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October 1, 2021

The Honorable Ken Weyler, Chairman
Fiscal Committee of the General Court
State House
Concord, N.H. 03301

His Excellency, Governor Christopher T. Sununu
And the Honorable Executive Council
State House
Concord, N.H. 03301

## REQUESTED ACTION

Pursuant to RSA 14:30-a, VI, authorize the Judicial Council to accept and expend, federal funds in the amount of $2,066,000 from the American Rescue Plan Act of 2021 (ARPA), State Fiscal Recovery Funds (SFRF) to address indigent defense needs resulting from the pandemic, effective upon Fiscal Committee and Governor and Council approval through June 30, 2023. 100% Federal Funds. This is an allowable use of ARP FRF funds under Section 602 (c)(1)(A) to respond to the public health emergency or its negative economic impacts.

Funding is to be budgeted as follows:

02-07-07-070010-24XX0000[1] ARP Indigent Def

| Class | Description | FY22 Requested Budget | FY23 Requested Budget | Total FY22/23 |
|---|---|---|---|---|
| 102 - 500751 | CONTRACTS FOR PROGRAM SERVICES | 1,091,000 | 900,000 | **1,991,000** |
| 067 - 500557 | TRAINING OF PROVIDERS | 75,000 | 0 | **75,000** |
| | **TOTAL EXPENSES** | 1,166,000 | 900,000 | **2,066,000** |
| | | | | |
| 000 - 400338 | FEDERAL FUNDS | 1,166,000 | 900,000 | **2,066,000** |
| | **TOTAL REVENUE** | 1,166,000 | 900,000 | **2,066,000** |

## EXPLANATION

States across the country are struggling with a significant indigent defense crisis.[2] New Hampshire is unable to meet the current need for indigent defense representation. Hundreds of defendants – including

[1]All direct program costs will be accounted for using activity 00FRF602PH0701A and all administrative and indirect costs will be accounted for using activity 00FRF602PH0701Z. Accounting classifications may be subject to technical changes at the discretion of the Department of Administrative Services' Division of Accounting Services.

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incarcerated individuals – are waiting to have an attorney appointed to their case as required by both the United States and New Hampshire Constitutions. These federal funds will allow the Judicial Council to provide temporary reinforcement to existing indigent defense programs while recruiting and training new attorneys through the following measures: 1) temporary, increased administrative fees for contract attorneys taking on new indigent defense cases; 2) a grant for training contract attorneys and assigned counsel taking on new indigent defense cases; and 3) and funding for 10 new, temporary attorneys at the Public Defender's Office.

**Temporary Hires at NH Public Defender: $1.8 million**

Our indigent defense system relies on a robust, statewide Public Defender. The New Hampshire Public Defender (NHPD) is the backbone of our indigent defense system. In a typical year, NHPD handles 85% of the indigent caseload, with contract attorneys handling 14% and assigned counsel appointed to the remaining 1%.

High staff turnover and case backlogs have created a perfect storm for indigent defense. Fewer cases resolved during the pandemic, leading to stagnant caseloads. Twenty-six attorneys (with a combined total of over 200 years of experience) left NHPD in FY21 –more than twice the normal attrition rate. An additional six attorneys have already tendered their resignations since July 1, 2021. When attorneys leave the program, their cases are split among the remaining attorneys, exacerbating stress levels and caseloads.

The Public Defender has the ability to close or reduce intake of new cases if attorney caseloads become excessive. With one exception, the program has not needed to do this for more than twenty years - until now. NHPD has limited intake at its trial offices across the state, resulting in hundreds of additional cases going to contract or assigned counsel – many more than these systems were designed to support.

The $1.8 million funding ($900,000/year, two-year period per position) would allow NHPD to hire up to 10 new, temporary attorneys to assist with the current caseload challenges. The need is greatest in the near future as the older cases proceed to trials and new cases continue to need counsel. This will allow NHPD to take a greater percentage of the caseload and reduce the reliance on contract attorney and assigned counsel programs.

**Temporary Assistance for Contract Attorneys: $191,000**

During the NHPD closures, contract attorneys have taken significantly more appointments than originally contracted. Many of these attorneys are solo practitioners who do not have support staff. This funding would provide temporary fee increases to compensate for the increased shared of the caseload: Contract attorneys would receive an additional $70 for misdemeanor and juvenile assistance (41%), an additional $105 for felony assistance (58%), and an additional $140 (1%) for serious felonies. This reflects the court rule which allows up to $35/hour reimbursement for paralegal assistance. Amendment to an existing CRF CARES Act allocation to allow use for the same purpose through December 31, 2021 is being requested from Governor and Council concurrently. This ARPA funding will be used after the CRF funding is exhausted.

Several contract attorneys have stopped taking new cases (unless the defendant is a current client) because of their significant workloads. Approximately 968 additional cases were assigned to contract attorneys in FY21, compared to FY20. Due to the ongoing nature of the office closures, it is expected that contract attorneys will continue to absorb an increased percentage of cases. This assistance will allow contract attorneys to take on future cases rather than appointing the more costly assigned counsel.

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[2] New England public defenders' 'crisis' may lead to poor representation (seacoastonline.com); Prosecutors, public defenders seek $15.5 million to handle court reopening - VTDigger; Exodus of lawyers for low-income Mainers prompts worry that cases won't be covered (bangordailynews.com); 2021-5-25-responding-to-the-emergency-caused-by-pandemic-driven-increased-public-defense-workloads.pdf (wsba.org)

**Criminal Defense Training: $75,000**

This funding would facilitate recruitment and training of attorneys taking on new cases through contract and assigned counsel programs. This is for reimbursement for expenses related to training contract attorneys and assigned counsel and distinct from the Public Defender's training program for new hires and is not intended to subsidize that training. The Judicial Council may, however, be reimbursed for the cost of contract attorneys and assigned counsel attendance at Public Defender training events, and attorneys in attendance of trainings will be paid an hourly rate of $60 during trainings.

This crisis has highlighted the lack of criminal training available to new attorneys who are not hired by NHPD. This funding would allow the Judicial Council to compensate attorneys to put on a statewide training on criminal defense. It would also compensate attorneys for their time to undergo the training. These attorneys would be able to accept misdemeanor cases shortly after their training, relieving the burden on attorneys already taking cases. This would also help sustain the contract and assigned counsel programs by providing invaluable experience and training to future practitioners in an area of law with a constant need.

This Agency will remain at your service to provide any requested information concerning the critical importance of this additional funding to the orderly administration of justice.

Thank you for your consideration.

Respectfully Submitted,

Sarah T. Blodgett

Sarah T. Blodgett
Executive Director