

# *The Visiting Committee on Management in the Courts*

Report to Chief Justice Margaret Marshall



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March 2003



The Visiting Committee on Management in the Courts

March 4, 2003

To the Chief Justice of the Supreme Judicial Court of Massachusetts:

Six short months ago, in August, 2002, you appointed us as a Visiting Committee on Management in the Courts, to provide an independent perspective on the state of management in the Judiciary and to make recommendations for its improvement.

Our work brought a new understanding of the immense managerial challenge that the size and complexity of the Courts pose. The pride in the Judiciary and the dedication to its high purpose that you expressed in establishing the Committee, we found reflected in the hundreds of court personnel with whom we spoke in the course of our study. Throughout the Commonwealth, we found islands of managerial excellence. Other parts of the Court system do not share that advantage. But it is among the links that are needed to forge all the Courts into a unified system that we found the most significant managerial gaps. These gaps will not ultimately be bridged by personal talents of individual personnel, but by assuring that the best organizational structures and management practices are at work in molding the Courts into a true "system," as opposed to a loose collection of parts.

It is for this reason that neither our recommendations nor your acceptance of them can, of themselves, create a well-managed Court system. The Legislature, the Executive branch, and the public, must work with the Judiciary to undertake anew the challenge originally begun in the late 1970s and provide for the complex courts of the 21st century the organizational frame and the managerial know-how needed to deliver the justice the people of Massachusetts deserve.

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## **I. EXECUTIVE SUMMARY**

Today, the Courts of Massachusetts are mired in managerial confusion. The impact of high-quality judicial decisions is undermined by high cost, slow action, and poor service to the community. The administration and management of the Judiciary is uneven at best, and oftentimes dysfunctional. Morale is near the breaking point, and there is little concern for customer service. Employees cry out for leadership. The public wants reasonably priced, quick, and courteous justice, but often receives the opposite.

The Visiting Committee on Management in the Courts was appointed by Chief Justice Margaret Marshall last August to provide an independent perspective on the state of management in the Massachusetts Courts and recommendations for improvement. The Committee found that, despite pockets of genuine excellence, the management of the Judiciary is preventing the people of Massachusetts from receiving the justice they deserve.

These failings have a significant impact on citizens of Massachusetts. Some citizens get better justice than others. Businesses avoid states with slow, unsteady courts, families suffer because of slow case resolution, and inefficiency wastes taxpayer money.

With pro bono staff assistance from McKinsey & Company, the Visiting Committee has spent the last six months visiting courthouses across the Commonwealth, interviewing hundreds of judges, court personnel, and leaders of the bar and the community.

The Committee identified three root causes of the deficiencies described above: a leadership culture and structure that hobbles management, a lack of performance measurement and accountability, and an inability to manage costs and resources.

The Committee's report spells out three initiatives to address these causes: commit to a new leadership style and a revised organizational structure, create a culture of high performance and accountability, and establish discipline in resource allocation and use.

Each of these initiatives comprises a number of recommendations and implementation challenges. Restructuring the Courts to clarify reporting lines and responsibilities within the system is the first recommendation. The Judiciary must clarify who is in charge of the Courts. Benchmarks and performance goals for employees, courthouses, and managers can then be established under the leadership identified. The Committee further proposes that the existing budget process be redesigned, and that resources be allocated according to demonstrated needs. The

Judiciary should eliminate overlap among administrative structures and geographic locations. Finally, the Courts should increase management experience in the administration of the Judiciary, and leverage outside turnaround talent to accelerate the transformation process.

Though the Judiciary itself must lead these initiatives, transformation of the culture, organizational structure, and ultimately the performance of the Courts cannot succeed without the active cooperation and assistance of the other branches of government. All three branches of the Government have created this situation and all three must now participate in addressing its repair.

No mere summary can do justice to the complexity of the Courts' current situation or the sweeping nature of the Committee's recommendations. This report attempts, in graphic exhibits as well as in text, a thorough analysis of the Courts' current operations and statutory structure as the basis for its recommendations. This brief summary is intended to encourage thoughtful reading of the full report. If the Court system is to be transformed, it will require in-depth, thorough examination, and a commitment from all concerned to see the transformation through.

## II. INTRODUCTION

In 1780, the Massachusetts' Constitution codified the role of the Supreme Judicial Court as the Commonwealth's court of final appeal. John Adams' system of checks and balances, whereby the Judiciary is separate from and co-equal to the Executive and Legislative branches, formed the model for our federal system. Massachusetts' judicial history is a source of pride to the Commonwealth; the judicial decision-making in our state has a historical reputation for quality that is second to none.

Yet today, our courts are drowning in managerial confusion. The impact of high-quality decisions is undermined by high cost and slow action. The administration and management of the Judiciary is uneven at best, and dysfunctional at worst. Morale is at the breaking point, and there is little focus on customer service. Employees cry out for leadership. The public wants reasonably priced, quick, courteous justice, but often receives the opposite.

These failings make a significant difference to the citizens of Massachusetts. Managerial, administrative and financial incongruities in our system of justice mean that some of the Commonwealth's citizens get better justice than others. While some courts appear to be running efficiently, the system as a whole is failing. Businesses avoid a state that has slow and uncertain courts. Families struggle when courts take too long to resolve cases, and taxpayers suffer when the Courts are not efficient. The Commonwealth as a whole suffers.

Typically, the answer to such problems is more money. But over the last decade, court funding and personnel levels have increased, while problems have worsened. In today's economic environment and based on past performance, there is little appetite for giving the Judiciary more resources. The Courts must do better, likely with fewer resources than they already have.

As part of her efforts to address these issues, the Chief Justice of the Massachusetts Supreme Judicial Court formed the Visiting Committee on Management in the Courts. Our committee, made up of a diverse group of citizens from the law, academia, business and the policy arenas,<sup>1</sup> was asked "to examine and make

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recommendations regarding the standards and current effectiveness of managerial systems within the Courts.”<sup>2</sup>

The Visiting Committee started from the premise that there is no point in assigning blame for the current state of affairs; no one person or entity is entirely at fault, and many missteps have been made with the best of intentions. Our goal is to put forward recommendations that will improve the Judiciary’s service to the people of the Commonwealth, not to aid or hinder any institution, political group or individual.

The Visiting Committee was greatly aided in its work by the existence of many thoughtful reports on the state of the Commonwealth’s courts. We carefully reviewed these reports, but formed our own conclusions.<sup>3</sup>

The Visiting Committee also notes at least three other ongoing efforts to better understand and address the problems of the Court system.<sup>4</sup> We hope that these efforts incorporate our findings and build on our recommendations for improving delivery of justice to the people of Massachusetts.

Because of the immense complexity of the Massachusetts Courts, the Committee focused its efforts on the elements that impact the most cases and individuals. We addressed management issues across the Trial Court; we paid special attention to the Boston Municipal, District, and Superior Court departments as well as the Housing and Land Courts, which together handle over 80 percent of the system’s caseload. The Visiting Committee visited every Trial Court department and, because we base our recommendations on basic management principles, we are confident that most of our recommendations also can be applied to the Probate & Family and Juvenile Court departments.

<sup>2</sup> For the full text of the Visiting Committee Charge, see <http://www.state.ma.us/courts/press/pr080602.html>

<sup>3</sup> These reports included:

“Res Gestae”: Massachusetts Bar Association Committee on Court Reform (1976);

“Report on the State of the Massachusetts Courts”: Governor’s Select Committee on Judicial Needs (1976);

“Agenda 90”: Senate Ways and Means Committee (1987);

“Justice Endangered: Management Report on Massachusetts Courts”: Harbridge House (1991);

“Massachusetts Courts in Crisis: A Model for Reform”: Boston Bar Association State Court Study Committee (1991);

“Chief Justice’s Commission on the Future of the Courts: Report of the Organization and Administration Task Force” (1992);

“Justice Delayed: Improving Administration of Civil Justice...”: Honorable Daniel B. Winslow (1998);

“A Declaration of Independence: Reaffirming the Autonomy of the Third Branch”: Pioneer Institute/Honorable James W. Dolan (2002).

The Visiting Committee is grateful to all those who have gone before in this effort; their work did much to educate us on the issues at hand.

<sup>4</sup> These efforts include Governor Romney’s recent proposals, a Massachusetts Bar Association study, and a planned legislative committee to study the Courts.

The Visiting Committee's work has been a vast undertaking. Over six months, the Committee and its staff visited 14 courthouses and interviewed hundreds of judges, clerks, probation officers, security officers, clerical staff, administrators, members of the bar and community leaders. We held three days of hearings with court leaders from across the Commonwealth. We learned an immense amount from all of these individuals, and were impressed by the passion and commitment of many Court employees. The experience hardened our belief that these dedicated individuals deserve a better system than the one that exists today.<sup>5</sup>

The Committee sought out best practices from the federal system<sup>6</sup> and from many states.<sup>7</sup> We spoke with experts from around the nation. We reviewed reports and documents from many states and the federal courts. We also called upon our own experiences with private and public-sector organizations facing difficult challenges and reform.

The Visiting Committee also had expert volunteer support in the management, legal, and communications arenas. The global management consulting firm McKinsey & Company provided a full-time team for six months. Mintz Levin Cohn Ferris Glovsky & Popeo provided an objective legal review of the statutory and constitutional framework that defines roles within the Judiciary.<sup>8</sup> Morrissey & Company provided communications expertise.<sup>9</sup> Finally, Boston College's graduate and professional schools donated both research and administrative support.<sup>10</sup> In sum, the Visiting Committee and its staff invested over 3000 man-hours in this effort.

The Visiting Committee owes a debt of gratitude to all those who have assisted us in this great task of seeking better justice for the people of the Commonwealth. The facts and ideas in this document are largely a product of the perspectives that those

<sup>5</sup> The Visiting Committee is not thanking by name the many Court personnel who helped us, both from fear of omission and because of the Committee's commitment to hold all individual opinions in confidence.

<sup>6</sup> The Visiting Committee extends its special thanks to the United States District Court for the Eastern District of North Carolina, and especially its Chief Judge, the Honorable Terrence W. Boyle, who was generous in sharing his views on court management in the federal system and providing us access to the talented staff of this high-performing federal trial court.

<sup>7</sup> The Visiting Committee extends its thanks to the Office of the State Court Administrator of Missouri, the Administrative Office of the Courts of California, the Public Information Office of the New York State Unified Courts and the Office of the State Courts Administrator of Florida, who have been very helpful in deepening our understanding of court organization and resource management practices in other states.

<sup>8</sup> The Visiting Committee is especially grateful to Bob Popeo, Beth Boland, and John LaPlante of Mintz Levin Cohn Ferris Glovsky & Popeo.

<sup>9</sup> The Visiting Committee is indebted to Peter Morrissey, John Lamontagne, Ed Cafasso, and Kerry Murphy of Morrissey & Company for their contributions.

<sup>10</sup> Special thanks are due to Bronwyn Lamont and Rose Mary Donahue of Boston College, who supported the Visiting Committee with intelligence and patience.

within and outside the Courts have so generously shared. But while we consulted many in the process, the recommendations contained in this report are the work of the Visiting Committee; no one outside the Committee and its staff contributed to its content or reviewed it prior to publication. The Visiting Committee takes full responsibility for these recommendations and any errors or omissions contained in this report.

The Committee realizes that the road ahead will not be easy. Our recommendations are far-reaching and will call for cooperation from the Judicial, Legislative, and Executive branches. Implementation will require years of effort. But the reward – fast, efficient and courteous justice – far exceeds the effort required to succeed.

### III. CURRENT SITUATION: THE CASE FOR CHANGE<sup>11</sup>

The Massachusetts Courts have a longstanding reputation for the quality of their judicial decision-making. Many observers believe that the Courts almost always “get to the right answer” in legal disputes. Yet the people of Massachusetts are still not getting the justice that they deserve.

Massachusetts’ Courts are managed in such a way that “getting to the right answer” takes too long and is too expensive. Cases can languish for years and both taxpayers and litigants pay too much for justice. The people of the Commonwealth deserve a system that delivers a sound answer in a timely fashion at a reasonable cost.

Exhibit 1

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#### **MASSACHUSETTS COURTS HAVE A REPUTATION FOR BEING SLOW AND COSTLY**

**U.S. Chamber of Commerce survey, December 2001**

##### **Timeliness of summary judgment/dismissal**

<b>State</b>	<b>Rank</b>
Delaware	1
Virginia	3
Connecticut	14
Missouri	30
New Jersey	35
New York	41
California	42
Texas	43
<b>Massachusetts</b>	<b>45</b>
Mississippi	50

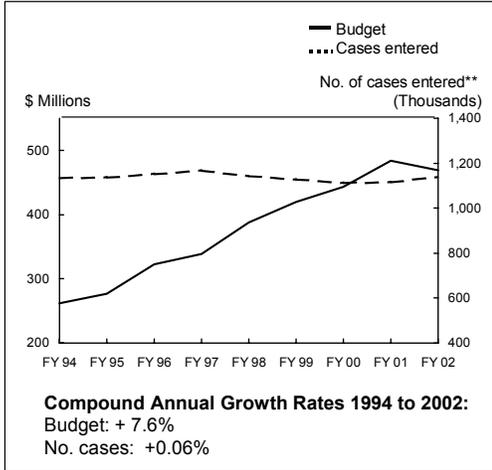
- In a 2001 U.S. Chamber of Commerce survey of corporate attorneys, Massachusetts ranked near the bottom in terms of timeliness
- In a 2001 Massachusetts Bar Association survey of Massachusetts lawyers on 19 areas of performance, judges received the lowest approval ratings for consideration accorded to parties’ time obligations and sensitivity to litigants’ legal fees

Source: States Liability Systems Ranking Study, U.S. Chamber of Commerce; 2001 Judicial Performance Survey Massachusetts Bar Association

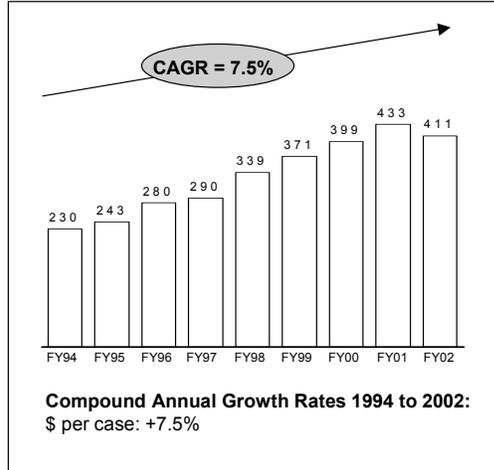
<sup>11</sup> For more detailed background on the current structure of the Courts, please see appendix 1.

## THE COST OF JUSTICE TO TAXPAYERS HAS BEEN RISING

**Trial Court funding vs. cases entered\***  
FY1994 – FY2002



**\$ per case**  
FY1994 – FY2002



\* Funding includes funds appropriated by the Legislature to the Trial Court plus Trial Court collective bargaining reserves; funding does not include funds appropriated to the Supreme Judicial Court or Appeals Court and excludes bond funds, grants, trusts, and intergovernmental funds

\*\* Decrease in cases entered has been underreported. The Juvenile Court counts individual charges as separate cases. In the District Court, multiple charges are considered to be part of a single case if filed against one person for one event. As cases have been moving from the District Court to the Juvenile Court because of the Juvenile Court's expansion, cases with multiple charges against one person are being counted by the number of charges, increasing overall Trial Court cases entered more than under multi-charge case counting

Note: "Cases" are defined differently by each department and the AOTC and are not weighted to reflect differential impact on workload. Fiscal year is from July 1 to June 30

Source: "Five-Year Summary of Cases Entered," in Judiciary Annual Report; AOTC; McKinsey analysis

For citizens to realize the urgency of reforming the courts, they must fully grasp the slow and costly status quo. The Judiciary's current shortcomings are truly damaging to the citizens of the Commonwealth.

## THE COST OF JUSTICE IS INCREASING

CIVIL EXAMPLES

Expenses	Social costs	Current financial costs	Previous financial costs
<b>Waiting time</b>	<ul style="list-style-type: none"> <li>Parties must wait through increasingly long delays before being called into session</li> </ul>	<ul style="list-style-type: none"> <li>Many clients must pay attorneys on a per hour basis for time spent waiting, regardless of service provided</li> <li>Time off work</li> </ul>	<ul style="list-style-type: none"> <li>Attorneys generally as expensive on per hour basis, but delays were slightly shorter or just as long as today</li> </ul>
<b>Filing a case</b>	<ul style="list-style-type: none"> <li>Higher filing fees inhibit lower income parties from filing civil claims</li> </ul>	<ul style="list-style-type: none"> <li>Fees as of August 2002*                             <ul style="list-style-type: none"> <li>Complaints: \$200</li> <li>Petitions: \$25</li> <li>Issuance of injunction or restraining order: \$75</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Fees prior to August 2002*                             <ul style="list-style-type: none"> <li>Complaints: \$175</li> <li>Petition: \$20</li> <li>Issuance of injunction or restraining order: \$50</li> </ul> </li> </ul>
<b>Judge time</b>	<ul style="list-style-type: none"> <li>Parties are not guaranteed their day in court; Superior Court sessions will not proceed in some instances unless parties are willing and able to pay for their own stenographers**</li> </ul>	<ul style="list-style-type: none"> <li>Potentially \$148 per diem (52 full-time court reporters are fully funded through Superior Court account; 18 per diem stenographers are funded through a separate per diem account until April 2003, after which date funding will run out and parties will have to pay for stenographers)**</li> </ul>	<ul style="list-style-type: none"> <li>Free: courts guaranteed and paid for stenographers as part of basic services to parties</li> </ul>

*Massachusetts Constitution, article XI*

*Every subject of the commonwealth ought to find a certain remedy (...). He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws*

\* Applies to the Superior Court only. Filing fees have also risen in other departments

\*\* The Superior Court is a court of record, meaning that sessions cannot proceed without proceedings being recorded

Source: AOTC; interviews; Constitution of the Commonwealth of Massachusetts

We saw several examples of how poor delivery of a sound judgment undermines the quality of justice in Massachusetts:

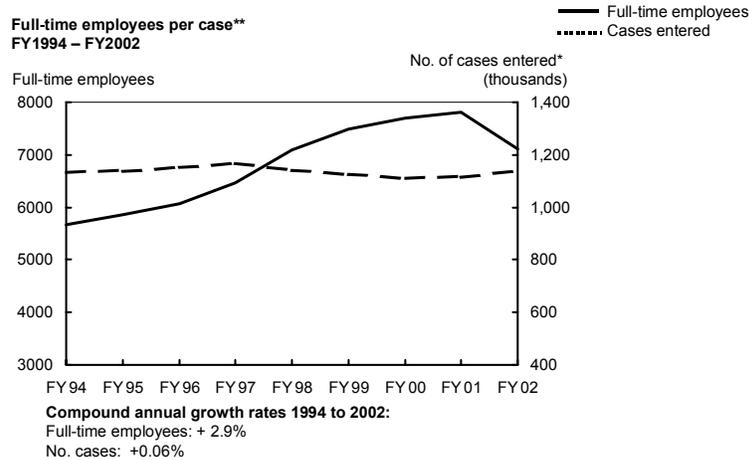
- Because it took the Courts almost five years to terminate their birth parents' custodial rights, a set of siblings spent their elementary school years in foster care, in spite of the existence of excellent potential adoptive parents.
- A convicted rapist was free for 16 years before serving a day of his prison sentence because of alleged health problems, missing and inaudible court records, and two appeals that took years to navigate the Court system. Until the victim herself filed a motion with the Supreme Judicial Court, no action was taken.
- From 1994 to 2002, caseloads across the system remained flat while costs have increased by 79% and personnel have increased by 25%. In spite of these additional resources, no noticeable progress has been made in delivering justice in a faster or more consistent manner.
- One clerk-magistrate was accused of over 100 acts of misconduct over a period of years before action was taken. This misconduct included slowing the handling of cases filed by lawyers he disliked, suggesting that a court employee "go commit suicide," and illegally attempting to influence the outcome of a criminal case.

These are but a small sample of the many grossly mishandled situations brought to our attention. During visits to courts across the Commonwealth, many stories of justice denied through delay or excessive cost came to light.

These shortcomings affect a broad range of constituents, as well as court personnel. Taxpayers bear the burden of an unreasonably expensive system, witnesses and police officers are away from other responsibilities as they wait to testify, and litigants wait years for justice. Jurors called for jury duty but not utilized cost the Commonwealth's employers tens of millions of dollars annually.<sup>12</sup>

<sup>12</sup> In 2001, Massachusetts's jury utilization stood at 12.4% (meaning 12.4% of citizens who appeared for jury duty were selected to serve on either a trial jury or grand jury, and sat for a trial or a grand jury indictment hearing). If utilization were raised to 24%, it would save over 150,000 workdays and approximately \$23 million in wages for Massachusetts's employers. (Note: Very high percentages of jury utilization are impractical due to late settlements of cases, the right of parties to strike jurors, and other legitimate reasons.)

**DESPITE RECENT CUTBACKS, OVERALL STAFFING TRENDS HAVE OUTPACED TREND OF CASES ENTERED**



\* Decrease in cases entered has been underreported. The Juvenile Court counts individual charges as separate cases. In the District Court, multiple charges are considered to be part of a single case if filed against one person for one event. As cases have been moving from the District Court to the Juvenile Court because of the Juvenile Court's expansion, cases with multiple charges against one person are being counted by the number of charges, increasing overall Trial Court cases entered more so than under multi-charge case counting

\*\* Full-time employees includes all full-time Trial Court employees as of the end of fiscal years

Note: "Cases" are defined differently by each department and the AOTC and are not weighted to reflect differential impact on workload. Fiscal year is from July 1 to June 30.

Source: "Five-Year Summary of Cases Entered," in Judiciary Annual Report; AOTC; McKinsey analysis

It should be noted that these shortcomings are not uniform across the entire court system. While there are some court employees, as in other lines of work, who do not show the proper dedication to their work, most of the individuals we met are hard working and committed to public service. Yet the overall effectiveness of the Courts remains at an unacceptable level. Why?

The existing organization of the Courts is unmanageable, inefficient and lacks accountability. These problems are not the result of bad intentions, but the fault of a series of partial solutions that have combined to make the structure of the Courts incomprehensible to all but the most attentive observers.

Three issues must be addressed to repair the Massachusetts Court System:

- **Convolutd organizational structure.** While the Supreme Judicial Court (SJC) holds superintendence over the entire court system, the Trial Court is divided into seven departments, each with its own administrative office and jealously guarded rights and prerogatives. According to the Constitution and statutes, both the SJC and the Chief Justice for Administration and Management (CJAM) hold

responsibilities for the Trial Court, yet roles and responsibilities are laid out in unclear and at times managerially contradictory statutes.<sup>13</sup>

There are also obstacles to good management within individual courthouses. First Justices often are armed only with moral suasion in their dealings with probation officers and clerks. Clerks who are appointed for life openly feud with the judges they are supposed to support, and Chief Probation Officers feel torn between the Commissioner of Probation's hierarchy and the First Justice they serve.

- **Lack of accountability and performance measurement and management.** Performance management requires a common definition of success in the court system. The Massachusetts Courts are lacking in this area. There are no shared system goals and benchmarks for performance to guide and direct employees. When pressed, court personnel acknowledge that no common measurements exist and that employee evaluation processes are nonexistent or have limited consequences. Managers have very limited means to reward high-performing employees, and are sometimes faced with union grievances or political threats when they attempt to discipline poor performers. Worse yet, managers themselves are not evaluated or motivated properly. High quality job performance is not rewarded, and poor performance is often ignored.
- **Inability to manage costs and resources.** Funding is allocated through arcane and decentralized means. Because each unit has its own resources, it is difficult to use financial controls as a management tool or redistribute resources to critical need areas. The current funding procedure rewards individual clerks, judges, and probation officers who abuse system guidelines and lobby individually for special favor from the Legislature.

Unclear reporting lines, a lack of consistent measurements and procedures, and uneven funding lead to a system that performs in an inconsistent fashion. Some courts, blessed with collaborative leaders and consistent funding, have developed informal structures that produce sound judicial decisions in a quick, respectful, and cost-efficient manner. Other courts struggle with poor morale, long case backlogs, disrespectful environments, and high costs.

<sup>13</sup> See appendix 2 for a detailed discussion of the statutory and constitutional foundations of the Massachusetts Court System.

These managerial and structural challenges – along with many others described in this report – have paralyzed the Court system so effectively that it is unable to heal itself. While many court leaders have not attempted to challenge the wrongs in the system, even the most skilled and passionate leader could not effect meaningful change within the constraints placed upon the Judiciary’s leaders.

The Courts must be transformed if they are to deliver the justice that the people of the Commonwealth deserve. The Courts’ current mind-set of resignation must be replaced by a relentless focus on serving the public. While only pockets of high performance now exist, all of Massachusetts’ citizens deserve high performing courts.

Reaching this goal does not require additional funding. Full implementation of this report would result in a less expensive and more effective Court system. Reaching this goal requires something that may be even more challenging than securing funding in a budget crisis – collaboration and cooperation among the Courts, Legislature, and Governor.

The Courts must agree on a definition of success that will fulfill the public’s right to a fair and just judicial system. The Legislative and Executive branches must agree to untangle the confusing structure that binds the Courts in mediocrity.

This is a daunting challenge, but one that is critical to the people of Massachusetts. Success brings a great reward: a Court system that performs to high standards of civility, timeliness, cost-efficiency, and decision-making, and a Commonwealth where citizens can rest assured they will receive the same quality justice from the Islands to the Berkshires. In the pages that follow, the Visiting Committee lays out its recommendations to meet this challenge. We hope that leaders across Massachusetts will consider them carefully and act quickly to give the people of the Commonwealth the Court system they deserve.

## IV. RECOMMENDED ACTIONS

The challenges facing the Courts are significant. The Visiting Committee initially considered tactical and piecemeal solutions, but quickly came to realize that only a major transformation would provide relief to the Courts' problems.

In the following pages, the Committee lays out 14 specific recommendations, organized into three initiatives:

- Commit to new leadership norms and structures
- Create a culture of high performance and accountability
- Establish discipline in resource allocation and use

Exhibit 5

### RECOMMENDED ACTIONS TO IMPROVE MANAGEMENT OF THE COURTS

<b>Initiative 1:</b> Commit to new leadership norms and structures	<b>Initiative 2:</b> Create a culture of high performance and accountability	<b>Initiative 3:</b> Establish discipline in resource allocation and use
<ol style="list-style-type: none"> <li>1. Through active leadership and statutory change, the SJC must exercise authority commensurate with its responsibility to lead the Judiciary</li> <li>2. Clarify lines of reporting and accountability throughout the system</li> <li>3. Increase the management experience brought to bear on the administration of the Judiciary by building a corps of professional administrators and securing external advice</li> </ol>	<ol style="list-style-type: none"> <li>4. Create a shared vision of success with associated benchmarks</li> <li>5. Define success (and failure) for individual managers, units, and staff members, with benchmarks and measurements</li> <li>6. Institute regular feedback and evaluation processes</li> <li>7. Make evaluations meaningful by connecting consequences to performance</li> <li>8. Abandon policies and traditions that make it difficult to measure or manage performance</li> <li>9. Publish unit rankings both internally and externally</li> </ol>	<ol style="list-style-type: none"> <li>10. Build improved financial and staff management capabilities to manage resources according to demonstrated needs</li> <li>11. Redesign the budget process to be simpler and more efficient; eliminate "gaming" of the process; and drive judicial accountability for performance</li> <li>12. Eliminate overlap and redundancy among administrative structures and geographic locations</li> <li>13. Triage and accelerate infrastructure improvements in a fact-based fashion</li> <li>14. Improve methods for collecting monies owed the Commonwealth</li> </ol>

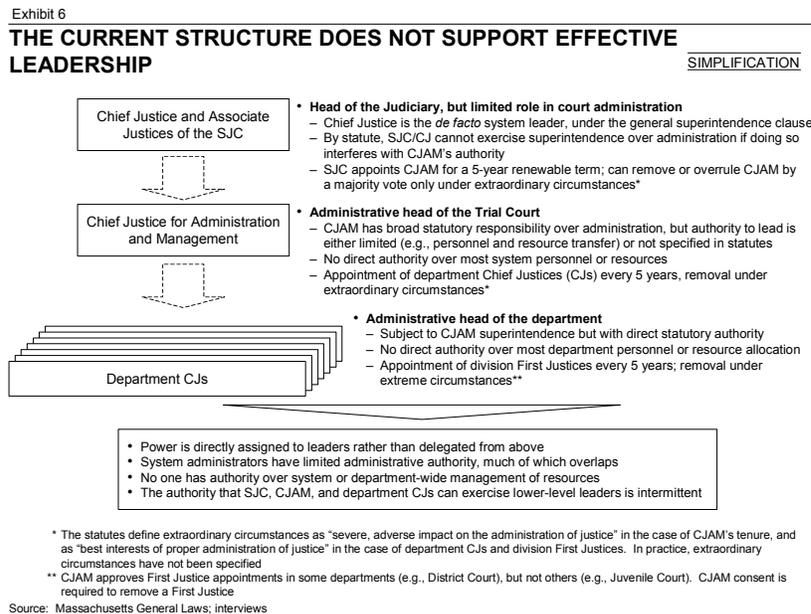
As discussed in the section on implementation, the Judiciary must lead these initiatives. Action and support from the Legislative and Executive branches are necessary, but are not the first steps toward success – only strong judicial leadership can achieve the results that the people of Massachusetts deserve.

## IV(a). INITIATIVE 1: COMMIT TO NEW LEADERSHIP NORMS AND STRUCTURES

Under its current leadership structure, the Judiciary faces almost insurmountable difficulties in effectively managing itself. Authority bears little correlation to responsibility, and accountability cannot be enforced. Direct statutory grants of power and resources to multiple leaders within the system, weak management tools, and a leadership culture too often not attuned to the realities of complex management undermine every leadership role in the Judiciary. Even responsible, committed individuals in leadership roles who want internal reforms are hobbled by limited and unclear powers.

### Issues with existing leadership norms and structures

The Supreme Judicial Court is the highest court in the Commonwealth and has general powers of oversight over all other courts. However, authority within the Judiciary is often directly assigned by the Governor or Legislature rather than delegated by the SJC. For example, the Chief Justice for Administration and Management (CJAM) has been established as a nearly autonomous authority to manage the Trial Court. The SJC is prohibited by statute from exercising or overriding those powers except in egregious circumstances.<sup>14</sup>



<sup>14</sup> M.G.L. c. 211, s. 3, provides that the SJC may overrule the CJAM under "extraordinary circumstances leading to a severe, adverse impact on the administration of justice." M.G.L. c211b, s.6, provides for removal of the CJAM by

The CJAM controls the largest single line item in the Judiciary budget, the \$96 million-plus Administrative Office of the Trial Court (AOTC) central administration account. While the SJC appoints the CJAM, the CJAM's term is five years and removal is only possible in the event of misconduct. As a result, the SJC has little means to influence the management of the Trial Court – which comprises the bulk of the Judiciary.

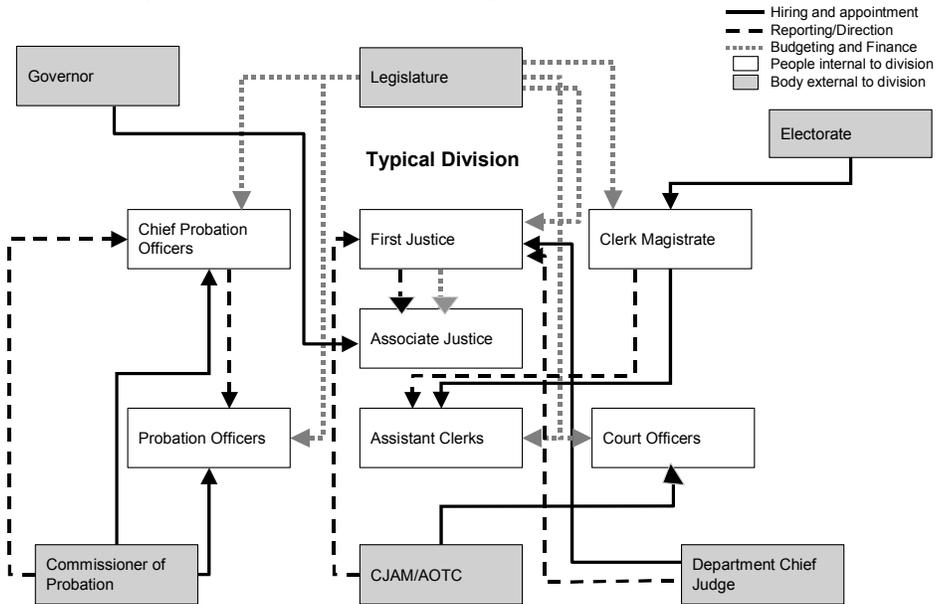
The CJAM's more expansive powers extend only over the Trial Court. The functional separation of jurisdictional and administrative leadership into separate centers of power is managerially detrimental to both – and to the system as a whole. This unusual and problematic structure is unique among American judiciaries and runs counter to basic management principles followed by private sector organizations.

The Judiciary suffers from this lack of a clearly defined leader for the entire system. Internally, no one knows where to turn for guidance. Externally, the Judiciary lacks a powerful voice to represent its interests to the public and the other branches of government. The SJC should perform this role, but finds its leadership restricted to jurisdictional issues.

the SJC “only for cause in the nature of malfeasance, misfeasance or nonfeasance.” See appendix 2 for a more detailed discussion of the statutory and constitutional foundations of the Court system.

The lack of meaningful authority is evident throughout the courts. Each layer of management has little ability to direct the next and little accountability to the one above. Reporting lines are vague and do not reflect natural working units. Basic tools of authority are undermined or absent: consequences cannot be tied to

Exhibit 7  
**EXTERNAL PRESSURES AND UNCLEAR INTERNAL RELATIONSHIPS  
 MAKE DIVISION MANAGEMENT DIFFICULT** SIMPLIFIED



Note: While Superior Court Clerks of Courts and Registrars of Probate are elected, Land Recorder and Clerk-Magistrates in other departments are appointed by the Governor  
 Source: Interviews; AOTC and SJC materials

performance; resources cannot be removed or redirected; even the selection of those in key positions is often outside of a manager’s control.

Examples of problems are plentiful: a Commissioner of Probation with a lifetime appointment can outwait a CJAM trying to enact change; a Clerk-Magistrate who is subject to a code of conduct but not performance standards can simply disregard the direction set by a First Justice or department Chief Justice.

Whether due to weak authority or other reasons, the leadership culture of the Judiciary is hesitant to act even when the authority to do so exists. Employees at every level struggle to understand what their leaders’ agenda is or how it is being pursued. Too few leaders exercise even the limited powers at their disposal to address poor performance and operational issues.

Asked to address issues facing the Judiciary, too many managers focus on resources they no longer have or how they have been victimized and constrained. Rarely do they identify ways to improve performance.

The Judiciary does not foster or reward management talent. Few managers at any level are appointed based on expertise in managing organizations. Instead, many managers are selected on the basis of their reputations for judicial decision-making, service in other (often non-administrative) roles in government, relationships with those influencing selection, or seniority within the Judiciary. Statutes set some of these criteria,<sup>15</sup> while tradition or political maneuvering drives others.

Although many First Justices, Clerks, and other supervisors have strong leadership and management skills, this is often more by accident than design. Performed well, management consumes time and attention. But many managerial roles in the Courts are assumed in addition to other functions and without sufficient support from professional administrators. Those undertaking the additional responsibilities and workload entailed by administrative roles (such as First Justice) generally do not receive additional compensation or a decrease in other responsibilities, thus making managerial roles less attractive. By failing to prioritize management skill, the Judiciary nearly guarantees that it will have too little of it.

The leadership structures and environment described here are powerful obstacles to real change. No leader has the unambiguous authority to drive transformation and too many managers have the ability to resist it. These structures have evolved over time. Previous changes in structure reflect the circumstances and personalities involved when they were made. The resulting unmanageable and unacceptable system requires aggressive reform. The three branches of government must now collaborate to redesign the Judiciary with clear reporting lines and roles so the system is more manageable and better able to deliver service to the public.

### **Recommended actions**

As a co-equal branch of government, the Judiciary must have and exercise both the power and ability to govern itself. Achieving this will require collaboration and action from internal leaders and the leaders of the other two branches of government. (Note that this document discusses several key facets of leadership, including performance measurement, management of individuals and entities, and resource allocation and utilization, at some length in later sections.)

<sup>15</sup> See appendix 2, pages 7-11, 13-15, 17-18.

Recommendation 1: Through active leadership and statutory change, the SJC must exercise authority commensurate with its responsibility to lead the Judiciary

Under the leadership of the Chief Justice, the Justices of the SJC must be visible leaders both internally and externally. The SJC recently clarified the constitutionally derived inherent power of judges to ensure the delivery of justice<sup>16</sup> and must now translate that power into managerial action. The Justices must be public advocates for the Courts in policy debates concerning the Judiciary. As part of their public role, they should provide the public and the other branches of government with regular updates on the Judiciary's performance and other information.<sup>17</sup> The current "Annual Report on the State of the Massachusetts Court System" is a start, but focuses more on reporting activity than evaluating performance. The people of Massachusetts, and their Governor and Legislature, deserve to know what the Courts' goals are, how achievement against those goals is measured, and how the Courts are doing.

Activist leadership is also vital to reenergize the human resources that are the Judiciary's greatest strength. The SJC, with widespread participation from its constituents, must articulate a mission that expands its aspirations beyond excellence in adjudication to excellence in administration and management. The SJC must also regularly communicate this mission to court employees at all levels.

Notwithstanding the professional strengths and talents of individual incumbents in the office of CJAM, it is managerially necessary that the person in this role report directly to the SJC. In concert with more active leadership from the SJC, the Legislature must recraft the role of Chief Administrator of the Courts. (For purposes of clarity, we will refer to this role as the "Chief Administrator" (CA) through the remainder of this document). The person in this role should report to and be removable at the will of the SJC. This Chief Administrator should be the agent of the SJC, no longer a power essentially independent from it. Because this CA will control the Administrative Office of the Courts, the SJC will, through the CA, have the resources necessary to effectively manage the Courts. The SJC should not regularly exercise the powers of the CA, but should play an active oversight role. If the CA does not exercise his<sup>18</sup> powers in concert with SJC direction, that person can be overruled or replaced as a matter of course. The person in the CA role could be, but does not necessarily have to be, a sitting judge.

<sup>16</sup> SJC-08812, 438 Mass. 387, delivered January 7, 2003.

<sup>17</sup> For more extensive discussion of performance measurement, see Initiative 2, below.

<sup>18</sup> In cases where this report refers to officeholders through a pronoun, we have uniformly used the male pronoun. This emphasizes that we are speaking generally about the holder of the office, not specifically about the current officeholder.

But in any circumstance, the CA must have a strong managerial background and be supported by a corps of talented professional managers.

The SJC and CA must optimize for the system as opposed to individual departments or divisions. The current structure of the Courts rewards managers who optimize for their “silo” within the system; there is no leader with the power to manage for the good of the entire system, demanding performance in every Courthouse in the Commonwealth.

This model is not only similar to that seen in other states and the federal system, but is consistent with widely accepted principles of organization and management. In addition, the Judiciary may wish to reshape its central administration to focus more on providing back-office support functions. If the Commonwealth were to move in that direction, reduction in the number of Trial Court departments should also be considered to minimize administrative redundancy (maintaining different jurisdictional departments if desirable).

#### Recommendation 2: Clarify lines of reporting and accountability throughout the system

Together, the Judiciary and Legislature should resolve the issues of unclear authority and confused reporting that pervade all levels of the Judiciary leadership structure. Laws granting direct authority to managers should be rewritten; all authority within the system should ultimately be delegated from the SJC; terms of office should be replaced with at-will appointments co-terminal with the tenure of the appointing leader. For example, senior managers appointed by the Chief Administrator of the Courts (the role currently played by the CJAM), such as the Commissioner of Probation and Department Chief Justices, should exercise power and use resources delegated by the Chief Administrator, should be directed by the CA in the ordinary course, and should serve at the will of the CA. To enable each CA to select the team that will carry out his plan, each new CA should have the opportunity to select a new team of senior managers.

As discussed below in the section on Performance Management, Trial Court divisions should be transformed into actively managed working units. To make this a reality, it is critical to empower First Justices with authority equal to the responsibility for the entire division.<sup>19</sup> Other managers within the division must be accountable to the First Justice if the role is to have real leadership impact.

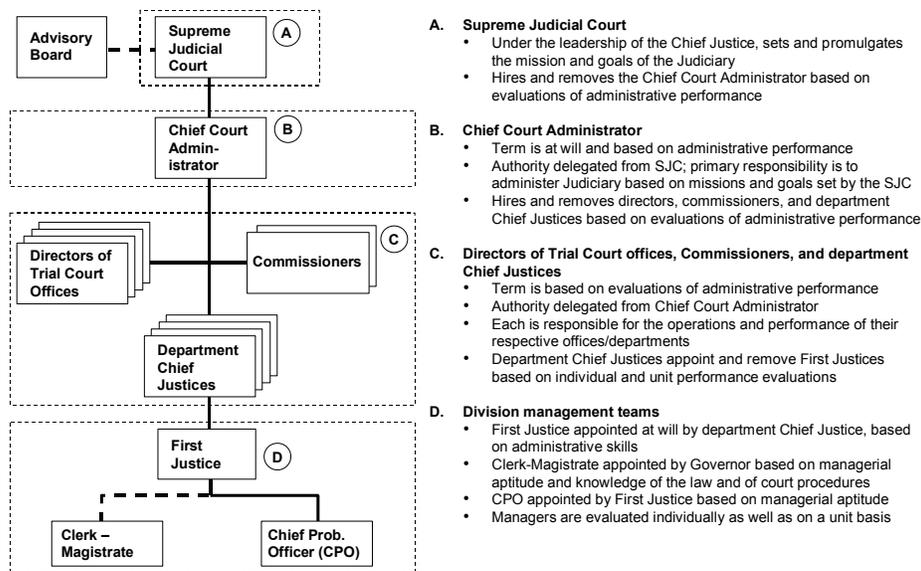
<sup>19</sup> The SJC’s recent decision, SJC-08812, 438 Mass. 387, delivered January 7, 2003, clearly establishes the authority of judges in the courthouse. However, it remains to be seen how this clarified authority will translate into active leadership.

In pursuing the need for authoritative leadership and clearer lines of reporting and accountability at every level, the Judiciary need not harden into a top-down, highly hierarchical and micromanaged institution. Rather, clarity of responsibilities and roles should empower leaders at every level to act with authority within their own purview and to hold one another accountable for getting the best possible performance from those who report to them. The Judiciary must move from a culture of hesitant leadership to one that rewards and embraces strong leadership at every level.

Exhibit 8

**THE JUDICIARY REQUIRES CLEAR LINES OF AUTHORITY AND DEFINED CONSEQUENCES FOR DIFFERENTIAL PERFORMANCE**

PROPOSED STRUCTURE



- A. Supreme Judicial Court**
  - Under the leadership of the Chief Justice, sets and promulgates the mission and goals of the Judiciary
  - Hires and removes the Chief Court Administrator based on evaluations of administrative performance
- B. Chief Court Administrator**
  - Term is at will and based on administrative performance
  - Authority delegated from SJC; primary responsibility is to administer Judiciary based on missions and goals set by the SJC
  - Hires and removes directors, commissioners, and department Chief Justices based on evaluations of administrative performance
- C. Directors of Trial Court offices, Commissioners, and department Chief Justices**
  - Term is based on evaluations of administrative performance
  - Authority delegated from Chief Court Administrator
  - Each is responsible for the operations and performance of their respective offices/departments
  - Department Chief Justices appoint and remove First Justices based on individual and unit performance evaluations
- D. Division management teams**
  - First Justice appointed at will by department Chief Justice, based on administrative skills
  - Clerk-Magistrate appointed by Governor based on managerial aptitude and knowledge of the law and of court procedures
  - CPO appointed by First Justice based on managerial aptitude
  - Managers are evaluated individually as well as on a unit basis

**Recommendation 3: Increase the management experience brought to bear on the administration of the Judiciary by building a corps of professional administrators and securing external advice**

The Judiciary needs to increase the level of managerial talent in the system. To achieve this goal, all those – including internal Judiciary leaders and the Executive branch -- who select candidates for Clerk-Magistrate, First Justice and other administrative roles must prioritize managerial aptitude in filling management roles.<sup>20</sup> Additionally, the role of professional managers should be expanded. This

<sup>20</sup> The Visiting Committee notes Governor Romney’s recent and proposed changes to the way judges are selected in Massachusetts. While these reforms may well improve the process for appointing highly qualified jurists to the Massachusetts bench, they do not appear to have the intent of selecting judges with any greater or lesser amount of managerial talent than the current selection process provides. It may be helpful in the future to propagate similar

means recruiting more professional court administrators, compensating them well, and granting them the authority necessary to manage the system. Judges and magistrates, who must devote most of their time to judicial decision-making, should delegate administrative power to these professionals, while maintaining oversight.

Important as these two strategies are for building managerial expertise throughout the system, we do not believe they are sufficient to effect the radical transformation to a managerial culture needed at this time. As one First Justice told us, court personnel are “hanging on by their fingernails” in their desire for real change.

The art of the great judge lies not only in exhaustive knowledge of the law, but also in the ability to wisely apply the law to the endlessly different circumstances of individual cases that come before him. The judge’s culture, like that of the physician, demands time-consuming attention to individuals and to the qualitative differences among them. A managerial culture, by contrast, employs quantitative methods to deal effectively with large and complex sets of constituents. These methodologies influence cultures that are different but are not opposed. The irony is that the larger and the more complex the court system, the more its quality of service to individuals will depend on its assimilation of a managerial culture to assure prompt, efficient, cost-effective justice to all.

The Visiting Committee, with its broad experience in change management efforts, understands the value of external expertise in effectively assimilating a managerial culture. This is especially true for the Courts, which are not versed in sweeping managerial transformation. Turnarounds are very difficult, and most private companies that engage in these efforts use outside advisors with turnaround experience to help them shape and implement their plans. This is not meant as a reflection on the talent in the Courts. As one CEO said, referring to his use of a turnaround team, “if you were having surgery, would you prefer to be operated on by someone who’s done it before, or someone who’s doing it for the first time?” The Visiting Committee believes that an investment in talented, external “turnaround” support will be key to focus and accelerate our progress towards a more efficient and productive Court system. Both public and private organizations have found that the advantages of outside help far outweigh the cost.<sup>21</sup>

Finally, the SJC must obtain leadership support from internal and external advisors. Great lawyers and jurists usually lack the experience of managing large organizations. To overcome this shortfall, and to bring new talent and perspectives

criteria for appointment of clerks, focused explicitly on managerial and administrative skills as well as legal knowledge.

<sup>21</sup> Funding for outside help may come from the Commonwealth’s coffers or one of the many foundations with an active interest in improved delivery of government service.

to bear, the SJC should immediately create a forward-looking advisory board to help it manage the Courts more effectively.<sup>22</sup> This board would include members from within the system who would be thoughtful and knowledgeable contributors and external members who can bring private sector or other government experience to bear on the managerial challenges facing the Judiciary. Including members of key legislative committees or their staffs or senior members of the Executive branch would ensure continuous communication and collaboration among the branches as they together assess the Judiciary's needs and opportunities. A high-profile and respected advisory board could also provide needed performance pressure and a sense of urgency.

<sup>22</sup> The intent of the Visiting Committee is that this advisory board be permanent, while the Steering Committee and Project Team recommended in the implementation section, below, should stay in place only during the transformation period (although this transformation period could last several years).

## **IV(b). INITIATIVE 2: CREATE A CULTURE OF HIGH PERFORMANCE AND ACCOUNTABILITY**

As the Visiting Committee visited courts across the Commonwealth, we asked one fundamental question: “What are your goals and how do you know if you are meeting them?”

While many courts pointed to high-quality decision-making as a goal, none had a way of measuring progress towards this goal. In fact, not one court was able to point to clearly defined benchmarks by which it measures itself on a regular basis on decision-making quality, efficiency, timeliness, and service. There were those in the Courts who expressed concern about interference of the Legislature in the management of the courts. However, it is a reasonable condition of self-governance that the Courts accept full responsibility for performance.

### **Issues with current performance and managerial culture**

It is very difficult for an organization to succeed when it lacks a clear picture of success. Yet, there exists today no complete mission statement for the courts. Judicial leaders often cite high-quality judicial decision-making as their sole goal, downplaying important elements of justice like timeliness and efficiency.

Likewise, just as there are no declared managerial goals at the system level, there are no benchmarks for evaluating departmental or individual court performance. While recent reclassification efforts have attempted to define expectations for front-line employees, they do not include measurements of good and bad performance. There are almost no definitions of what a good or bad job looks like at the managerial level. The evaluations and consequences tied to individual and working unit performance common for managers in the private sector are absent in the Judiciary.

Even with clear definitions of success and measurable goals, incentives to do a good job are limited. While front-line employees are subject to some discipline for poor performance, it is very difficult to reward high performers in a meaningful way. Managers have even less incentive to perform. Unclear reporting relationships make it even harder for the system to determine the consequences of good or bad performance.<sup>23</sup>

Because of these shortcomings in performance management and mission clarity, the courts today lack a sharp focus on managerial service to the public. This focus will

<sup>23</sup> See Initiative 1, above, for discussion of unclear reporting relationships.

give urgency to considerations of timeliness, efficiency and cost effectiveness. Only court leaders can provide this focus.

### **Recommended actions**

These recommendations below, taken together, aim at creating a “managerial” or “performance” culture to complement and transform the current culture that so laudably appreciates the value of sound judicial decision-making. Massachusetts’ Courts were originally envisioned as providing justice with limited caseload and accordingly limited managerial challenges. In such an environment, informal management processes can be adequate. But in today’s large Court system, success requires management based on quantitative measures as well as personal leadership. The Initiative 2 recommendations described below are intended to build such a managerial culture.

Together these changes will create a new focus for the Courts – a focus on providing the people of the Commonwealth with justice that is not only substantively correct, but also is quick, courteous and efficient.

#### Recommendation 4: Create a shared vision of success with associated benchmarks

Today’s definition of success in the Courts – rendering high quality judicial decisions – is a necessary but inadequate fulfillment of the responsibility to deliver justice. The Courts must act quickly to create a definition of success to which everyone in the courts can contribute and establish explicit, measurable goals for individuals and departments to pursue.

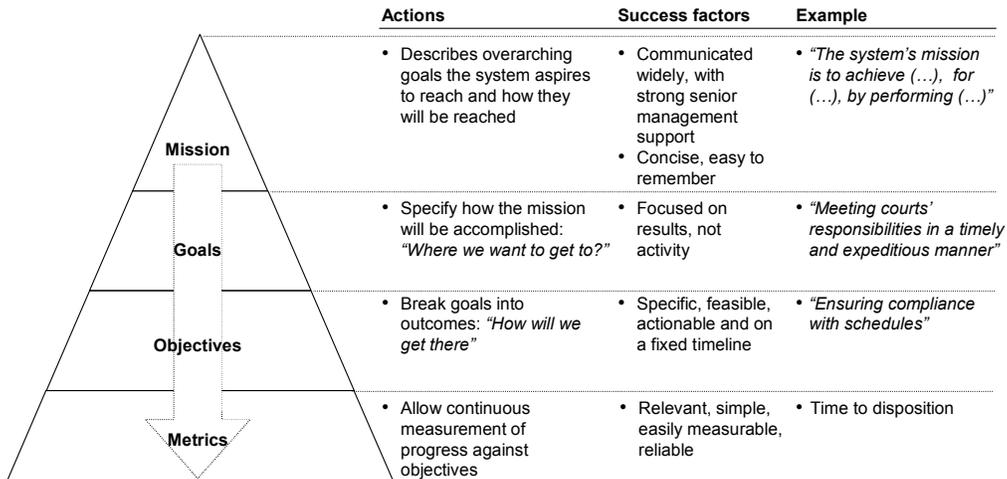
Because justice is not only about decision-making, the Courts must include other elements of justice in their mission statement. For example, a mission statement could read, “The Massachusetts Courts will deliver justice to the people by making correct legal decisions, in a timely fashion, at a reasonable cost, treating all who appear before them with courtesy and respect.”<sup>24</sup>

<sup>24</sup> In each of the 12 state court systems we studied that had a mission statement, the statement focused on service as well as decision-making. State court mission statements studied included those from Alaska, California, Idaho, Iowa, Maine, Minnesota, New Jersey, New Mexico, New York, Oregon, Utah, and Virginia.

This mission statement should be supported by concrete, measurable goals.

Exhibit 9

**PERFORMANCE MANAGEMENT SHOULD BE BUILT FROM A SYSTEM-WIDE MISSION**



For example:

- Set and enforce a “time to trial” goal of 18 months for major civil cases
- Commit to matching the national average of cost/case handled
- Institute regular customer service surveys and improve scores by 5% in two years; record and track complaints, aiming for a 10% decrease in the first two years
- Collect and publish “reversal rates” or “recidivism rates” to measure success in the goals of correct judicial decision-making and reform of convicted criminals, setting appropriate goals for improvement

These examples are but a few of the possible measurements that could be rolled into a “report card” that would allow managers to know how well the system and its component parts are doing at meeting their goals.

**PERFORMANCE MEASUREMENT MODEL FOR THE MASSACHUSETTS COURTS SHOULD RELY ON CLEAR DIVISION GOALS, BROKEN DOWN INTO SIMPLE, RELIABLE METRICS**

ILLUSTRATIVE  
NOT EXHAUSTIVE

<p><b>Quality</b></p> <ul style="list-style-type: none"> <li>• % of decisions reversed on appeal</li> <li>• Recidivism rates of defendants:             <ul style="list-style-type: none"> <li>– On bail</li> <li>– On probation</li> <li>– After having served sentence</li> </ul> </li> </ul>	<p><b>Service</b></p> <ul style="list-style-type: none"> <li>• Number of complaints (by type)</li> <li>• Availability of court reporters / interpreters</li> </ul>
<p><b>Timeliness</b></p> <ul style="list-style-type: none"> <li>• Time to disposition</li> <li>• Age of pending caseload</li> <li>• On-track rate with time standards</li> <li>• Continuance rate</li> </ul>	<p><b>Efficiency</b></p> <ul style="list-style-type: none"> <li>• FTE / case</li> <li>• \$ / case</li> </ul>

Creating a mission statement and explicit goals for the system should be an early priority for the Courts. The mission statement and goals should be in place by September 2003.

Recommendation 5: Define success (and failure) for individual managers, units, and staff members, with benchmarks and measurements

Just as the system cannot be successful without a clear view of what success looks like, it is unreasonable to expect high performance from staff when they do not know what is expected of them. Managers and front-line staff should have clear definitions of success in their own jobs, and should be measured against those goals.

Through its recent job reclassification effort, the AOTC, in collaboration with organized labor, has taken a long step towards performance management at the front-line level. There is still much to do, but early progress is promising. At the management level, less progress has been made.

Creating detailed “job descriptions” for each management and staff<sup>25</sup> role in the Judiciary, with clear statements of responsibility and accountability, will be helpful in defining roles and judging performance. Job descriptions should include expectations for both personal behavior and individual performance. “Unsatisfactory,” “average,” and “excellent” performance and behavior should be clearly described. Holding managers, as well as staff, accountable will immediately improve the morale of staff and the credibility of leaders.

Each performance unit (likely defined as the division level) should have clear goals based on the new mission. These goals should include metrics on courtesy, timing, and efficiency, as well as quality of decision-making. They should be published, and are meant to drive evaluation of division and other unit leaders.

Exhibit 11

**FORMAL GOAL SETTING AND PERFORMANCE REVIEW PROCESSES SHOULD BE IMPLEMENTED FOR DIVISIONS AND DIVISION DEPARTMENTS**

ILLUSTRATIVE

**Performance scorecard: division example**

	<b>Level 1 Unsatisfactory performance</b>	<b>Level 2 Below best practice but meets minimum standard</b>	<b>Level 3 Broadly recognized as best practice</b>	<b>Level 4 World class – few courts nationally able to consistently perform this level</b>
<b>Delivery and measurement of service levels</b>	<ul style="list-style-type: none"> <li>Staff are not given specific training or coaching (e.g., friendliness towards public)</li> <li>No measurement of key elements of court performance (e.g., speed of justice, service satisfaction)</li> </ul>	<ul style="list-style-type: none"> <li>Staff are given only basic court service training</li> <li>Service standards (e.g., speed of justice) measured in courts</li> </ul>	<ul style="list-style-type: none"> <li>Staff are given basic training and desired behavior is reinforced by management</li> <li>Key elements of performance (e.g., speed of justice, cost of justice) are measured routinely and reported in “league tables”</li> </ul>	<ul style="list-style-type: none"> <li>Performance objectives are clearly laid out and measured by management and other entities outside of the courts</li> <li>Performance standards, e.g., average time to disposition, are routinely audited</li> </ul>
<b>Role of management team</b>	<ul style="list-style-type: none"> <li>Management rarely interacts with line employees and or public and does not focus enough attention on delivering fair justice at a timely and cost-effective manner</li> </ul>	<ul style="list-style-type: none"> <li>Management spends more than 50% of time trouble shooting and addressing operations issues in courts</li> <li>Management prioritizes delivering “the right answer” but will also work on speed of justice and other service issues</li> </ul>	<ul style="list-style-type: none"> <li>Management works closely with AOTC, department administrative office, staff, and frequent users of the court to solve operating and performance issues</li> <li>Rigorously monitors and challenges performance standards, with “zero tolerance” mindset</li> </ul>	<ul style="list-style-type: none"> <li>Management coaches effectively and helps build staff operations strengths</li> <li>Routinely compares performance across divisions, departments, and other state courts</li> </ul>

- Performance feedback should be given to divisions and division departments on a regular basis (e.g., semi-annually) to assess performance and compare it against objectives
- Expectations and objectives should then be communicated for the next period

<sup>25</sup> Recent job reclassification efforts defined jobs, but did not describe levels of performance.

#### Recommendation 6: Institute regular feedback and evaluation processes

Measuring performance is a critical step in improving service to the public. It is also critical to changing the managerial culture of the Courts. Every employee in the Courts should have regular reviews, where performance is discussed and coaching is provided. Every employee and manager in the Courts should have a clear understanding of how well they are performing and what they need to do to get to the next level.

#### Recommendation 7: Make evaluations meaningful by connecting consequences to performance

Telling employees how they are doing is not enough; high and low performance must have consequences. Significant variation in salary increments and bonuses should make it worthwhile for employees to provide their best efforts. Promotions, preferred staffing, and other perks should be reserved for those who have demonstrated consistently high performance. Poor performers who do not improve over time should not be allowed to continue.

The consequences of good and bad performance should be clearly explained to all employees. Transparency in this area improves morale and increases employees' sense that evaluations are fair and necessary for the system's overall success.

For evaluations to be meaningful, those who perform evaluations must have a role in the hiring, firing and compensation of those they manage. The structural changes described in Initiative 1 are critical in making this a reality.

#### Recommendation 8: Abandon policies and traditions that make it difficult to measure or manage performance

In the Committee's examination of the Courts, we found several policies and traditions that make it difficult to create a performance culture. The most obvious is the system of lock-step pay progression where seniority is more important than performance. Implementing the recommendations above would require ending this practice.

Though we have not considered the organizational makeup of the Courts as part of our charge, there is one organizational unit within the system that has special importance for performance management. That segment is the Superior Court circuit system. This system, which has valid historical roots, assigns judges to sit in a division for as little as a month at a time, with assignments based on seniority.

Superior Court judges often hear only parts of an ongoing case and cases frequently have to be rescheduled to accommodate judge changeovers. This makes it difficult

to assess accountability for case management and also makes it difficult to assign work equitably. The hardest working and most efficient judges carry an undue burden. The Courts should either abolish the circuit system entirely, rotate judges in teams to create shared accountability or, at a minimum, assign judges for periods of no less than one year.

Recommendation 9: Publish unit rankings both internally and externally

To strengthen the evaluation system, especially among life-tenured judges and clerks, the Courts should publish performance metrics at the most granular level possible, namely at the division level. These metrics should be ranked in a manner that makes it very clear where each unit stands in relation to its peers. The public deserves to know which courts are quickest, most courteous and most cost efficient.

Exhibit 12

**PUBLISHING DIVISION REPORT CARDS AND DEPARTMENT-WIDE RANKINGS WILL HELP THE COURTS IDENTIFY AREAS OF STRENGTH AND IMPROVEMENT NEEDS**

ILLUSTRATIVE

**Division report card**

<b>Department:</b>	District Court		
<b>Division:</b>	Coastal Town		
<b>Case type:</b>	Criminal		
	<b>Court</b>	<b>Standard</b>	<b>Rating</b>
<b>Filings/disposition ratio</b>	1.5	1.0	F
<b>Cases pending/cases pending and disposed</b>	80%	50%	F
<b>Cases disposed within 180 days</b>	40%	80%	D
<b>Cases disposed within 360 days</b>	80%	95%	B
<b>Average time to disposition</b>	300 days	90 days	F

**Department wide rankings**

<b>Department:</b>	District Court	
<b>Case type:</b>	Criminal	
<b>Category:</b>	Average time to disposition	
	<b>Rank</b>	<b>Average time</b>
	1	North Shore 55 days
	2	Merrimac Valley 68 days
	3	Cape Cod 70 days
	4	Cape Ann 71 days
	5	Western Mass 86 days
	69	Coastal Town 300 days

#### **IV(c). INITIATIVE 3: ESTABLISH DISCIPLINE IN RESOURCE ALLOCATION AND USE**

Control over personnel and resources is a fundamental tool of management. Today, the Massachusetts Court System lacks this tool. The Judiciary is not truly independent or self-managing today because it does not have the power to manage its own resources. If, as described above, the Courts are to be held accountable for their performance, they must have the authority over resources needed to drive results.

However, the Courts currently do not have the managerial capabilities needed to effectively handle autonomous control over resources. The recommendations below are designed to help the Courts build these capabilities.

Many inside and outside the Courts are embroiled in debate about whether the current complex and highly rigid budget and staffing structure led to poor Judiciary financial stewardship or vice versa. Whatever the truth of the matter, the budgeting process itself all but guarantees ineffective management of resources. Our effort below is to identify questionable processes and suggest collaborative solutions to achieve a Judiciary that uses resources both efficiently and responsively.

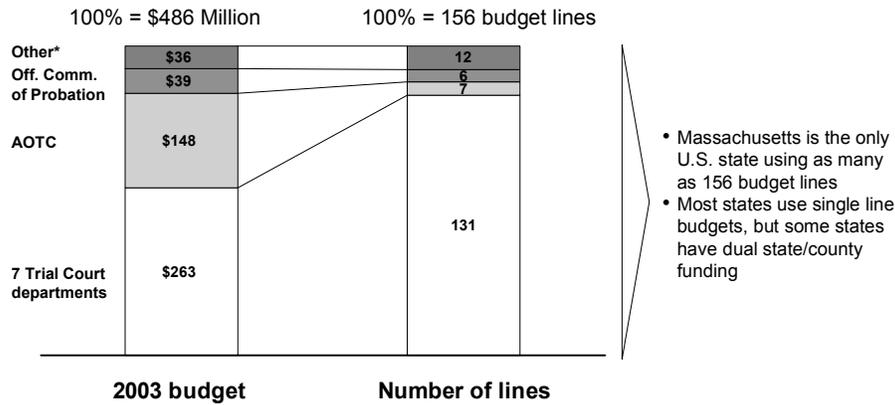
##### **Issues with current systems for resource allocation and use**

A number of issues confound effective resource management by the Judiciary. Because these issues are intertwined, they must be recognized and addressed collectively to achieve real reform.

First, the current system is too complex and convoluted, leading to unnecessary investments of time from both court managers and the Legislature, and hindering internal accountability for funds within the system. In 2002, the Courts' budget had 170 individual line items. In 2003 it had 156 line items, varying in size and type from \$48,510, "for the operation of the Berkshire, Franklin, Hampden, and Hampshire family court clinic" to \$96,545,267, "for the central administration of the Trial Court." Inconsistency reigns. For example, Probation has its own line, is included in the Superior Court department line, and is a part of division lines in some of the other departments. Each division spends funds from multiple lines – by location (e.g., the division), by function (i.e., probation, security), by job type (i.e., judges), and by some central accounts (e.g., those controlled by the AOTC). This complexity makes basic accounting, much less accountability for funds, impossible.

**2003 BUDGET WAS ALLOCATED THROUGH A CONVOLUTED PROCESS RESULTING IN 156 LINE ITEMS** SIMPLIFICATION

2003 budget lines, \$ millions, number of budget lines



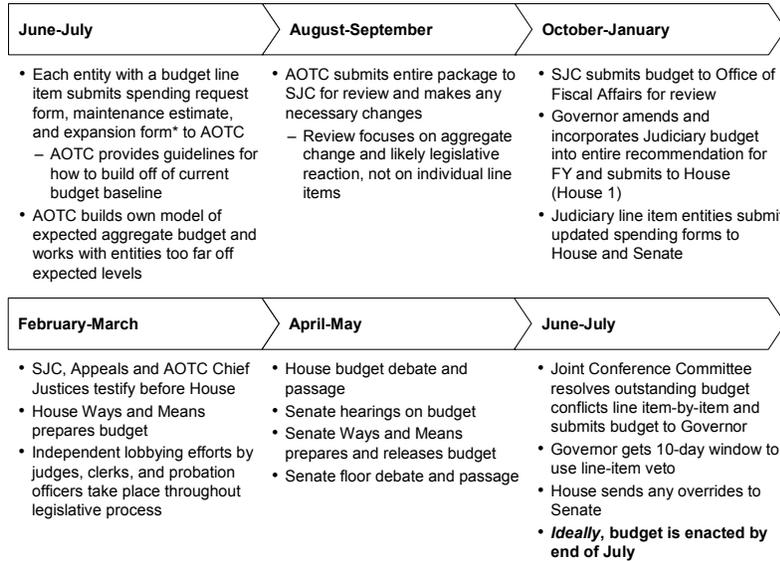
\* Includes Supreme Judicial Court, Office of Jury Commissioner and Appeals Court expenses

Note: The \$486 million 2003 Judiciary budget does not include funding for the Committee for Public Counsel Services, including those for the Massachusetts Legal Assistance Corp., Mental Health Legal Advisors Committee, Massachusetts Correctional Legal Services, and the Social Law Library

Source: AOTC; McKinsey analysis

The process that leads to development of this budget is accordingly complex and convoluted. Getting from the first stages of budget development to the enactment of a budget often takes more than a year. Well over 100 budget requests are submitted to the AOTC, these are reviewed by the SJC, and a Judiciary budget is submitted to the Governor and Legislature. As the many line items of the Courts' budget wind their way through committee, individual judges, clerks, and other officials lobby for their units to be funded, and back room deals abound.

## CURRENT BUDGET CYCLE IS LONG AND COMPLEX

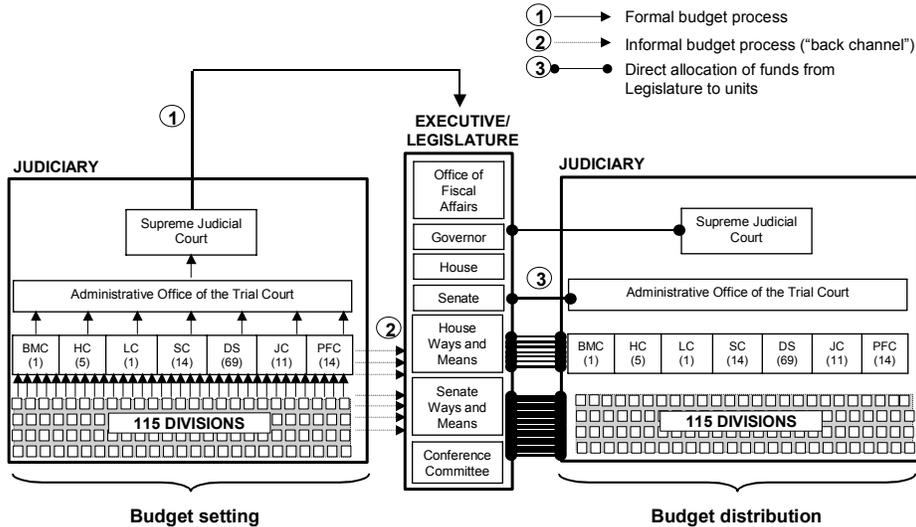


\* Expansion forms are requests for specific increases in funding for special projects, etc.

Source: AOTC; SJC

## CURRENT PROCESS FOR BUDGET SETTING AND DISTRIBUTION IS COMPLEX AND UNCLEAR

SIMPLIFICATION

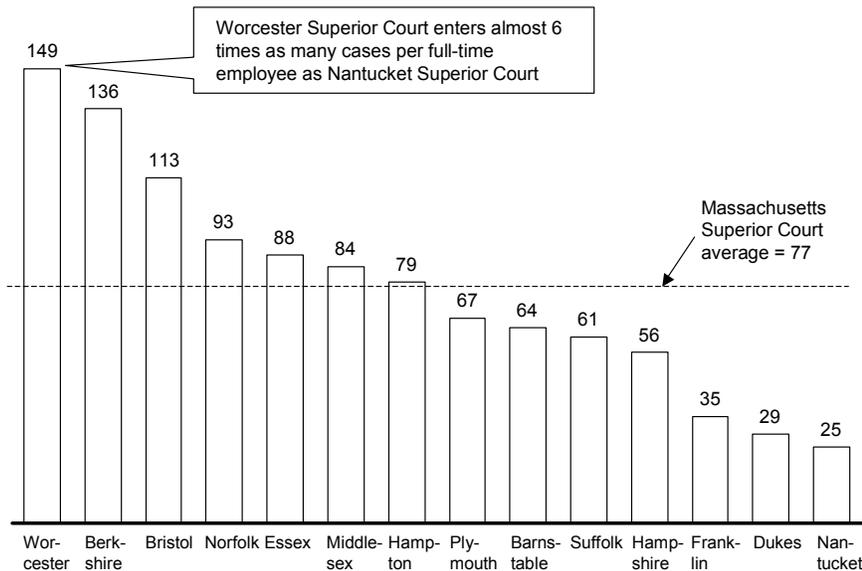


This process, like many of the current processes in the Courts, encourages optimization for “islands” within the system rather than for the system as a whole. Individual managers lobby legislators for their specific budget lines or statutory employees and are often rewarded with funds or employees beyond what the system requested. Managers who comply with the CJAM’s budget process and refrain from separate lobbying see their divisions penalized while others gain, seemingly at their expense. This process leads to patent disparities – some would say gross inequities – within the system, and greatly varying levels of service across the system.

Exhibit 16

**RESOURCES ARE NOT ALLOCATED BASED ON CASELOAD**

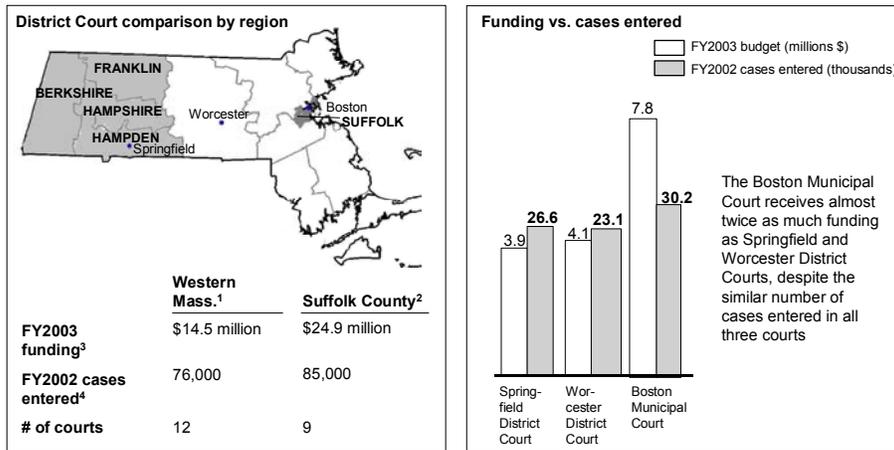
Cases entered per FTE in the Superior Courts\*



\* Based on cases entered during FY2002 (July 2001-June 2002) and October 2002 FTEs; FTE count only includes positions budgeted through division accounts such as clerks, assistant clerks, and all clerical staff. It does not include positions budgeted through central accounts such as judges, all levels of probation officers, and security personnel

Source: AOTC; McKinsey analysis

**RESOURCE ALLOCATION BEARS LITTLE RELATIONSHIP TO CASELOAD**



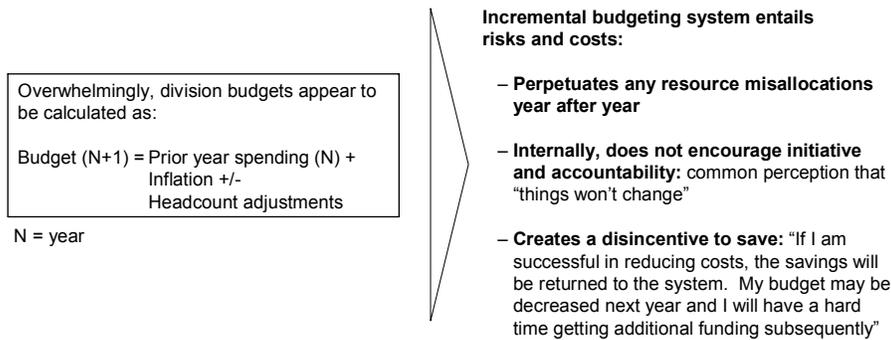
1 Western Massachusetts defined as the four western-most counties of Massachusetts: Berkshire, Franklin, Hampshire, and Hampden  
 2 Includes the Boston Municipal Court because of its similar jurisdiction. Boston Municipal Court funding also covers staffing of security personnel and administrative office employees not included in other District Court budgets or staffing figures. Additional staffing accounts for about 15% of personnel  
 3 Funding available includes funds appropriated by the Legislature to the divisions only. Funds from non-Judiciary line items, all outside, federal, and private grants, and non-division line items are excluded  
 4 Excludes clerk hearings

Source: AOTC; Administrative Office of the Boston Municipal Court; McKinsey analysis

It is difficult to condemn all such disparities outright, for the Courts do not currently have a standardized way to measure workload and allocate resources effectively.<sup>26</sup> Thus, even if the AOTC had complete control over the Judiciary’s resources, there is no existing methodology to allocate resources in a more professional manner. Many, if not most, court managers point to resource scarcity as the Judiciary’s biggest obstacle and paint themselves as victims, never acknowledging their responsibility to justify the use of every resource by some reliable standard before demanding more. The two largest factors in division budgeting appear to be past budgets and political influence, not demonstrated need.

<sup>26</sup> The Judiciary lacks the basic facts with which to determine the level of resources, measured by both dollars and staff, that each division and department needs. The system tracks few statistics about the workload and activities of each of its locations. Those statistics that are tracked, such as cases entered, are not recorded consistently across departments. Without these facts and the understanding they engender, the Judiciary is ill prepared to create and defend the budget and staffing request it sends to the other branches of government or to manage the few flexible resources it can allocate among divisions and departments. Instead of determining what each location actually needs, the Judiciary relies on past levels of funding and staffing and any special requests made by the divisions, creating the appearance that it is little concerned with resource stewardship. While this is challenging, it can be done. In the federal system, a weighted caseload analysis is performed annually, and forms the basis of funding allocation.

## FUNDING FOR DIVISIONS IS DRIVEN PRIMARILY BY PAST SPENDING AND EXPENDITURES, NOT NEED



Source: AOTC; interviews; McKinsey analysis

The current budget system, in addition to being inefficient and non-quantitative, also limits managerial flexibility. The Judiciary has little flexibility to move resources where they are needed in response to changing caseloads or trends.

Finally, the current process separates control over resources from accountability. Although senior Judiciary leaders are responsible by statute for reporting on Judiciary finances, they have little actual authority to make decisions concerning these resources or to hold lower level managers accountable for their use. The current mechanism for accountability, which requires senior Judiciary leaders to report to the Legislature about the resources used by the system, is thus an empty exercise.

Senior Judiciary leaders have too little control over resources while middle managers (through control of individual budget lines) have too much. Each budget line, along with the statutes authorizing many employees, specify exactly which working unit, and thus which manager, will receive what level of resources. The SJC has control only over its own budget lines and they are stretched simply to cover the SJC's own expenses. The CJAM has little ability to interfere with individual trial court managers' control over resources. Burdensome regulations govern what resources or statutory employees can be moved around the system, if they can be moved at all. This powerlessness means that, in this current period of

fiscal constraints, the Judiciary is constantly hamstrung as it tries to respond to needs and issues as they arise.

Together, these constraints help make the courts unmanageable and the level of service unacceptable in many parts of the Commonwealth. An aggressive program of capacity-building and structural change is necessary to make the Courts truly self-governing and efficient in their use of the taxpayers' resources.

### **Recommended actions**

The recommendations we outline below must be considered together rather than as a menu of options. Redesigning the budget to increase the Judiciary's flexibility to deploy resources and its ability to hold managers and working units accountable will result in improvement only if the Judiciary has upgraded its internal resource management capabilities to handle the additional responsibility. Judiciary leaders cannot ask the Legislature for fewer line items and greater autonomy over spending without being ready to increase the depth and frequency of their communications about how and where resources will be and have been used. The Executive branch cannot improve the allocation of capital funds to the most desperate courthouses without Judiciary assistance in identifying the most urgent needs. In resources more than any other area, the three branches of government must consider themselves partners rather than adversaries.

#### Recommendation 10: Build improved financial and staff management capabilities to manage resources according to demonstrated needs

The Judiciary must significantly improve its central administration talent and tools for analyzing and managing resources, especially if the Legislature does provide it with increased responsibility. Greater accountability for resource decisions and supervision over resource use can only happen if well-trained individuals are in place and equipped to maintain clear understanding of resource flows at all times. Such improved skills, tools, and data collection are also critical to improved performance management, described in Initiative 2, above.

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**STAFFING MODELS EXIST FOR PARTS OF THE COURT SYSTEM TODAY,  
BUT ARE RARELY USED**

Category	Total staff in MA*	Staffing model exists?	Used?	Notes
Judges	354	Yes	No	Never used
Assistant clerks	480	Yes	No	Never used
Clerk clerical	1,791	No	No	Outdated and never used
Assistant chief probation officers	187	Yes	Yes	In place for each Trial Court department
Probation officers	973	Yes	Yes	In place for each Trial Court department
Associate probation officers	196	No	No	Probation officer formula used as a proxy
Probation clerical	595	No	No	Outdated and never used
Court officers	629	Yes	Yes	In place for each Trial Court department
Associate court officers	256	Yes	Yes	In place for each Trial Court department

\* As of October 2, 2002

Source: AOTC; interviews; 1993 Towers Perrin Report

In order to properly manage its own resources, the Courts must institute a system to match those resources with need. That is to say, departments and divisions should be provided operational funding based on objective measures of the work they need to perform. The Judiciary should put an objective formula in place that takes into account the types of cases handled by a department or division, the amount of effort (time) typically required to dispose of each type of case, and the number of each type of case each department or division can expect to deal with based on historical trends. This formula, perhaps with adjustments for quantifiable factors such as cost of living, unique security concerns, and so on, should drive all allocations of funding. This model has been used with great success in the federal system.

**A STAFFING MODEL WILL HELP ASSESS THE MINIMUM PERSONNEL REQUIREMENTS OF COURTS BASED ON DEMONSTRATED WORKLOAD**

ILLUSTRATIVE



Case weighting and other basic means by which court system activity levels can be understood are in limited use at best in the Commonwealth,<sup>27</sup> while other state judiciaries use them widely. Although they are complex and frequently debated, these analyses would be an enormous improvement over the current lack of reliable or available data, and can be adapted as experience dictates. Given the importance of database information technology to this endeavor, MassCourts (the Court system’s ongoing information management initiative) should be reviewed immediately for its ability to support these activities and regularly provide sophisticated and highly tailored management reports.

<sup>27</sup> Probation currently uses a case-weighting system (“risk needs”) to seek and allocate resources, but this needs further analysis, given clear inconsistencies in the way data has been tracked year-over-year.

## MULTIPLE GAPS EXIST IN TRIAL COURT CASELOAD INFORMATION AVAILABLE TO MASSACHUSETTS COURT LEADERS

NON-EXHAUSTIVE

Metric	Questions	Current status*
<b>Caseload</b>	<ul style="list-style-type: none"> <li>What is the volume of business in the Courts (before any weighting)?</li> </ul>	<ul style="list-style-type: none"> <li>Cases entered and disposed tracked, but definition of cases vary between departments; cases pending not tracked by all departments</li> </ul>
<b>Case aging</b>	<ul style="list-style-type: none"> <li>To what extent are cases backlogged? How long have cases been in the system?</li> </ul>	<ul style="list-style-type: none"> <li>Tracked and published publicly in Superior Court and Boston Municipal Court; tracked and kept internally for Juvenile Court</li> </ul>
<b>Average time to disposition</b>	<ul style="list-style-type: none"> <li>Are parties having their cases handled quickly?</li> </ul>	<ul style="list-style-type: none"> <li>Not tracked</li> </ul>
<b>Disposition by method</b>	<ul style="list-style-type: none"> <li>Are cases being disposed of in the earliest appropriate stages of case processing?</li> </ul>	<ul style="list-style-type: none"> <li>Tracked only for Superior Court and Boston Municipal Court</li> </ul>
<b>"On-track" rate</b>	<ul style="list-style-type: none"> <li>Are cases being processed in accordance with time standards assigned for each stage</li> </ul>	<ul style="list-style-type: none"> <li>Time to disposition on-track rates tracked in Superior Court and Boston Municipal Court; time to trial tracked in Probate and Family Court</li> </ul>
<b>Case weighting</b>	<ul style="list-style-type: none"> <li>How time-consuming is each case for key personnel (e.g., judges, clerks, probation officers)</li> </ul>	<ul style="list-style-type: none"> <li>Not tracked</li> </ul>

\* For departments only. Many statistics are tracked by some department divisions but are not tracked department-wide  
Source: Interviews; websites; annual reports

## CASELOAD INFORMATION IS TRACKED MORE SYSTEMATICALLY IN OTHER TRIAL COURT SYSTEMS\*

EXAMPLES

Metric	Federal Courts	Missouri	Oregon
<b>Caseload</b>	<ul style="list-style-type: none"> <li>Tracked by cases entered, disposed, and pending</li> </ul>	<ul style="list-style-type: none"> <li>Tracked by cases entered, disposed, and pending</li> </ul>	<ul style="list-style-type: none"> <li>Tracked by cases entered, disposed, and pending</li> </ul>
<b>Case aging</b>	<ul style="list-style-type: none"> <li>Tracked by length of time pending for active cases</li> </ul>	<ul style="list-style-type: none"> <li>Tracked by case age at time of disposition</li> </ul>	<ul style="list-style-type: none"> <li>Tracked by length of time pending for active cases</li> </ul>
<b>Average time to disposition</b>	<ul style="list-style-type: none"> <li>Tracked by average time to disposition, average time to trial, and average time from conviction to sentencing</li> </ul>	<ul style="list-style-type: none"> <li>Tracked in terms of days from time of filing**</li> </ul>	<ul style="list-style-type: none"> <li>Tracked in terms of days from time of filing to trial, minus inactive time***</li> </ul>
<b>Disposition by method</b>	<ul style="list-style-type: none"> <li>Tracked</li> </ul>	<ul style="list-style-type: none"> <li>Tracked by case type</li> </ul>	<ul style="list-style-type: none"> <li>Tracked by non-trial dispositions and trial dispositions by trial type</li> </ul>
<b>"On-track" rate</b>	<ul style="list-style-type: none"> <li>Not tracked</li> </ul>	<ul style="list-style-type: none"> <li>Tracked</li> </ul>	<ul style="list-style-type: none"> <li>Tracked based on American Bar Association guidelines as modified for Oregon</li> </ul>
<b>Case weighting</b>	<ul style="list-style-type: none"> <li>Calibrated according to 1987-1993 Federal District Court time study</li> </ul>	<ul style="list-style-type: none"> <li>Calibrated according to 2002 clerical weighted workload time study and 1994 judicial workload survey</li> </ul>	<ul style="list-style-type: none"> <li>Not tracked except for probation</li> </ul>

\* Includes the Federal District Court, the Missouri Circuit Court, and the Oregon Circuit Court (Missouri and Oregon were chosen due to similarities with Massachusetts)

\*\* Periods during which a warrant was outstanding have been excluded when calculating the age of criminal cases

\*\*\* A case is considered "inactive" when it is beyond the trial court's control to move it forward to adjudication (i.e., while a bench warrant is outstanding, during the pendency of a bankruptcy proceeding, etc.)

Source: Interviews; annual reports; websites

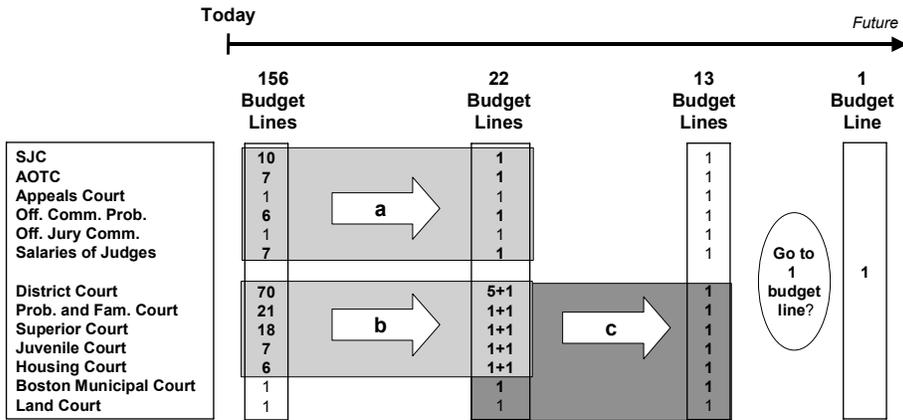
Using real data and resource standards, the Judiciary must base its funding and staffing requests on demonstrated need. Resource formulas that are based on activity levels and current staffing and that identify locations that merit additional resources and where potential savings might be realized would help provide real support for the Judiciary budget and staff requests. By providing legitimate analysis of the comparative activity levels of different divisions and the percentage of resources each requires, the Judiciary can create a legitimate, easily defensible budget that legislators, the Governor, and the public could support.

Recommendation 11: Redesign the budget process to be simpler and more efficient; eliminate “gaming” of the process, and drive judicial accountability for performance

We do not believe the Judiciary is ready for a single-line budget. As the Courts become more skilled at managing resources in an empirical, fact-driven way, they will earn the right to have greater control over their own resources. As an intermediate step, the Legislature must provide greater flexibility first by increasing the Judiciary’s ability to transfer funds and staff, and, as the Judiciary improves its financial management capabilities over time, by decreasing the number of budget lines.

Exhibit 23

**A PHASED APPROACH TO REDUCING NUMBER OF LINE ITEMS** ILLUSTRATIVE  
**WOULD ACHIEVE FLEXIBILITY AND ACCOUNTABILITY**



- a: consolidate each department's budget lines into one
- b: consolidate District Court's budget lines for divisions into 5 administrative regions. Consolidate Probate and Family, Superior, Juvenile and Housing Courts' budget lines for division operations into one administrative region each. All Trial Court departments keep a central budget line for overhead and administration
- c: consolidate all Trial Court departments' budgets into one budget line per Trial Court department

Judicial leaders should commit to the straightforward funding formula described above, and rigorously use that formula wherever the Legislature provides the flexibility to do so. This will build trust that the Courts are capable of managing themselves efficiently. Legislative leaders should commit to a streamlined budget process that allows the Courts to deploy resources, so long as they do so according to demonstrated workload. This will – over time – lead to a significant reduction in the number of budget lines and to less “gaming” of the system; as funds are allocated by formula, there will be no reward for individual managers to go outside the official budget process. This will also lead to a more streamlined and efficient judicial budgeting process.

It may seem counter-intuitive that reducing the number of individuals responsible to the legislature for funding will increase accountability. However, asking the Legislature to manage 156 judicial officers responsible for line items while carrying on all the other business of the Commonwealth is unreasonable. By holding a few judicial leaders accountable for efficient resource use – and expecting that handful of leaders to hold their subordinates accountable – the Legislature will actually be better able to demand resource efficiency from the Courts.

Communications about funding should be between the Chief Justice of the SJC and the leaders of the other branches. The Chief Justice should regularly, on a quarterly or more frequent basis, update the other branches about Judiciary resource use and issues on both a system-wide and division level. The Judiciary should provide the other branches with rigorous analysis of activity levels and needs in order to support its resource request and allocation plans. The Governor and Legislature can continue to provide direction on how the Judiciary should use its resources, but should do so to senior leaders at the overall budget level rather than by specifying the use for each piece of funding.

Recommendation 12: Eliminate overlap and redundancy among administrative structures and geographic locations

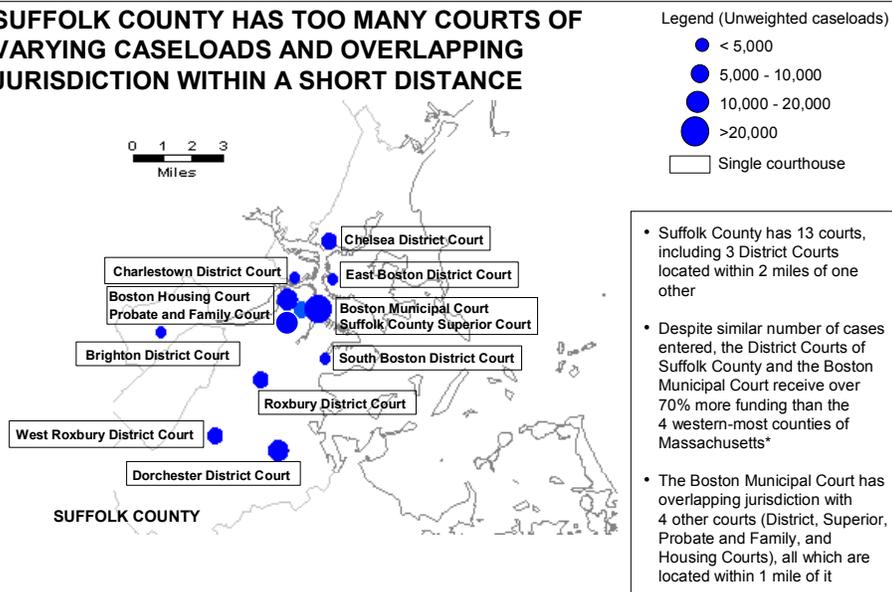
Today’s court administrative structure is unclear and rife with redundancy. In the Visiting Committee’s visits to courthouses, it was never clear what “back-office” tasks were the responsibility of the Administrative Office of the Trial Court, the Administrative Office of the Department, or the staff of the Division First Justice or Clerk. The specific tasks and responsibilities of each component require clarification and greater consistency. At a bare minimum, the Courts should consider more of a shared services model for transactional activities such as benefits administration, purchasing, IT support, and so on. While the Visiting Committee’s mandate does not extend to jurisdictional questions, we do – from a managerial perspective – recommend considering a reduction in the number of departments of

the Trial Court. It is possible to have specialized sessions (for example, the Business Litigation Sessions of the Superior Court) without having separate administrative infrastructure.

Similarly, senior leaders should consider establishing a standard of “critical mass” for court efficiency that would counsel closure or consolidation of units in close proximity with other divisions of the same department. Citizens must have ready access to the courts, but modern transportation has shrunk what were once time-consuming distances between courthouses to a manageable size. Financial pressures are forcing many locations to close for periods of time or to reduce the provision of vital services. Keeping any location open purely due to tradition or political considerations in such an environment is a failure of stewardship.

Exhibit 24

**SUFFOLK COUNTY HAS TOO MANY COURTS OF VARYING CASELOADS AND OVERLAPPING JURISDICTION WITHIN A SHORT DISTANCE**



- Suffolk County has 13 courts, including 3 District Courts located within 2 miles of one other
- Despite similar number of cases entered, the District Courts of Suffolk County and the Boston Municipal Court receive over 70% more funding than the 4 western-most counties of Massachusetts\*
- The Boston Municipal Court has overlapping jurisdiction with 4 other courts (District, Superior, Probate and Family, and Housing Courts), all which are located within 1 mile of it

\* 4 western-most counties of Massachusetts are Berkshire, Franklin, Hampshire, and Hampden Counties  
 Note: The Juvenile Court is not included because cases are tracked by single-charge complaints as opposed to multiple-charge complaints as in the other departments. It is located in the same courthouse as the Boston Housing and Probate and Family Courts  
 Source: AOTC; Mapitude

**Recommendation 13: Triage and accelerate infrastructure improvements in a fact-based fashion**

Many courthouses in the Judiciary are in such disrepair that they are an embarrassment to the Commonwealth, a burden to the employees who must work there everyday and an affront to the citizens who are forced to use them.<sup>28</sup> The

<sup>28</sup>Employees in one courthouse had to file litigation against the Commonwealth in order to relocate, after twenty-five years of studies suggesting renovating or closing the courthouse were ignored.

Judiciary and Executive branches must speed up the process and prioritize the courthouses requiring bond funds. The Judiciary must identify the basic activities a courthouse supports and catalog all courthouses according to their ability to do so. Courthouses should then be upgraded according to this prioritization alone. Other sources of funding will be extremely limited in the near term, but Judiciary leadership should do what it can to fund small improvements that can translate into significantly better working conditions.

The Judiciary must also continue to improve its ability to select and implement technological upgrades to achieve cost savings and provide better service to the Commonwealth. Senior managers must ensure that the system has experienced and knowledgeable people in place to select and manage technology and allow these individuals greater freedom to make timely decisions. The current pace of MassCourts suggests that the system has made significant progress in this area. That said, it is critical that the MassCourts effort consider the needs of the performance management and resource allocation sections of this report if it is to deliver the service that the Commonwealth's Courts will need.

#### Recommendation 14: Improve methods for collecting monies owed the Commonwealth

Revenues flowing from Judiciary activities and Commonwealth property rightly belong to the people of the Commonwealth. However, the Judiciary does not capture nearly all such revenues. This is a failure of its stewardship. The Judiciary should analyze all monetary activity associated with its activities and, together with the Legislature, take action to improve collection of monies owed.

Examples include enabling the Courts to accept credit cards, which will transfer a significant burden of bad debt and collection costs associated with personal checks away from the Judiciary. Eliminating the payment of statutory bail fees by defendants to magistrates<sup>29</sup> so that these fees flow directly to the Commonwealth would not only increase cash flows to the public coffers, but would also eliminate the conflict of interest magistrates face when making a judicial decision that can impact their personal finances. Other examples abound.<sup>30</sup>

The Judiciary lacks the systems and motivation needed to efficiently collect revenues owed the Commonwealth. This situation must change if the Courts are to be seen as credible stewards of the Commonwealth's resources.

<sup>29</sup> See M.G.L. c. 262, s. 24 (2002).

<sup>30</sup> Another example is the current system of appointing and compensating stenographers. Because the SJC recently appointed a committee to address this issue, the Visiting Committee is withholding an opinion on this matter.

## V. IMPLEMENTATION PLAN

The initiatives described above represent a demanding transformation of the Courts. Such changes require careful attention to the process of implementation. To aid in this, the Visiting Committee has laid out general guidelines for a successful transformation. While some of these recommendations are quite specific, the Committee believes that precise details should be left to whatever implementation team is appointed to drive the Courts' transformation.

For a transformation program to achieve success, it must be well led, aligned around a shared mission and set of goals, attentive to maintaining momentum and deadlines, and willing to hold individuals accountable for progress. The organization must design a broad plan for change and commit to it not for a period of months, but of years. In this case, the Legislature must partner with the Judiciary to enable real change and to redesign key aspects of the statutory and budgetary framework. However, legislative action should not be the first action, nor will it of itself, be sufficient: the Judiciary itself must be determined to change and own responsibility for achieving improvement.

Successful transformations take many forms, but almost always share the following prerequisites:

1. Establish a sense of urgency
2. Form a powerful guiding coalition with a shared vision and direction
3. Assemble deep project leadership, including “turnaround team” talent and resources, and establish a binding implementation schedule
4. Prioritize requisite actions and confidence-building moves (e.g., “quick wins”)
5. Maintain focus and accountability during and after the change program

### 1. Establish a sense of urgency

For an institution like the Judiciary that takes great pride in its history and comfort in its traditions, change is far more difficult than maintaining the status quo. A shared sense that change is necessary – a so-called “burning platform” – is required to induce individuals to make extraordinary efforts and maintain momentum. We spoke with hundreds of individuals who are close to the Judiciary's situation, and nearly all of them believe change is imperative. We have described what we saw and the factors that convinced us of the need for change in hopes that readers will

have a clearer understanding of the Judiciary’s situation. But the people who must act and in some cases make sacrifices to bring about change – court employees of all types and at all levels, legislators, and others – are the primary audiences who must feel urgency. The Judiciary must focus attention on its difficulties, its needs and its level of performance, and must generate momentum by laying out a compelling path forward on a rapid timeline. Bringing in external “turnaround team” talent, as discussed above in Initiative 1, will also communicate a sense of urgency that neither the Judiciary nor the Legislature demonstrated during past reform efforts.

## 2. Form a powerful guiding coalition with a shared vision and direction

Every change program encounters roadblocks and moments when forward progress depends upon the assistance of others. The recommendations in this report, especially, call for the cooperative assistance of a number of people and agencies. If the Judiciary accepts our findings and embarks on transformation, its leadership should immediately seek support from internal and external leaders whose assistance and action will be required or whose opposition would provide a barricade to change. These leaders should be requested to advocate this effort publicly and should be made partners in its success. Early identification of sources of support and opposition can guide approach and sequencing as discussion turns towards planning.

A small, joint Steering Committee, composed of members from both inside and outside the Judiciary, should be assembled to guide the effort. It would be best if the external members of this Steering Committee include turnaround experts with significant time to support the transformation and aid in building the needed sense of urgency. This Steering Committee should be small enough to act quickly and decisively, but include representatives of key groups and constituencies. In the case of the Judiciary, the membership of this Steering Committee might overlap with that of the advisory board we recommend earlier in this document. The Steering Committee should stay in place until these success conditions are reached. Meetings should be regular and frequent to track progress, make key decisions, identify and break through bottlenecks, and ensure adequate resources are in place. It must have a powerful leader, fully committed to the effort and willing to lead from the front – in this case the Chief Justice of the SJC with collaboration with the CA and support from a senior turnaround expert.

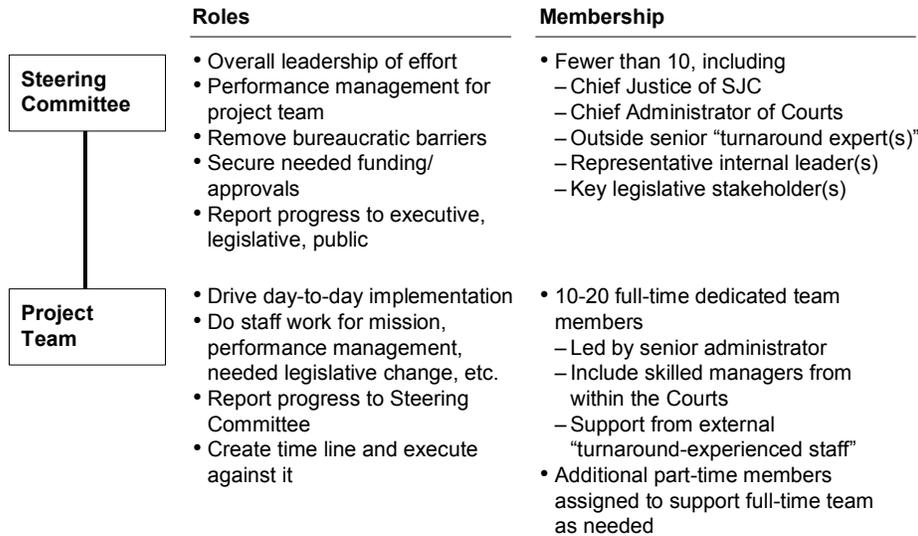
The Steering Committee must quickly define success for the change program and create a shared vision and direction. With senior Judiciary leaders, it must articulate a mission encompassing efficient, timely, and fair justice for all, and

translate that vision into clear and measurable objectives to harness the full energy and potential of internal and external constituents. A well-publicized timeline with milestones should both generate momentum and hold project staff and other constituents accountable for progress.

Exhibit 25

**POTENTIAL IMPLEMENTATION STRUCTURE INTEGRATES POLICY AND EXECUTION**

ILLUSTRATIVE



3. Assemble deep project leadership and resources and establish a binding implementation schedule

Transformation is hard work and requires dedicated resources. A cross-functional “Project Team,” reporting to the Steering Committee, is vital to drive day-to-day work. This team must have “turnaround-experienced” talent, most likely external talent, that understands the decisions that need to be made and the required pace of the work. This Project Team should work under the leadership of a senior administrator who is released from his normal role to focus completely on managing the transformation project, with “right-hand” support from external “turnaround team” members. Internal team members from across the organization should report directly to the project manager for the duration of the mission. Ultimately, the members of the Project Team should be held responsible for achieving milestones driven by the recommendations laid out in this document.

A number of key leadership roles in the Judiciary, such as the CJAM (which may be redefined in the Chief Administrator role described in Initiative 1, above) and several department Chief Justice positions, will be up for renewal in the next 24 months. Ensuring that change-focused leaders with sound managerial experience fill those roles and take part in the Project Team's activities would invigorate the organization with the commitment to transformation.

Selecting an effective leader with management expertise and a deep understanding of the mission and function of the organization to head the Project Team is critical to its success. This leader must be empowered with a broad public mandate to pursue the program's goals, to address problems wherever they exist, to take radical steps and make hard choices to improve performance and reduce unnecessary costs, and to attack "sacred cows" confident that he has the support and authority of senior leadership behind him. Conflicts with groups and individuals within the system will be inevitable and the leadership's commitment will be tested by the need to support the administrator in the face of criticism and complaints.

As one of its first tasks, the Project Team must create a master timeline and assign responsibilities for completing key tasks. Once the Steering Committee reviews the timeline and roles, it should be publicized to initiate accountability and generate interest. Requiring discussion and a vote of the Steering Committee for alteration or deviation from the timeline helps impose discipline. The Steering Committee reviews progress on the master timeline at each meeting and provides regular status updates to key constituencies, including the SJC, the Governor, and the Legislature.

#### 4. Prioritize requisite actions and confidence-building moves (e.g., "quick wins")

Successful transformation requires both early confidence-building and a commitment to quickly address issues that could block further progress. For example, there are places where statutory change will be required to increase leadership options or otherwise increase operating efficiency and make further change possible. Other urgent constraints can be addressed by the Judiciary internally but are highly time-sensitive. For example, the data needed for improvements in both performance management and resource allocation and utilization must be identified, tracked and analyzed. The MassCourts system is currently under development and these data capabilities must be built into the system to ensure long-term efficiency. In addition, expectations and standards for managers and working units must be established and articulated before accountability for them can be applied. Skill levels and systems for resource management must be upgraded before greater financial responsibility is shouldered.

Along with the foundation-laying actions described above, change programs need initial confidence-building moves (“quick wins”) to prove that the organization is serious about change and to prevent erosion of faith in its administrative ability. The initial moves must be sufficiently significant and irrevocable to demonstrate that real change is underway.

A communications plan in which managers and staff can be kept abreast of timeline developments and share in successes and progress is one fundamental way to set expectations and create accountability for the program. It also generates system-wide interest and discussion. Actively identifying widely recognized malefactors and bringing them before disciplinary authorities can signal that bad behavior will not be tolerated and that there is growing accountability within the system.

#### 5. Maintain focus and accountability during and after the change program

Maintaining focus is difficult but vital to achieving success. A well-designed plan will be ambitious and set high aspirations. Pursuing it will tax the organization’s managerial resources and talent pool to the breaking point. Once an organization adopts goals and a plan for reaching them, it must maintain focus on the elements of the plan and not revisit that plan whenever a suggestion for additional or different change is proffered.

The Steering Committee should have the power to hold the organization and most importantly the Project Team accountable for meeting these goals. Anyone who contributes to the process – or obstructs or undermines it – should meet with immediate consequences. These consequences may be financial or affect one’s responsibilities, including promotion or demotion, but they must be meaningful and sufficiently rapid to provide a message to others.

Finally, the change program must institutionalize its achievements and engrain them in the institution’s processes and systems from the beginning. In this case, the statutory change described above is but one way that this should happen; upgraded personnel manuals, new manager evaluation processes, and regularly scheduled public communications about performance are other important tools.

In this case, it would be wise for the SJC and Steering Committee to set clear goals for the first year of transformation, and to publicly revisit those goals in a year. These goals should include having a new system mission in place, measuring progress against those goals and publishing a report card, completing a “dry-run” of a fact-based funding formula, etc. This will create public pressure to deliver on the Visiting Committee’s recommendations.

The Steering Committee must constantly watch for passive resistance and attempts to ignore the program and return to the status quo after an initial show of cooperation. New processes and expectations should be memorialized and used to reinforce successes and deter failures. Once the change program is over, organization leaders should remain watchful and hold one another accountable to ensure that the program's objectives continue to be met.

## **VI. CONCLUSION: AN ASPIRATION FOR THE COURTS**

The Visiting Committee realizes the dimensions of the challenge it has presented to the Courts. Yet, we foresee the magnitude of the reward.

In a matter of years, the people of Massachusetts could, and should, have a court system that delivers sound judicial decisions in a timely, efficient, and courteous manner.

Specifically, the Visiting Committee hopes to see the Courts:

- Dramatically streamline reporting and administrative operations
- Significantly reduce time to trial
- Show consistent improvement in measurements of service and courtesy
- Relentlessly measure not only the quality of judicial decisions, but the speed, efficiency and service with which they are delivered
- Return some savings to the General Fund and reinvest others in improved facilities, pay, and working conditions

The people of this Commonwealth should know that whether they walk into a courthouse in the mountains or on the islands, they will get equal justice, delivered in a timely, efficient, and respectful manner.

These aspirations are lofty and will require the Judiciary to closely examine the system that currently exists and the performance of each individual and unit within it. In many cases these discussions will be difficult and will only be constructive if they remain focused on the goals for the future, rather than becoming mired in attributions of fault for the past and present. We urge the readers of this report, both from inside and outside the Judiciary, to support the Judiciary in this endeavor. In supporting the Judiciary, they will be serving themselves.

The deep commitment to the system and its mission that we saw in employees at every level and in every part of the Judiciary is its strongest asset, and the resource that will be most vital to its reform.

The Chief Justice would not have called our Committee into being unless she believed that the need to re-examine and reform the management of the Judiciary was pressing. We, in turn, would not have written this report if we did not believe that the Judiciary is capable of change.

We are confident that our ambitious vision for the future is possible. The current state of low morale, poor performance and budget cuts is also a window of opportunity for change. With awareness of the problem comes acceptance of the need and responsibility for change, and the search for new direction.

The path ahead will not be easy, and will require a new form of leadership and accountability from the Judiciary, commitment from the Governor, structural change from the Legislature, and years of hard work. But the people of Massachusetts deserve no less.

# Appendix 1: Basic Facts and the Status Quo in the Courts

Visiting Committee on Management in the Courts

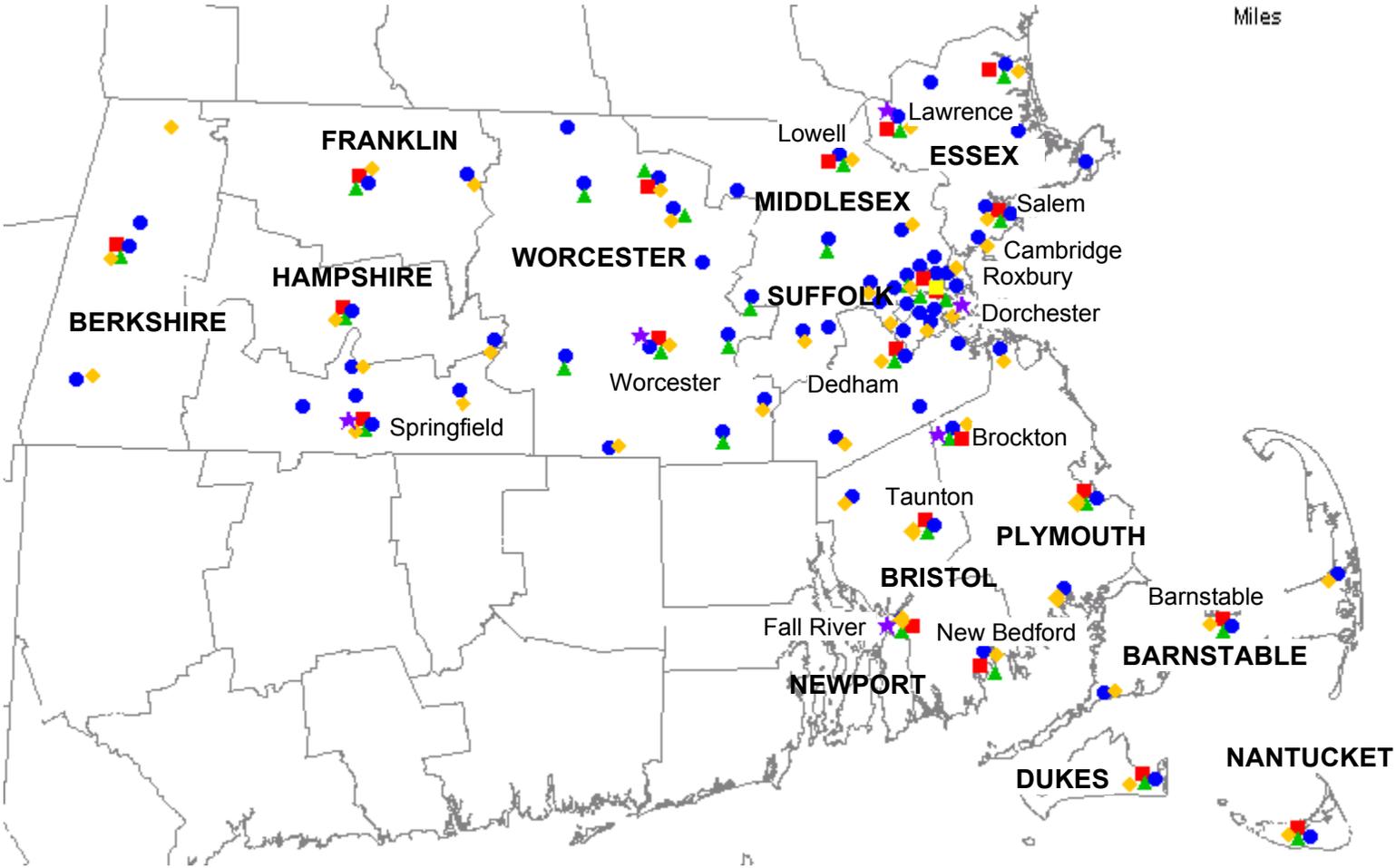
# TABLE OF CONTENTS

- **Basic facts**

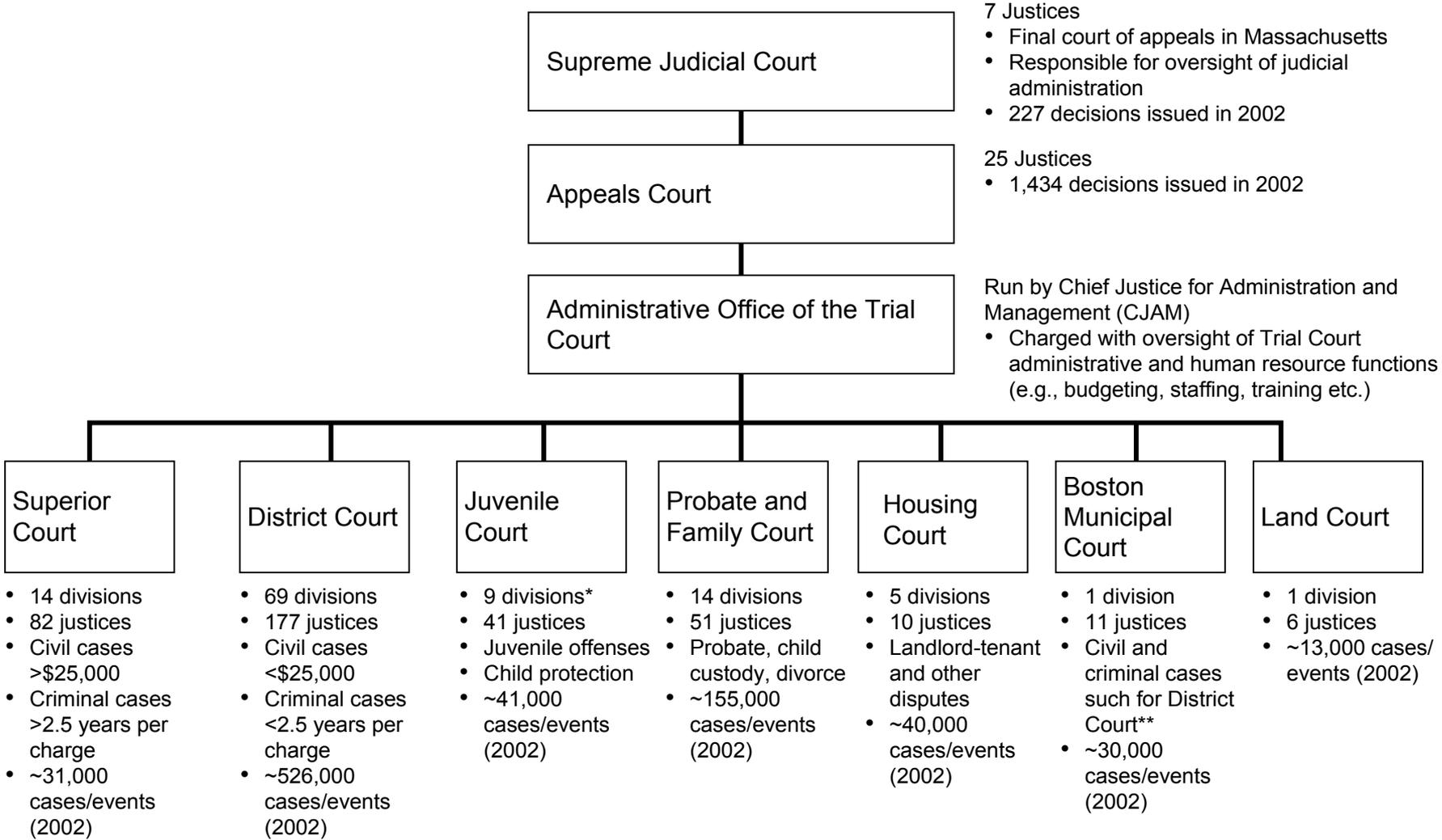
- Current structure
- Current performance management
- Current resource management / funding process

# DIVISION SESSIONS BY LOCATION

- District Court and Boston Municipal Court
  - ★ Housing Court
  - ◆ Juvenile Court
  - Land Court
  - ▲ Probate and Family Court
  - Superior Court
- 0 9 18 27  
Miles



# OVERVIEW OF THE MASSACHUSETTS COURT STRUCTURE

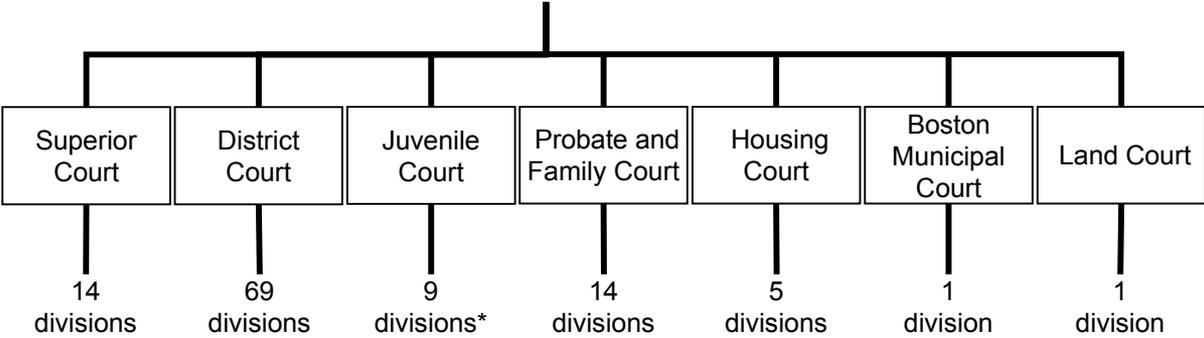


\* 11 divisions are authorized for the Juvenile Court

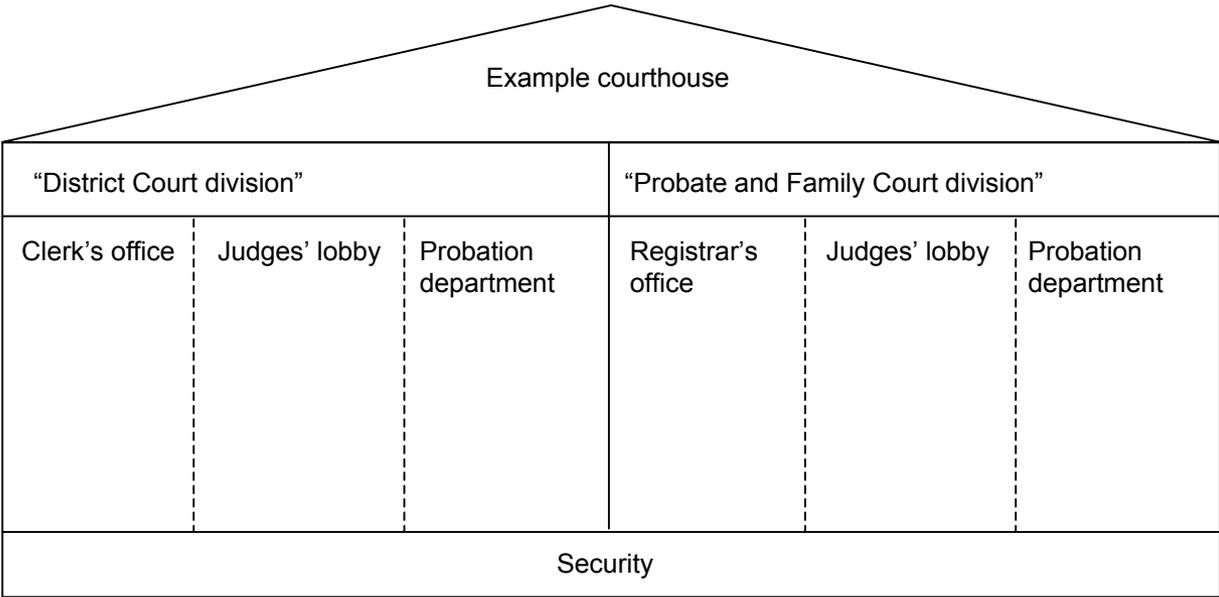
\*\* The Boston Municipal also shares concurrent subject matter jurisdiction with the Superior Court, Probate and Family Court, and Housing Courts on certain cases

Note: "Cases" are defined differently by each department and are not weighted to reflect their differential impact on workload. Clerk hearings are excluded from approximations of cases/events; the number of justices for all courts is the maximum authorized by statute but the actual number of sitting judges varies depending upon vacancies

# OVERVIEW OF THE MASSACHUSETTS TRIAL COURT STRUCTURE



- 7 Trial Court departments
- Each has 1 or more divisions



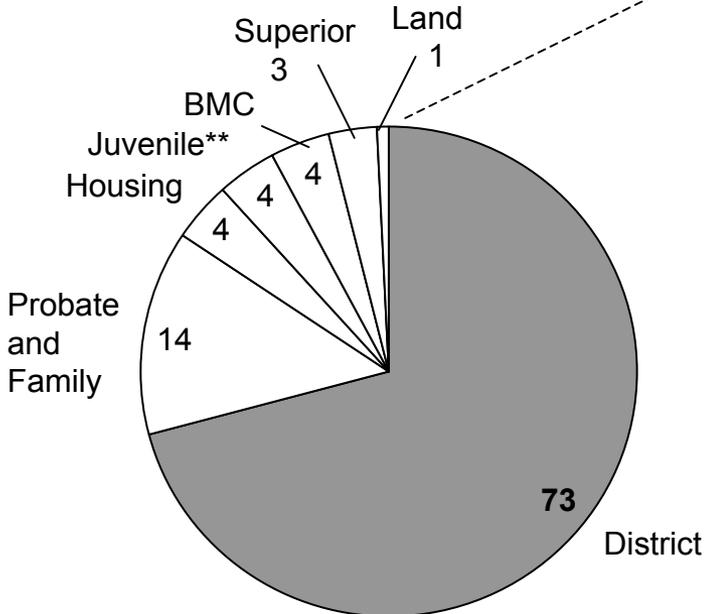
- Most divisions exist in only 1 courthouse but divisions from different departments may be co-located
- Each division contains a judges' lobby, clerk's office, and probation department, and uses security assigned to the courthouse in which it is located
- A courthouse may contain multiple judges' lobbies, clerk's offices, and probation departments but only one security office

\* 11 divisions are authorized for the Juvenile Court

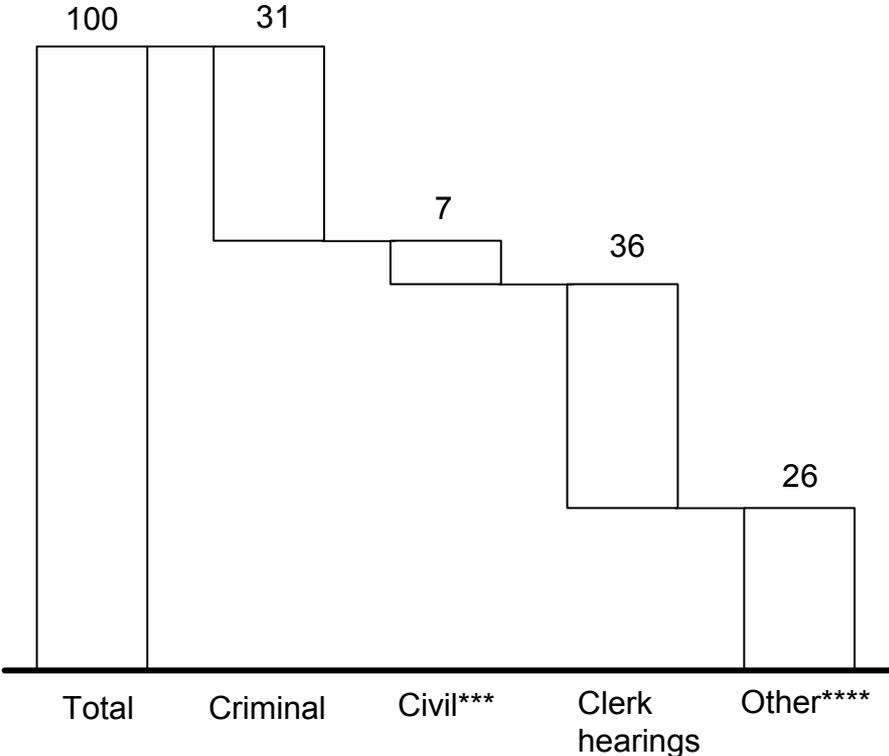
# CASES ENTERED IN MASSACHUSETTS COURTS

2002, Percent

**Total cases entered \***  
100% = 1,145,179



**District Court cases by type**  
100% = 821,437



\* The Appeals Court and the Supreme Judicial Court entered a combined 3,532 cases in 2002 or 0.31% of total cases entered

\*\* Excludes clerk hearings in the Juvenile Court because they are not included in the AOTC's five-year caseload summary

\*\*\* Civil cases include regular and remanded cases

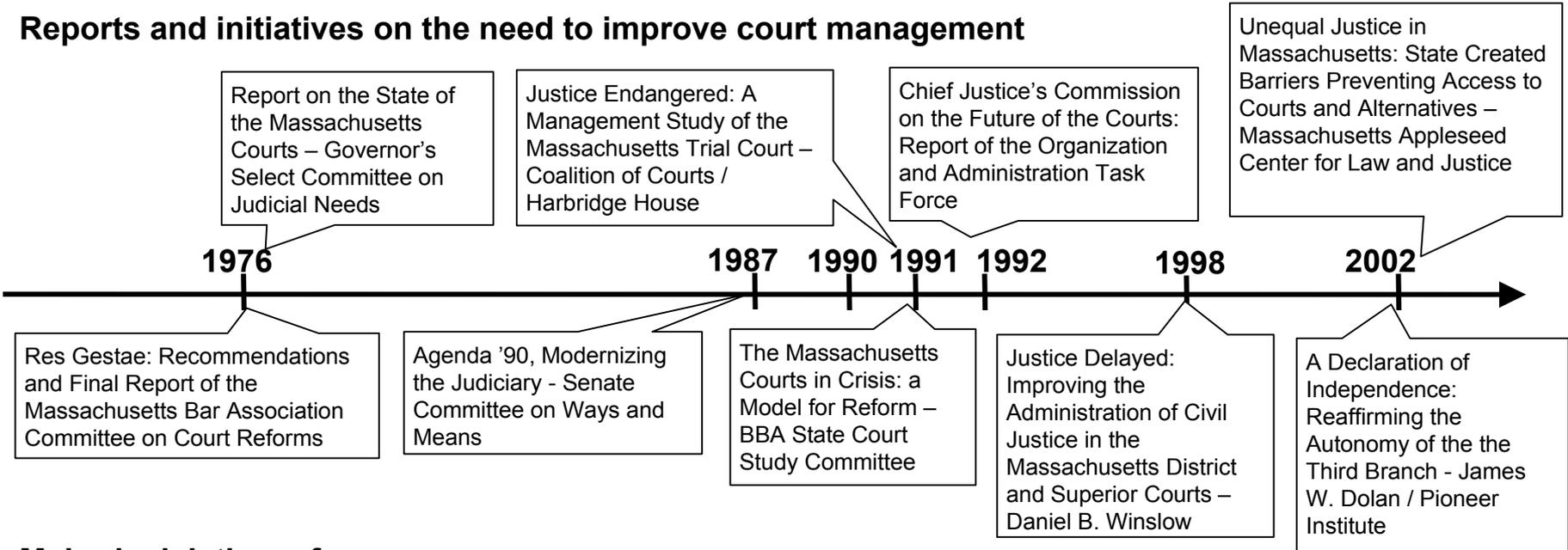
\*\*\*\* "Other" includes small claims, mental health petitions, abuse prevention petitions, summary process, supplementary process (civil and small claims), other civil cases, delinquency, CHINS (Child in Need of Services), and care and protection cases

Note: "Cases" are defined differently by each department and the AOTC and are not weighted to reflect their differential impact on workload. Fiscal year is from July 1 to June 30. Pie chart does not equal 100% because of rounding error

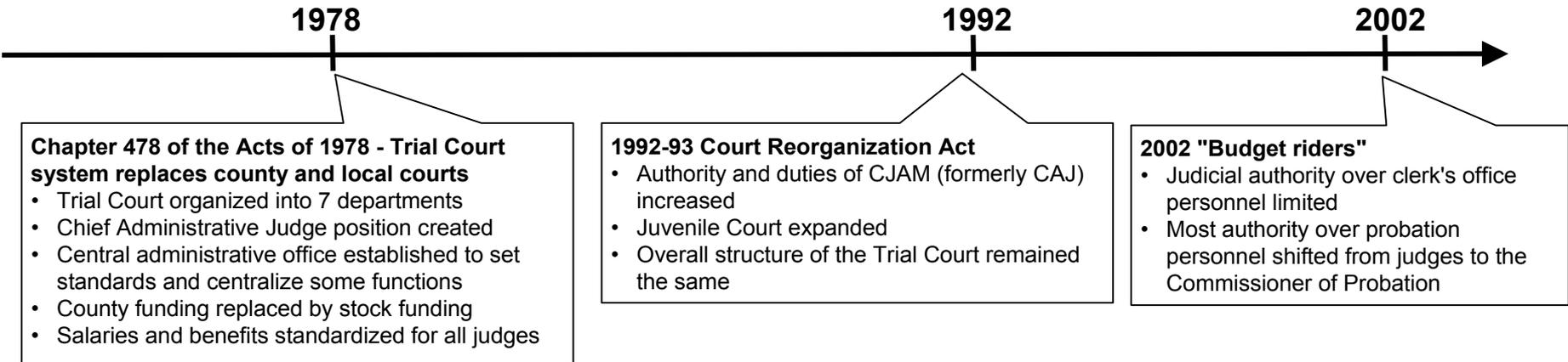
Source: "Five-Year Summary of Cases Entered" in Judiciary Annual Report; McKinsey analysis

# HISTORY OF PRIOR REPORTS AND INITIATIVES ON COURT MANAGEMENT AND LEGISLATIVE REFORMS

## Reports and initiatives on the need to improve court management



## Major legislative reforms



Source: Reports listed; legislative history; McKinsey analysis

# KEY JUDICIARY POSITIONS AND UPCOMING TRANSITIONS

Position	Individual	Start of initial term*	End of current term	Reason
<b>SJC</b>				
Chief Justice	Margaret H. Marshall	10/1999	2014	Retirement at 70
Associate Justices	John M. Greaney	9/1989	2009	Retirement at 70
	Judith A. Cowin	10/1999	2012	Retirement at 70
	Roderick L. Ireland	9/1997	2014	Retirement at 70
	Francis X. Spina	10/1999	2016	Retirement at 70
	Robert J. Cordy	2/2001	2019	Retirement at 70
	Martha B. Sosman	9/2000	2020	Retirement at 70
<b>Appeals Court Chief Justice</b>	Christopher J. Armstrong	5/2000	2006	Retirement at 70
<b>CJAM</b>	Barbara A. Dortch-Okara	10/1998	10/2003	End of current 5-year term
<b>Department Chief Justices**</b>				
BMC	Charles R. Johnson (Acting)	10/2002	Open	Acting Chief Justice
District Court	Samuel E. Zoll	9/1976	6/2004	Retirement at 70
Superior Court	Suzanne DelVecchio	11/1999	11/2004	End of current 5-year term
Housing Court	Manuel Kyriakakis	6/2002	1/2006	Retirement at 70
Probate & Family	Sean M. Dunphy	11/1997	11/2007	End of current 5-year term
Juvenile Court	Martha P. Grace	2/1998	2/2008	End of current 5-year term
Land Court	Karyn F. Scheier	2/2003	2/2008	End of current 5-year term

**SJC:**

- 5 SJC Justices have been in place fewer than 3 years
- Unless justices retire early, there will be no change in composition for 7 years

**Others:**

- CJAM and 3 department Chief Justices are to be appointed in the next 2 years

\* Start of initial term indicates the beginning of first appointment to position. End of current term indicates the month when the next term will begin, whether of the same person or someone new. The announcement of a new or re-appointment normally happens at least one month ahead

\*\* Turnover among department Chief Justices has been low and generally the result of mandatory retirement at age 70. Boston Municipal Court Chief Justice Tierney, 69, has just resigned after nearly 15 years as Chief Justice

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- **Current structure**

- Current performance management

- Current resource management / funding process

Judges from the District and Juvenile Courts sued their clerks over separation of power issues

## First Justices

- Responsible for local court management, case management, and judgment of legal disputes
- Empowered to enforce local court rules
- Report to department Chief Justice

The First Justice in Brighton has held the Commissioner of Probation in contempt of court

## Appointed/elected Clerks\*

- Responsible for clerical operations of court and magisterial functions
- Empowered to appoint assistant clerks
- Largely autonomous if appointed; reporting to voting public if elected

## Legislature

- Responsible for appropriating funds to Judiciary
- Allocates funds in a detailed line-item fashion
- Responsible to electoral constituencies

An equal protection case is being filed against the Legislature over the inequitable distribution of judicial resources across the Commonwealth

## Department administrative offices (e.g., Administrative Office of the District Court, Superior Court, etc.)

- Responsible for budgeting and planning, training, and general administrative oversight
- Provide training, data collection, and financial planning support
- Report to Chief Justice of department

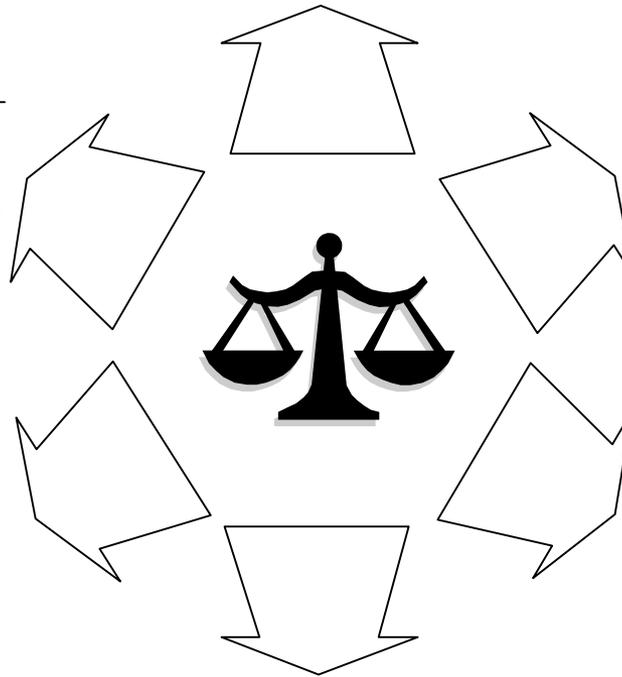
## Probation officers

- Responsible for oversight of probation, enforcement of court orders, etc. ("The arms and legs of the court")
- Report to Commissioner of Probation

## Judicial administrative structure (i.e., AOTC/CJAM)

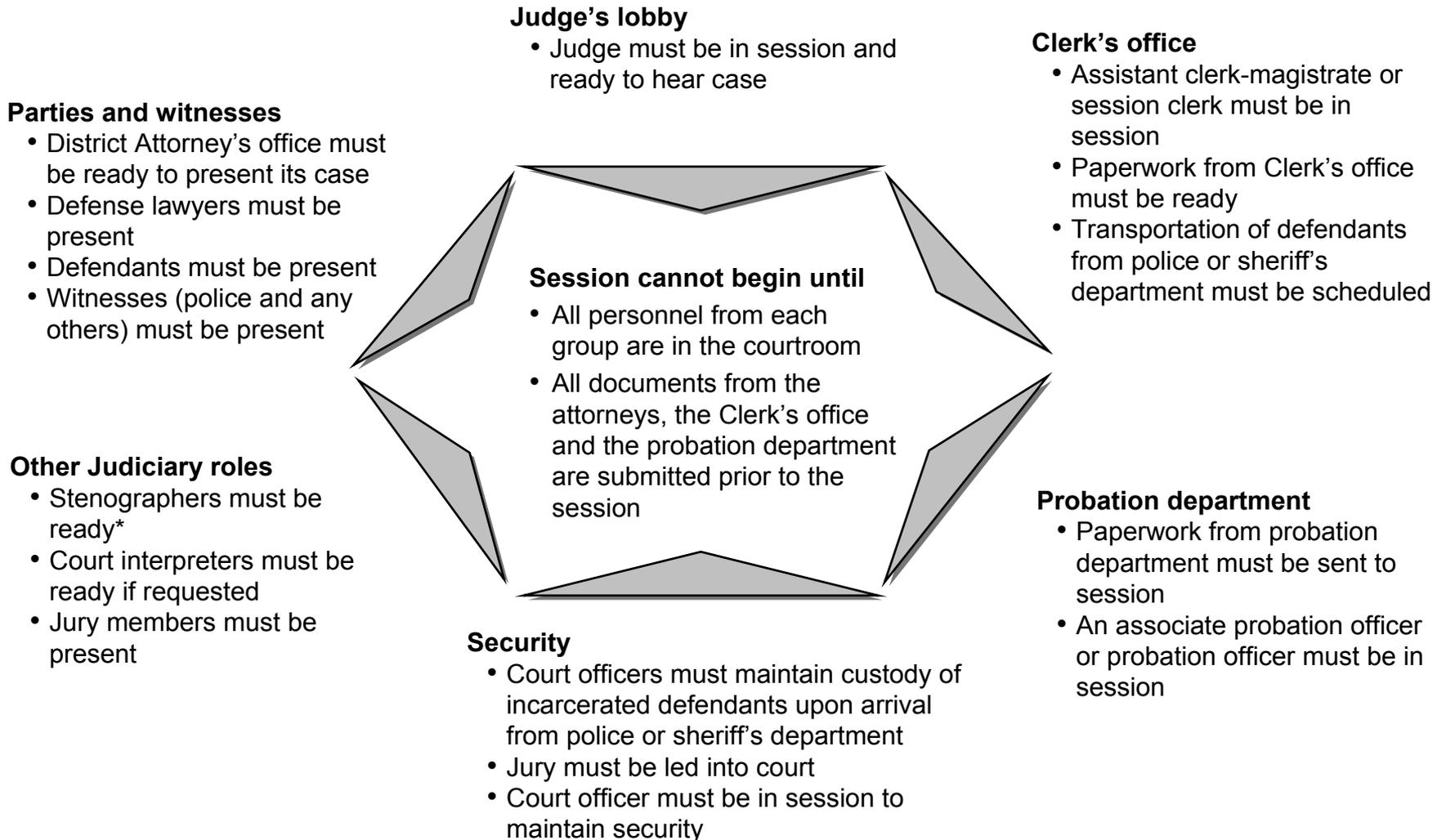
- Responsible for management training, financial administration, court security officers
- Report to SJC

In 1995, the House Post-Audit Committee Bureau found the AOTC systematically violated the law and wasted millions of dollars



\* In the District Court, Clerk-Magistrates are appointed by the Governor for life. In the Superior Court, Clerks of Court are elected. Roles vary in other departments

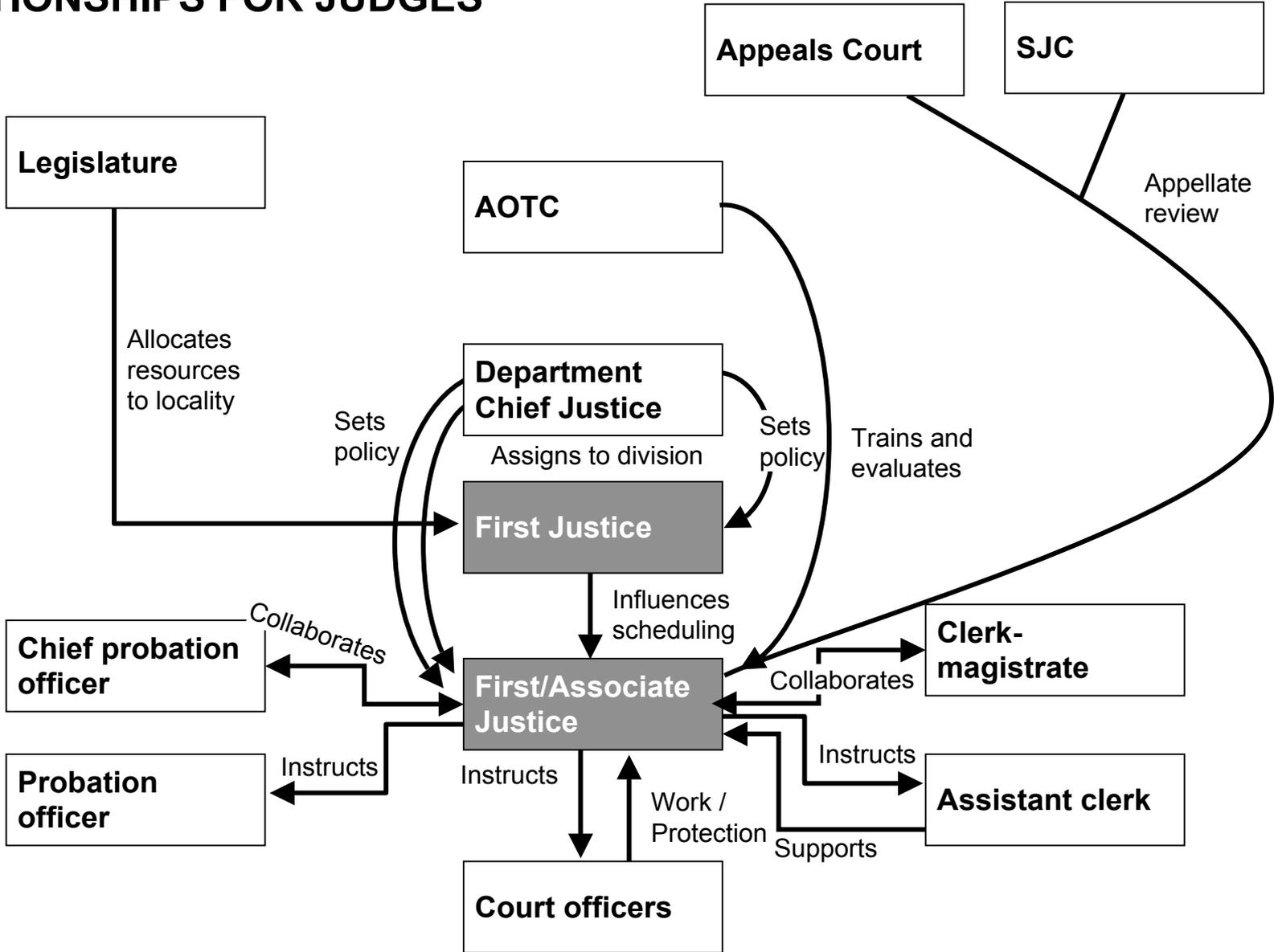
## Criminal jury trial session



\* In courts of record

# WORK, EVALUATIONS, HIRING AND REPORTING RELATIONSHIPS FOR JUDGES

DISTRICT COURT EXAMPLE



Source: Interviews; AOTC; Judiciary materials

# COMPARISON OF MANAGEMENT AND ADMINISTRATION STRUCTURES OF VARIOUS JUDICIARIES

	MA	US	CA	CT	IL
• Is the Supreme Court or Chief Justice preeminent managerially?	• Supreme Judicial Court	• Chief Justice	• Chief Justice	• Chief Justice	• Supreme Court
• Are Supreme Court justices appointed or elected?	• Appointed until age 70	• Appointed for life	• Appointed for term, then retention election	• Appointed for term	• Elected for term, then retention election
• Who has ultimate managerial power?	• Unclear between CJAM and SJC	• Chief Justice, with Judicial Conference	• Judicial Council chaired by Chief Justice	• Chief Justice	• Supreme Court
• Are administrative roles statutory or constitutional?	• Statutory	• Statutory	• Constitutional	• Statutory	• Constitutional
• Is the highest full-time administrator a professional or a judge?	• Judge (Chief Justice for Administration and Management)	• Professional (Director of Administrative Office)	• Professional (Director of Administrative Office)	• Traditionally a judge, although not required (Chief Court Administrator)	• Professional (Administrative Director)
• How is central administration organized?	• Functionally (AOTC) but with additional department-level administrations	• Functionally	• Primarily functionally	• Functionally	• Functionally

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- **Current performance management**
- Current resource management / funding process

# OVERVIEW OF CURRENT PERFORMANCE EVALUATIONS OF DIVISIONS

## Current situation

## Outcomes

### Performance measurement

- No unified definition of performance
- No standard set of metrics to assess performance beyond basic unweighted caseload
- Different definitions for key data and metrics across Trial Court departments
- Metrics mostly tracked and analyzed at local level, not systematically consolidated at Trial Court department level
- Different performance tracking systems exist between and even within Trial Court departments
- No outside evaluation of each division's performance
- No clear leadership/reporting structure in place within each division: 3 power centers (i.e., Judge's lobby, Clerk's office, Probation department) have distinct purviews and reporting lines

- Difficult to set consistent goals/objectives to inspire division managers
- Impossible to deeply understand divisions' performance and to make meaningful comparisons and benchmarking among divisions
- No objective, reliable data available to motivate managers, identify issues/opportunities, or increase accountability to external parties
- No real accountability for performance
- Difficult to enforce consequences for over/under performance
- Level of collaboration between division departments depends mostly on leadership/charisma of First Justice, with cooperation based mostly on goodwill

### Performance management

- No mission statement or other shared definition of success/achievement
- No standard processes in place for setting objectives
- No formal and regular review processes in place for assessing performance and communicating feedback to divisions and division departments
- Existing negative consequences are mostly inappropriate or extreme: either too drastic, focused only on conduct, or without impact
- Few mechanisms in place to recognize good group or individual performance (no performance pay, limited recognition, unclear linkages between performance and promotion)

- Division managers lack goals and direction
- Feedback mostly given when problems arise
- Negative consequences rarely enforced, making bad performers feel immune to discipline mechanisms
- Difficult to align division managers with common, positive incentives

# RECENT INITIATIVES TO MONITOR INDIVIDUAL PERFORMANCE

	<b>Description</b>	<b>Comment</b>
<b>Trial Court judicial evaluations</b>	<ul style="list-style-type: none"><li>• Launched in May 2001, September 2002, and February 2003 by Committee on Judicial Performance Evaluation</li><li>• Questionnaires distributed to attorneys, court employees and jurors</li><li>• Goal: measure judges' performance</li><li>• Scope: Trial Court divisions in Plymouth and Bristol Counties; District Court divisions of Suffolk County, Boston Municipal Court, and Boston Housing Court; Superior Court divisions of Suffolk and Middlesex Counties</li></ul>	<ul style="list-style-type: none"><li>• By statute, results are confidential</li><li>• Unclear what consequences will exist for lowest-performing judges</li></ul>
<b>Reclassification and evaluation program</b>	<ul style="list-style-type: none"><li>• Implementation of "job families" completed in 1999 by AOTC's Human Resources Department. Labor Management Committee is currently designing and negotiating a formal performance evaluation program for administrative employees</li><li>• Goals: enabling individual promotions without prior vacancies and creating a unified process for individual performance management</li><li>• Scope: clerical staff in the 7 Trial Court departments</li></ul>	<ul style="list-style-type: none"><li>• In progress, ongoing negotiations with unions</li><li>• Does not address performance of middle managers (e.g., Clerks or assistant clerks) or probation officers</li></ul>

# OVERVIEW OF TRIAL JUDGE EVALUATION PROCESS

## Evaluation criteria

### *Jurors are asked to evaluate a judge's...*

- Clarity of communication
- Fairness and attentiveness
- Respectfulness and lack of bias
- Punctuality

### *Lawyers are asked to evaluate a judge's...*

- Patience, attentiveness and respectfulness
- Preparedness, expertise and clarity
- Efficiency and timeliness
- Fairness and lack of bias

### *Court employees are asked to evaluate a judge's ...*

- Clarity of communication
- Control of the courtroom and managerial effectiveness
- Fairness and lack of bias
- Courtesy and respectfulness

## Timing

- First standardized Trial Court-wide judicial evaluations began in May of 2001\*
- Judges are to be evaluated every 2-3 years on a “rolling cycle”
- Approximately one-third of Trial Court judges have been evaluated in the past 2 years

## Use

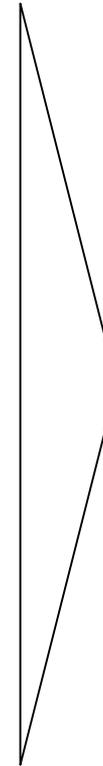
- Responses are aggregated and shared with the evaluated judge, department chiefs and the CJAM
- Evaluations are not shared with other judges or the public
- Evaluations are used to help identify areas for improvement

## Judicial evaluations are used to...

- Help judges identify areas [in need of] of improvement
- Probe “public perception” issues

## Judicial evaluations are NOT used to...

- Provide objective measures of performance/case processing flow
- Establish criteria for incentive/reward systems



\* Previously, each department designed and carried out their own judicial evaluations

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# JUDICIARY EXPENSES INCLUDED AND EXCLUDED IN JUDICIARY BUDGET

NON-EXHAUSTIVE

<b>Expense type</b>	<b>Included</b>	<b>Excluded</b>	<b>Notes</b>
Employee-related	Salaries; some benefits*	Pension; benefits	Pension and benefits for state employees are budgeted through central state account
Facilities	Leases; maintenance	Construction; planning**	Construction and planning funds financed by state bonds, budgeted through central state accounts and managed by the Division of Capital Asset Management (DCAM)
Operations	All operating expenses***		

\* Unemployment compensation, dental/optical health plans, and employer Medicare tax included in Judiciary budget

\*\* Planning for court facilities is also funded and carried out by the AOTC's department of Court Capital Projects, but majority of planning activities and financing is done outside of the Judiciary

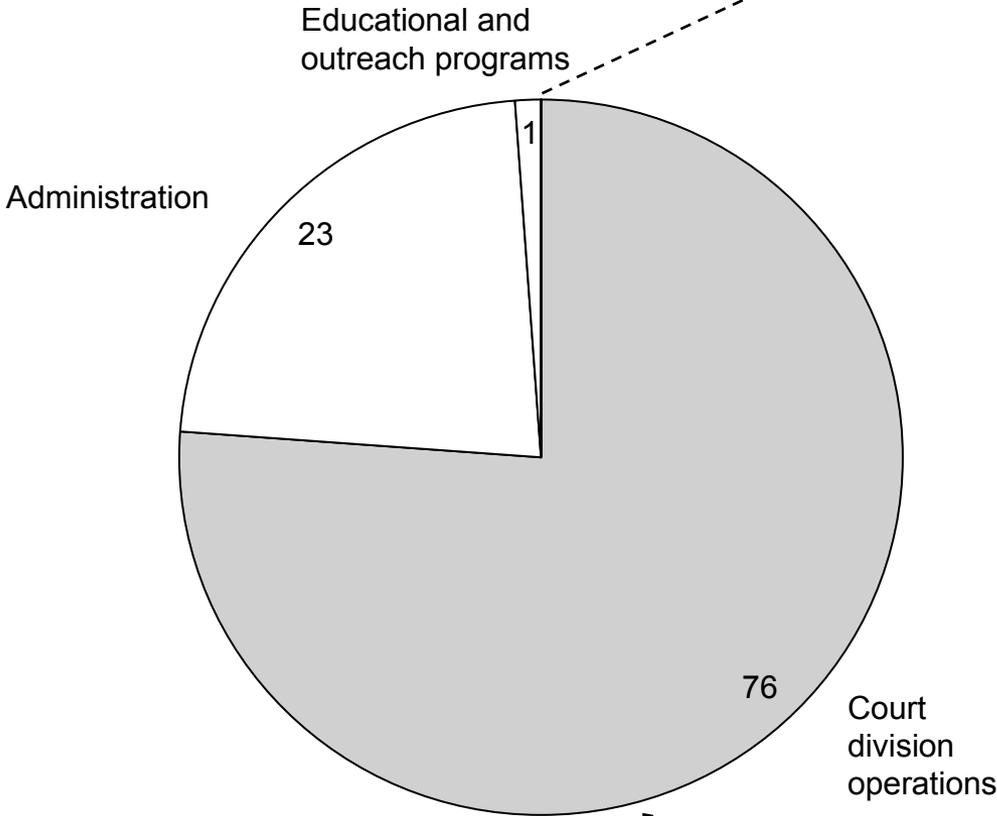
\*\*\* Operating expenses include utilities, travel, court libraries, equipment leases and maintenance, and postage

# MASSACHUSETTS JUDICIARY BUDGET

FY 2002, Percent

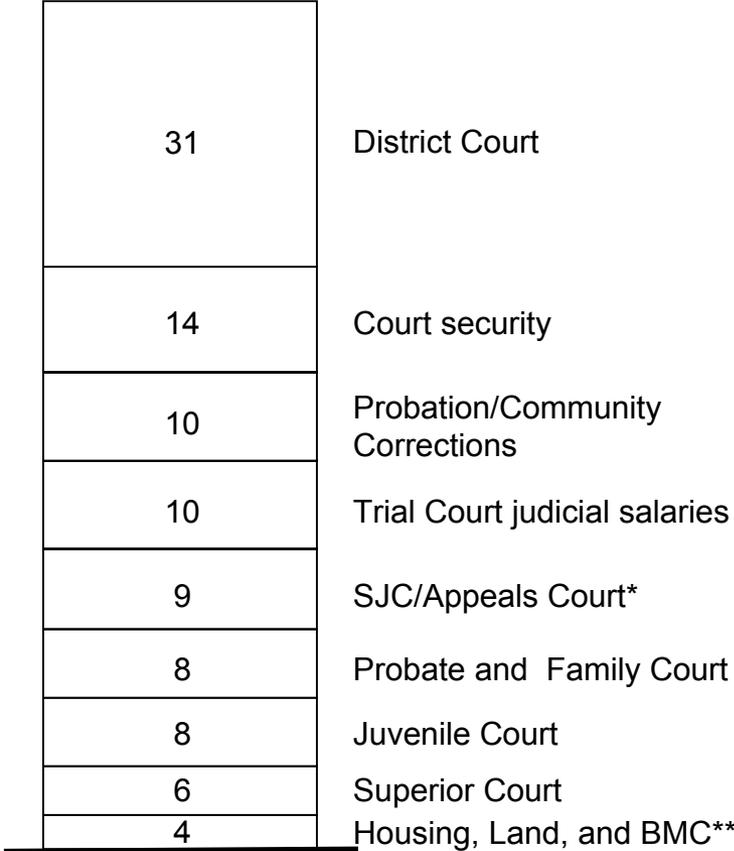
## 2002 Massachusetts Judiciary budget\*

100% = \$494.1 million



## Court division operations budget

100% = \$373.9 million



\* SJC and Appeal Court judicial salaries are included in the SJC/Appels Court budget allocation. Excludes expenses budgeted under Committee for Public Counsel Services, including those for Massachusetts Legal Assistance Corp., Mental Health Legal Advisors Committee, Massachusetts Correctional Legal Services, and the Social Law Library

\*\* Administrative expenses for Land Court and BMC budgeted through operations budget

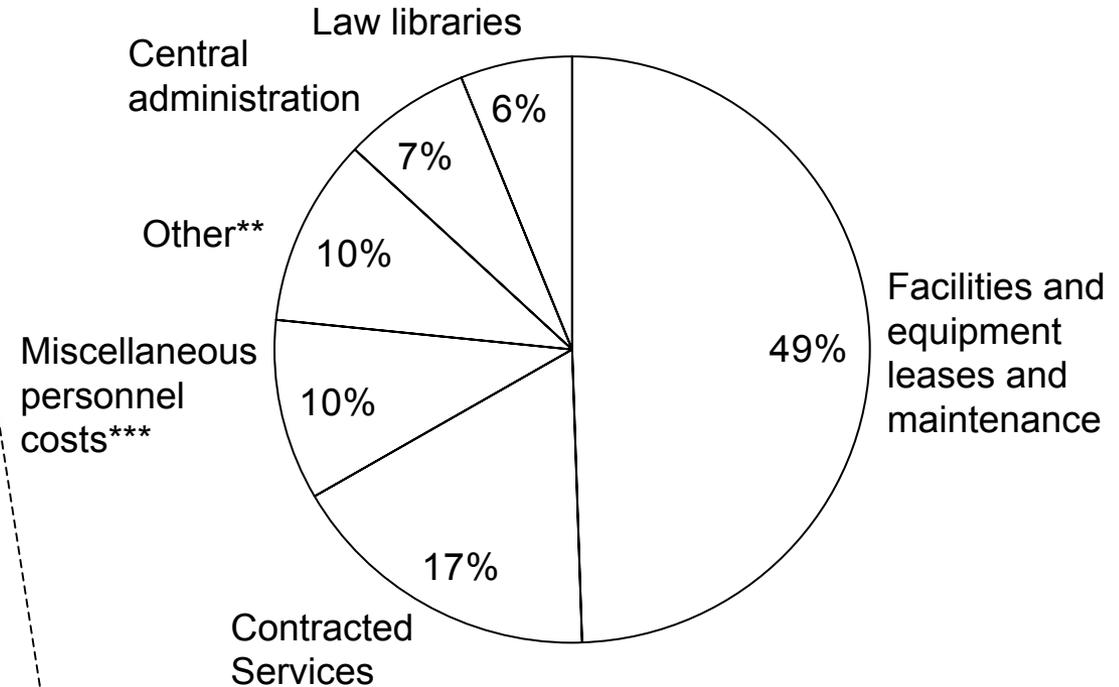
# FY 2002 ADMINISTRATIVE EXPENSES

## 2002 Trial Court administrative budgets

Thousands of \$

<b>AOTC*</b>	<b>100,700</b>
Superior Court	8,054
Jury Commissioner	2,131
District Court	1,242
Probate and Family Court	1,855
Juvenile Court	1,244
MA Sentencing Commission	274
Housing Court	121
<b>Total</b>	<b>115,621</b>

## AOTC central administration line item expenses\* 100% = \$100.7 Million



\* In fiscal year 2003, the Legislature consolidated all AOTC-listed central administration, facilities, equipment, contracted services, law library, and other accounts into the AOTC Central Administration account. Prior to 2003, budget items were listed as separate line items as broken down above. 2002 budget breakdown is for line items now included in the 2003 Central Administration account, **including** expenses for building leases now controlled by the AOTC, **including** those previously itemized under department accounts. The 2003 Central Administration account does not itemize expenses as shown in line items above

\*\* "Other" includes Trial Court jury expenses, witness fees, court interpreter salaries, and telecommunications, travel, and printing expenses

\*\*\* Miscellaneous personnel costs include dental/optical plans, unemployment compensation, and employer Medicare tax

Note: Fiscal year is from July 1<sup>st</sup> to June 30<sup>th</sup>. Pie chart does not equal 100% because of rounding error

Source: AOTC, McKinsey analysis

# JUDICIARY BUDGET REQUEST BINDER SUBMITTED TO GOVERNOR AND LEGISLATURE

## FY 2002

- **Contents:**

- **Binder contains 9 sections, covering 9 institutions/departments:**

- Supreme Judicial Court
- Commission on Judicial Conduct
- Board of Bar Examiners
- Massachusetts Legal Assistance Corporation
- Mental Health Legal Advisors Committee
- Massachusetts Correctional Legal Services
- Social Law Library
- Massachusetts Appeals Court
- Administrative Office of the Trial Courts (covers all 7 Trial Court departments)

- **Each section typically contains:**

- A letter from each institution's highest ranking officer, addressed to CJ Marshall\*, summarizing the 2002 base budget and expansion requests
- Detailed memos describing each expansion request (e.g., "appellate court expansion", "request for the restoration of the second archivist position", "consolidation of Trial Court funding"... )
- A financial roll-up of 2001 with: actual 2001 budget and spending levels, projected 2002 maintenance and expansion estimates by type of expense (i.e., salaries, travel and expenses, administrative expenses...)
- For each budget line:
  - One page describing the FY2002 expansion requests
  - One page describing FY2001 total spending, steps and inflation, and total 2002 maintenance estimate

- 
- Content and presentation of documentation is not homogeneous across institutions/departments (e.g., depth of description for expansion varies between departments)
  - Templates for reporting past and budgeted expenses (e.g., detail and types specified) are not homogeneous between departments

# JUDICIAL COST REDUCTION MECHANISMS IN FY 2002

Saving mechanism	Description	Comment
<b>Payroll savings via work time reductions</b>	Time at work reduction via voluntary leaves of absences, mandatory furloughs, and shortening of work weeks	May be difficult to repeat in the future
<b>Head count reductions</b>	Head count reduction of 714 employees (9.1%) from July 2001 to July 2002 as a result of early retirements, attrition, and hiring freeze	No additional early retirements scheduled for 2003
<b>Contract terminations</b>	Termination of service contracts (e.g., facilities maintenance contracts)	No additional contract terminations expected for 2003*
<b>Transfer of funds across budget lines</b>	CJAM was authorized to transfer funds across and within department budget lines at her discretion and without legislative approval (normally, CJAM can only transfer surplus funds within department after April 31)**	Inter-department transfer authority was not granted by Legislature for FY 2003

**The Trial Court will have to find new ways to significantly reduce costs in the future**

\* CJAM described 2002 head count reduction as “one-time” savings

\*\* CJAM has authority to transfer funds of any amount between line items in the same department from July 1 to April 30 with approval from House and Senate Ways and Means Committees. From May 1 to June 30, CJAM may transfer funds of up to \$65 thousand without approval but is restricted in terms of how funds are allocated

# LIMITATIONS ON JUDICIARY FLEXIBILITY TO MOVE RESOURCES

		← Current flexibility restrictions →		
		Statutes	Line-item budget	Unions
Flexibility levels	<b>Hire / fire</b>	<ul style="list-style-type: none"> <li>• First Justices have no hiring/firing authority over positions in clerks' office and probation department</li> </ul>	<ul style="list-style-type: none"> <li>• Money from one division cannot be used to pay for additional staff in another</li> </ul>	<ul style="list-style-type: none"> <li>• Non-disciplinary terminations must be made based on seniority</li> </ul>
	<b>Employee / financial transfers</b>	<ul style="list-style-type: none"> <li>• House and Senate Ways and Means Committees must be notified of all employee and financial transfers lasting over 90 days</li> <li>• Employee transfers cannot last for more than 360 calendar days</li> </ul>	<ul style="list-style-type: none"> <li>• The division of origin will generally continue to pay for the staff's salary while they are working at a different division</li> <li>• Transfer of funds may require approval of Legislature and may be restricted in amount*</li> </ul>	<ul style="list-style-type: none"> <li>• Some unionized positions have transfer restrictions in their contracts</li> </ul>
	<b>Employee overtime</b>	<ul style="list-style-type: none"> <li>• Overtime can only be compensated by paid time off</li> </ul>	<ul style="list-style-type: none"> <li>• Money from one division cannot be used to pay for overtime in another</li> </ul>	<ul style="list-style-type: none"> <li>• Employees must take paid time off after acquiring 75 hours of overtime</li> </ul>

\* CJAM has authority to transfer funds of any amount between line items of the same department from July 1 to April 30 with approval from House and Senate Ways and Means Committees. From May 1 to June 30, CJAM may transfer funds of up to \$65 thousand without approval but is restricted in terms of how funds are allocated

# Appendix 2: Statutory and Constitutional Review of the Massachusetts Judicial System

Visiting Committee on Management in the Courts

## MEMORANDUM

TO: The Visiting Committee on Management and Administration of the Courts of the Commonwealth

FROM: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

DATE: January 30, 2003

RE: The Massachusetts Judicial System -  
Review of Statutory Framework Defining Judicial Roles

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The following represents a brief overview of selected areas of the Massachusetts judicial system. Specifically, this memorandum provides descriptions of a number of key positions within the judicial system, from the justices of the highest state court to lower court officers. Covered topics include appointment, term of service, powers and authority, and removal procedures for the various judicial figures. In summarizing these positions, focus has been placed upon their underlying statutory or constitutional foundations, as set forth in Massachusetts General Laws, 2002 (“MASS. GEN. LAWS”) and the Massachusetts Constitution, as amended (“MASS. CONST.”). Often, the text of the relevant statute or provision in the Constitution has been altered only slightly to provide a full exposition of the law.

### I. INTRODUCTION

#### A. Separation of Powers

In Massachusetts, separation of powers is achieved through Article 30 of the Constitution.<sup>1/</sup> Interpreting this article, the Supreme Judicial Court has recognized that, “some overlap is inevitable,” and “absolute division of the three general types of functions is neither possible nor always desirable;” however, “the essence of what cannot be tolerated under art. 30 [is] interference by one department with the functions of another.” *Gray v. Comm’r of Revenue*, 422 Mass. 666, 671 (1996) (quotations and citations omitted). Based on this understanding, the Supreme Judicial Court has held that, “[t]he executive and legislative

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<sup>1/</sup> “In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.” MASS. CONST. Pt.1, art. 30.

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branches impermissibly interfere with judicial functions when they purport to restrict or abolish a court's inherent powers,<sup>2/</sup> or when they purport to reverse, modify, or contravene a court order." *See id.*

The Massachusetts Constitution prescribes the term lengths and process of selection for all state court judges, and any changes must occur through constitutional amendment. *See, e.g.,* MASS. CONST. Amend. Art. XCVIII (1972) (establishing a compulsory mandatory retirement age of 70 for all judges). Proposed amendments may be submitted to the electorate only after approval by a majority of both houses of the Legislature<sup>3/</sup> during consecutive sessions. Unlike other proposed changes to the Constitution, changes to the method of judicial selection may not be proposed through initiative petitions. *See* MASS. CONST. Amend. art. XLVIII, Pt. 2, § 2.

## **B. The Court System**

The Massachusetts judiciary is composed of the Supreme Judicial Court, the Appeals Court, and the Trial Court. Seven Departments make up the Trial Court: the Superior Court, the District Court, the Boston Municipal Court, the Juvenile Court, the Housing Court, the Land Court, and the Probate and Family Court. The Supreme Judicial Court is the only court in Massachusetts with constitutional status. All other courts have been established through legislation. *See* MASS. CONST. Pt. 2, c. 1, § 1, art. III (vesting the Legislature with the authority to establish the courts). In 1978, the Legislature enacted a statute to reorganize the administration of the court system, and to make substantive changes in the jurisdiction of certain courts. 1978 MASS. ACTS c. 478. The state courts were again reorganized in 1992 with the passage of Chapter 379, an act aimed at "improving the administration and management of the judicial system of the Commonwealth." 1992 MASS. ACTS c. 379. The current system and many of the positions described below are largely a product of that legislation.

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<sup>2/</sup> "Inherent powers of the courts are those 'whose exercise is essential to the function of the judicial department, to the maintenance of its authority, or to its capacity to decide cases.' ... Although the courts' inherent powers may be recognized by statute, they exist without statutory authorization and cannot be restricted or abolished by the Legislature without violating art. 30..." *Brach v. Chief Justice of the Dist. Court Dep't*, 386 Mass. 528, 535 (1982), quoting *Sheriff of Middlesex County v. Comm'r of Correction*, 383 Mass. 631, 636 (1981). These "inherent powers" have been recognized by the Supreme Judicial Court as flowing from Article 29 of the Massachusetts Constitution, which guarantees to every citizen "an impartial interpretation of the laws, and administration of justice," and trial by "judges as free, impartial and independent as the lot of humanity will admit." Article 29 also mandates that Justices of the Supreme Judicial Court hold their offices as long as they "behave themselves well," and that they have "honorable salaries." MASS. CONST. Pt. 1, art XXIX.

<sup>3/</sup> In the Massachusetts Constitution, the legislative branch of government is referred to as the "General Court." Throughout this document, however, the more familiar term "Legislature" will be used.

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## II. STATUTORY BASIS FOR SELECT AREAS OF THE MASSACHUSETTS JUDICIAL SYSTEM

### A. The Supreme Judicial Court

The Supreme Judicial Court (“SJC”) was established in 1692 as the “Superior Court of the Judicature,” and changed its name following American independence and the ratification of the Massachusetts Constitution. It is the oldest appellate court in continuous existence in the Western Hemisphere, and, since 1780, has been operating under the oldest, still functioning written constitution in the world.

The SJC is the highest court in the Commonwealth, having general powers of oversight over all other courts. Chapter 211 of the Massachusetts General Laws provides the framework of the SJC.

#### 1. Appointment and term

The SJC has a Chief Justice and six Associate Justices, all of whom are appointed by the Governor,<sup>4/</sup> subject to the approval of the Governor’s Council.<sup>5/</sup> MASS. GEN. LAWS c. 211, § 1. Each Justice holds his/her position until the mandatory retirement age of 70. MASS. CONST. Pt. 2, c. 3, art. I, *as amended by* MASS. CONST. amends. LVIII, XCVIII. The current Justices on the SJC, with year of appointment, are: Chief Justice Margaret H. Marshall

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<sup>4/</sup> Executive Order No. 420, signed by Governor Paul Cellucci on April 26, 2000, established a non-partisan Judicial Nominating Council (“JNC”) to advise the Governor with respect to appointments of judges, clerk-magistrates and clerks of court. This Order superseded prior Executives Orders that had provided for similar advisory committees. Comprised of an Executive Committee having twenty-five members, and four Regional Committees having eleven or fifteen members, the JNC “solicits, interviews, evaluates, and recommends a slate of well-qualified candidates” to the Governor. The Executive Committee screens candidates for vacancies in the Land Court, the Superior Court, and the Appeals Court. The Regional Committees screen candidates for the District, Probate, Juvenile, and Housing Courts in their regions. After review of any slate of candidates for a particular position or positions, the Governor may ask that further information be provided or for an expanded list. Section 11 of the Order established a separate Special Nominating Committee for the selection of Justices to the SJC. This Committee had nine members drawn from throughout the Commonwealth by the Governor, who served “at his pleasure under the same rules as apply to members of the Regional and Executive Committees.” While following the mandates set for the other Committees, the Special Nominating Committee placed “particular focus on the needs of the Supreme Judicial Court and the often special experience, interests, and qualities necessary to the making of a well qualified judicial candidate for the Supreme Judicial Court.” A majority of at least four votes from the Special Nominating Committee was necessary for a recommendation to be made to the Governor, through the Executive Committee. The Special Nominating Committee had an initial life of two years, which expired on May 30, 2001, and since that time there has not been a vacancy on the SJC. When the next vacancy occurs, the Governor may extend the Special Nominating Committee, or the Executive Committee could be charged with the responsibility of screening candidates for the SJC. *See* Exec. Order No. 420, *available at* <http://www.state.ma.us/jnc/ExecutiveOrder420.htm>

<sup>5/</sup> The Governor’s Council consists of eight individuals besides the Lieutenant Governor and is elected biennially for the purpose of “advising the Governor in the executive part of government.” *See* MASS. CONST. Pt. 2, c. 2, § 3, art. I and amendments.

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(1996), Associate Justice John M. Greaney (1989), Associate Justice Roderick L. Ireland (1997), Associate Justice Judith A. Cowin (1999), Associate Justice Francis X. Spina (1999), Associate Justice Martha B. Sosman (2000), and Associate Justice Robert J. Cordy (2001).

The salary of the Chief Justice and the Associate Justices is set by the Legislature, and was last adjusted in 2000. The Chief Justice receives approximately 3.5% more than Associate Justices. *See* MASS. GEN. LAWS c. 211, § 22.

## 2. Duties

The jurisdiction and administrative authority of the SJC is the product of legislative acts passed by the state Legislature as provided in the Massachusetts Constitution. *See* MASS. CONST. Pt. 2, c. 1, § 1, art. III. The seven Justices hear appeals from September through May. Four Justices constitute a quorum of the full bench. MASS. GEN. LAWS c. 211, § 2. Single Justice sessions are held each week throughout the year for certain motions pertaining to cases on trial or appeal, bail reviews, bar discipline proceedings, petitions for admission to the bar and a number of other statutory proceedings. The Associate Justices sit as Single Justices each month on a rotation schedule. The full bench renders approximately 250 written decisions per year. Single Justices decide a total of approximately 800 cases annually.<sup>6/</sup>

As an appellate court, the SJC hears all appeals in first-degree murder cases and appeals transferred from the Appeals Court.<sup>7/</sup> The SJC also has original jurisdiction in specific cases.<sup>8/</sup> The SJC is required by the Massachusetts Constitution to render advisory opinions to the Governor and to each branch of the Legislature upon important questions of law and “solemn occasions.” MASS. CONST. Pt. 2, c. 3, art. 2. Unlike other state supreme courts, the SJC cannot render an advisory opinion *sua sponte*; the SJC may only offer an advisory

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<sup>6/</sup> *See* <http://www.state.ma.us/courts/courtsandjudges/courts/supremejudicialcourt/about.html>.

<sup>7/</sup> The full bench of the SJC also has appellate jurisdiction over all questions of law arising on exceptions, report, or appeal from the Superior Court Department, Probate and Family Court Department, District Court Department (criminal cases), the appellate divisions of the District Court and Boston Municipal Court Departments, the Juvenile Court Department, and the Appellate Tax Board. *See* MASS. GEN. LAWS c. 211, § 5. The SJC also hears appeals from decisions, orders, and rulings by a Single Justice of the SJC. *See* MASS. GEN. LAWS c. 211, § 6; MASS. GEN. LAWS c. 231, § 112. Generally, appeals from the lower courts first are taken to the Appeals Court, except in those instances where the Legislature has granted the SJC exclusive jurisdiction. In addition to having the concurrent jurisdiction with the Appeals Court, the SJC may review an appeal directly without the necessity of any prior hearing or decision of the Appeals Court in specified circumstances. *See* MASS. GEN. LAWS c. 211A, § 10. *See also* MASS. GEN. LAWS c. 211A, § 11.

<sup>8/</sup> The SJC has original concurrent jurisdiction with the Superior Court Department of the Trial Court over all matters typically within a common law court’s general jurisdiction. MASS. GEN. LAWS. c. 214, § 1. Thus, the SJC may hear any case over which the Superior Court Department has jurisdiction; however, this type of original jurisdiction is wholly discretionary and rarely exercised.

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opinion upon the request of the Governor or the Legislature, not on its own initiative.<sup>9/</sup> The SJC decides independently whether or not an important question of law or solemn occasion exists.<sup>10/</sup>

The SJC also has the power of “general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided.” MASS. GEN. LAWS c. 211, § 3. Additionally, the SJC’s general superintendence power includes oversight of the administration of all courts of inferior jurisdiction. *See id.*<sup>11/</sup>

The SJC Rules Committee is composed of three SJC Justices, excluding the Chief Justice, and is charged with oversight of the uniform rules.<sup>12/</sup> The Committee also approves all rules of the lower courts and various agencies (e.g., Judicial Conduct Commission, Clients’ Security Board). The Committee considers all proposals for new rules or changes to current rules, and is aided and advised by a number of Standing Advisory Committees.

Additionally, the SJC supervises the activities of the Board of Bar Overseers, the Office of Bar Counsel, and the Clients’ Security Board, which were established by an SJC rule in 1974.<sup>13/</sup>

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<sup>9/</sup> *See, e.g., Opinion of the Justices*, 386 Mass. 1201 (1978) (Where there was no duty imminently confronting Senate, and answer of Justices of SJC to question propounded by Senate would not provide guidance necessary to ensure that Senate acted in manner consistent with state Constitution, there was no "solemn occasion" and Court requested to be excused from answering such question).

<sup>10/</sup> *See, e.g., In re Opinion of the Justices to the Senate*, 430 Mass. 1205 (2000) (A “solemn occasion,” exists when the Governor or either branch of the Legislature wishes to take some action, but has “serious doubts” as to their power and authority to take such action under the Constitution or an existing statute).

<sup>11/</sup> This aspect of the SJC’s general superintendence power reflects the principle that judicial authority in Massachusetts is not limited to adjudication, but includes ancillary functions, such as rule making and judicial administration, which are necessary if the courts are to carry out their constitutional mandate. *See Police Comm’r of Boston v. Municipal Court of Dorchester Dist.* 374 Mass. 640 (1978).

<sup>12/</sup> For example, MASSACHUSETTS RULES OF CIVIL PROCEDURE, MASSACHUSETTS RULES OF CRIMINAL PROCEDURE, MASSACHUSETTS RULES OF APPELLATE PROCEDURE, and MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT.

<sup>13/</sup> (i) The Board of Bar Overseers collects annual registration fees from lawyers and applies them to fund its operations and those of the Office of Bar Counsel, the Clients' Security Board, and Lawyers Concerned for Lawyers.  
(ii) The Bar Counsel, an independent prosecutor who serves at the pleasure of the Court, investigates grievances alleging professional misconduct against lawyers, and prosecutes formal charges against lawyers before the Board of Bar Overseers. The Board of Bar Overseers may dismiss charges, impose minor discipline, or recommend suspension or disbarment to the Court. The Board also hears petitions for reinstatement to the bar.  
(iii) The Clients' Security Board has the duty to "discharge the collective professional responsibility of the bar." To that end, the CSB reimburses clients who have been the victims of embezzlement or misuse of funds by lawyers. These awards are funded entirely out of registration fees assessed against lawyers in the Commonwealth.  
*See* [http:// www.state.ma.us/courts/courtsandjudges/courts/supremejudicialcourt/about.html](http://www.state.ma.us/courts/courtsandjudges/courts/supremejudicialcourt/about.html)

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### **3. Discipline and removal of SJC justices**

Two avenues exist for the removal of an SJC Justice: (1) removal by institutions and procedures operating within the judicial system itself, or (2) removal by the executive and legislative branches of government acting pursuant to the Constitution.

As with all other state court judges, discipline of SJC Justices is under the jurisdiction of the Massachusetts Commission on Judicial Conduct (CJC). MASS. GEN. LAWS c. 211C § 2. The CJC consists of nine members: 3 judges, appointed by the Justices of the SJC, no two of whom are from the same department of the Trial Court and who are not themselves SJC Justices; 3 members of the Bar, appointed by the Chief Administrative Justice of the Trial Court, none of whom are judges; and 3 others appointed by the Governor, none of whom may be members of the Bar. Members of the Commission hold their position for six years and are not compensated. MASS. GEN. LAWS c. 211C, § 1.

An SJC justice may be disciplined for the following:

- (a) conviction of a felony
- (b) willful misconduct in office
- (c) willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute
- (d) conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conducted in office or outside of judicial duties, that brings the judicial office into disrepute
- (e) any conduct that constitutes a violation of the codes of judicial conduct or professional responsibility, including the eight canons of judicial ethics outlined in Rule 3:09 of the Massachusetts Supreme Judicial Court's Code of Judicial Conduct.

MASS. GEN. LAWS c. 211C, § 3.

The CJC may also investigate allegations of physical or mental disability of a Justice. *See* MASS. GEN. LAWS c. 211C, § 10.

In accordance with the procedures set forth in MASS. GEN. LAWS c. 211C, §§ 2, 5-8, upon receipt of allegations of judicial misconduct, the CJC first conducts an investigation, which is then followed by a public hearing (if formal charges are filed). A Hearing Officer, appointed by the SJC, then makes a report containing proposed findings and recommendations for discipline, as necessary. A majority vote of the CJC is required for a recommendation of disciplinary action to be forwarded to the Chief Justice of the Appeals Court and the six most senior Appeals Court Justices (this panel sits in the place of the SJC when an SJC Justice is the subject of discipline). MASS. GEN. LAWS c. 221C, § 9. The CJC may "dispose" of a complaint by "informal adjustment" at any stage of the proceedings by: (1) informing or admonishing the Justice that his/her conduct may be cause for discipline;

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(2) directing professional counseling and assistance for the Justice; (3) imposing conditions on the Justice's conduct; or (4) persuading the Justice to retire informally. MASS. GEN. LAWS c. 211C, § 8 (1). Additionally, the Commission may issue a private reprimand with the consent of the Justice. MASS. GEN. LAWS c. 211C, § 8 (3). Only the Appeals Court panel can impose sanctions such as removal, retirement, fine or censure, upon the recommendation for disciplinary action forwarded by the Commission. MASS. GEN. LAWS c. 211C, § 8 (4).

An SJC Justice also can be removed by the Governor with the consent of the Governor's Council "upon the address of both houses of the Legislature," *see* MASS. CONST. Pt. 2, c. 3, art. I, or made to retire involuntarily due to mental or physical infirmity. MASS. GEN. LAWS c. 211C, § 2 (2). An SJC Justice may also be impeached by the House of Representatives (following a "grand inquest"), and convicted by the Senate. *See* MASS. CONST. Pt. 2, c. 1, § 3, art. VI; MASS. CONST. Pt. 2, c. 1, § 2, art. VIII.

## **B. Chief Justice of the Supreme Judicial Court**

### **1. Appointment**

The Chief Justice of the SJC is appointed by the Governor with the approval of the Governor's Council, and is selected from among the sitting Associate Justices. As with the appointment of SJC Justices, the Governor selects the Chief Justice after giving due consideration to the qualifications and qualities necessary to fill the position. *See supra* n. 4. The Chief Justice holds the position until retirement or resignation, and is subject to the same standards for removal as the six Associate Justices. Since October 14, 1999, the Chief Justice of the SJC has been the Honorable Margaret H. Marshall.

### **2. Duties**

In addition to the duties and authority shared by all Justices of the SJC, the Chief Justice of the SJC is statutorily required to perform a number of administrative and managerial duties, including but not limited to:<sup>14/</sup>

- (a) accepting requests from justices of the Trial Courts, the Appeals Court and the SJC that they be placed upon the list of retired judges, and placing those justices upon that list, *see, e.g.*, MASS. GEN. LAWS c. 32, §65G;
- (b) assigning eligible retired justices to fill temporary vacancies within the judiciary, *see, e.g.*, MASS. GEN. LAWS c. 32, §§ 65E and 65F;
- (c) granting leaves of absence to Associate Justices of the SJC, and Justices of the Appeals Court, *see* MASS. GEN. LAWS c. 211, § 28; MASS. GEN. LAWS c. 211A, § 17;

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<sup>14/</sup> The foregoing list represents a summary of the duties of the Chief Justice provided for by statute. The Chief Justice also fulfills many other informal roles in his or her position as the highest ranking judicial officer in the Commonwealth.

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- (d) accepting estimates for court maintenance and revenue from the Chief Justice of the Appeals Court, MASS. GEN. LAWS c. 211A, § 7;
- (e) preparing, in consultation with the Chief Justice for Administration and Management, a statement of all expenses and costs of the SJC, and submitting this budget to the budget director, MASS. GEN. LAWS c. 211, §2A;
- (f) appointing the chairperson and committee members of the Jury Management Advisory Committee, MASS. GEN. LAWS c. 234A, § 6;
- (g) fixing the salary of the Reporter for the Commonwealth, with the approval of the Governor and the Governor's Council, MASS. GEN. LAWS c. 221, § 68;
- (h) sitting on, or appointing another SJC Justice or former SJC Justice to sit on, the Judicial Council as established by MASS. GEN. LAWS c. 221, § 34A;
- (i) approving leases and the rental of court facilities in accordance with MASS. GEN. LAWS c. 29A;
- (j) designating one member of the Committee on Criminal Justice established by MASS. GEN. LAWS c. 6, § 156.

### **C. Chief Justice for Administration and Management (“CJAM”)**

The Chief Justice for Administration and Management (CJAM) manages and administers the Trial Court of Massachusetts, which consists of seven trial court Departments. The CJAM also has direct supervisory authority over the Office of the Commissioner of Probation and the Office of the Jury Commissioner. As such, the CJAM is the statutory employer of the approximately 8,000 employees of the Trial Court who work in 130 locations across Massachusetts. The Administrative Office of the Trial Court (AOTC) is made up of nine departments, each managed by a Director who reports to the Chief of Staff. The AOTC is the office through which the CJAM both manages the Trial Court and provides services to it. This office works closely with the Trial Court Departments and Commissions and with the SJC and Appeals Court to enhance the administration of justice in the Commonwealth.

#### **1. Appointment, term and removal**

The office of the Chief Justice of Administration and Management of the Trial Court is not a judicial office under the provisions of the Constitution.<sup>15/</sup> The CJAM is appointed by a

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<sup>15/</sup> See MASS. CONST. Pt. 2, c. 3, art I. Because the CJAM is not a “judicial officer,” the position is not subject to the Constitution’s restriction on removal “during good behavior” until the mandatory retirement age of seventy. In contrast to judicial officers, whose appointment and removal are subject to the Constitution, *see, e.g.* MASS. CONST. Pt. 2, c. 2, § 1, art. 9 (all judicial officers . . . shall be nominated and appointed by the [G]overnor, by and with the advice and consent of the [C]ouncil”), non-judicial officers, such as clerks, sheriffs, and other “officers of the court,” are subject to the authority granted to the courts by the Legislature, as well as the inherent powers of the judiciary. *See Matter of Dugan*, 418 Mass. 185 (1994) (holding that if a person is a judicial officer within the meaning of the Constitution, the Legislature may not delegate the power of removal to the SJC; however, a clerk of the District Court is not a judicial officer). *See also Opinion of the Justices*, 300 Mass. 596, 600 (1938) (If an office holder is not a judicial officer, this court, even without statutory authority, may have a power of removal “as an incident of the judicial function.”).

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majority of the SJC Justices, from among the justices of the trial court departments. The appointment is for a five-year term, with eligibility for additional five-year terms. The CJAM may be removed by a majority of SJC Justices only for cause in the nature of malfeasance, misfeasance or nonfeasance. The CJAM may continue to perform his or her duties as a justice while serving as CJAM. *See* MASS. GEN. LAWS c. 211B, § 6. The current CJAM is the Honorable Barbara A. Dortch-Okara, who has held the position since 1998.

The salary of the CJAM is set by the Legislature and was last adjusted in 2000. The CJAM receives approximately 8% more than Trial Court justices. *See* MASS. GEN. LAWS c. 211B, § 4, para. 3.

## **2. Duties**

The CJAM is the administrative head of the seven Trial Court Departments of the Commonwealth. In addition to the “general superintendence of the administration the trial court,” the CJAM is responsible for the “improvement of the administration of the trial courts and the securing of their proper and efficient administration.” MASS. GEN. LAWS c. 211B, § 9. Although the CJAM has the power of “general superintendence of administration,” Section 9 subjects this broad grant of authority to the superintendence power of the SJC, as provided in MASS. GEN. LAWS c. 211, § 3. Section 3, however, also expressly provides that the SJC’s general superintendence power “shall not include the authority or power to exercise or supersede any of the powers, duties and responsibilities of the [CJAM],” except where “extraordinary circumstances” exist that lead to a “severe, adverse impact on the administration of justice.” An order from a majority of SJC Justices is needed in such an event, with a complete statement of why the CJAM’s authority is being superseded. Thus, the statutes place limitations on both the CJAM and the SJC in their ability to exercise their respective general superintendence powers unchecked. Additionally, the CJAM’s general superintendence power with respect to clerks and registers of probate is now limited by MASS. GEN. LAWS c. 211B, § 10C, which expressly excepts clerks and registers of probate from this power.

Appeals arising from decisions made by Chief Justices of the Trial Court Department regarding disputes between First Justices and clerks, recorders or registers are heard by the CJAM, who must determine the matter expeditiously. As the head of Trial Court Department administration, the CJAM acts as the appellate authority in most instances where a member of the judiciary is aggrieved by a personnel decision. *See, e.g.*, MASS. GEN. LAWS c. 211B, § 10 (i). Additionally, the CJAM must periodically prepare and submit to the Chief Justice of the SJC a detailed estimate for the ordinary maintenance of the entire trial court, and all revenue there from. MASS. GEN. LAWS c. 29, § 3, para. 1, cl. 5. The estimate must include judicial salaries and the salaries of all officers and employees within the trial court, and estimates of all sums that the Commonwealth is obligated to pay under the provisions of MASS. GEN. LAWS c. 29A. *Id.*

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The CJAM has the power to consolidate cases involving the same party or the same issue that are pending in different Departments of the Trial Court for hearing by one justice. The CJAM may assign a justice to sit as a justice of other Departments within the Trial Court, and this justice may exercise all of the powers of the justices of other departments. In this way, the CJAM is able to dispose of such cases with efficient use of judicial resources. MASS. GEN. LAWS c. 211B, § 9 (xix).<sup>16/</sup>

Finally, the CJAM is “responsible for the management of court personnel, facilities, administration, security, and court business and [has] the authority necessary to carry out these responsibilities.” MASS. GEN. LAWS c. 211B, § 9.<sup>17/</sup>

#### **D. Chief Justices of the Trial Court Departments**

There are seven Trial Court Departments in Massachusetts.<sup>18/</sup> Each Trial Court Department has its own Chief Justice. Like the CJAM but with a more limited, specialized authority, the Chief Justice presides over his or her Department as the administrative head of the Department and is responsible for the efficient operation of all the courts therein as well as the management and supervision of most court personnel.

##### **1. Appointment, term and removal**

The CJAM appoints the Chief Justice of each Trial Court Department from among the justices appointed to the particular Department.<sup>19/</sup> A Chief Justice holds his or her office for a term of five years, and is eligible to be reappointed for an unlimited number of additional five-year terms, until reaching the mandatory retirement age of 70. A Chief Justice may be removed from office prior to the expiration of his or her term upon a determination by the CJAM that removal is “in the best interests of the administration of justice.” *See* MASS. GEN. LAWS c. 211B, § 5.

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<sup>16/</sup> This provision effectively solves the problem arising out of the Trial Court Department system adhered to in Massachusetts. By granting the CJAM the authority to allow one justice to “wear two hats,” the article overcomes the problem created by having seven separate Trial Court Departments, each with its own exclusive jurisdiction. This type of trial court system runs counter to the “simple” three-tiered court system with a single trial court department that is recommended by the American Bar Association and is in place in other state court systems.

<sup>17/</sup> MASS. GEN. LAWS c. 211B, § 9 provides a non-exhaustive list of the various powers of the CJAM. Section 9 lists 38 different areas in which the CJAM has authority, ranging from building maintenance to continuing legal education for judicial and non-judicial personnel to dispute resolution among judges.

<sup>18/</sup> The Boston Municipal Court Department, the District Court Department, the Housing Court Department, the Juvenile Court Department, the Land Court Department, the Probate and Family Court Department, and the Superior Court Department.

<sup>19/</sup> The statute does not provide any criteria for selection.

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The salary of the Chief Justices is set by the Legislature and was last adjusted in 2000. Chief Justices receive approximately 4% more than Trial Court justices. *See* MASS. GEN. LAWS c. 211B, § 4, para. 2.

## 2. Duties

In addition to his or her judicial powers and duties as a justice of the Trial Court, the Chief Justice is the administrative head of his or her Trial Court Department, its clerks, other officers and employees subject to MASS. GEN. LAWS c. 276, § 99 (probation officers), “and the appropriate collective bargaining agreement.” MASS. GEN. LAWS c. 211B, § 5. A Chief Justice also has the following powers, authority and responsibilities:<sup>20/</sup>

- (a) The power to appoint, discipline, evaluate, transfer and define the duties of all non-judicial personnel within his or her department including special masters, court reporters, law clerks, temporary clerks and other support personnel consistent with the provisions of MASS. GEN. LAWS c. 211B, §§ 8 and 10A.<sup>21/</sup> A Chief Justice does not have the power to appoint non-judicial personnel serving in the office of a clerk, recorder or register, but has the authority to discipline clerks, recorders and registers and all other personnel in their offices, upon “the raising of any dispute” between a First Justice and a clerk, recorder or register. Appeals of such decisions by a Chief Justice are made to the CJAM. Additionally, no person holding a commission as a clerk of court (whether elected or appointed), a register of probate, or a recorder may be assigned by the Chief Justice outside the department, division or court to which he is elected or appointed without his consent. Any clerk aggrieved by any transfer or assignment of himself or personnel of his office may appeal to the CJAM. MASS. GEN. LAWS c. 211B, § 10 (i).
- (b) The power to assign or to transfer justices appointed to his or her department of the trial court to any particular court within that department for such period or periods of time as the Chief Justice deems necessary. The Chief Justice also has the power to appoint regional justices and to define their duties. Appeal of these decisions may be made to the CJAM. *Id.* § 10 (ii).
- (c) The discretionary authority to ascertain the respective preferences of the justices as to which court or courts, if any, they wish to be assigned or transferred. *Id.* § 10 (iii).

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<sup>20/</sup> For a complete list of the Chief Justice’s eighteen responsibilities, as enumerated by statute, *see* MASS. GEN. LAWS c. 211B, § 10.

<sup>21/</sup> MASS. GEN. LAWS c. 211B, § 8 creates and defines the role of the Advisory Committee on Personnel Standards. MASS. GEN. LAWS c. 211B, § 10A defines, in general, the powers and duties of First Justices, who, in turn, are under the authority of Chief Justices of the Trial Court Departments. *See infra* Part II, Section E.

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- (d) The power to suspend any particular session in any court within his or her department. The power to move sessions so that the availability of court personnel is consistent with the needs of individual courts. The power to transfer cases and matters from a court to any other court within the department, to consolidate cases, and to make such periodic adjustments in the scheduling and locations of court sessions as are deemed necessary for the proper administration of justice. *Id.* § 10 (iv).
- (e) When necessary “to ensure the proper administration of justice,” to transfer employees of the department to serve where needed, and to impose discipline on such officers and employees, including dismissal and suspension with or without pay. The Chief Justice may, upon reasonable notice, temporarily transfer nonjudicial personnel within the department (e.g. personnel employed by clerks, etc.), but any transfer may not be more than a reasonable distance from the regular place of employment unless the transferred employee consents. The transfer cannot be for more than ninety days, but may be extended for three consecutive ninety-day periods, provided that notice is given to the House and Senate Committees on Ways and Means upon each extension. No transfer can exceed three hundred and sixty consecutive days. This transfer provision does not apply, however, to a clerk or clerk-magistrate (whether elected or appointed by the Governor), register of probate, or recorder. *Id.* § 10 (v).
- (f) The responsibility to compile a comprehensive written report of the operation of his or her department of the Trial Court at the conclusion of each fiscal year. *Id.* § 10 (viii).
- (g) The responsibility, annually, to prepare and submit to the CJAM a budget estimate, in detail, for the ordinary maintenance of his or her department of the Trial Court, and all revenue there from, as provided in MASS. GEN. LAWS c. 29, § 3 para. 1, cl. 5. This budget estimate must include judicial salaries and the salaries of employees within the department and must include estimates of all sums that the Commonwealth is obligated to pay under the provisions of MASS. GEN. LAWS c. 29A. The Chief Justice also has the authority to administer the amount appropriated to his Trial Court Department. *Id.* § 10 (x) and (xi).
- (h) The responsibility for the administrative management of the personnel, staff services and business of the department, including financial administration and budget preparation, record-keeping, information systems and statistical controls, purchasing, planning, construction, case flow management, assignments of sittings of the justices of their respective departments, including assigned justices. Each Chief Justice may delegate these responsibilities and powers to a justice, regional justice, First Justice, court officer, clerk, or any employee of the department, for such period of time and with such limitations as he or she may impose. *Id.* § 10 (xii).

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- (i) The power to discipline any justice assigned or appointed to the department who refuses or fails to comply with any order concerning the performance of his or her duties as justice or any other lawful order of the Chief Justice of the department. The Chief Justice also has the power to require any justice assigned or appointed to his or her department to participate in a judicial enhancement program in response to any action of such justice that brings the judiciary into disrepute, which lowers the public confidence in the judiciary or which impedes the administration of justice. A justice who is disciplined by the Chief Justice may appeal the imposition of discipline to the CJAM. Any justice aggrieved by decision of the CJAM may appeal to the SJC. These proceedings are confidential, MASS. GEN. LAWS c. 211C, unless consent is given or the SJC deems disclosure necessary in the interest of the public. All disciplinary action imposed by a Chief Justice, whether consensual or not, must be reported to the SJC.<sup>22/</sup>

## **E. First Justice**

Within each Trial Court Department, the First Justice serves as the administrative head of his or her department within the court or courts for a county or group of counties. There are fourteen counties in Massachusetts, each having at least one courthouse wherein two or more Trial Departments (often known as “divisions” or “sessions”) are located.<sup>23/</sup> Each First Justice is responsible for the management of his or her Trial Court department within a specific division/session.

### **1. Appointment, term and removal**

In both the Superior and District Court Departments of the Trial Court, the Chief Justice appoints First Justices. *See* MASS. GEN. LAWS c. 212, § 14A (in the Superior Court Department, a First Justice may be appointed “from time to time” when the Chief Justice determines that “for the purpose of the efficient administration of the business of the department” a First Justice is necessary); MASS. GEN. LAWS c. 218, § 6 (in the District Court Department, the Chief Justice “shall have the power to appoint the First Justice of each of the various courts within the District Court Department, subject to the approval of the CJAM”).

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<sup>22/</sup> This type of disciplinary action differs from that imposed by the CJC in that, here, discipline relates to the justice’s performance as an employee (*i.e.*, following orders, fulfilling duties), whereas action taken by the CJC relates to a justice’s behavior and is often initiated by a third party, outside of the judicial system.

<sup>23/</sup> All fourteen counties have at least one Superior Court and at least one District Court, often within the same building. For example, in Hampshire County, the Hampshire Superior Court and the Northampton Division District Court Department – each of which has its own First Justice – are both in the same courthouse. Although other Trial Court Departments have First Justices, this section of the outline will focus specifically on First Justices within the Superior Court Department and the District Court Department.

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The First Justice is selected from among the justices of his or her Department, with appropriate consideration given to seniority, length of service in his or her particular county or group of counties, and managerial ability. *Id.* Each First Justice serves as the First Justice of his or her division for a five-year term and is eligible to be reappointed for additional five-year terms. *Id.* In both the Superior Court Department and the District Court Department, a First Justice may be removed during any five-year term from his or her position as First Justice when it is determined by the Chief Justice “to be in the best interests of the administration of justice.” *Id.* Any First Justice who is removed during a five-year term from his or her position as First Justice by the Chief Justice of his or her Department may appeal the decision to the CJAM. *Id.*

## 2. Duties

The First Justice is the administrative head of the Trial Court Department within his or her particular county or group of counties, and has the following powers, authority and responsibilities.<sup>24/</sup>

- (a) The power, subject to the approval of the Chief Justice of his or her department, to appoint, dismiss, discipline, supervise, assign, evaluate, transfer and define the duties of all non-judicial personnel within the court, including special masters, court reporters, law clerks and other support personnel, except personnel in the office of the clerk, recorder or register. First Justices of the District Court Department do not have the authority to appoint, dismiss, assign or discipline probation officers and assistant probation officers, as this power is now vested in the Commissioner of Probation. MASS. GEN. LAWS c. 218, § 6.<sup>25/</sup>
- (b) The power, subject to the approval of the Chief Justice of his or her department, to supervise and assign duties to all justices appointed to or assigned to his or her court, and to authorize such justices to delegate the calling of the list to the clerk of the court where appropriate to the administration of justice.
- (c) The responsibility to bring to the attention of the Chief Justice of his or her department all disputes concerning all clerks, recorders and registers, or their personnel, appointed to or assigned to his or her court.
- (d) The power, subject to the approval of the Chief Justice of the department, to supervise and assign duties to all justices appointed to or assigned to his or her division.

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<sup>24/</sup> These are the powers enumerated in MASS. GEN. LAWS c. 211B, § 10A, which applies to all First Justices and contains general provisions for their authority. In addition to these statutory boundaries, the authority of First Justices in particular Trial Court Departments are defined by other statutes. *See, e.g.*, MASS. GEN. LAWS c. 185C, § 8 (further defining the authority of First Justices within the Housing Court Department); MASS. GEN. LAWS c. 217, § 2 (defining the authority of First Justices within the Probate Court Department).

<sup>25/</sup> While First Justices in both the Superior Court Department and the District Court Department are subject to MASS. GEN. LAWS c. 211B, § 10A, First Justices in the District Court (as well as First Justices in the Juvenile Court, the Housing Court, and the Boston Municipal Court) are also subject to MASS. GEN. LAWS c. 211B, § 10B, which provides to clerks the exclusive authority to appoint assistant clerks.

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- (e) The responsibility to periodically prepare and submit to the Chief Justice of his or her department an estimate, in detail, for the ordinary maintenance of the division or place for holding court, and all revenues there from as provided in MASS. GEN. LAWS. c. 29 § 3 para. 1 cl. 5.<sup>26/</sup>

MASS. GEN. LAWS c. 211B, § 10A

## **F. Clerk**

Clerks perform a wide number of administrative and judicial tasks, ranging from scheduling to granting bail and issuing summonses. Every division of every Trial Court Department has at least one clerk, whose role helps to facilitate the work of the judges and to aid in the efficient operation of the courthouse.

### **1. Appointment and Removal**

Clerks in Massachusetts are either appointed or elected. Elected clerks serve a six-year term. In the District Courts, clerk-magistrates are appointed by the Governor, and remain in this position as long as they maintain good behavior and until they reach mandatory retirement age “under the provisions of any applicable general or special law relative to retirement systems.” MASS. GEN. LAWS c. 218, § 8. Elected clerks are not subject to mandatory retirement ages set by statute. Clerks of the court may be removed by a majority of the SJC “if the public good so requires.” MASS. GEN. LAWS c. 211, § 4. The salaries of clerks are established by the Legislature, and are a set percentage of the salaries of the Justices of the courts. *See, e.g.*, MASS. GEN. LAWS c. 221, § 94.

### **2. Duties**

The general duties of the clerks include:

- (a) attendance at all the courts when held in their county, as well as the sessions of the county commissioners, and making accurate recordation of those proceedings, MASS. GEN. LAWS c. 221, § 14;
- (b) taking care and custody of all of the records, books and papers which pertain to, or are filed in their offices, *id*;
- (c) taking and swearing in of affidavits where the action or proceeding is pending before their court, MASS. GEN. LAWS c. 221, § 18;

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<sup>26/</sup> A First Justice’s budgeting authority is further outlined in MASS. GEN. LAWS c. 211B, § 13, which states that the First Justice’s budget estimate must include “all judicial salaries and the salaries of all officers and employees within the division or place for holding court.” This includes an estimate of the funding necessary for probation officers. Similarly, clerks and registers of probate for each county must provide the same estimate for their office. In the District Court, the Juvenile Court, the Housing Court, and the Boston Municipal Court departments, the First Justice is required to consult with the clerk of his or her division when preparing the budget estimate. This budget is submitted to the Chief Justice, who must “periodically” submit the budget to the CJAM for review and approval. *See* MASS. GEN. LAWS c. 211B, § 13.

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- (d) forwarding to the Attorney General all notices of appeal, orders for the report of cases, and bills of exceptions in criminal cases in which the Attorney General appears for the Commonwealth, MASS. GEN. LAWS c. 221, § 19;
- (e) issuing orders of notice upon any complaint or other proceeding in a civil action, MASS. GEN. LAWS c. 221, § 22;
- (f) reporting to the board of registration in medicine the names of all physicians convicted of a felony in connection with the practice of medicine, as well as the names of those individuals found to have been unregistered practitioners of medicine, MASS. GEN. LAWS c. 221, § 26;
- (g) issuing bail, MASS. GEN. LAWS c. 276, § 57;
- (h) releasing a prisoner on his own recognizance (in District Court, denial of release by a clerk is reviewable by a judge), MASS. GEN. LAWS c. 276, § 58;
- (i) issuing summonses for witnesses, MASS. GEN. LAWS c. 233, § 1.

In District Courts, clerks may also receive complaints, administer all required oaths to complaints, and issue warrants, search warrants and summonses. MASS. GEN. LAWS c. 218, § 33.

In addition to the general duties provided for in MASS. GEN. LAWS c. 221, § 14 *et. seq.*, clerks of the court for the several counties, the clerk of the Superior Court for criminal business in Suffolk county, the clerk of the Superior Court for civil business in Suffolk county, clerks of the Housing Courts, Registers of the Probate Courts, clerks of District courts, clerks of Juvenile Courts, and clerks of the Municipal Court of the city of Boston, also have the title of Magistrate for their particular department or division of the Trial Court. MASS. GEN. LAWS c. 221, §62B.

Magistrate Clerks may do the following:

- (a) grant continuances
- (b) hear and rule on any non-evidentiary motion as may be allowed by rule of court
- (c) call pre-trial conferences
- (d) mediate actions under MASS. GEN. LAWS c. 218, § 22 (small claims)
- (e) receive citations and hold hearings pursuant to MASS. GEN. LAWS c. 90C, § 3 (motor vehicle violations)
- (f) receive petitions and review orders pursuant to MASS. GEN. LAWS c. 140, § 157 (vicious animal complaints)
- (g) hold preliminary hearings to determine whether there is probable cause to believe that a probationer has violated the terms of his probation
- (h) set bail during the normal court day, when a justice is unavailable

MASS. GEN. LAWS c. 221, §62C.

Under MASS. GEN. LAWS c. 211B, § 10A, which went into effect in July of 2001, clerks, recorders and registers have responsibility for the internal administration of their respective

offices, including the selection, appointment, and management of personnel, staff services and record keeping. This responsibility of the clerks has been “carved out” of the general authority of the First Justices, and was recently the subject of a legal challenge brought by two First Justices. *See First Justice of the Bristol Div. of the Juvenile Court Dept. v. Clerk-Magistrate of the Bristol Div. of the Juvenile Court Dept.*, 438 Mass. 387 (2003) (holding that the Legislature’s modification of the statutory authority of First Justices, Chief Justices, the CJAM vis-a-vis clerks and the Commissioner of Probation was constitutional, despite the fact that the challenged legislation was enacted by means of “outside sections” of a general appropriations bill, because the enacted changes do not “alter the relationship between First Justices and clerks in the Trial Court,” but rather “clarify” the clerks’ preexisting authority without limiting the “independent authority of a First Justice . . . to supervise the conduct of judicial personnel, including the clerk”).

### **G. Commissioner of Probation**

The Commissioner of Probation supervises the probation work in all of the courts of the Commonwealth, and has access to all probation records of the courts.

#### **1. Appointment, term and removal**

The Commissioner of Probation is appointed by the CJAM. MASS. GEN. LAWS c. 276, § 98. This appointment is governed by the standards of MASS. GEN. LAWS c. 211B, § 8. Thus, appointment of the Commissioner of Probation must be approved by the Advisory Committee on Personnel Standards and follow the standards promulgated by that body. Likewise, the Committee’s approval is also necessary for removal of the Commissioner, which can only occur “for cause” at the instigation of the CJAM. *See* MASS. GEN. LAWS c. 211B, § 8. The term of the Commissioner of Probation is indefinite, until resignation, removal, or mandatory retirement occurs. The salary of the Commissioner of Probation is set by the CJAM, subject to appropriation. MASS. GEN. LAWS c. 276, § 98.

#### **2. Duties**

- (a) Subject to the approval of the CJAM, the Commissioner establishes reports and forms to be maintained by probation officers; procedures to be followed by probation officers; standards and rules of probation work, including methods and procedures of investigation, mediation, supervision, case work, record keeping, accounting, caseload and case management. MASS. GEN. LAWS c. 276, § 99.
- (b) The Commissioner promulgates rules and regulations concerning probation officers or offices, provided that the rules and regulations have been approved in writing by the CJAM subject to MASS. GEN. LAWS c. 150E. *Id.*
- (c) The Commissioner assists the CJAM in developing standards and procedures for the performance evaluation of probation officers, and assists each First Justice in evaluating the work performance of probation officers. *Id.*

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- (d) The Commissioner receives all notices of intended disciplinary action against a probation officer or supervising probation officer, including reprimand, fine, suspension, demotion or discharge that may be initiated by a First Justice, supervisor or Chief Probation Officer. *Id.*
- (e) The Commissioner develops and conducts basic orientation and in-service training programs for probation officers, as necessary. *Id.*
- (f) The Commissioner conducts research studies relating to crime and delinquency, and may participate with other public and private agencies in joint research studies. *Id.*
- (g) The Commissioner has the responsibility for assessing the needs of probation offices and assisting the First Justices in this effort. The Commissioner may recommend to First Justices or the CJAM the appointment and assignment of additional probation or clerical personnel or both. *Id.* The Commissioner may also appoint, dismiss and assign probation officers to the Trial Court as he or she deems necessary. MASS. GEN. LAWS c. 276, § 83.
- (h) The Commissioner annually submits written budget recommendations for the probation service to the CJAM, in addition to the budget requests submitted by the First Justices on behalf of their respective courthouse or courthouses, including probation offices. MASS. GEN. LAWS c. 276, § 99.
- (i) The Commissioner annually conducts regional meetings with Chief Probation Officers to discuss the budget needs of the local probation offices. The Commissioner may also hold conferences on probation throughout the Commonwealth. *Id.*

## **H. Chief Probation Officer**

Chief Probation Officer is a statutorily created office, established to provide an additional level of supervisory authority in courts where the number of probation officers requires that an additional managerial position exist.

### **1. Appointment, term and removal**

Subject to appropriation and in any court having two or more probation officers, the Commissioner of Probation may designate one probation officer to serve as Chief Probation Officer and may designate other probation officers to serve as Assistant Chief Probation Officers, as he or she deems necessary for the effective administration of justice. The Commissioner may suspend or discipline any Chief Probation Officer, subject to collective bargaining agreements. MASS. GEN. LAWS c. 276, § 83. The salaries of Chief Probation Officers are set “in accordance with a schedule of salaries recommended in writing by the CJAM and filed with the House and Senate Committees on Ways and Means.” MASS. GEN. LAWS c. 276, § 99B, para. 2.

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## **2. Duties**

Chief Probation Officers manage and supervise those probation officers under their direction and serve at the direction of the Commissioner of Probation. MASS. GEN. LAWS c. 276, § 83.

## **III. SUMMARY**

The judicial system in Massachusetts operates pursuant to statutory grants of authority that both create and limit the powers of the specific courts and judicial personnel according to their relative positions within a hierarchical scheme. In addition to its position as the “court of last resort” on legal issues, the Supreme Judicial Court also serves as the top administrative authority in the management of the entire state judicial system. Within this management structure, the Chief Justice for Administration and Management serves under the SJC to supervise the seven departments of the Trial Courts, with overall responsibility for their efficient operation. Each Trial Court department is headed by a Chief Justice who, in turn, delegates authority to First Justices who oversee specific courts within the department. Clerks and Probation Officials work within the departments to complete the management picture, with each reporting to and working with the next level of authority according to statutory mandate. Generally, those judicial positions having the statutory authority to create and administer budgets oversee the operation of the particular department or court under their control; however, the Legislature has also granted non-judicial officers some autonomy to perform their duties independently.