

CERTIFIED-RETURN RECEIPT REQUESTED

October 9, 2015

Williams B. Evans, Police Commissioner
Boston Police Department
One Schroeder Plaza
Boston, Massachusetts 02120

Hon. Terry M. Craven, First Justice
Suffolk County Juvenile Court
24 New Chardon Street
Boston, Massachusetts 02114

Edward J. Dolan, Commissioner
Massachusetts Office of the Commissioner
of Probation
One Ashburton Place, Room 405
Boston, Massachusetts 02108

Anthony J. Benedetti, Chief Counsel
Massachusetts Committee for Public
Counsel Services
44 Bromfield Street
Boston, Massachusetts 02108

Re: Compliance Review of the Boston Police Dep't (10-OCR-0198); Mass. Office of the Comm'r of Probation (10-OCR-0199); Suffolk County Juvenile Court (10-OCR-0200); and Mass. Comm. for Pub. Counsel Servs. (10-OCR-0201)

Dear Commissioner Evans, Commissioner Dolan, Judge Craven, and Mr. Benedetti:

I am writing to report the findings of the compliance review of language services within the juvenile justice system in Suffolk County, Massachusetts, conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ). The OCR would like to thank your respective staffs for assisting OCR attorneys Daphne Felten-Green and Michael Thomas during their April 26-29, 2010, onsite visit and attorney Shelley Langguth during her May 22-23, 2014, onsite visit.

In my letters to your respective agencies, dated February 5, 2010, I explained that the OCR had selected your agencies for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. As I noted at that time, the OCR limited the scope of the compliance review to the provision of juvenile justice services¹ to juveniles and families² who, as a result of national origin, are limited English proficient (LEP). An LEP person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English.

¹ As the OCR explained during our onsite visits, our compliance review is focused on your agencies' operations, programs, activities, and services that relate to the juvenile justice system up to, but not including, the adjudication stage.

² Throughout this Compliance Review Report, the terms "family" and "families" include parents and/or legal guardians.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 2 of 56

Title VI, the Safe Streets Act, and their implementing regulations require that recipients of federal financial assistance ensure meaningful access for LEP individuals.³ In June of 2002, the DOJ published guidance for its financial aid recipients on taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). Using the technical assistance standards in the DOJ Guidance, the OCR initiated this compliance review to determine the extent to which the Boston Police Department (BPD), Massachusetts Office of the Commissioner of Probation (OCP), the Suffolk County Juvenile Court (SCJC), and the Massachusetts Committee for Public Counsel Services (CPCS) provide language services to LEP juveniles and LEP families of juveniles involved with the pre-adjudication juvenile justice system in Suffolk County.⁴

After a thorough evaluation of the services provided by your respective agencies, including your responses to the OCR's data requests and the information the OCR gathered in connection with its onsite visits, which included interviews with agency representatives and discussions with representatives of community organizations, the OCR sent the BPD, the OCP, the SCJC, and the CPCS a draft Compliance Review Report on May 22, 2015, in accordance with 28 C.F.R. §§ 42.107(d)(2) and .206(e). In a July 28, 2015, email to Ms. Langguth, the BPD reported that it did not have any factual corrections to the draft Compliance Review Report. In a July 24, 2015, voicemail message for Ms. Langguth, the CPCS reported the same. On August 27, 2015, the OCP and the SCJC submitted a joint written response to the draft Compliance Review Report, in which they provided several factual corrections or clarifications to the draft Report along with information on actions that the OCP and the SCJC have already taken relating to the OCR's recommendations. The OCR has made the necessary factual corrections and updates to the draft Compliance Review Report to correctly reflect the manner in which the OCP and the SCJC are providing language assistance services.

In regard to the limited scope of our review, we conclude that the BPD, the OCP, the SCJC, and the CPCS are each taking steps to provide LEP persons with meaningful access to its juvenile justice services. Your respective agencies should build on these steps and take further action

³ In addition, while the OCR does not conduct this review under the Juvenile Justice Act of 2002, we note that the requirements under that Act to identify and mitigate disproportionate minority contact are also implicated by the language access for national origin minority LEP juveniles and families of juveniles having contact with the system.

⁴ In 2003, the OCR conducted a compliance review of the BPD concerning the BPD's provision of language services to all LEP individuals. On October 17, 2003, the OCR issued a Compliance Review Report on the BPD that set forth recommendations regarding the BPD's services to LEP persons. The OCR's current review of the BPD also serves as a follow up to our prior review.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 3 of 56

consistent with the recommendations contained herein to ensure that you are meeting your obligations under Title VI and the Safe Streets Act. The following Compliance Review Report contains observations about the language assistance provided to LEP juveniles and LEP families of juveniles having contact with the juvenile justice system in Suffolk County, along with recommendations based on the DOJ Guidance that the BPD, the OCP, the SCJC, and the CPCS may find helpful in developing policies and procedures to improve your services to LEP individuals.

Compliance Review Report

This Compliance Review Report begins by providing a brief overview of the roles and responsibilities of the BPD, the OCP, the SCJC, and the CPCS in connection with the juvenile justice system in Suffolk County. The Compliance Review Report then closely tracks the DOJ Guidance: first assessing each agency's obligation to provide LEP services and then reviewing the elements that each agency should include in a more effective plan for offering language assistance to LEP persons.

I. Overview of the BPD, the OCP, the SCJC, and the CPCS

A. BPD

The BPD provides law enforcement services throughout the City of Boston, and is the largest police department within Suffolk County. When an officer with the BPD arrests a juvenile for commission of a criminal offense, the officer files an application for a criminal complaint with the SCJC.⁵

B. OCP

The OCP is part of the Massachusetts Trial Court, which is a unified Massachusetts court system. The OCP includes the Massachusetts Probation Service, which contains 105 separate probation divisions throughout the fourteen counties in the State of Massachusetts, including eleven juvenile probation divisions. Juvenile probation officers provide intake services and supervision for children, adolescents and young adults involved in delinquency⁶ and youthful offender⁷ cases,

⁵ Other agencies within Suffolk County that may arrest a juvenile and file a criminal complaint include the Massachusetts State Police, the Massachusetts Bay Transportation Authority, the Chelsea Police Department, the Winthrop Police Department, and the Revere Police Department.

⁶ Pursuant to the Massachusetts General Laws, a delinquent child is defined as a child between the ages of seven and eighteen who violates any city ordinance or town by-law or who commits any offense against a law of the Commonwealth. Mass. Gen. Laws ch. 119, § 52 (2014).

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 4 of 56

and also monitor children who are the subject of abuse and neglect. These services include investigating a juvenile's personal history, background, and environment; periodically visiting or having telephone contact with the juvenile; making recommendations to the court regarding detention and disposition; reporting findings to the court; referring juveniles to social service agencies within the community; and enforcing court orders. Probation officers with the OCP's Juvenile Probation Department, Suffolk County Division provide intake services and supervision for juveniles and their families involved in delinquency and youthful offender cases in Suffolk County.

C. SCJC

The Massachusetts Trial Court also contains seven specialized court departments, including the Juvenile Court Department. The Juvenile Court Department has jurisdiction over civil and criminal matters including delinquency cases and youthful offender cases, care and protection petitions, and children requiring assistance cases.⁸ The SCJC is one of eleven divisions of the Juvenile Court Department and has jurisdiction over cases occurring in Suffolk County. The SCJC hears criminal sessions at the Edward Brooke Courthouse in Boston and holds satellite juvenile court sessions certain days of the week at the District Court courthouses in West Roxbury, Dorchester, and Chelsea.

The SCJC and the OCP receive administrative assistance from the Executive Office of the Trial Court (EOTC), including facilities management, fiscal operations, human resources, security, information services, and support services. The EOTC's Office of Court Management, Support Services Division, Office of Court Interpreter Services (OCIS) recruits, screens, trains, and certifies or qualifies foreign language interpreters who provide interpretation services for court proceedings and probation functions. These interpreters are either staff interpreters who are employed by the Massachusetts Trial Court or per diem interpreters who are freelance interpreters assigned as needed by the OCIS. (*See Compliance Review Report, infra* Section II(C)(7)(a)(ii) for a detailed discussion of the interpreter services provided by the OCIS.)

⁷ A youthful offender is any juvenile between the ages of fourteen and eighteen who commits an offense against a law of the Commonwealth, which if the juvenile was an adult, would be punishable by imprisonment in a state prison, and (a) has previously been committed to the Department of Youth Services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm, or (c) has committed a violation of paragraph (a), (c), or (d) of section ten or section ten E of chapter 269. Mass.Gen.Laws ch. 119, § 52 (2014). Section ten of chapter 269 relates to the possession of dangerous weapons, and section ten E relates to the sale of firearms. Mass.Gen.Laws ch. 269, §§ 10, 10E (2014).

⁸ The Juvenile Court Department does not have jurisdiction over juveniles between the ages of fourteen and eighteen who are charged with committing murder in the first or second degree.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 5 of 56

D. CPCS

The CPCS is a fifteen-member committee that is appointed by the Governor of the Commonwealth of Massachusetts, the Speaker of the House of Representatives of the Commonwealth of Massachusetts, the President of the Senate of the Commonwealth of Massachusetts, and the Massachusetts Supreme Court. The CPCS oversees the provision of legal representation to indigent individuals in criminal and civil court cases; the CPCS' Youth Advocacy Division provides legal representation to juveniles involved in delinquency or youthful offender cases from the arraignment through the disposition of the case. The Youth Advocacy Division employs staff attorneys to handle some of these cases, but the majority of cases are handled by private attorneys or bar advocates who are trained, overseen, and compensated by the CPCS.

II. Assessing the Obligation to Provide LEP Services

According to the DOJ Guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons requires an assessment that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and the related costs. 67 Fed. Reg. at 41459-61. In considering the application of these four factors to the BPD, the OCP, the SCJC, and the CPCS, the OCR offers the following observations and recommendations.

A. The Number or Proportion of LEP Individuals in the Service Population

As noted above, the SCJC has jurisdiction over juvenile matters occurring in Suffolk County. Based on recent data from the U.S Census Bureau, in 2012, Suffolk County had an estimated population of 701,757 residents age five and older; of this group, 435,025 spoke English only, and 266,732 (38%) spoke a language other than English. U.S. Census Bureau, American FactFinder, 2012 American Community Survey 1-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Suffolk County, Massachusetts <http://factfinder.census.gov>. Of the 701,757 residents age five and older, 126,632 (18%) spoke Spanish, and over half of this number (64,358) spoke English less than "very well," which the OCR considers LEP. *Id.* The data further indicates that 30,888 residents age five and older spoke French Creole, with 16,543 speaking English less than "very well;" 25,749 spoke Chinese, with 14,806 speaking English less than "very well;" 10,769 spoke Vietnamese, with 7,410 speaking English less than "very well;" 9,450 spoke Portuguese or Portuguese Creole, with 4,868

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 6 of 56

speaking English less than “very well; 8,303 spoke Arabic, with 4,976 speaking English less than “very well;” 8,069 spoke French, with 2,114 speaking English less than “very well;” 6,918 spoke African languages, with 3,182 speaking English less than “very well;” 6,183 spoke Italian, with 1,800 speaking English less than “very well;” and 6,029 spoke Russian, with 3,193 speaking English less than “very well.” *Id.*

Recommendations for the OCP, the SCJC, the CPCS, and the BPD

In order to determine what language assistance services each agency should provide, it is necessary that the OCP, the SCJC, and the CPCS have procedures in place to periodically review and tabulate available data on the LEP residents of Suffolk County. The available data from the U.S. Census Bureau indicate that the most prevalent foreign language spoken by juveniles and families of juveniles under the jurisdiction of the Suffolk County juvenile justice system is Spanish, and that other languages such as French Creole, Chinese, Vietnamese, Portuguese or Portuguese Creole, Arabic, and French are also frequently spoken. The OCP, the SCJC, and the CPCS should periodically review the most recent data from the U.S. Census Bureau to determine the language assistance needs of the population under the jurisdiction of the Suffolk County juvenile justice system and to identify the most common foreign languages spoken by LEP individuals. It is important to note that the service population includes not only juveniles, but the LEP population in general, since it is often the families of juveniles who are LEP. Recent data from the U.S. Census Bureau can assist in numerous ways, including determining the need to assign a particular number of interpreters to the specific SCJC buildings, the need to hire bilingual staff, and the need to translate documents into foreign languages. The OCP, the SCJC, and the CPCS may also find helpful any available data collected by local school districts on the languages spoken by enrolled students in Suffolk County. These data provide additional information on the foreign language groups in a particular area and their relative size.

Similarly, the BPD should periodically review the latest data from the U.S. Census Bureau to determine the most prevalent foreign languages spoken by juveniles and families of juveniles within the City of Boston and under the jurisdiction of the BPD.⁹ The BPD should also review data compiled by the Boston Public Schools on the languages spoken by LEP students.

⁹ As this Compliance Review Report focuses on language services within the juvenile justice system in Suffolk County, the OCR is not evaluating the number of LEP individuals within the City of Boston at this time.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 7 of 56

B. Frequency of Contacts with LEP Persons

1. BPD Data Collection

At the time of the OCR's April 2010 onsite visit, the BPD did not track its encounters with LEP individuals, including juveniles and their family members, in its Incident Reports and other reporting forms. Since the OCR's initiation of this review in 2010, the BPD has added a field to its Incident Reports that allows an officer to record if the officer requested language assistance services; however, currently this field does not capture who provided the language assistance services, who the language assistance services were provided to (including whether they were provided to an LEP juvenile or family member), or what language the language assistance services were provided in. To communicate with LEP individuals whom they encounter in the field, including LEP juveniles and their families, officers generally rely upon a bilingual BPD employee or Language Line Services (Language Line), a private vendor that provides telephonic interpretation in over 150 languages. The BPD also utilizes the private vendor Qwest Communications (Qwest) to provide telephonic interpretation for LEP callers who contact the BPD's Emergency 911 Operations Center. During the OCR's May 2014 onsite visit, the BPD provided the OCR with a report indicating that from January 1, 2012 to May 22, 2014, the BPD placed 11,450 calls to Language Line and 1,994 calls to Qwest for language assistance services. However, the BPD told the OCR that the Commonwealth of Massachusetts pays for the services of Language Line and Qwest and that the BPD does not receive invoices from either of these agencies documenting the specific calls placed by the BPD and the languages involved, and that the BPD does not track this information.

2. OCP Data Collection

The OCP, including the OCP's Juvenile Probation Department, Suffolk County Division, currently does not track its encounters with LEP juveniles and family members. While the OCP recently revised its Juvenile Intake Report to explicitly collect the language spoken in the home and whether an interpreter is needed, the OCP does not track this information. Once a juvenile has been arraigned by the SCJC, probation officers input the information from the Juvenile Intake Report into its electronic Court Activity Record Information (CARI) database; there is no specific field in CARI to note the LEP status of a juvenile or family member. Following the OCR's May 2014 onsite visit of the OCP, the OCP told the OCR that in 2015 it intends to implement a pilot program to assess how to accurately collect data on the OCP's contacts with LEP individuals.¹⁰

¹⁰ In the SCJC's and OCP's response to the draft Compliance Review Report, the OCP said that it has an ongoing pilot program at the Essex County Juvenile Court, and that the results of that pilot program may inform the OCP going forward on how to improve collection and analysis of data. The OCP also clarified that CARI is not a case

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 8 of 56

For interactions with LEP juveniles and family members that occur at the courthouse, the OCP uses per diem or staff interpreters screened or certified by the OCIS. Upon providing interpreter services, per diem interpreters must complete a Daily Service Record and submit it to the OCIS; the Daily Service Record includes the date of service, the language spoken by the interpreter, the court where the interpretation incurred, the case name and the presiding judge, and the amount of time spent interpreting. Staff interpreters complete and submit to the OCIS a Weekly Service Record including the same information. These reports do not indicate the individual to whom interpretation was provided, such as whether interpretation was for a juvenile or a family member.

During the OCR's May 2014 onsite visit of the SCJC, the SCJC provided the OCR with data depicting the use of per diem and staff interpreters at the SCJC, which may include interpretation provided for a probation officer interacting with a juvenile or family member at the courthouse. This data indicates that in fiscal year (FY) 2011 (July 1, 2010 to June 30, 2011), OCIS per diem and staff interpreters provided interpretation for 1,291 "clients" at the SCJC; 982 of these clients spoke Spanish, 92 spoke Haitian, 98 spoke Vietnamese, 30 spoke Cantonese, 32 spoke Cape Verdean, 15 spoke Arabic, 14 spoke Portuguese, and the remaining clients spoke Mandarin, Somali, French, Khmer, Hindi, Albanian, Bosnian, and Swahili. In Fiscal Year 2012, OCIS per diem and staff interpreters provided interpretation for 1,339 clients at the SCJC; 1,007 of the clients spoke Spanish, 80 spoke Cape Verdean, 85 spoke Haitian, 34 spoke Portuguese, 58 spoke Vietnamese, 15 spoke Cantonese, 15 spoke Somali, and the remaining clients spoke Mandarin, Amharic, Khmer, French, Russian, Bosnian, Arabic, Greek, Bengali, Dinka, Dutch, and Polish. In FY 2013, OCIS per diem and staff interpreters provided interpretation for 1,261 clients; of these clients, 872 spoke Spanish, 115 spoke Haitian, 108 spoke Cape Verdean, 57 spoke Vietnamese, 28 spoke Somali, 14 spoke Arabic 13 spoke Cantonese, and the remaining clients spoke Amharic, Greek, Albanian, Mandarin, Portuguese, Khmer, Bosnian, French, Fulani, Italian, and Russian. While providing a helpful overview of the total number of individuals at the SCJC who received language assistance services from a staff or per diem interpreter, the data does not indicate who received interpretation services (e.g., a juvenile or a family member), whether the interpretation was provided in connection with a juvenile delinquency or youthful offender proceeding or another type of case, and whether the interpretation was provided during a probation interview or a judicial proceeding.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 9 of 56

3. SCJC Data Collection

Upon discovering that a juvenile or family member is LEP, a SCJC clerk notes in MassCourts¹¹ the individual(s) who needs the interpreter and the specific language required, and a request for an interpreter for the next court date is sent to the OCIS via MassCourts.¹² (See above for data on usage of OCIS per diem and staff interpreters at the SCJC.)

In December 2014, the Massachusetts Trial Court, in cooperation with the Trial Court's Language Access Advisory Committee, published the *Massachusetts Trial Court Language Access Plan* (effective December 2014) (Trial Court LAP). The Trial Court LAP provides an assessment of current language assistance services throughout the Trial Court along with an action plan for implementing proposed improvement of these services. The Trial Court LAP notes that currently MassCourts does not generate sufficient reporting of language assistance services, such as the duration of service, the type of proceeding, the number of parties assisted, and whether language services other than per diem or staff interpreters were utilized. The Trial Court LAP states that the Trial Court will make efforts to collect more useful data regarding the language needs of individuals by case type; location; language; incidences of delay, default, or dismissal; and other metrics that illuminate the particular needs of LEP litigants. Additionally, the Trial Court LAP indicates that the Trial Court will examine how it can identify LEP individuals before they enter the courthouse, and that it will work with law enforcement, attorneys, advocates, social workers, and individual court users to identify language access needs in all matters.

4. CPCS Data Collection

When a Youth Advocacy Division staff attorney or bar advocate is assigned a juvenile delinquency or youthful offender case, the staff attorney or bar advocate completes a Case Opening Booklet to collect information on the juvenile and the juvenile's family; this Booklet includes information on the language(s) spoken by the juvenile but does not collect this information for family members. It does not appear that anyone tracks and compiles the information written on the Case Opening Booklet. Youth Advocacy Division staff attorneys will enter information regarding the juvenile's family into the electronic case management system TRIS, including the primary language(s) spoken by the juvenile and at home. However, bar advocates do not enter information into TRIS, and staff attorneys only handle approximately

¹¹ MassCourts is the electronic software program that the SCJC uses for docket entries.

¹² In the SCJC's and the OCP's response to the draft Compliance Review Report, the SCJC said that currently the SCJC does not have the ability to generate local reports through MassCourts on the languages spoken in its court sessions.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 10 of 56

thirty to forty percent of juvenile cases assigned to the Youth Advocacy Division. During the OCR's May 2014 onsite visit, the Youth Advocacy Division said that it does not have the funds to develop a mechanism to conduct a search of TRIS to determine how many LEP juveniles the Youth Advocacy Division staff attorneys served.

When Youth Advocacy Division staff attorneys or bar advocates interact with LEP juveniles and family members during judicial proceedings, they primarily utilize the OCIS interpreters in the courthouse at no cost to the CPCS. (*See* above for data on usage of OCIS per diem and staff interpreters at the SCJC.) For interactions with LEP juveniles and family members outside of the courthouse, they may also utilize the OCIS interpreters; however, the interpreters will submit an invoice for payment to the CPCS to cover the costs of the out-of-court interpreting. In follow up to the OCR's May 2014 onsite visit, the Youth Advocacy Division said that prior to FY 2014 (July 1, 2013 to June 30, 2014), the CPCS did not track invoices that it received from interpreters for such services. For FY 2014, the Youth Advocacy Division said that from July 1, 2013 through May 1, 2014, it received twenty hours of out-of-court interpretation in connection with juvenile delinquency or youthful offender cases in Suffolk County. According to the Youth Advocacy Division, the invoices do not indicate the specific languages involved in these services. The Youth Advocacy Division said that this number appears low, and opined that some of the interpretation services provided in connection with juvenile cases may have been counted in with adult cases.

General Recommendation for the BPD, the OCP, the SCJC, and the CPCS

In order to accurately assess the needs of Suffolk County's LEP population, including which parties most frequently require language assistance services (e.g., juvenile, family member, or witness), as applicable, the BPD, the OCP, the SCJC, and the CPCS should refine their collection of data from juveniles, families of juveniles, and interpreters to specifically identify the individual needing language assistance services, the primary language spoken by the individual, and how the agency provided language services.

Recommendations for the BPD

While the BPD has modified its Incident Reports to include a field that indicates when an officer requests language assistance, this field does not capture pertinent information such as the language involved, how language services were provided (i.e., the reporting officer, another bilingual BPD officer, or Language Line), or who the language assistance services were provided to (i.e., a juvenile, or a juvenile's family member). The BPD should revise its Incident Reports, Field Interrogation/Observation Forms, and other related forms to ensure that this information is somehow captured by additional or expanded fields. The BPD should also

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 11 of 56

develop a mechanism for tracking the calls placed to Language Line and Qwest and the languages involved, either by modifying its electronic Computer Aided Dispatch System or other electronic case management systems to collect and track this information, or requesting monthly statements from Language Line and Qwest. The BPD should then tabulate all of this data on an annual basis to determine the language needs of its LEP service population, including juveniles and their family members.

Recommendations for the OCP

While the OCP has recently revised its Juvenile Intake Report to collect information on the primary language spoken in the home and whether an interpreter is needed, the OCP does not currently track this information. The OCP is currently implementing a pilot program which may provide information on how to better track its encounters with LEP individuals. The OCR recommends that the OCP further revise its Juvenile Intake Report to specifically collect the primary language spoken by both the juvenile and the juvenile's parent or guardian, and who requires an interpreter. We further recommend that the OCP add specific fields to the electronic database CARI to capture this information. The OCP should then work toward developing a system to tabulate all of this data on an annual basis to determine the evolving language needs of LEP juveniles and LEP families of juveniles in Suffolk County.

Recommendations for the SCJC

Currently, the SCJC notes in MassCourts which individual (i.e., a juvenile, or a juvenile's family member) needs an interpreter and the specific language spoken; however, the SCJC does not currently have the ability to generate data reports from this information. In the Trial Court's LAP, the Trial Court notes that currently MassCourts does not generate sufficient reporting of language assistance services and that it will make efforts to collect more useful data regarding the language needs of LEP individuals. The Trial Court and the SCJC should implement the action plans contained in the Trial Court LAP regarding tracking contacts with LEP individuals, including LEP juveniles and LEP family members appearing before the SCJC, and should evaluate this data on an annual basis to determine the specific language needs at the SCJC.

Recommendations for the CPCS

The Case Opening Booklet utilized by Youth Advocacy Division staff attorneys and bar advocates currently collects information on the language spoken by the juvenile; however, it does not collect information on the language spoken by the parent or guardian, and it does not appear that the Youth Advocacy Division analyzes or tracks this information. And while staff attorneys note the language spoken by the juvenile and the language spoken at home in TRIS, bar

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 12 of 56

advocates, which handle sixty to seventy percent of juvenile cases, do not utilize TRIS. The CPCS should explore the possibility of including searchable fields in TRIS that note whether a juvenile or a family member requires an interpreter and the language spoken, and should require bar advocates to enter information into TRIS to the extent feasible. The CPCS should also carefully track the invoices it receives from OCIS interpreters and should require interpreters to note who language services were provided for (i.e., a juvenile, or a juvenile's family member), the type of proceeding, the language involved, and the county where the interpretation occurred. The CPCS should then tabulate this data on an annual basis to determine the specific language assistance needs of juveniles and family members involved in juvenile delinquency and youthful offender cases in Suffolk County.

C. Important Public Services Provided to LEP Individuals

1. Initial Contact with Law Enforcement

As discussed in Section I of this Compliance Review Report, the BPD is one of several agencies within Suffolk County who may arrest a juvenile for a criminal offense. The BPD's Rule and Procedures, Rule 318B, *Procedures for Handling Arrested Juveniles and Use of the Juvenile Detention Facility* (Sept. 13, 1995), establishes the BPD's policy for the care and treatment of arrested juveniles. According to Rule 318B, the BPD classifies an arrested juvenile as either a "delinquent child" or a "status offender." A delinquent child is defined in Rule 318B as "[a] child between seven and seventeen who violates any city ordinance, or town by-law or who commits any offense against a law of the Commonwealth" pursuant to Mass. Gen. Laws ch. 119, § 52.¹³ A status offender is defined in Rule 318B as a child under seventeen who has committed an act that is against the law but which would not be against the law if it were committed by an adult, such as the transportation of alcoholic beverages.¹⁴

According to Rule 318B, BPD officers are authorized and encouraged to use the least restrictive appropriate placement available for arrested juveniles, given the facts of the offense. Rule 318B sets forth the following procedures for handling arrested juveniles. Once a juvenile is arrested, BPD officers take the juvenile into custody and bring the juvenile to a district police station for booking. The arresting officer informs the Duty Supervisor of the facts and circumstances of the case, and the Duty Supervisor immediately notifies a juvenile probation officer and the juvenile's parent or guardian of the juvenile's arrest. During the OCR's May 2014 onsite visit, the BPD

¹³ Please note that effective September 18, 2013, Mass. Gen. Laws ch. 119, § 52 extends the age range of a delinquent child to between seven and eighteen years old. Accordingly, the BPD may wish to revise Rule 318B to reflect this change.

¹⁴ This Compliance Review Report focuses on the BPD's actions in regard to a "delinquent child" as discussed in Rule 318B.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 13 of 56

explained that an officer will call the juvenile's parent or guardian, and if the officer is unable to reach the parent or guardian, the BPD will send an officer to the parent or guardian's address or workplace to provide notification of the arrest. The BPD said that it will repeat this process as often as necessary. The BPD told the OCR that it is very rare that the BPD would not be able to reach a parent or guardian, and that in such cases, the BPD usually transfers the juvenile to an Alternative Lockup Program if the juvenile is unable to make bail, as discussed below.

As discussed above, Rule 318B indicates that immediately following a juvenile's arrest, the BPD also notifies a juvenile probation officer with OCP's Suffolk County Division. During the OCR's May 2014 onsite visit with the OCP, the OCP said that if the BPD arrests a juvenile during court hours, the arresting officer will transport the juvenile to the SCJC for arraignment that day. In its response to the draft Compliance Review Report, the OCP said that when an officer arrests a juvenile during court hours, an officer may not contact a probation officer prior to transporting the juvenile to the SCJC and the probation officer stationed at the SCJC will learn of the arrest upon the juvenile's arrival at the SCJC.

For situations where arraignment that day is not possible or if the BPD arrests a juvenile outside of court hours, during the OCR's May 2014 onsite visit the BPD said that the arresting officer and the Duty Supervisor, with the probation officer's recommendation, will decide whether to detain a juvenile pending arraignment or release the juvenile to his or family, taking into consideration factors such as criminal history and the nature of the offense. During the OCR's May 2014 onsite visit with the OCP, the OCP said that the BPD provides the probation officer with information regarding the nature of the offense, any injuries, any outstanding warrants, any prior record information, and whether there is a responsible adult available who can assume responsibility for the juvenile. Pursuant to BPD Rule 318B, juveniles may only be released to a parent, guardian, or other reputable person if the person promises, in writing, to supervise the juvenile and insure the juvenile's appearance in court. If the BPD, with the probation officer's recommendation, decides to release the juvenile to a responsible adult, the BPD has the responsible adult sign a Juvenile Detention Release Form where the parent, guardian, or other adult promises that he or she will be responsible for ensuring the presence of the juvenile at court. This Juvenile Detention Release Form is only available in English.

BPD Rule 318B notes that a detained juvenile is eligible for bail in accordance with the laws of the Commonwealth of Massachusetts. During the OCR's May 2014 onsite visit of the OCP, the OCP told the OCR that if the BPD and the probation officer are recommending to detain a juvenile pending arraignment, the BPD contacts the bail commissioner; the OCP stated that court clerks or private individuals rotate serving as the bail commissioner. It is ultimately the bail commissioner's determination of whether to release the juvenile to a parent or guardian, set bail, or detain the juvenile without bail. According to Massachusetts law, a justice, clerk, or bail

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 14 of 56

commissioner shall admit an arrested individual to bail on his or her personal recognizance without surety unless the justice, clerk or bail commissioner determines that such release will not reasonably assure the appearance of the individual before the court. Mass.Gen.Laws. ch. 276, § 58 (2014). In making this determination, the justice, clerk, or bail commissioner shall take into account the nature and circumstances of the offense; the potential penalty for the offense; the individual's family ties; the individual's financial resources and employment record; the individual's history of mental illness; the individual's reputation and length of residence in the community; any record of prior convictions or illegal drug use or distribution; any prior flight to avoid prosecution or use of false identification; any prior failure to appear in court; whether the individual is currently on bail, probation, parole, or other release for a prior crime; and whether the offense involves domestic abuse or a violation of a domestic order. *Id.*

In September 2010, the OCR conducted a telephone interview with an individual serving at that time as the bail commissioner; this individual said that the bail commissioner relies heavily on the recommendation of the arresting law enforcement agency and the probation officer when deciding whether to release the juvenile to his or her family, set bail, or hold a juvenile without bail, and that the bail commissioner rarely speaks with a juvenile or family member. The bail commissioner told the OCR that the Commonwealth of Massachusetts always prefers that a juvenile be released to his or her family rather than be detained pending arraignment.

During this initial period of investigation and notification, the BPD detains the juvenile in secure lockup at the district station; juveniles between the ages of fourteen and seventeen who are charged with delinquency offenses may be held for up to six hours. The BPD does not administer or maintain detention units for juveniles detained for over six hours; according to BPD Special Order 08-023, *Transportation and Holding Facilities for Juveniles* (Aug. 8, 2008), all juveniles held for more than six hours must be transported to a state juvenile Alternative Lockup Program. During the OCR's May 2014 onsite visit, the BPD provided the OCR with a current list of non-secure Alternative Lockup Programs, which are unlocked overnight shelters for status offenders and non-violent delinquents, and a list of secure Alternative Lockup Programs, which are for delinquent juveniles not eligible for a non-secure facility. The Alternative Lockup Programs are administered by the Massachusetts Department of Youth Services or other outside entities.¹⁵ Rule 318B states that juveniles under the age of fourteen may not be detained in police lockup for any amount of time; during the OCR's May 2014 onsite visit, the BPD said that a Duty Supervisor may keep such a juvenile at the station out of sight and sound of the booking station and adult prisoners, or may transport the juvenile to an approved shelter care facility.

¹⁵ The OCR's current review does not encompass language services provided at the Alternative Lockup Programs.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 15 of 56

During the OCR's May 2014 onsite visit, the BPD said that following an arrest of a juvenile, a BPD officer will file an application for a criminal complaint with the SCJC.

In the BPD's response to the OCR's 2010 Data Request (BPD 2010 Data Response), the BPD said that when interacting with juveniles and their families pre-arrest, during arrest, and post-arrest, officers use their judgment to determine whether the juvenile and/or the juvenile's family members are having difficulty communicating in English. The BPD stated that if it is a non-emergent situation and language assistance is required, the officer will determine the language needed and will broadcast a request on the radio for a bilingual officer with the relevant language skills. In an emergent situation, the officer will contact Language Line for telephonic interpretation services. The BPD also indicated that officers may use a bilingual social worker stationed at the BPD to communicate with LEP juveniles and LEP family members. In its 2010 Data Response, the BPD also provided the OCR with a Miranda Rights flyer translated into Spanish that is posted at all of the district stations and may be used to advise a Spanish-speaking juvenile or family member of the juvenile's rights prior to an interrogation.

In the OCR's interviews of BPD officers during the April 2010 onsite visit, officers told the OCR that when interacting with LEP individuals, they contact the BPD's Emergency 911 Operations Center and ask a dispatcher to request a bilingual officer over the radio, or they contact an officer directly who they know is bilingual. Only a few officers reported ever using Language Line for interpretation, and they did not specify whether this was in connection with a juvenile arrest. The officers with whom the OCR spoke reported using friends or family members to interpret for LEP individuals in various situations, such as when investigating a motor vehicle accident or to obtain information on injuries, and one officer told the OCR that he relied upon a family member to tell an LEP mother that the officer had arrested her son and to explain where the juvenile was located.

2. Pre-Adjudication Probation Services

As discussed above in Section II(C)(1) of this Compliance Review Report, if a law enforcement agency arrests a juvenile in Suffolk County the law enforcement agency may contact the OCP's Juvenile Court Department, Suffolk County Division to notify the OCP of the arrest, or the OCP probation officers at the courthouse will learn of the arrest upon the juvenile's arrival at the SCJC. In its response to the draft Compliance Review Report, the OCP indicated that during court hours, probation officers are always present at the courthouse.

If the arrest occurred outside of court hours, the law enforcement agency will obtain a probation officer's recommendation of whether to release the juvenile to his or her family or detain the juvenile pending the bail commissioner's decision pre-arraignment. During the OCR's May

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 16 of 56

2014 onsite visit of the OCP, which included a meeting with OCP management and a probation officer from OCP's Juvenile Court Department, Suffolk County Division, the OCP explained that outside of normal working hours, the OCP has an on-call probation officer available at all times for each of the three SCJC courthouses. The OCP provided the OCR with the Juvenile Court Probation On-Call Arrest Form that probation officers use to determine whether to recommend that a juvenile be released to a family member or held pending arraignment; this form analyzes information such as the nature of the offense, whether the juvenile has a prior delinquent record or any outstanding warrants, whether a family member is available, whether the family member refused to allow the juvenile to return home, and whether the juvenile has a prior history of failure to appear in court. The OCP said that probation officers obtain this information and provide recommendations to law enforcement officers over the telephone and do not meet with the officer or the juvenile at this time. The OCP told the OCR that if a law enforcement officer notifies the probation officer that a juvenile or family member is LEP, the probation officer will note this on the Arrest Form.

During the OCR's May 2014 onsite visit, the OCP told the OCR that a probation officer generally conducts an intake interview with a juvenile at the courthouse immediately prior to the arraignment. The OCP said that a family member may also be present, and that it is not common that a police officer was unable to reach a family member to notify the family member of the arrest and arraignment. According to the OCP, if the juvenile is arrested during court hours, the OCP may also attempt to reach a juvenile's family member by telephone. During the OCR's May 2014 onsite visit, the OCP provided the OCR with the Pretrial Intake/Indigency Report that the probation officer completes, which collects demographic information such as the juvenile's address, date of birth, ethnicity, parents' identity, and probation status, along with information pertaining to whether a juvenile may be considered indigent and eligible for appointment of counsel. (*See Compliance Review Report, infra* Section II(C)(4) for a detailed discussion of appointment of counsel.) There is no specific field on this form to capture whether a juvenile or family member is LEP; the OCP told the OCR that if a juvenile or family member is LEP, the probation officer will note on the top of the form that an interpreter is needed for the juvenile and/or family member and the language spoken. The Pretrial Intake/Indigency Report contains a waiver authorizing release of information that a family member must sign; this waiver is only available in English. In its response to the draft Compliance Review Report, the OCP provided the OCR with a revised Juvenile Intake Report that it now uses to collect demographic information on the juvenile and the juvenile's parents or guardians; at the top of the revised Juvenile Intake Report it explicitly collects the primary language spoken in the home and whether an interpreter is needed.¹⁶

¹⁶ The Juvenile Intake Report states that if a court-appointed attorney is requested, the probation officer should also complete the adult pre-trial intake and indigency forms.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 17 of 56

In May 2014, the OCP also provided the OCR with another form generally entitled “The Trial Court Juvenile Court Department Suffolk Division” that the probation officer also completes during intake to record information regarding factors such as the juvenile’s education, risks and needs, parents or guardians, health, behavior and attitude, and circumstances of the arrest. This form does not contain any fields to designate whether a juvenile or family member is LEP or to note their primary language.¹⁷

According to the OCP, based on the information collected, a probation officer may provide recommendations to the judge during arraignment regarding whether a juvenile should be considered indigent and whether the juvenile should be detained pending adjudication. Probation officers may communicate with juveniles and their families during the arraignment and other pre-adjudication court proceedings to discuss the judge’s expectations of them and the next court date. The OCP told the OCR that a probation officer’s level and frequency of contact with a juvenile and the juvenile’s family post-arraignment and prior to adjudication will depend on the order of the SCJC judge. At arraignment, a judge may release a juvenile to his or her family with written conditions such as electronic monitoring, curfew, stay away orders, exclusion zones, school attendance, and substance abuse testing, and a probation officer will be responsible for monitoring these conditions of release. (*See Compliance Review Report, infra* Section II(C)(3) for a detailed discussion of pre-adjudication judicial proceedings.) The OCP told the OCR that a probation officer’s level and frequency of contact with a juvenile and the juvenile’s family post-arraignment and prior to adjudication will depend on the order of the SCJC judge, and that contact may involve telephone calls, home visits, or meetings at the courthouse where the OCP maintains an office. The OCP told the OCR that the majority of its home visits of juveniles may be conducted with the BPD. In the BPD’s 2010 Data Response, the BPD discussed a program called Operation Night Light where BPD officers and OCP Suffolk Division probation officers visit the homes of juveniles in the evening to ensure compliance with probation conditions. The OCP told the OCR that the OCP’s involvement in Operation Night Light occurs during both the pre- and post-adjudication stages.

During the OCR’s May 2014 onsite visit of the OCP, the OCP told the OCR that for interactions at the courthouse with a juvenile and the juvenile’s family, if the juvenile or a family member is LEP, an OCP Suffolk County Division probation officer will obtain language assistance services from an interpreter screened or certified by the OCIS, either by having a SCJC clerk submit a request to the OCIS or locating an interpreter already at the courthouse. (*See Compliance Review Report, infra* Section II(C)(7)(a)(ii) for a detailed discussion of the interpreter services provided by the OCIS.) The OCP said that most often it is a family member, and not a juvenile, who is LEP, and that it is rare that an appropriate OCIS interpreter is not available. The OCP

¹⁷ In the SCJC’s and the OCP’s response to the draft Compliance Review Report, the OCP said that it is phasing out this form and soon will no longer utilize it.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 18 of 56

said that if an OCIS interpreter is not available, or for interactions outside of the courthouse, a probation officer uses a bilingual probation officer, a bilingual SCJC staff member, or a Department of Children & Families social worker who is present at the home visit to communicate with an LEP juvenile or family member. The OCP further said that for home visits conducted with the BPD, such as visits in connection with Operation Night Light, a bilingual BPD officer may provide interpretation. The OCP said that a probation officer may use a family member to interpret if no one else is available, although it is the OCP's preferred practice not to rely on family members for interpretation. During the OCR's April 2010 onsite visit of the OCP, Suffolk County Division probation officers reported communicating with LEP juveniles and family members by using OCIS interpreters, and if an OCIS interpreter was not available, by relying upon a bilingual probation officer or a friend or family member of the LEP individual.

3. SCJC Pre-Adjudication Delinquency Proceedings and Diversion Programs
 - a. Commencement of Proceedings

As discussed in Section II(C)(1) of this Compliance Review Report, following the arrest of a juvenile, a law enforcement officer will file an application for a criminal delinquency complaint with the SCJC; pursuant to the Massachusetts General Laws, any other individual may also file an application for a delinquency complaint. *See* Mass. Gen. Laws, ch. 119, § 54 (2014), ch. 218, § 35 (2014). During the OCR's May 2014 onsite visit, the SCJC said that the Suffolk County District Attorney's Office may subsequently initiate a youthful offender proceeding after obtaining an indictment by a grand jury. The SCJC explained that applications for a complaint are filed in the SCJC's Clerk Magistrate's Office, and that the Clerk Magistrate will evaluate the complaint to determine if there is probable cause to support it. During the OCR's May 2014 onsite visit, the SCJC discussed the following pre-adjudication judicial proceedings and diversion programs available at the SCJC.

- b. Show Cause Hearing and Pre-Complaint Diversion Programs

Absent an arrest, if an application for a complaint involves a misdemeanor charge the juvenile is entitled to a "show cause" hearing before the Clerk Magistrate prior to the issuance of a complaint, where the Clerk Magistrate will hear from the complainant and the juvenile and determine whether there is probable cause to issue the complaint. Additionally, a law enforcement officer who is filing an application on a felony charge absent an arrest may also request a show cause hearing prior to the issuance of a complaint.¹⁸ If a juvenile was arrested,

¹⁸ In follow up to the OCR's May 2014 onsite visit of the BPD, the BPD told the OCR that it is unaware of a situation in which a BPD officer would file an application for a criminal complaint absent an arrest.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 19 of 56

the Clerk Magistrate automatically issues a complaint without conducting a show cause hearing. Prior to a show cause hearing, the SCJC sends the juvenile and the juvenile's family a written notice of the show cause hearing; this notice is only available in English.

If a juvenile or juvenile's family member is LEP, the Clerk Magistrate will request a staff or per diem interpreter from the OCIS to provide language assistance services during the show cause hearing. The SCJC said that the SCJC generally discovers that a juvenile or a family member is LEP in the following ways: a law enforcement officer indicates the need for an interpreter on the application for a complaint; the Clerk Magistrate identifies the need for an interpreter at the show cause hearing; a probation officer identifies the need for an interpreter during the intake interview with the juvenile and the juvenile's family; or an attorney identifies the need for an interpreter after interviewing the juvenile. Upon discovering that a juvenile or family member is LEP, the Clerk Magistrate or session clerk notes in MassCourts the person(s) who needs the interpreter and the specific language required, and a request for an interpreter for the next court date is sent to the OCIS via MassCourts; each time the case is in court the clerk re-requests an interpreter in this manner for the next scheduled court date. If the Clerk Magistrate is aware that a juvenile or a family member is LEP prior to the show cause hearing, the Clerk Magistrate will request an interpreter in advance via MassCourts; otherwise, the Clerk Magistrate will telephone the OCIS to request an interpreter for that day. The SCJC said that if the need for an interpreter involves a commonly-spoken language such as Spanish or Cape Verdean the OCIS is usually able to provide an interpreter by the end of the day, and if an interpreter is not available the Clerk Magistrate will continue the show cause hearing until a later date. (*See Compliance Review Report, infra* Section II(C)(7)(a)(ii) for a detailed discussion of the interpreter services provided by the OCIS.)

At the show cause hearing stage, there are two types of formal diversion programs that a Clerk Magistrate may place a juvenile in instead of issuing a complaint. If a Clerk Magistrate believes that there is probable cause to issue a complaint involving fire starting behavior, the Clerk Magistrate can refer the juvenile to the Fire Starters program conducted by the Boston Fire Department. If a complaint involves the possession of alcohol and the incident occurred in South Boston, the Clerk Magistrate can refer the juvenile to a substance abuse education program conducted by the Gavin House. If the juvenile successfully completes the program, the Clerk Magistrate does not issue a criminal complaint to initiate judicial proceedings. According to the SCJC, the Clerk Magistrate also has wide discretion to refer juveniles to community services in connection with applications for complaints involving school offenses, domestic violence, and school yard fights. In such cases, the Clerk Magistrate will delay the issuance of the complaint for several weeks or months to see whether the services have successfully resolved the juvenile's issues; if the juvenile's issues have not been resolved to the satisfaction of all involved parties, then the Clerk Magistrate will issue the complaint.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 20 of 56

The SCJC told the OCR that the Clerk Magistrate or a probation officer will let the service providers know if a juvenile or a juvenile's family member is LEP and requires language assistance services. The SCJC said that most juveniles that it encounters are proficient in English. The SCJC judge with whom the OCR spoke was not aware whether the Fire Starters program or the substance abuse program conducted by the Gavin House had bilingual staff or other interpreters to communicate with LEP juveniles or family members.

c. Alternatives to Arraignment

Once a Clerk Magistrate issues a criminal complaint, there is no formal pre-arraignment diversion program available for juveniles.¹⁹ However, the SCJC told the OCR that prior to arraignment the assistant district attorney, defense counsel, and probation officer will frequently present an alternative to arraignment to a judge which includes release conditions and referrals to community based programs. For example, the RFK Children's Action Corps operates the Dorchester Detention Diversion Advocacy Program for cases involving high-risk juveniles filed in the district court in Dorchester;²⁰ juveniles participate in this program an average of six months and receive case management services including individualized service and supervision plans, curfew and school attendance checks, transportation to and from service appointments and court hearings, and educational advocacy services. The SCJC has also referred juveniles to the Bridging the Gap program operated by The Salvation Army, which teaches high-risk juveniles important life skills such as building self-esteem, dealing with peer pressure, anger management, decision-making, strengthening communications skills and relationships with family and friends, and job seeking and financial planning. The SCJC said that minor offenses such as trespassing, loitering and shoplifting are often not arraigned but are dismissed by the judge after the juvenile completes the established community service hours.

As discussed above, the SCJC said that the SCJC or probation officer will notify a community service provider if a juvenile or a juvenile's family member is LEP.

d. Arraignment and other Pre-Adjudication Proceedings

If the Clerk Magistrate has issued a criminal complaint on a juvenile and the juvenile is not diverted prior to arraignment, a judge with the SCJC will conduct an arraignment hearing, where the judge will notify the juvenile of the pending charges. At the arraignment, the assistant district

¹⁹ During the OCR's May 2014 onsite visit, the SCJC said that the Suffolk County District Attorney's Office was working with the SCJC to develop a formal diversion program.

²⁰ The SCJC told the OCR that the Dorchester Detention Diversion Advocacy Program can also accept juveniles from the other SCJC locations.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 21 of 56

attorney may also request bail or may request a dangerousness hearing to detain the juvenile pending adjudication. As discussed in Section II(C)(1) of this Compliance Review Report, pursuant to Massachusetts law, a judge shall release a juvenile on his or her personal recognizance without surety unless the judge determines that such release will not reasonably assure the appearance of the individual before the court. Mass.Gen.Laws. ch. 276, § 58 (2014). In making this determination, the judge shall take into account the nature and circumstances of the offense; the potential penalty for the offense; the individual's family ties; the individual's financial resources and employment record; the individual's history of mental illness; the individual's reputation and length of residence in the community; any record of prior convictions or illegal drug use or distribution; any prior flight to avoid prosecution or use of false identification; any prior failure to appear in court; whether the individual is currently on bail, probation, parole, or other release for a prior crime; and whether the offense involves domestic abuse or a violation of a domestic order. *Id.*

The SCJC told the OCR that in ninety percent of cases, pending adjudication a judge will release a juvenile to the juvenile's family on his or her personal recognizance without setting bail. A judge may decide to place a juvenile on pre-trial probation with specified conditions; a judge can place a juvenile on administrative probation, where an OCP probation officer sees a juvenile occasionally but primarily relies upon the juvenile to demonstrate compliance with the probation conditions, or supervised probation, where a probation officer has more frequent contact with and supervision of the juvenile. Conditions of pre-trial probation may include obeying all court orders and local, state, and federal laws; reporting to the juvenile's probation officer at required times; allowing the probation officer to visit the juvenile with or without notice; and community service programs such as the Dorchester Detention Diversion Advocacy Program. The length of pre-trial probation is approximately three months, and if a juvenile satisfies all of the required conditions a judge will dismiss the pending charges. In lieu of bail, a judge may also impose restrictive conditions on a juvenile to help ensure the juvenile's appearance in court, such as conditions to go to school and to stay away from certain individuals.

If a judge decides to set bail in accordance with the Massachusetts General Laws and the juvenile cannot post the bail, the juvenile will be detained; the SCJC told the OCR that juveniles may only be detained for up to fifteen days and that a judge must re-evaluate the bail determination at the conclusion of each fifteen-day period. The Massachusetts Department of Youth Services assumes custody of all juveniles who are detained while waiting to post bail. Once a juvenile is able to post bail and is released on bail, the judge may impose pre-trial probation conditions. The SCJC told the OCR that the SCJC attempts at every stage in the process to determine what is best for the juvenile and to divert the juvenile from the juvenile justice system, and that the majority of cases do not proceed to adjudication.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 22 of 56

In certain cases, an assistant district attorney may request a dangerousness hearing to determine whether the juvenile should be denied bail and detained pending adjudication. Pursuant to Massachusetts law, a judge may order a juvenile to be detained up to 120 days pending adjudication if the judge finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of other individuals or the community. Mass. Gen. Laws ch. 276, § 58A(3) (2014). In making this determination, the judge shall consider the nature and seriousness of the danger posed to others that would result from the juvenile's release; the nature and circumstances of the offense; the potential penalty the juvenile faces; the juvenile's family ties, employment record and history of mental illness; the juvenile's reputation; the risk that the juvenile will obstruct justice or intimidate a witness or juror; the juvenile's prior criminal record and any illegal drug use or distribution; whether the juvenile is currently on bail, probation, parole, or other release for a prior crime; and whether the offense involves domestic abuse or a violation of a domestic order. Mass. Gen. Laws ch. 276, § 58A(5) (2014). The SCJC told the OCR that it is rare for an assistant district attorney to request that a juvenile be denied bail and be detained pending adjudication. The Department of Youth Services would assume custody of any juvenile detained pending adjudication.

According to the SCJC, other pre-adjudication judicial proceedings include violation of release conditions hearings, revocation of bail hearings, and motion hearings. As with show-cause hearings, during these pre-adjudication proceedings the SCJC provides language assistance services to LEP juveniles and LEP family members through OCIS staff and per diem interpreters. The summons to appear and judicial orders provided to juveniles and their families are only in English; however, the SCJC said that the interpreter will conduct a sight translation of all orders during the hearing and judges in their discretion may ask the OCIS to translate the order into the appropriate language.

e. SCJC Court Clinic

The SCJC has a court clinic at all four SCJC locations that contains a forensic juvenile psychiatrist, forensic juvenile psychologists, and forensic social workers affiliated with either the Massachusetts General Hospital or the Massachusetts Department of Mental Health. Judges can refer cases to the court clinic pre- or post-arraignment to determine whether a juvenile is competent to stand trial and to conduct a full psychiatric or psychological evaluation to determine whether there are any cognitive, mental health or substance abuse issues to be address through conditions of probation or disposition. Clinicians rely upon OCIS interpreters to communicate with LEP juveniles and LEP family members referred to the clinic.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 23 of 56

f. Front Desk Interactions

The SCJC also interacts with juveniles and family members at front desks within SCJC facilities, by responding to inquiries and providing information. The SCJC told the OCR that during such interactions, SCJC staff utilize OCIS interpreters to communicate, or may use a bilingual SCJC employee if the information sought is simple such as directions to an office or the next court date.

4. Public Counsel Services

As discussed in Section II(C)(2) of this Compliance Review Report, when a probation officer conducts an intake interview with a juvenile prior to arraignment the probation officer will complete a Pretrial Intake/Indigency Report partly to gather information on the juvenile's financial situation. During arraignment, the probation officer will provide recommendations to the presiding SCJC judge regarding whether the juvenile should be considered indigent.²¹ If the judge determines that a juvenile is indigent, the juvenile is assigned public counsel services provided or managed by the CPCS' Youth Advocacy Division. In the CPCS' response to the OCR's 2010 Data Request (CPCS 2010 Data Response) and during the OCR's May 2014 onsite visit with Youth Advocacy Division management, the Youth Advocacy Division explained that it employs staff attorneys to handle these cases, but the majority of cases are handled by private attorneys or "bar advocates" who are trained, overseen, and compensated by the CPCS. Specifically, the CPCS contracts with a local bar advocate program, which then contracts with qualified private attorneys who have been trained and certified to accept assignments by the CPCS. The local bar advocate program provides professional oversight of the private bar advocate attorneys, and a supervisory attorney with the CPCS is ultimately responsible for overseeing the local bar advocate programs and private attorneys.

During the OCR's May 2014 onsite visit, the Youth Advocacy Division said that approximately 99 percent of juveniles who appear in SCJC are indigent and are assigned public counsel at arraignment, and that each court day there are on-duty Youth Advocacy Division staff or bar advocate attorneys who receive the assigned cases. The Youth Advocacy Division said that at the time of the OCR's visit, it employed eight staff attorneys who represented juveniles appearing before the SCJC, and that the staff attorneys handled approximately thirty to forty percent of the assigned cases with bar advocates handling the remaining cases.

²¹ Pursuant to the Massachusetts General Laws, an individual is considered indigent if one of the following apply: (a) the individual receives public assistance under a listed program; (b) the individual's income, after taxes, is 125 percent or less of the current poverty threshold; or (c) the individual is unable to pay the fees and costs of the judicial proceeding or is unable to do so without depriving the individual or his or her dependents of life necessities. Mass. Gen. Laws ch. 261, § 27A (2014).

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 24 of 56

In the CPCS 2010 Data Response, the CPCS said that once a Youth Advocacy Division staff attorney is assigned a case, the staff attorney will meet with the juvenile to complete a Case Opening Booklet which captures demographic and criminal history information on the juvenile. During the OCR's May 2014 onsite visit, the Youth Advocacy Division told the OCR that it also trains the bar advocates to complete this Case Opening Booklet. Currently, some of the information on the juvenile that is collected for inclusion in a Case Opening Booklet includes the language(s) spoken by the juvenile, pending and prior charges, educational and employment history, citizenship status, family information, and medical information.²² The section on family information does not contain any questions on whether a family member requires an interpreter and the language spoken. The Youth Advocacy Division further told the OCR that staff attorneys enter demographic and case-related information on the juvenile into the electronic database TRIS, including the juvenile's race, ethnicity, primary guardian, and primary language(s) spoken by the juvenile and at home. According to the Youth Advocacy Division, bar advocates do not enter data into TRIS.

The Youth Advocacy Division told the OCR that while staff attorneys and bar advocates generally first meet with a juvenile and the juvenile's family during the arraignment, if the SCJC clerk magistrate is holding a show cause hearing prior to the arraignment stage, the clerk magistrate may request that the Youth Advocacy Division provide counsel for the juvenile at the hearing. The Youth Advocacy Division said that staff attorneys and bar advocates meet with juvenile clients and their families at the courthouse, at the juvenile's home, at the Youth Advocacy Division's office, or at a juvenile's place of detention if the juvenile is detained prior to adjudication. According to the Youth Advocacy Division, staff attorneys and bar advocates meet frequently with juveniles and their families during the pre-adjudication stage of judicial proceedings.

During the OCR's April 2010 and May 2014 onsite visits, the Youth Advocacy Division told the OCR that if a staff attorney or bar advocate is interacting with a juvenile and the juvenile's family during a judicial proceeding or during an incidental conversation in the courthouse, an OCIS interpreter who is providing interpretation for the judicial proceeding will provide interpretation for the attorney, and that it is the SCJC's responsibility to arrange for an interpreter during judicial proceedings. For the majority of out-of-court interactions with LEP juveniles or family members, staff attorneys and bar advocates contact the OCIS to request the service of an interpreter or may contact an OCIS interpreter directly. However, prior to incurring costs for an interpreter, staff attorneys and bar advocates generally must file a motion with the SCJC to request that the CPCS pay for the interpreter services. (*See* Compliance Review Report, *infra* Section II(C)(7)(a)(iv) for a detailed discussion of the process for filing a motion with the court

²² Following the OCR's May 2014 onsite visit, the Youth Advocacy Division told the OCR that it is in the process of revising the Case Opening Booklet.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 25 of 56

for payment of interpreter services.) The Youth Advocacy Division also said that bilingual staff attorneys or bar advocates will communicate directly with an LEP juvenile or family member.

During the OCR's onsite visits, the Youth Advocacy Division told the OCR that staff attorneys and bar advocates have also utilized the interpreter services of bilingual members of local community-based organizations serving Somali- and Asian-speaking populations, and several staff attorneys and bar advocates whom the OCR interviewed in April 2010 reported using friends or family members of an LEP juvenile or family member to interpret. During the OCR's May 2014 onsite visit, the Youth Advocacy Division said attorneys do have access to Language Line for telephonic interpretation although it is not heavily used.

5. Complaints

a. BPD

The BPD's Rules and Procedures, Rule 109, *Discipline Procedure, Amended* (April 12, 1983) sets forth the procedures for handling complaints of misconduct from members of the public. According to Rule 109, the BPD's pamphlet *Commendation/Complaint Resolution Procedure*, and information that the OCR obtained from the BPD following its May 2015 onsite visit, the BPD's complaint procedures are as follows. Individuals can file a complaint in person, over the phone, or in writing at the BPD's Internal Affairs Division (IAD) or at any district station, and can also file a complaint online at www.cityofboston.gov/police. The Complainant, or a BPD supervisor taking the complaint, may complete a written Commendation/Complaint Information form documenting the complainant's allegations; a hardcopy version of this form is only available in English, although the on-line version may be translated into thirty-four different languages. (*See* Compliance Review Report, *infra* Section II(C)(7)(b)(i) for a discussion of the BPD's website.) Complaints are investigated either by the IAD or by district command staff; the BPD explained that the IAD generally delegates to district command staff complaints that are less serious, can be investigated in a relatively short amount of time, and do not involve allegations of racial or gender bias, sexual assault, use of force, injuries to the complainant, arrests, lawsuits, or criminal prosecutions. At the close of the investigation, the IAD makes a determination of the disposition of the complaint and notifies the complainant in writing of the disposition. If a complaint is unsubstantiated, the BPD notifies the complainant that the complainant can appeal the finding to the Community Ombudsman Oversight Panel (CO-OP); the CO-OP is a three-person independent civilian board appointed by the Major of Boston. The CO-OP's mandate is to review BPD investigations for fairness and thoroughness, and if the CO-OP finds that the investigation was not fair or thorough it discusses its concerns with the BPD and may request that the BPD conduct further investigation.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 26 of 56

Rule 109 does not mention or discuss how the BPD provides language assistance services to an LEP complainant. In the BPD's 2010 Data Response, it indicated that the BPD communicates with LEP complainants, including LEP juveniles or family members, by using a bilingual officer or Language Line. According to the BPD 2010 Data Response and information provided during the OCR's May 2014 onsite visit, since January 1, 2008, the BPD has not received any complaints alleging that the BPD had difficulty communicating with an LEP juvenile or LEP family member.

b. OCP

The OCP currently does not have any written procedures or complaint forms for a juvenile or family member to follow if they wish to file a complaint of misconduct against a Suffolk County Division probation officer. During the OCR's May 2014 onsite visit, the OCP said that all complaints are brought to an on-site manager for initial review, and that the manager may meet with the complainant to discuss the complainant's concerns and will gather relevant information from staff. The OCP said that since 2008, it has not received any complaints from a juvenile or family member alleging that they could not adequately communicate with a Suffolk County Division probation officer.

According to the Trial Court LAP, the Trial Court intends to develop and implement a system to monitor all staff who have responsibilities to LEP individuals to ensure they are meeting their legal obligations, including having a visible complaint process available in multiple languages.

c. SCJC

In follow up to the OCR's May 2014 onsite visit, the SCJC said that complaints against a Clerk Magistrate or Assistant Clerk Magistrate at the SCJC are handled in accordance with Massachusetts Supreme Judicial Court Rule 3:13, which states that such complaints shall be investigated by a committee on professional responsibility established by the Massachusetts Supreme Court. The SCJC said that complaints against other SCJC employees are generally directed to either the Clerk Magistrate, Chief Probation Officer, or Chief Court Officer. As noted above, the Trial Court LAP indicates that the Trial Court will develop a system to process complaints against Trial Court Staff regarding the provision of language assistance services.

Pursuant to the OCIS' *Standards and Procedures of the Office of Court Interpreter Services* (effective Oct. 30, 2009), if an individual wishes to complain about the services of an OCIS interpreter who provided interpretation at the SCJC, the individual can submit a written complaint to the OCIS for review and investigation. The OCIS has developed an *O.C.I.S. Interpreter Complaint Form* for individuals to complete to document their complaint; this form

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 27 of 56

is available on the Massachusetts Trial Court's website at <http://www.mass.gov/courts/docs/forms/interpreter-serv/complaint.pdf> and is currently available in English only. The OCIS recently told the OCR that from January 1, 2012 to January 23, 2015, the OCIS has not received any complaints regarding an interpreter providing services at the SCJC. If an individual wishes to complain of alleged misconduct by a judge at the SCJC, the individual shall submit a complaint in writing to the Massachusetts Commission on Judicial Conduct; the Commission has developed a complaint form for this purpose that is available in English only on the Commission's website at <http://www.mass.gov/cjc/complaintform.pdf>.

d. CPCS

In the CPCS 2010 Data Response, the CPCS provided a document entitled *Complaints Regarding the Performance and Conduct of Assigned Attorneys*.²³ According to this document, the complaint procedures apply to a private attorney who is certified to accept case assignments as a bar advocate and is subject to an allegation that the attorney has failed to provide competent representation, engaged in misconduct, or failed to comply with requirements or performance standards promulgated by the CPCS. The procedures state that the CPCS shall consider any complaint regardless of the manner in which it is submitted, and that the complaint shall be investigated to the extent and in the manner deemed appropriate by the CPCS' Chief Counsel or his or her designee.

During the OCR's May 2014 onsite visit, the Youth Advocacy Division said that the same procedures will apply to complaints of misconduct against staff attorneys, and that there is not a complaint form for complainants to complete. The Youth Advocacy Division said that the CPCS has not received any complaints since January 1, 2012, alleging that a bar advocate or staff attorney was not effectively communicating with an LEP juvenile or family member.

6. Community Outreach

a. BPD

In the BPD 2010 Data Response, the BPD said that it builds partnerships with community and neighborhood organizations serving and representing LEP juveniles and families, such as the Asian Task Force Against Domestic Violence, the Association of Haitian Women, the Black

²³ These complaint procedures do not appear to be a stand-alone document, but rather appear to be a portion of a larger document. During the OCR's May 2014 onsite visit, the Youth Advocacy Division said that it believes the complaint procedures are part of the CPCS' *Assigned Counsel Manual Policies and Procedures*. However, the OCR reviewed the version of the *Assigned Counsel Manual Policies and Procedures* (dated Oct. 24, 2011) that is currently posted on the CPCS' website at <https://www.publiccounsel.net/assigned-counsel-manual/> and did not see a section pertaining to complaint procedures.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 28 of 56

Ministerial Alliance, the Boston Center for Youth and Families, Inquilinos Boricuas en Accion, and the Massachusetts Alliance of Portuguese Speakers. The BPD employs sworn and civilian Community Service Officers who serve as liaisons with the community and link juveniles and their families to these partner organizations for needed services; in follow up to the OCR's May 2014 onsite visit, the BPD said that it currently employs sixty-six Community Service Officers, including a Youth Services Officer who engages in activities with and provides advice to juveniles. Additionally, the BPD indicated in the BPD 2010 Data Response that it participates in the Youth Services Providers Network, which is a partnership between the BPD and the Boys & Girls Club of Boston whereby the Network provides licensed clinical social workers to work in each of the eleven BPD police districts and various specialized units to provide social work services to juveniles referred by officers.²⁴ During the OCR's May 2014 onsite visit, the BPD said that assigned bilingual social workers speak various languages including Spanish, Haitian, and Creole.

b. OCP

The OCP has not engaged in any specific community outreach to individual LEP juveniles or LEP family members of juveniles in Suffolk County, as the OCP only has jurisdiction over individuals if ordered by the SCJC. The OCP has engaged in some general outreach to community organizations; following the OCR's May 2014 onsite visit, the OCP said that the OCP has developed relationships with organizations serving LEP populations, such as Asian-speaking populations, and that on occasion it refers juveniles to these organizations for services.

In the Trial Court LAP, the Trial Court indicates that it has developed a list of stakeholders to contact about informing LEP individuals of their right to an interpreter along with a list of media sources that provide information to LEP communities, and that it will establish regular communications with these groups.

c. SCJC

In follow up to the OCR's May 2014 onsite visit, the SCJC said that it does not conduct any formal outreach to organizations serving LEP communities, but that judges and the Clerk Magistrate will respond to requests for information or for speaking engagements. As discussed above, the Trial Court LAP indicates that the Trial Court will begin to establish communications and outreach with community groups and media organizations serving LEP communities.

²⁴ Information contained on the BPD's website at <https://bpdnews.squarespace.com/youth-connect> indicates that the Youth Services Providers Network is now known as YouthConnect.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 29 of 56

d. CPCS

In the CPCS 2010 Data Response and during the OCR's April 2010 onsite visit, the CPCS said that it conducts outreach to numerous community-based organizations who work with juveniles, including organizations serving LEP communities such as Sociedad Latina, by conducting workshops entitled *Know the Law* where Youth Advocacy Division staff educate the organizations about juvenile criminal law and juveniles' rights and responsibilities. Additionally, the Youth Advocacy Division conducts workshops for parents and guardians on understanding the educational system. Following the OCR's May 2014 onsite visit, the Youth Advocacy Division said that it continues to conduct these types of presentations, and that in 2014 it conducted two educational presentations in Spanish for MassStart, a school-based community program that offers services to juveniles in the Boston Public Schools and their families; the Youth Advocacy Division relied upon a bilingual employee from MassStart for interpretation.

7. General Language Services

To provide the foregoing services to LEP juveniles and LEP families of juveniles in Suffolk County, the BPD, the OCP, the SCJC, and the CPCS offer both oral and written language assistance.

a. Oral Language Services

i. BPD

The BPD's Rule 318B, which sets forth the procedures that BPD officers should follow for the care and treatment of arrested juveniles, does not address how to interact with juveniles or family members who are LEP. The BPD has issued to all employees Commissioner's Memorandum 93-01, *AT&T Language Line* (effective Jan. 20, 1993), which states that the BPD subscribes to Language Line for telephonic interpretation services in over 140 different languages. Memorandum 93-1 states that 911 operators may utilize Language Line to communicate with non-English speaking callers, and that officers in the field may also use Language Line to communicate with non-English speaking persons by contacting the BPD's Emergency 911 Operations Center and requesting Language Line. The BPD does not have any other written policies or procedures addressing how to communicate with LEP individuals, including juveniles and family members.

Based on the information gathered during the OCR's onsite reviews, it appears that officers primarily communicate with LEP juveniles and LEP families of juveniles by using bilingual BPD employees to communicate directly or serve as interpreters. During the OCR's May 2014 onsite

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 30 of 56

visit, the BPD provided the OCR with a list of bilingual employees. This list indicates that out of the 2,934 BPD employees as of June 27, 2014, 251 employees spoke one or more foreign languages. Of these employees, 134 spoke Spanish, 32 spoke Haitian Creole, 27 spoke Cape Verdean, 13 spoke Vietnamese, 12 spoke Cantonese, 11 spoke French, 7 spoke Chinese, 5 spoke French Creole, 4 spoke Italian, 3 spoke Portuguese, 2 spoke Arabic, 2 spoke Gaelic, 2 spoke Russian, 2 spoke Toisanese, 1 spoke Armenian, 1 spoke Bosnian, 1 spoke Greek, 1 spoke Hebrew, 1 spoke Jamaican Patois, 1 spoke Laotian, 1 spoke Mandarin, 1 spoke Polish, and 1 spoke Romanian.

In the BPD 2010 Data Response, it said it actively recruits officers who speak foreign languages through recruiting posters translated into Cape Verdean, Chinese, Spanish, and Vietnamese. In the 2010 Data Response and during the OCR's April 2010 and May 2014 onsite visits, the BPD stated that it periodically uses selective certification lists when hiring entry level police officers, which are lists provided by the Massachusetts Human Resources Division that contain the names of applicants who passed the entry level examination and self-identified as being proficient in a particular foreign language. The BPD said that this is a positive factor in the BPD's evaluation of applications, and that the BPD has used selective certifications in 2010 to hire officers who speak Haitian Creole and Cape Verdean, and in 2011 to hire officers who speak Vietnamese and Chinese. The BPD said that applicants on a selective certification list claiming proficiency in a foreign language have their language skills assessed by the Boston Language Institute, which tests the applicant's contextual conversational proficiency. The BPD told the OCR that the BPD's Human Resources Division also periodically distributes a survey to all BPD employees and that employees may self-identify as having foreign language skills, and that the BPD does not test the language skills of employees who self-identify. The BPD said that its list of bilingual employees contains employees who were hired under a selective certification and those who self-identify, and that the Human Resources Division maintains this list and it is not disseminated to staff. The list of bilingual employees provided to the OCR during our May 2014 onsite visit does not specify whether an employee was hired under a selective certification and has had his or her language skills assessed. The BPD does not provide additional compensation to employees with foreign language skills. The officers with whom the OCR spoke during its April 2010 onsite visit said that to obtain the services of a bilingual officer, they contact a BPD dispatcher to broadcast a request over the radio or contact an officer directly whom they know is bilingual.

According to the BPD 2010 Data Response, officers may also utilize Language Line to communicate with LEP juveniles and LEP family members. However, only a few officers with whom the OCR spoke said they have used Language Line for interpretation, and they did not specify whether those instances involved a juvenile or a family member of a juvenile. The BPD also said that officers utilize the bilingual social workers stationed at the BPD through YouthConnect to communicate with LEP juveniles and LEP family members; during the OCR's

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 31 of 56

May 2014 onsite visit, the BPD said that assigned bilingual social workers speak various languages including Spanish, Haitian, and Creole.

In the BPD 2010 Data Response, the BPD said that it strongly discourages the use of informal interpreters such as friends or family members to communicate with an LEP juvenile or family member, and that officers only use family members when absolutely necessary to obtain urgently needed and important information. However, during the OCR's April 2010 onsite visit, one officer told the OCR that he once relied upon a family member for interpretation to tell an LEP mother that the officer had arrested her son and to explain where the juvenile was located.

The BPD does not train its officers on how to communicate with LEP individuals, including LEP juveniles and family members, other than distributing Commissioner's Memorandum 93-1.

In April 2010, the OCR held a roundtable discussion with community group representatives regarding the manner in which language services are provided to juveniles and their families involved in the juvenile justice system in Suffolk County. During this roundtable, community group representatives indicated that the BPD does a relatively good job at providing language assistance services to LEP persons who speak common foreign languages, such as Spanish and Portuguese; however, they expressed concern that the BPD is not ensuring that services are available in less-common languages, such as Somali and Vietnamese.²⁵

ii. OCP

The OCP does not have any written procedures specific to OCP discussing how probation officers should provide services to LEP individuals, including LEP juveniles and family members. The majority of interactions that OCP Suffolk County Division probation officers have with juveniles and their families occur at the SCJC courthouses, and for such interactions the OCP relies upon interpreters screened or certified by the OCIS. The Massachusetts General Laws state that, "[a] non-English speaker, throughout a legal proceeding, shall have a right to the assistance of a qualified interpreter who shall be appointed by the judge, unless the judge finds that no qualified interpreter of the non-English speaker's language reasonably available, in which event the non-English speaker shall have the right to a certified interpreter, who shall be appointed by the judge." Mass. Gen. Laws ch. 221C, § 2 (2014). As discussed in Section I(C) of this Compliance Review Report, the OCIS is responsible for recruiting, screening, training, and certifying interpreters to provide interpretation in connection with legal proceedings.

²⁵ In July 2014, the OCR reached out to the community representatives with whom it spoke in 2010 to inquire whether they had any updated information to share regarding the language services provided by the BPD, the OCP, the SCJC, or the CPCS. The community representatives did not provide the OCR with any additional information.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 32 of 56

The OCIS has developed the written *Standards and Procedures of the Office of Court Interpreter Services* (effective October 30, 2009) (OCIS Standards); the stated purpose of the OCIS Standards is to provide court interpreters, judges, attorneys, and other court personnel with important information about accessing, using, and providing quality interpreter services in the Massachusetts Trial Court and to provide guidelines for requesting or acting as interpreters. Additionally, as discussed in Section II(B)(3) of this Compliance Review Report, in December 2014, the Massachusetts Trial Court published the Trial Court LAP. The Trial Court LAP states that it is the policy of the Massachusetts Trial Court to provide meaningful access for LEP individuals in compliance with Title VI, and that the Trial Court shall make every effort to ensure access to language assistance services in all court proceedings and court-managed or court-related programs. The Trial Court LAP notes that how best to accomplish each action will be informed by the availability of adequate and appropriate resources. The Trial Court LAP further notes that the main entry point to the court system is a clerk, register, or probation office service counter, and that staff must not turn anyone away because of a limited ability to speak English or ask the individual to return with someone who can speak English. The Trial Court LAP provides an assessment of current language assistance services throughout the Trial Court and an action plan for implementing proposed improvement of these services, based on the DOJ's four-factor analysis.

According to the OCIS Standards, the OCIS will schedule and provide interpreters to appear at all criminal or civil judicial proceedings, including the initiation of such proceedings, and will also provide interpreters for parents, guardians, and other individuals who must understand the court proceeding. The OCIS Standards further state that while the OCIS generally will not provide or compensate interpreters for witness interviews, depositions, or other interpretation outside of a court facility, the OCIS will provide and compensate interpreters for investigations and evaluations ordered by the court and either required by statute or by the court for trial or disposition of a matter.²⁶ During the OCR's April 2010 and May 2014 onsite visits, OCIS and OCP told the OCR that the OCIS will provide interpreters for OCP interactions with LEP juveniles and family members that occur at the courthouse, but will not provide interpreters for use outside of the courthouse such as during home visits. The OCIS Standards cite Mass. R. Civ. P. 43(f), which states that "[t]he court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court." However, following the OCR's May 2014 onsite visits of the OCP and the SCJC, the Administrator of the Massachusetts Trial Court stated that the Trial Court never charges LEP individuals for the cost of interpreter services.

²⁶ In the SCJC's and OCP's response to the draft Compliance Review Report, they noted that the OCIS provides interpreters for District Attorney witness preparation, grand jury investigations, court investigations, and court clinic evaluations.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 33 of 56

The OCIS Standards set forth the minimum requirements to serve as a court interpreter along with the OCIS' procedures for screening and certifying interpreters. The minimum requirements to work as a court interpreter for OCIS are as follows: (1) a four-year college degree from the United States or an equivalent higher education degree from another country; (2) verifiable references; and (3) academic, native-level mastery of English and the foreign language. The OCIS screens applicants by reviewing their academic background, language proficiency, and prior interpreting and translating experience, and also looks for an understanding of the important role that a court interpreter plays in facilitating access to the legal process for LEP individuals. The OCIS interviews the applicants meeting the minimum requirements, provided that there is a current need for interpreters in the language spoken by the applicant. During the interview, the OCIS assesses the applicant's English oral skills and general competency to work as a court interpreter. Selected applicants are then required to take a written screening examination, which tests the applicant's proficiency in English and in their foreign language. Subsequent to the OCR's May 2014 onsite visit of the SCJC, the OCIS explained to the OCR that the screening examination contains translation exercises available in Spanish, Portuguese, Chinese, Cape Verdean Creole, Haitian Creole, Vietnamese, Hebrew, French, Hindi, and some African languages. Certain applicants may be excused from taking the screening examination, such as applicants who have received certification by the Federal Court's Interpreter Program, by another state upon completion of an exam from the National Center for State Courts' (NCSC) Consortium for Language Access in the Courts, or by the National Association of Judiciary Interpreters and Translators (NAJIT); applicants who have a higher academic degree and demonstrated fluency in both English and the foreign language; and applicants who speak a language that have only a recent or no history of written codification.

When an applicant passes this initial screening, the OCIS conducts a criminal record check. Applicants passing the criminal record check are then required to attend a mandatory multi-day training session by the OCIS that introduces them to the practice of interpretation and the OCIS Standards. After the training and orientation session, the OCIS assigns each applicant to a mentor, who is an experienced court interpreter, for a period of time that varies depending on the applicant's individual needs and level of expertise. Once an applicant satisfies these threshold requirements the applicant is considered to be a "screened" interpreter.

The next level of interpreters are "certified" interpreters. To be eligible for certification, an individual must satisfy the minimum criteria to be a screened interpreter, and must also possess one of the following: (1) a minimum of one year of work experience in interpretation, preferably in court or conference interpretation; (2) legal interpretation certification from another state where certification requirements are equivalent to those of OCIS; (3) certification or qualification from the Federal Court's Interpreter Program; or (4) a legal or conference interpretation diploma or certification from a national or international interpreter program. Individuals meeting the

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 34 of 56

prerequisites and who are seeking certification in a language for which there is an approved examination must take a written and oral certification examination administered by the OCIS. The OCIS told the OCR that the written examination is a multiple-choice exam developed by the NCSC and tests the candidate's overall English lexicon, knowledge of the legal process, and interpreter ethics. The OCIS further indicated that through 2012, the OCIS administered yearly oral certification examinations in Spanish and Portuguese that were developed by the University of Massachusetts, and that in the Spring of 2013 the OCIS partnered with the judicial interpreter offices in Maine, Vermont, and Rhode Island to administer oral examinations in Spanish, Portuguese, Khmer, and Mandarin that were developed by the NCSC. The OCIS indicated that it plans to continue to collaborate with other New England states in administering certification examinations and to establish a yearly oral examination calendar for certification candidates.

Individuals who have already passed an examination from the NCSC, NAJIT, or the federal courts are excused from taking the certification examinations. Screened interpreters seeking certification in a language for which there is not an approved oral examination may apply for certification by submitting proof of written and oral proficiency in English, proof of written and oral proficiency in the foreign language, and three letters of reference. Interpreters satisfying these criteria are considered to be certified interpreters. Additionally, if a certified interpreter is also qualified to interpret in the federal courts by the United States District Court for the District of Massachusetts, the interpreter is considered to be a "qualified" interpreter. During the OCR's April 2010 onsite visit, the OCIS told the OCR that the OCIS only screens and certifies individuals for interpretation, and not for translation, but that some interpreters used by the OCIS have been certified in translation by another entity such as the American Translators Association.

All screened, certified, and qualified interpreters must sign a statement agreeing to be bound by the OCIS' *Code of Professional Conduct for Court Interpreters for the Trial Court*, which sets forth the ethical standards of conduct and roles and responsibilities of court interpreters. The OCIS provides periodic training workshops on serving as an interpreter that court interpreters are required to attend.

Pursuant to the OCIS Standards, when the OCIS receives a request for an interpreter, the OCIS will first attempt to assign a qualified or certified interpreter, and if one is not available, will assign a screened interpreter. Court interpreters utilized by the OCIS are either staff interpreters, who are certified interpreters who work full-time for the Massachusetts Trial Court, or per diem interpreters, who are freelance interpreters assigned as needed by the OCIS. The staff interpreters oversee the per diem interpreters assigned to their courts. The OCIS publishes a list of staff and per diem screened and certified interpreters on its website at www.mass.gov/courts/programs/interpreter-services.²⁷ The most recent list (revised May 2015)

²⁷ This list does not designate if an interpreter is also qualified to interpret in the federal courts.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 35 of 56

contains the name and contact information for 149 staff and per diem interpreters who interpret throughout the Trial Court; 100 of these interpreters are certified and 49 are screened, and 14 of the 149 are staff interpreters. The listed staff and per diem interpreters speak a total of forty-two different languages; forty-seven interpreters speak Spanish (forty certified and seven screened), fourteen speak Portuguese (twelve certified and two screened), seven speak Russian (all certified), six speak Mandarin (five certified and one screened), five speak Hindi (two certified and three screened), five speak Punjabi (all screened), and between one and four of the interpreters speak the remaining languages. In their response to the draft Compliance Review Report, the SCJC and OCP clarified that the posted list contains the names of interpreters who have volunteered to be listed on the public website, and that the OCIS relies upon a total of over 170 staff and per diem interpreters, with 24 of these interpreters being staff interpreters. The Trial Court LAP indicates that the Trial Court will be developing a protocol for hiring additional staff interpreters based upon the number of individuals seeking language assistance in a particular language in each court location.

During and subsequent to the OCR's May 2014 onsite visit of the SCJC, the SCJC said that the OCIS assigns three Spanish-speaking interpreters each day to the Edward Brooke Courthouse, which includes an OCP office and the SCJC along with the Boston Municipal Court, the Boston Housing Court, and the Suffolk County Probate and Family Court. Additionally, the OCIS assigns a Haitian-speaking interpreter, a Portuguese-speaking interpreter, and a Vietnamese-speaking interpreter one to two days per week on average to the Edward Brooke Courthouse. For other interpreting needs at the Edward Brooke Courthouse and for the satellite courthouses in Chelsea, Dorchester, and West Roxbury, the OCIS assigns interpreters as needed. The OCP told the OCR that OCP Suffolk County Division probation officers interacting with an LEP juvenile or LEP family member at a courthouse will request an OCIS interpreter through the SCJC clerk, who submits an electronic request to the OCIS via MassCourts, or by physically locating an interpreter already at the courthouse and requesting assistance. In the Trial Court's LAP, the Trial Court states that it will explore best practices for assigning staff and per diem interpreters to probation offices.

The OCIS Standards state that if an appropriate OCIS interpreter is not available to provide interpretation at a courthouse, Language Line is available for use at probation office counters. However, based on the information that the OCP has provided to the OCR, as of the time of the OCR's May 2014 onsite visit, it does not appear that probation officers have used Language Line while interacting with an LEP juvenile or family member at the SCJC. According to the Trial Court LAP, the Trial Court has begun to train probation and clerk offices on using Language Line.²⁸ The Trial Court LAP further states that the Trial Court is exploring the possibility of

²⁸ In the SCJC's and the OCP's response to the draft Compliance Review Report, they said that the OCIS is currently

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 36 of 56

utilizing video remote interpreting, and that it will develop specific standards for telephone and video remote interpreting.

The OCP told the OCR that if an OCIS interpreter is not available to provide interpretation during an interaction at the courthouse, or if a probation officer is interacting with an LEP juvenile or LEP family member during a telephone call or a home visit, the probation officer relies upon a bilingual probation officer, a bilingual social worker from the Department of Children & Families, a friend or family member of the LEP individual, or a bilingual BPD officer. In response to the draft Compliance Review Report, the OCP said that as of October 5, 2015, the OCP's Juvenile Probation Department, Suffolk County Division employed twenty-six probation officers, three assistant chief probation officers, one first assistant chief probation officer, and one chief probation officer, along with one associate probation officer with limited duties. Of the thirty-two employees, four speak Spanish, one speaks Chinese, one speaks French and French Creole, and one speaks Portuguese. The probation officers self-reported their language ability, and the OCP does not assess the language skills of these bilingual employees. During the OCR's May 2014 onsite visit, the OCP said that the bilingual employees may communicate directly with LEP juveniles or family members or may serve as interpreters for other probation officers. The OCP does not maintain a list of bilingual probation officers. In the Trial Court LAP, the Trial Court states that it intends to promote the hiring of bilingual Trial Court staff and to recognize them for using their bilingual skills, and that it will develop appropriate policies for bilingual staff to provide direct services in languages that they speak and which they are deemed competent.

The OCP also told the OCR that while it is not the OCP's preferred practice to rely on family members for interpretation, probation officers have done so if no other resources are available. During the OCR's interviews with probation officers in April 2010, several probation officers reported using friends or family members to interpret, and one probation officer reported using juveniles to interpret for LEP family members. According to the OCP, bilingual BPD officers have served as interpreters during home visits conducted jointly with the BPD. During the OCR's May 2014 onsite visit, the OCP said that it has not utilized Language Line during out-of-court interactions with LEP juveniles or family members, although it is exploring the possibility of doing so in the future.²⁹

The OCP does not conduct training for probation officers on how to communicate with LEP juveniles or LEP families of juveniles. However, according to information provided during the OCR's May 2014 onsite visit, the OCP periodically offers one- or three-day language skills

rolling out the use of Language Line telephone interpreting for clerk encounters and probation home visits.

²⁹ See footnote 28.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 37 of 56

training courses for probation officers to help them address language and cultural barriers. In 2001, 2002, 2003, and 2011, it offered Spanish language skills training, and in 2008 it offered a Portuguese language skills training course. In the Trial Court LAP, the Trial Court indicates that it will add a session on language access and cultural competency to the mandatory orientation for new employees, and that it will provide specific training on these issues to management, clerks, and other staff members who interact with LEP individuals.

During the OCR's April 2010 roundtable discussion with representatives of community organizations, one representative expressed the opinion that whether or not a probation officer provides an LEP juvenile or family member with language assistance services depends on the particular probation officer, and that there is no oversight by OCP management.

iii. SCJC

The SCJC's procedures for communicating with LEP juveniles and family members are set forth in the OCIS Standards and the recently-developed Trial Court LAP, as discussed above. The SCJC does not have any written policies or procedures specific to the SCJC on communicating with LEP individuals. As discussed in detail above, the SCJC relies upon qualified, certified, and screened interpreters from the OCIS to communicate with LEP juveniles and family members during judicial proceedings. Also as discussed above, there are three Spanish-speaking interpreters assigned each day to the Edward Brooke Courthouse, along with a Haitian-speaking, a Portuguese-speaking, and a Vietnamese-speaking interpreter who spend one to two days per week on average at the Edward Brooke Courthouse. For other interpreting needs at the Edward Brooke Courthouse and for the satellite courthouses in Chelsea, Dorchester, and West Roxbury, the OCIS assigns interpreters as needed. During the OCR's May 2014 onsite visit of the SCJC, the SCJC said that if the SCJC is aware in advance of a court proceeding that a juvenile or family member is LEP, the clerk will submit a request for an interpreter to the OCIS via MassCourts; otherwise, the clerk will telephone the OCIS to request an interpreter for that day. The SCJC said that if the need for an interpreter involves a commonly-spoken language such as Spanish or Cape Verdean the OCIS is usually able to provide an interpreter by the end of the day, and if an interpreter is not available the judge will continue the proceeding.

The OCIS Standards and the Trial Court LAP state that the First Justice, Regional Administrative Judge, or Chief Justice (as applicable) of each court shall designate a court liaison to be informed where interpreters are needed each day and to respond to inquiries from the OCIS. The SCJC told the OCR that there is a designated liaison within the Clerk Magistrate's office at each SCJC facility.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 38 of 56

According to the OCIS Standards, if an appropriate qualified, certified, or screened interpreter is not available to provide interpretation at a courthouse, the OCIS has contracts in place with private interpreter agencies and with Language Line for telephonic interpretation. However, the Trial Court LAP notes that because outside private interpreters have not been certified nor screened by the OCIS, they should be used as an option of last resort. The Trial Court LAP indicates that Language Line is available for use at front counters, probation office service counters, law libraries, court service centers, and for brief, non-evidentiary courtroom proceedings, and that it is often an adequate solution when an OCIS interpreter is not available. In follow up to the OCR's May 2014 onsite visit, the SCJC said that it rarely uses Language Line due to the availability of interpreters at the SCJC. The SCJC told the OCR that as of January 23, 2015, the Trial Court has provided all SCJC departments with a Quick Reference Guide for using Language Line. According to the Trial Court LAP, the Trial Court is exploring the possibility of utilizing video remote interpreting, and intends to develop specific standards for the use of telephone and video remote interpreting.

The Trial Court LAP notes that currently there is no tracking or screening of bilingual court staff who engage in direct contact with LEP individuals. The Trial Court LAP indicates that the Trial Court intends to promote the hiring and recognition of bilingual court staff and to develop appropriate policies for qualified bilingual court staff to provide direct services in a foreign language. Subsequent to the OCR's May 2014 onsite visit, the SCJC told the OCR that the SCJC has used a third-party such a bilingual SCJC employee for interpretation in proceedings which only involved dismissing a case or setting a future court date. However, the SCJC said that this is the exception to the SCJC's general practice of continuing all substantive legal proceedings until an OCIS interpreter is available. The SCJC also reported using bilingual employees to interpret at a front desk if the information being exchanged is simple such as the directions to an office or the next court date.

As for court-ordered programs and services, such as the Fire Starters program, substance abuse program, Dorchester Detention Diversion Advocacy Program, and Bridging the Gap program that the SCJC may require juveniles to compete, the Trial Court LAP states that the Trial Court will ensure that such programs either provide direct service in multiple languages or provide interpreter services for LEP participants. According to the Trial Court LAP, the Trial Court will identify all court-ordered programs offered in languages other than English and will make a list available to all courts and users.

In regard to training SCJC staff on interacting with LEP individuals, during the OCR's April 2010 onsite visit, the OCIS provided the OCR with a bench card that it disseminated to judges and court staff, including judges and staff at the SCJC. The bench card includes information regarding the meaning of LEP; explains that the judge and other court personnel should always

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 39 of 56

use a certified or screened interpreter and should not use children, relatives, judges, attorneys, or other court personnel to provide interpretation; explains how to schedule an interpreter; and provides information on the role of the interpreter and how to work with an interpreter. The SCJC recently told the OCR that on January 23, 2015, the OCIS re-distributed the bench cards to SCJC judges, and that the Office of Court Management has developed a new bench card that it will soon distribute to all courts including the SCJC. As discussed above, in the Trial Court LAP, the Trial Court indicates that it will add a session on language access and cultural competency to the mandatory orientation for new employees, and that will provide specific training on these issues to management, clerks, and other court staff members who interact with LEP individuals.

The community group representatives with whom the OCR spoke in April 2010 opined that the OCIS is doing a good job at providing language assistance services for LEP juveniles and family members during judicial proceedings at the SCJC.

iv. CPCS

Other than a few provisions in the CPCS' *Assigned Counsel Manual Policies and Procedures* (Oct. 24, 2011) (Assigned Counsel Manual), as discussed below, the CPCS does not have any written procedures setting forth the procedures for requesting and utilizing language assistance services to communicate with LEP juveniles and family members during in-court and out-of-court interactions. For interactions with LEP juveniles and LEP family members that occur during judicial proceedings or during incidental conversations in the courthouse, the CPCS' Youth Advocacy Division relies upon OCIS interpreters who are providing interpretation for the judicial proceeding, as discussed above.

Out-of-court interactions with LEP juveniles or LEP family members are addressed in the CPCS' Assigned Counsel Manual. The CPCS provides all staff attorneys and bar advocates the Assigned Counsel Manual, which informs staff attorneys and bar advocates of the qualifications, training, and performance standards; the billing process, audit and evaluation procedures; and other policies and procedures related to assignment and compensation. Regarding LEP clients, Chapter II, Section 8, states the following:

[f]or out-of-court pre-trial preparation, including client interviews, the attorney representing the hearing impaired or non-English speaking client should obtain the services of a court-certified or professional interpreter, unless counsel is fluent in the client's language. It is the responsibility of assigned counsel to insure the provision of a court-certified or professional interpreter for these purposes, by moving the

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 40 of 56

Court to approve funds pursuant to G.L. c. 261, §§ 27A-27G. CPCS will pay for out-of-court interpreter services upon presentation of the allowed Motion and appropriate billing.

Additionally, Chapter IV, Part I, Section C, paragraph 12 of the Assigned Counsel Manual states that when an attorney is unable to communicate with a juvenile or his or her guardian because of language differences, the attorney shall take whatever steps are necessary to insure effective communication including obtaining funds for an interpreter to assist with pre-trial preparation, interviews, investigations, and in-court proceedings. Massachusetts General Laws chapter 261, section 27C states that if a court has determined that an individual is indigent, the court shall not deny any request for extra fees or costs if the court finds that the object or service is reasonably necessary to ensure as effective a prosecution or defense as if the client was financially able to pay. During the OCR's April 2010 and May 2014 onsite visits, the Youth Advocacy Division told the OCR that staff attorneys or bar advocates who need an interpreter first file a motion for funds with the court, and that once a motion is approved the attorney contacts the OCIS to request an interpreter or directly calls an interpreter on the OCIS' list of screened and certified interpreters. Chapter VI, Section I sets forth the procedures for filing a motion with the court, which includes submitting a written motion explaining how the requested funds are reasonably necessary to ensure as effective a defense as if the client was able to pay along with an *Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees & Cost*. However, Chapter VI, Section III states that no motion for expenses is required for interpreter services under \$500.00, and that upon rendering services interpreters should submit a request for compensation to the CPCS' Indigent Court Costs Department. During the OCR's April 2010 interviews with staff attorneys and bar advocates, all but one of the attorneys said they have filed motions with the SCJC and have obtained the services of an OCIS interpreter for out-of-court interactions, although several attorneys noted that they have had difficulty finding an appropriate interpreter who was available for an out-of-court appointment.

According to the CPCS 2010 Data Response and information provided during the OCR's onsite visits, if an attorney is bilingual the attorney will communicate directly with an LEP juvenile or family member in lieu of relying upon an OCIS interpreter, and the Youth Advocacy Division makes every effort to assign an appropriate bilingual attorney to an LEP juvenile or a juvenile with an LEP family member. At the time of the OCR's May 2014 onsite visit, the Youth Advocacy Division employed eight staff attorneys to handle juvenile delinquency and youthful offender cases in Suffolk County, of which three were bilingual and spoke Spanish. The Youth Advocacy Division also employed an administrative assistant in Suffolk County who spoke Spanish. The Youth Advocacy Division told the OCR that these employees self-identified their language skills, and that the CPCS does not assess their language skills. According to the CPCS 2010 Data Response, it considers language skills to be an important professional asset when

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 41 of 56

recruiting, hiring, assigning, or promoting bilingual employees, although it does not provide bilingual staff attorneys with any additional compensation. During the OCR's April 2010 onsite visit, the Youth Advocacy Division said that it does not take any specific actions to recruit bilingual staff attorneys.

As for bar advocates, the Youth Advocacy Division recently told the OCR that as of January 26, 2015, six of the juvenile bar advocates who handle cases Suffolk County are bilingual and speak Spanish. Additionally, the Youth Advocacy Division said that there are eight Spanish-speaking bar advocates in Suffolk County who are not specifically juvenile defenders, but could be called upon for language assistance services. As with bilingual staff attorneys, the CPCS does not assesses the language skills of bilingual bar advocates.

In addition to relying upon interpreters certified or screened by the OCIS and bilingual staff attorneys or bar advocates, during the OCR's April 2010 onsite visit, the Youth Advocacy Division told the OCR that on occasion attorneys have also utilized the interpreter services of bilingual members of local community-based organizations serving Somali- and Asian-speaking populations. According to the CPCS 2010 Data Response, staff attorneys and bar advocates should only use friends or family members of an LEP individual to interpret when no certified interpreter is available such as an unexpected conversation with a witness, and during the OCR's May 2014 onsite visit the Youth Advocacy Division stated that it is not common for attorneys to use friends or family members to interpret. However, during the OCR's interviews of staff attorneys and bar advocates in April 2010, several staff attorneys and bar advocates said they have relied upon friends and family members of an LEP juvenile or family member, including the juvenile, to provide interpretation. During the OCR's May 2014 onsite visit, the Youth Advocacy Division said attorneys do have access to Language Line for telephonic interpretation although it is not heavily used.

According to the CPCS 2010 Data Response, other than providing staff attorneys and bar advocates with the Assigned Counsel Manual, the CPCS has no specific training programs on working with LEP juveniles and family members. During the OCR's May 2014 onsite visit, the Youth Advocacy Division said that it is unaware whether staff attorneys receive any training on this issue.

b. Written Language Services

i. BPD

The BPD has several translated materials available to communicate with juveniles and their families regarding juvenile justice matters. As discussed in Section III(C)(1) of the Compliance

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 42 of 56

Review Report, the BPD has translated its Miranda Rights flyer into Spanish and posts the flyer at all of the BPD's district stations. The BPD also has a Request to Submit to a Chemical Test form that contains information in both English and Spanish, and has brochures in Spanish on staying out of jail and recognizing signs of gang involvement. Additionally, the BPD posts a Language Assistance sign in English and in Spanish at BPD headquarters and at all district stations; this sign notifies individuals that language assistance is available free of charge and that forms and information are available in thirty-four languages on the BPD's website. According to the BPD's 2010 Data Response, internal BPD documents are translated by bilingual BPD officers who have had their oral foreign language skills assessed by the Boston Language Institute.

As referenced in the BPD's Language Assistance sign, all of the materials on the BPD's website, www.BPDnews.com, can be translated into thirty-four different languages.

ii. OCP

The OCP has developed a fact sheet regarding OCP services (both adult and juvenile services) that it has translated into Spanish, Portuguese, and Haitian Creole; the OCP told the OCR that it is not aware of who translated this fact sheet. At this time, the OCP does not have any other translated materials available to communicate with juveniles and their families. During the OCR's May 2014 onsite visit, the OCP said that the Trial Court's Language Access Advisory Committee is planning a pilot program at the Edward Brooke Courthouse to translate various documents into foreign languages and have them available for the public.³⁰ The OCP said that it posts a sign provided by the OCIS at the front counter in its offices at the SCJC courthouses stating in thirty-two different languages that individuals have a right to an interpreter at no cost and that one will be called.

The OCP's website, <http://www.mass.gov/courts/court-info/probation/>, contains a Microsoft Translator function that allows a user to translate all of the information posted on the website into forty different languages.

iii. SCJC

The SCJC's Confidential Information Sheet, which is completed by individuals filing an application for a delinquency complaint, requests demographic information in both English and

³⁰ In the SCJC's and OCP's response to the draft Compliance Review Report, the OCP said that it has worked with the OCIS and the Trial Court's LAP Committee to identify essential OCP documents for translation, and that this work is expected to continue.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 43 of 56

Spanish on a juvenile and the juvenile's parent(s) or guardian(s).³¹ Otherwise, all of the other SCJC forms and documents relating to juvenile delinquency or youthful offender cases are only available in English. All of the orders issued by a SCJC judge are initially issued in English; the SCJC told the OCR during its May 2014 onsite visit that a court interpreter will conduct a sight translation of the order and other court documents during the judicial proceeding, and a judge at his or her discretion may request the OCIS to translate the order into the appropriate foreign language. The OCIS only certifies individuals to be interpreters and does not certify individuals to translate documents; however, the OCIS told the OCR that some of its court interpreters have been certified by another entity to provide translation. During the OCR's April 2010 onsite visit, several staff and per diem interpreters with whom the OCR spoke reported translating court documents such as court orders.

In the Trial Court LAP, the Trial Court indicates that it has adopted *Guidelines for the Translation of Court Forms and Instructions in the Trial Court* and that it will endeavor to translate court forms and materials initially into Spanish and Portuguese, the two foreign languages most frequently-spoken in Massachusetts, followed by other languages based on need. The Trial Court LAP states that the Trial Court is in the process of prioritizing documents to be translated, and that it will amend court forms to inform recipients that the Trial Court provides language access services at no cost. As discussed above, the Massachusetts Trial Court's Language Access Advisory Committee is planning a pilot program at the Edward Brooke Courthouse to translate various documents into foreign languages. According to the Trial Court LAP, the Trial Court will also develop standards for court translator certification

As for the sign developed by the OCIS stating in thirty-two different languages that individuals have a right to an interpreter at no cost, the SCJC recently told the OCR that it had not previously received this signage, but that on January 23, 2015, it obtained and posted the sign in all SCJC locations.

The SCJC's website, <http://www.mass.gov/courts/court-info/courthouses/juv-court/norfo>, contains a Microsoft Translator function that allows a user to translate all of the information posted on the website into forty different languages.

³¹ During the OCR's May 2014 onsite visit, the SCJC provided the OCR with the hardcopy version of the Confidential Information Sheet that requests information in both English and Spanish. However, the Confidential Information Sheet posted on the SCJC's website at <http://www.mass.gov/courts/forms/juv/juv-forms-gen.html> is in English only. The SCJC should ensure that the version of this form that contains information in both English and Spanish is posted on the SCJC's website.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 44 of 56

iv. CPCS

In the CPCS 2010 Data Response, the CPCS provided the OCR with an informational document that it developed that explains the juvenile court process along with an informational document on a juvenile's responsibilities as a probationer; these documents are available in English, Spanish, Haitian Creole, Khmer, Somali, and Vietnamese. The Youth Advocacy Division said that attorneys provide these documents to juveniles and their families. Subsequent to the OCR's May 2014 onsite visit, the Youth Advocacy Division said that it is unaware of who translated these documents. Other than these documents, the Youth Advocacy Division does not have any written materials translated into foreign languages to communicate with LEP juveniles or family members. The Youth Advocacy Division does not have any translated signage in its offices within Suffolk County to communicate with LEP juveniles or family members.

The CPCS' website, <http://www.publiccounsel.net/>, and the Youth Advocacy Division's specific webpage, <http://www.youthadvocacydepartment.org/index.html>, contain information in English only.

Recommendations for the BPD

The BPD is currently taking steps to communicate with LEP juveniles and LEP family members involved in delinquency or youthful offender proceedings at the SCJC, such as recruiting and hiring bilingual officers and entering into contracts with telephonic interpretation agencies. However, the BPD should build on these steps to provide even more effective language assistance to LEP individuals, beginning with developing a comprehensive, written language assistance plan. In the OCR's October 17, 2003, Compliance Review Report issued on the BPD, we recommended that the BPD develop a written language assistance plan to document the procedures that it has in place for communicating with LEP individuals and discussing how it will notify employees and LEP individuals of these procedures; however, as of this date, the BPD has not taken any steps to develop a written plan. The BPD's Commissioner's Memorandum 93-01, which was issued in 1993, only addresses the use of Language Line and does not discuss all of the resources that the BPD has in place and which are available to employees. The development and dissemination of a written plan will help ensure that all BPD employees are aware of the resources that the BPD has available to communicate with LEP individuals, including juveniles and family members, and the procedures for obtaining these resources and ensuring meaningful access to BPD services to LEP individuals.

The BPD's written plan should specifically note that LEP juveniles and LEP family members of juveniles are entitled to free language assistance services during encounters with the BPD. Additionally, the plan should advise employees to first attempt to obtain language assistance

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 45 of 56

from a bilingual BPD employees who has had his or her interpretation skills assessed by the Boston Language Institute, and that employees should only use third-parties such as friends or family members of LEP individuals or self-identified bilingual employees in exigent circumstances or in very informal, non-confrontational contexts to obtain basic information. The plan should state that barring the most exigent circumstances, employees should never use children or juveniles to interpret. Please see Section II of this Compliance Review Report for additional information regarding developing a comprehensive and effective language assistance plan.

Currently, if a bilingual employee is hired from a selective certification list, the BPD utilizes the Boston Language Institute to assess the employee's conversational proficiency in the foreign language; however, the BPD does not assess the language or interpretation skills of bilingual employees who self-identify. To ensure the accuracy of interpretation services provided by bilingual employees, the BPD should begin to assess the language skills of *all* bilingual employees who communicate directly with or serve as an interpreter for LEP individuals, including LEP juveniles and LEP family members. The BPD may wish to utilize the Boston Language Institute to assess the skills of currently-untested bilingual employees, or may utilize another objective means to establish language proficiency. An objective testing process does not need to involve a professional certification process. For example, some law enforcement agencies test employees' interpretation skills through oral review panels comprised of officers, language professors from local colleges or universities, and community group members who are competent to interpret. However, it is important to note that any testing process should go beyond testing an employee's conversational proficiency in a foreign language and should assess the particular skill of interpreting, which requires listening to something in one language and orally conveying its meaning into another language. A bilingual employee may have the skills to converse with another person in a foreign language but may not have skills to provide competent interpretation in that language, and therefore it is essential for law enforcement agencies to ensure that the bilingual employees providing language assistance are competent in the specific skill of interpretation. The BPD should work with the Boston Language Institute and any other entity or organization that it uses to evaluate its employees foreign language proficiency to ensure that any test specifically assesses an applicant's or employee's skill in interpretation, and not just conversational proficiency. Additionally, if the BPD intends to continue to use bilingual employees to translate written documents, the BPD should ensure that any testing process also assesses the written translation skills of employees who may be translating documents for the BPD. The BPD should ensure that its Operations Center maintains a list of all bilingual BPD employees that specifically notes which employees have had their interpretation skills assessed and which employees are qualified to translate documents, and should disseminate this list to all employees as well.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 46 of 56

To increase the number of bilingual officers who are available to provide language assistance services for the BPD, the BPD should continue to take steps to specifically recruit and hire bilingual officers, such as continued use of selective certifications to hire frequently-encountered languages. Out of the 2,934 BPD employees as of June 27, 2014, only 251 or 9 percent were bilingual. To attract more bilingual employees, the BPD may wish to consider providing additional compensation to employees who demonstrate proficiency in a foreign language.

In regard to written materials, while the BPD has taken steps to make several documents and resources available in Spanish, it should take additional steps to ensure compliance with Title VI. The DOJ encourages recipients to satisfy the “safe harbor” provision in the DOJ Guidance when determining what documents to translate. *See* DOJ Guidance, 67 Fed. Reg. 41464. This provision states that recipients should translate “vital documents” for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. *Id.* Whether a document is “vital” depends on the “importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” *Id.* at 41463. Examples of documents that may be “vital” are consent and complaint forms; intake forms; written notices of rights; denial, loss, or decrease of benefits; notices of disciplinary actions; written tests for a license, skill, or job for which knowing English is not required; applications to participate in a program or activity; and applications to receive a benefit or service. *Id.*

In accordance with the DOJ Guidance, the BPD should perform an inventory of all of its written materials, identify the documents it considers “vital,” and translate these documents into the languages that meet the safe harbor threshold. To determine which LEP populations meet the safe harbor threshold, the BPD should review data from the U.S. Census Bureau regarding the languages spoken by its service population and specifically the percentage of individuals who speak each language “less than very well.” The BPD should then take steps to translate all of its vital documents into the languages that meet this threshold, such as any documents relating to an individual’s rights or the provision of consent. The BPD should only rely on qualified translators to translate its documents, such as professional translation companies or bilingual employees whose written translation skills have been assessed and approved through an objective testing process.

Once the BPD develops a comprehensive written language assistance plan, it should immediately train all employees on the plan to ensure that all employees are aware of the proper procedures for providing language assistance services. Following this initial training, the BPD should continue to train employees on an annual basis on providing language assistance services to LEP individuals, including LEP juveniles and LEP family members. As part of its training program, the BPD may wish to show the enclosed training DVD *Breaking Down the Language Barrier*:

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 47 of 56

Translating Limited English Proficiency into Practice. Other law enforcement agencies have found this DVD particularly helpful in training employees on how to provide services effectively to LEP populations. Additionally, please also find enclosed a CD-ROM, entitled *Espanol for Law Enforcement*, which is an interactive training tool that covers basic Spanish phrases and sentences relative to law enforcement. This CD-ROM may be duplicated; alternatively, additional copies may be requested from the DOJ by contacting the National Institute of Justice at (800) 851-3420 or by visiting the following website: <http://www.ojp.usdoj.gov/nij/pubs-sum/201801.htm>.

Regarding community outreach, the OCR commends the BPD for using Community Service Officers to closely interact with the community. The BPD should continue to ensure that Community Service Officers, including its Youth Service Officer, take part in community activities and should actively seek out opportunities to collaborate with organizations serving LEP populations and to make presentations to LEP populations. To the extent feasible, the OCR recommends that the BPD assign bilingual officers as Community Service Officers to better collaborate with LEP communities. To ensure that its outreach efforts are effective, the BPD should establish a mechanism for gathering community feedback on its provision of services to LEP individuals. For example, the BPD may want to develop a written survey of community groups serving LEP populations, or to convene a focus group of LEP individuals. The BPD may also consider holding separate meetings with each LEP community, perhaps in collaboration with community, business, and religious leaders representing the LEP population, so that the BPD can hear the LEP community's unique needs regarding outreach. The BPD should explore the possibility of using ethnic media outlets to relay public safety information to the public, and should use these outlets to publicize community meetings and to inform LEP persons of the availability of free language assistance services and other important resources.

Recommendations for the OCP and the SCJC

Through the Trial Court and the OCIS, the OCP and the SCJC are currently taking active steps to communicate with LEP juveniles and LEP families of juveniles participating in pre-adjudication probation functions and judicial proceedings in Suffolk County. The OCR commends the Trial Court for its recent development of the Trial Court LAP as a supplement to the OCIS Standards. The OCR understands that as members of the Massachusetts Trial Court, the OCP's and the SCJC's interactions with LEP juveniles and LEP family members in Suffolk County are governed by the Trial Court LAP. To ensure that the SCJC and the OCP's Juvenile Court Department, Suffolk County Division are providing meaningful access to their services to LEP juveniles and LEP family members, both the SCJC and the OCP³² should actively work with the

³² While the scope of the OCR's compliance review of the OCP is the provision of language assistance services to juveniles and juveniles' families participating in probation services associated with juvenile delinquency and

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 48 of 56

Trial Court to implement the action plans discussed in the Trial Court LAP.³³ The action plans affecting OCP and SCJC juvenile probation and court functions include, but are not limited to, the following: 1) assessing the language needs of each court and exploring best practices for assigning staff and per diem interpreters to court and probation offices; 2) training court and probation employees on the use of Language Line and developing specific standards for telephone and video remote interpreting; 3) promoting the hiring of bilingual staff and developing policies for bilingual staff to provide services in foreign languages in which they are deemed competent; 4) identifying all court-ordered programs offered in languages other than English and ensuring all court-ordered programs are accessible to LEP individuals; 5) providing training for court staff and probation officers on interacting with LEP individuals; 6) developing a visible complaint process to address complaints against probation officers and court personnel; 7) establishing regular communication with stakeholders and media sources that provide information to LEP communities; 8) and translating pertinent court and probation documents into foreign languages.

In response to the draft Compliance Review Report, the SCJC and OCP noted that the Trial Court has distributed the Trial Court LAP to staff and posts it on its website for all Trial Court employees. To supplement the Trial Court LAP, the SCJC and the OCP should each develop their own accompanying procedures for SCJC and OCP Juvenile Department, Suffolk County Division employees to explain the specific language assistance resources that are available at the SCJC and the OCP Juvenile Department, Suffolk County Division (i.e., OCIS interpreters specifically assigned to SCJC court and probation offices, bilingual employees, and Language Line), and when it is appropriate to use these resources. The OCP should reach out to the Trial Court to request that, to the extent possible, the Trial Court make available the certified OCIS interpreters for OCP interactions with LEP juveniles and LEP family members outside of the SCJC courthouses. The SCJC and the OCP should work with the Trial Court to assess the language skills of bilingual employees who communicate directly with or serve as interpreters for LEP juveniles or LEP families of juveniles in Suffolk County and should disseminate a list of these bilingual employees to all staff. The OCR recommends that the SCJC and the OCP take steps to recruit additional bilingual employees, especially those who speak languages frequently encountered in Suffolk County such as Spanish, Creole, Chinese, Vietnamese, and Portuguese. The SCJC and the OCP should instruct employees in their written procedures to only use English-speaking friends or family members to communicate general, non-sensitive information (e.g., providing directions or general information regarding the status of a case), and when using

youthful offender cases in Suffolk County, the OCR strongly recommends that the OCP implement our recommendations in its probation offices throughout the Commonwealth.

³³ Based on the information contained in the Trial Court LAP, the OCR understands that the Trial Court will be designating a working group to oversee the implementation of the Trial Court LAP and to develop action steps, clear goals, specific protocols, and concrete deadlines.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 49 of 56

such parties would not raise concerns of privacy, confidentiality, or conflict of interest. The SCJC should instruct its employees that they should never use friends, family members, or bilingual SCJC employees to provide interpretation during court proceedings, and the OCP should notify probation officers that they should not rely upon third parties such as friends or family members, especially juveniles, to communicate with LEP individuals during interviews.

In regard to written materials, the OCP and the SCJC only have a few translated documents available for LEP juveniles and LEP families of juveniles. The DOJ encourages recipients to satisfy the “safe harbor” provision in the DOJ Guidance when determining what documents to translate. *See* DOJ Guidance, 67 Fed. Reg. at 41,464. This provision states that recipients should translate “vital documents” for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. *Id.* Whether a document is “vital” depends on the “importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” *Id.* at 41,463. Examples of documents that may be “vital” are consent and complaint forms; intake forms; notices of rights; notices of upcoming hearings; notices of denial, loss, or decrease of benefits; notices of disciplinary actions; applications to participate in a program or activity; and applications to receive a benefit or service. *Id.*

In the Trial Court LAP, the Trial Court states that it is in the process of prioritizing documents to be translated and that it will endeavor to translate court forms and materials into Spanish and Portuguese, followed by other languages based on an evaluation of need. Additionally, the OCP indicated in response to the draft Compliance Review Report that it is working with the OCIS and the Trial Court’s LAP Committee to identify essential OCP documents for translation. In accordance with the DOJ Guidance, the OCP and the SCJC should continue to work with the Trial Court to perform an inventory of all of their written materials, identify the documents they consider “vital,” and then request that the Trial Court translate these documents into the languages that meet the safe harbor threshold. Based on the 2012 Census data, it appears that the LEP populations in Suffolk County that meet the safe harbor threshold include Spanish, French Creole, Chinese, Vietnamese, Portuguese, Arabic French, Italian, and Russian. According to the Trial Court LAP, the Trial Court will develop standards for court translator certification; the OCP and the SCJC should ensure that any translated probation- or court-related documents or forms that they utilize have been translated by an individual who is qualified to translate.

Recommendations for the CPCS

The CPCS is currently taking action to communicate with LEP juveniles and LEP families of juveniles that it represents in Suffolk County, including utilizing the services of OCIS interpreters for both in-court and out-of-court interactions and using bilingual staff attorneys and

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 50 of 56

bar advocates to communicate with LEP clients or family members. However, the OCR recommends that the CPCS take further action to ensure meaningful access to juveniles and juveniles' families involved in delinquency and youthful offender proceedings in Suffolk County to comply with Title VI and the Safe Streets Act. As an initial matter, the CPCS should expand the sections in its Assigned Counsel Manual regarding communicating with LEP clients and LEP parents or guardians of juvenile clients, or should develop a stand-alone policy addressing communicating with LEP juveniles and LEP parents or guardians of juveniles.³⁴ In doing so, the CPCS should provide information on communicating with LEP juveniles or LEP family members during in-court interactions, and should explain that bilingual staff attorneys or bar advocates should only communicate important information directly with an LEP juvenile or LEP family member in lieu of using an OCIS interpreter if they have been deemed qualified through independent assessment. The CPCS should also advise attorneys against using English-speaking juveniles, friends, or family members to provide interpretation for LEP juveniles or LEP families of juveniles.

While the CPCS' Youth Advocacy Division currently relies upon several bilingual staff attorneys and bar advocates to communicate directly with LEP juveniles and LEP family members in Suffolk County, the CPCS has not assessed the language skills of these employees. To ensure that bilingual attorneys are communicating accurately and effectively with LEP clients and family members, the CPCS should develop some objective process for assessing the language skills of bilingual staff attorneys and bar advocates. An objective process does not need to involve a formal certification process; for example, the CPCS may consider assessing the foreign language skills of bilingual attorneys through oral review panels comprised of language professors from local colleges or universities or community group members who are proficient in the foreign language. Additionally, if the CPCS relies upon bilingual staff attorneys or bar advocates to serve as interpreters for another CPCS attorney communicating with an LEP juvenile or LEP family member (versus communicating directly with an LEP individual in a foreign language), the CPCS should conduct an assessment of the attorney's particular skill of interpreting, which requires listening to something in one language and orally conveying its meaning into another language. A bilingual individual may have the skills to converse with another person in a foreign language but may not have the skills to provide competent interpretation in that language, and therefore it is important that the CPCS ensure that the bilingual attorneys serving as interpreters are competent in the specific skill of interpretation.

³⁴ While the scope of the OCR's compliance review of the CPCS is the provision of language assistance services to juveniles and juveniles' families involved in juvenile delinquency or youthful offender proceedings in Suffolk County, the OCR strongly recommends that the CPCS implement our recommendations in its probation offices throughout the Commonwealth.

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 51 of 56

Once the CPCS has expanded its written instruction on communicating with LEP juveniles and LEP families of juveniles, it should immediately disseminate this information to staff attorneys and bar advocates and should train all staff attorneys and bar advocates representing juveniles in Suffolk County on how to effectively communicate with LEP juveniles and LEP family members. Following this initial training, the CPCS should establish regular training sessions for staff attorneys and bar advocates focused on providing language assistance services to LEP juveniles and LEP families of juveniles.

Other than two informational documents for juveniles, the CPCS does not have any translated documents or forms to communicate with LEP juveniles or LEP family members. The CPCS should evaluate the LEP populations that it serves to ensure compliance with Title VI and the Safe Streets Act. The DOJ encourages recipients to satisfy the “safe harbor” provision in the DOJ Guidance when determining what documents to translate. *See* DOJ Guidance, 67 Fed. Reg. at 41,464. This provision states that recipients should translate “vital documents” for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. *Id.* Whether a document is “vital” depends on the “importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” *Id.* at 41,463. Examples of documents that may be “vital” are consent and complaint forms; intake forms; notices of rights; notices of upcoming hearings; notices of denial, loss, or decrease of benefits; notices of disciplinary actions; applications to participate in a program or activity; and applications to receive a benefit or service. *Id.*

In accordance with the DOJ Guidance, the CPCS should perform an inventory of all of its written materials used to communicate with juveniles and their families, identify the documents it considers “vital,” and then translate these documents into the languages that meet the safe harbor threshold. In doing so, the CPCS should utilize an individual who has obtained certification in translation or has otherwise demonstrated proficiency in translating written documents into a foreign language. The CPCS should also post a sign in the primary languages of its largest LEP populations in any CPCS facilities where attorneys meet with juvenile clients and their families stating that on request, free language services are available. The OCR also recommends that the CPCS develop a written complaint form for individuals to complete if they wish to complain of misconduct by a staff attorney or a bar advocate, and that this complaint form be made available in frequently-encountered foreign languages.

The CPCS should continue to participate in workshops for juveniles and their family members from LEP communities to educate them about the laws and attendant rights and responsibilities relating to juvenile delinquency, education, and related matters. The CPCS may also wish to develop a mechanism for gathering community feedback on its provision of services to LEP

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 52 of 56

juveniles and LEP families of juveniles, such as developing a written survey of juvenile clients and their families.

D. Available Resources

1. BPD

The fiscal year (FY) for the BPD is from July 1 to June 30. According to the BPD, its operational budget for FY 2012 was \$269,341,879.00, its budget for FY 2013 was \$278,904,791.00, and its budget for FY 2014 was \$294,934,909.00. During the OCR's May 2014 onsite visit, the BPD said that it does not specifically budget for language assistance services. The BPD told the OCR that it spends \$86,000.00 on two designated bilingual positions in the Emergency 911 Operations Center that are currently filled by certified interpreters who speak Haitian Creole and Spanish; the BPD said that these employees may interpret for officers in the field. Otherwise, the BPD does not provide additional compensation for officers and civilian employees who are bilingual. The BPD does not pay for telephonic interpretation obtained from Language Line or Qwest; rather, those costs are paid by the Commonwealth of Massachusetts.

2. OCP and SCJC

The OCP and SCJC primarily rely upon per diem and staff interpreters screened or certified by the OCIS for language assistance services; these interpreter services are paid by the OCIS, and the SCJC's and OCP's operational budgets do not include any funds for language assistance services. The fiscal year for the OCP and SCJC runs from July 1 to June 30. The OCIS provided the OCR with data indicating that in FY 2012 it budgeted \$6,868,188.00 for language assistance services, including salaries and payroll taxes of staff interpreters, costs for per diem interpreters, and administrative supplies, and expended \$6,724,177.36. In FY 2013, the OCIS budgeted \$7,576,293.00 for language assistance services and expended \$7,111,096.56; in FY 2014, the OCIS budgeted \$7,649,807.00 for language assistance services and expended \$7,336,299.91; and in FY 2015, the OCIS budgeted \$7,645,452.00 for language assistance services.

Neither the OCP nor the SCJC provide additional compensation to bilingual employees, and neither agency located any invoices documenting expenditures for Language Line services.

3. CPCS

The CPCS' fiscal year is also July 1 to June 30. According to information provided to the OCR subsequent to our May 2014 onsite visit, the CPCS' overall budget in FY 2012 was

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 53 of 56

\$183,946,124.00, in FY 2013 was \$205,175,428.00, and in FY 2014 was \$204,395,621. The Youth Advocacy Division indicated that there is no specified operational budget for Youth Advocacy Division, and that the CPCS does not specifically budget for language assistance services. Language assistance services for communications between attorney and LEP juveniles or family members during judicial proceedings is primarily provided by the OCIS interpreters in the courthouse at no cost to the CPCS. The CPCS is responsible for paying for interpreter services provided by OCIS interpreters during out-of-court interactions with juveniles and family members; however, the Youth Advocacy Division told the OCR that the CPCS did not start to track interpreter bills for services to juveniles and family members until FY 2014. For FY 2014, the Youth Advocacy Division said that available invoices indicate that the Youth Advocacy Division spent at least \$1,270.00 on interpretation services for juvenile cases in Suffolk County; however, the Youth Advocacy Division opined that this figure does not accurately capture all of its interpreter expenses for juvenile cases, as some interpreter invoices may have been counted in with adult cases. The Youth Advocacy Division may also utilize bilingual staff attorneys or bar advocates to communicate with LEP juveniles or family members, and does not provide bilingual staff attorneys or bar advocates with any additional compensation.

Recommendations for the BPD

The BPD should undertake a review of its human and capital resources in assessing how well it is responding to the needs of its LEP populations, including LEP juveniles and LEP family members. One part of this review should include gathering feedback from the local LEP service population on how the BPD can provide more effective language assistance services, as discussed above. The BPD should also work with community groups serving LEP populations to determine what additional steps it can take to attract more bilingual employees capable of interpreting in a variety of foreign languages. To this end, the BPD should consider providing incentive pay or bonuses for BPD employees who provide interpretation. The BPD should utilize local community groups serving LEP populations to identify all of the community resources that are available to provide cost-effective and reliable language assistance services to LEP individuals.

Recommendations for the OCP and SCJC

The OCP and the SCJC, in connection with the Trial Court, should conduct a thorough review of available human and capital resources in assessing how well they are responding to the needs of LEP juveniles and LEP families of juveniles. The OCR recommends that the SCJC and the OCP gather feedback from the local LEP service population in Suffolk County, along with local organizations and associations representing LEP juveniles and families of juveniles, on how the OCP and the SCJC can provide more effective language assistance services to LEP juveniles and

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 54 of 56

LEP families of juveniles. In doing so, the OCP and the SCJC may wish to develop a written survey of community groups serving LEP juveniles and LEP families of juveniles in Suffolk County, or to convene a focus group of LEP juveniles and LEP families of juveniles. The OCP and the SCJC should also work with the Trial Court to determine how they can recruit more bilingual court employees and probation officers, and should consider providing additional compensation to such employees in recognition of their language skills.

Recommendations for the CPCS

The CPCS should also review its human and capital resources to assess how well it is responding to the needs of LEP juveniles and LEP families of juveniles in Suffolk County. The OCR recommends that the CPCS gather feedback from LEP juvenile clients and LEP family members in Suffolk County, along with local organizations and associations representing LEP juveniles and families of juveniles, on how the CPCS can provide more effective language assistance services to LEP juveniles and LEP families of juveniles. The CPCS should evaluate what actions it can take to recruit additional bilingual staff attorneys and bar advocates who can communicate directly with LEP juveniles and LEP family members.

IV. Developing an Effective Plan on Language Assistance for LEP Persons

According to the DOJ Guidance, an effective plan for providing language assistance to LEP persons has five elements: (1) identifying LEP individuals who need language assistance; (2) providing information to employees and LEP individuals on the ways in which language assistance will be provided; (3) training employees on effective and available methods of communicating with LEP individuals; (4) providing notice to LEP individuals of available free language assistance services; and (5) monitoring and updating the plan.

Recommendation for the BPD

The BPD should develop a comprehensive, written policy on providing services to LEP persons in a variety of contexts, including field and walk-in encounters, emergency and non-emergency telephone calls, interviews and interrogations, complaint processing, and written communication. In doing so, the BPD may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement agency; (2) Limited English Proficiency Resource Document: Tips and Tools from the Field; and (3) sample written language assistance policies developed by other law enforcement agencies and approved by the DOJ. These documents are available online at <http://www.lep.gov>, and should assist the BPD in developing a comprehensive written language assistance policy on providing services to LEP persons. The OCR also recommends that the

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 55 of 56

BPD name one person on staff to be responsible for coordinating services to LEP persons. This individual's first task might be to review this Report and the OCR's recommendations to develop a formal language assistance policy that will become familiar to every employee at the BPD.

Recommendation for the OCP and SCJC

To supplement the OCIS Standards and the Trial Court LAP, the SCJC and the OCP should each develop specific written procedures for SCJC and OCP Juvenile Department, Suffolk County Division employees to explain the specific language assistance resources that are available at the SCJC and the OCP Juvenile Department, Suffolk County Division (i.e., OCIS interpreters specifically assigned to SCJC court and probation offices, bilingual employees, and Language Line), and when it is appropriate to use these resources. The SCJC and the OCP should instruct employees in their written procedures to only use English-speaking friends or family members to communicate general, non-sensitive information (e.g., providing directions or general information regarding the status of a case), and when using such parties would not raise concerns of privacy, confidentiality, or conflict of interest. The SCJC should instruct its employees that they should never use friends, family members, or bilingual SCJC employees to provide interpretation during court proceedings, and the OCP should notify probation officers that they should never rely upon third parties such as friends or family members, especially juveniles, to communicate with LEP individuals during interviews.

Recommendation for the CPCS

To ensure that staff attorneys and bar advocates are aware of the CPCS' procedures for communicating with LEP juveniles and LEP family members during both in-court and out-of-court interactions, the CPCS should expand the sections in its Assigned Counsel Manual regarding communicating with LEP clients and LEP parents or guardians of juvenile clients. Alternatively, the CPCS may wish to develop a stand-alone policy addressing communicating with LEP juveniles and LEP parents or guardians of juveniles. In expanding the relevant sections in the Assigned Counsel Manual or developing a new policy, the CPCS should provide information on the procedures for communicating with LEP juveniles or LEP family members during both in-court and out-of-court interactions, and should explain that bilingual staff attorneys or bar advocates should only communicate directly with an LEP juvenile or LEP family member in lieu of using an OCIS interpreter if they have been deemed qualified by the CPCS. The CPCS should also advise attorneys against using English-speaking juveniles, friends, or family members to provide interpretation for LEP juveniles or LEP families of juveniles. Additionally, the CPCS should consider including information in its Assigned Counsel Manual or stand-alone policy on how staff attorneys and bar advocates can identify an LEP client or family member and the language spoken, how the CPCS will train staff attorneys and bar

William B. Evans, Police Commissioner
Edward J. Dolan, Commissioner
Hon. Terry M. Craven, First Justice
Anthony J. Benedetti, Chief Counsel
October 9, 2015
Page 56 of 56

advocates on communicating with LEP clients and family members, and how the CPCS will notify LEP individuals of the availability of free language assistance services.

V. Conclusion

The BPD, the OCP, the SCJC, and the CPCS have taken a number of steps to provide meaningful access to their programs and activities to LEP juveniles and LEP families of juveniles in Suffolk County. However, the BPD, the OCP, the SCJC, and the CPCS must build on these steps to become fully compliant with the language access requirements under Title VI and the Safe Streets Act. On request, the OCR is available to provide technical assistance in implementing its recommendations and formulating a written language assistance plan as required. **Immediately upon receipt of this letter, we ask that a responsible official from each of your agencies contact OCR attorney Shelley Langguth to develop a timeline and goals for implementing our recommendations.**

Thank you for your cooperation and the assistance of your staffs throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Yours very truly,

/s/ Michael L. Alston

Enclosure (for BPD)

cc: Carlos Cannon, Research Analyst
Boston Police Department

Crispin Birnbaum, Deputy Commissioner for Legal Services
Massachusetts Office of the Commissioner of Probation

Joshua Dohan, Director, Youth Advocacy Department
Massachusetts Committee for Public Counsel Services