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THE STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL
www.nh.gov/judicialcouncil



Jay Buckey, Executive Director
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June 9, 2025

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Executive Council
State House
Concord, N.H. 03301

REQUESTED ACTION

Contingent upon Fiscal Committee and Governor and Council approval of the corresponding request to transfer \$200,000, authorize the Judicial Council to amend a contract with New Hampshire Public Defender (Vendor #155941), Concord, NH, originally approved by Governor and Council on June 28, 2023 (item #99), by increasing the price limitation by \$200,000 from \$55,589,108 to \$55,789,108, with no change to the contract completion date of June 30, 2025, effective upon Governor and Council approval. 100% General Funds.

Funds are available in Public Defender Program as follows:

		<u>FY 2025</u>
02-07-07-070010-10940000-102-500732	Contracts for Program Services	\$200,000

EXPLANATION

The New Hampshire Public Defender (NHPD) is currently above its contractually specified caseload limits in eight of its ten field offices. This has resulted in NHPD closing to five circuit courts where it can no longer accept cases. These closures slow assignment of counsel and result in additional costs for the Judicial Council. This amendment is requested to augment NHPD's training and retention of attorneys so that NHPD can remain open to as many courts as possible.

Thank you for your consideration. This Agency will remain at your service to answer any questions you may have regarding the proposed contract and its importance to the orderly administration of justice.

Respectfully Submitted,

Jay M. Buckey
Executive Director

AMENDMENT TO STATEWIDE INDIGENT DEFENSE CONTRACT FY24-25

1. The State of New Hampshire and Contractor agree that the Indigent Defense Representation Contract dated May 31, 2023, be modified as follows:
 - a. The general provision 1.8 "Price Limitation" of \$55,589,108 is increased to \$55,789,108.
 - b. Exhibit C, Section 6. is modified as follows "Within 60 days following conclusion of State Fiscal Year 2025, NHPD shall report to the State the amount, if any, by which the total of the payments specified above for both fiscal years exceeds the total expenses incurred for operation of NHPD for the two fiscal years. NHPD will apply any unused funds to expenses to its state-contracted indigent defense expenses for fiscal years 2026 and 2027."

Approval by the Attorney General (Form, Substance, and Execution)

By: 
Christopher Row

On: 6/3/25

State Agency Signature

By: 
Jay Buckey, Executive Director, Judicial Council

On: 6/4/25

Contractor Signature

By: 
President, NHPD Board of Directors

On: 5/29/2025

(President at time of Fiscal Request)

By: 
Christine List (Current President
of NHPD Board of Directors))

On: 6-9-2025

State of New Hampshire
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that NEW HAMPSHIRE PUBLIC DEFENDER is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on May 06, 1985. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 83694

Certificate Number: 0007154425



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 9th day of April A.D. 2025.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a horizontal line.

David M. Scanlan
Secretary of State

**NEW HAMPSHIRE PUBLIC DEFENDER
BOARD OF DIRECTORS
CERTIFICATE OF AUTHORITY**

WHEREAS, the New Hampshire Constitution provides a right to counsel to those facing a loss of their liberty; and,

WHEREAS, New Hampshire RSA Chapter 604-B establishes the plan for appointment of counsel in indigent criminal cases and other circumstances; and,

WHEREAS, the Judicial Council has awarded the indigent defense contract to the New Hampshire Public Defender;

NOW THEREFORE, the Board of Directors of the New Hampshire Public Defender authorizes, by majority signature below, Board President Christine List, Esq. to enter into a contract with the Judicial Council for the New Hampshire Public Defender to provide defense representation to indigent defendants in criminal cases, to indigent respondents against sexually violent predator petitions, to indigent defendants in capital-murder cases, and to indigent juveniles in delinquency proceedings, in the State of New Hampshire, for the period July 1, 2025 through June 30, 2027.

Date: 6/4/25

/s/ Suzanne Ketteridge
Suzanne Ketteridge

6/5/25

Date: _____

/s/ Richard J. Maloney
Richard Maloney

Date: 6/4/2025

/s/Melissa Lynn Davis
Melissa Davis

Date: 6/4/2025

/s/Michael J. Iacopino
Michael Iacopino

Date: 6/4/2025

/s/ John P. Newman
John Newman

Date: 6/4/25

/s/Ashley Sheehan
Ashley Sheehan

Date: 6/4/25

/s/Tony Sculimbrene
Tony Sculimbrene

**NEW HAMPSHIRE BAR ASSOCIATION BOARD OF
GOVERNORS**

RESOLUTION

WHEREAS, the New Hampshire Constitution provides a right to counsel to those facing a loss of their liberty; and,

WHEREAS, New Hampshire RSA Chapter 604-B establishes the plan for appointment of counsel in indigent criminal cases and other circumstances; and,

WHEREAS, the above statute in subsection 604-B:4 authorizes the State, by and through the Judicial Council, (and, with the approval of the Governor and Executive Council), to contract with an organization or group of attorneys to provide a Public Defender Program for the State of New Hampshire, so long as the organization or group meets with the approval of the New Hampshire Bar Association as a provider of indigent defense services; and,

WHEREAS, the New Hampshire Public Defender has requested such approval from the New Hampshire Bar Association; and,

WHEREAS, the Board of Governors of the New Hampshire Bar Association has considered this request of the New Hampshire Public Defender;

NOW THEREFORE, it is hereby resolved that the Board of Governors of the New Hampshire Bar Association gives its formal approval of the New Hampshire Public Defender as an organization created and operated to provide defense representation to indigent defendants in criminal cases, to indigent respondents against sexually violent predator petitions, to indigent defendants in capital-murder cases, and to indigent juveniles in delinquency proceedings, in the State of New Hampshire.- for the period July 1, 2025 through June 30, 2027.

6/6/2025
Date


Kathleen M. Mahan, President
New Hampshire Bar Association

Nina Gardner, Chair
Sen. Daryl Abbas
Hon. James P. Bassett
James T. Boffetti, Esq.
Stephanie Bray, Esq.
Kimberly Casey
Paul W. Chant, Esq.
John E. Durkin, Esq.
Karen A. Gorham, Esq.
Hon. David D. King

THE STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL
www.nh.gov/judicialcouncil



Richard E. Sampson, Acting Executive Director
State House Annex – Room 120
25 Capitol Street
Concord, New Hampshire 03301-6312

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Heather Kulp, Esq.
Steven D. Lubrano
Rep. Bob Lynn
Dianne Martin, Esq.
Brian J. X. Murphy, Esq.
Hon. Tina Nadeau
Dino Scala
Alan Seidman, Ed.D
Phillip Utter, Esq.

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June 9, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Judicial Council to enter into a contract with the New Hampshire Public Defender (hereinafter the Public Defender Program, Vendor Code 155941) in the amount of \$55,589,108 to provide indigent-defense representation pursuant to the provisions of RSA 604-B:4, effective July 1, 2023 upon Governor and Council approval through June 30, 2025. 100% General Funds.

Funds are anticipated to be available in Fiscal Years 2024 and 2025, upon the availability and continued appropriation of funds in the future operating budget, as follows:

	<u>FY 2024</u>	<u>FY 2025</u>
02-07-07-070010-1094-102 Public Defender Program	\$27,794,554	\$27,794,554

EXPLANATION

The Judicial Council requests authorization to enter into a contract for the biennium with the New Hampshire Public Defender, the only statewide public defender program. The Public Defender Program has the current capacity to meet the obligations of the contract.

Under the terms of this contract, the Public Defender Program would continue to operate in all ten counties through June 30, 2025 and would maintain its administrative offices at 10 Ferry Street, Suite 425, in Concord, New Hampshire. The New Hampshire Public Defender meets the requirements of RSA 604-B:4, has received the formal approval of the New Hampshire Bar Association, and is the State's most cost-effective method of delivering indigent-defense representation, which is mandated by the State and Federal Constitutions and authorized by the statutory provisions of RSA 604-A:2. This contract will enable the Public Defender Program to provide continued representation for clients in the roughly 11,000 cases carried forward from pre-existing court appointments, and to accept approximately 85% of new indigent criminal

delinquency cases over the next biennium. The Public Defender Program is the nucleus of the indigent defense system. It reduces reliance on the more expensive and less predictable assigned counsel system, and it provides reliable representation in the broad range of homicide, felony, misdemeanor, appellate, and sexual-violent-predator cases brought in New Hampshire courts against persons for whom the state is constitutionally and statutorily obligated to provide legal representation.

The Attorney General's Office has approved this contract as to form, substance and execution.

REQUEST FOR PROPOSALS AND REVIEW PROCESS

The Judicial Council developed a detailed Request for Proposals (RFP) for public defender services and made the RFP available on the Judicial Council website. The availability of the RFP and the opportunity to submit proposals were also publicized in a statewide newspaper (Union Leader) on March 26, 2023. In addition, the RFP was listed on the Department of Administrative Services, Procurement and Support Services' website for Statewide Bids and Proposals. Notice regarding the availability of the RFP also appeared on the New Hampshire Bar Association's classifieds website.

Other than the New Hampshire Public Defender, no group or individual submitted a proposal for consideration. The proposal submitted by the New Hampshire Public Defender was reviewed thoroughly by the Judicial Council's Indigent Defense Subcommittee and was found to be compliant with the Judicial Council's Request for Proposals.

Thank you for your consideration. I would be happy to answer any questions you may have regarding this proposed contract.

Respectfully submitted,



Richard E. Sandperil
Acting Executive Director

Attachments

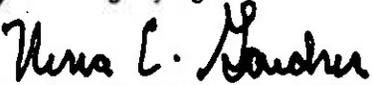
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

I. IDENTIFICATION.

1.1 State Agency Name New Hampshire Judicial Council		1.2 State Agency Address 25 Capitol Street, Room 120 Concord, NH 03301-6312	
1.3 Contractor Name New Hampshire Public Defender		1.4 Contractor Address 10 Ferry Street, Suite 425 Concord, NH 03301	
1.5 Contractor Phone Number 603-224-1236	1.6 Account Number 010-0070-1094-102	1.7 Completion Date June 30, 2025	1.8 Price Limitation \$55,589,108
1.9 Contracting Officer for State Agency Richard E. Samdperil, Acting Executive Director		1.10 State Agency Telephone Number 603-271-3592	
1.11 Contractor Signature  Date: 5/25/23		1.12 Name and Title of Contractor Signatory Michael J. Iacopino, President NHPO Board of Directors	
1.13 State Agency Signature  Date: 5-25-23		1.14 Name and Title of State Agency Signatory Nina Gardner, Chair New Hampshire Judicial Council	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ (not applicable)			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 5/31/23			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

EXHIBIT A
SPECIAL PROVISIONS

1. Conditional Nature of this Agreement

Paragraph 4 of Form P-37 is inapplicable and deleted.

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the continued appropriation of funds for the services provided herein, and in no event shall money promised to the New Hampshire Public Defender (NHPD) in this contract be transferred administratively or otherwise to the Contract Counsel or Assigned Counsel programs without the express written consent of the President of Public Defender Program's Board of Directors. If, however, it shall become necessary to reduce the monies paid to NHPD pursuant to this paragraph, there shall be a concomitant and pro rata reduction of the services which NHPD is obligated to perform hereunder.

2. Data/Access/Confidentiality

Paragraph 9 of Form P-37 is inapplicable and deleted.

The parties acknowledge that the Public Defender Program has obligations of confidentiality and loyalty to clients which cannot be abridged. NHPD must strictly prevent access by the State to information regarding all matters related to the representation of individual clients.

NHPD has reporting and access obligations to the State of New Hampshire as follows:

A. The Public Defender Program Executive Director shall personally report to the Judicial Council on the operation of the Public Defender Program as requested.

B. All records of NHPD regarding expenses of operation of NHPD shall be available for examination at any reasonable time to fiscal agents of the State or General Court, including the Judicial Council.

C. NHPD will keep time records for statistical purposes and for assessment of any repayment ordered in accordance with RSA 604-A:9.

D. NHPD shall furnish the Judicial Council such listing of personnel, job descriptions and salary levels as the Judicial Council shall from time-to-time request.

E. Within thirty (30) days following the conclusion of each quarterly period during the term of this Agreement, written progress reports shall be prepared by NHPD. The reports shall briefly describe the cases accepted during the quarterly period, the progress of such cases, and the final disposition of all cases, in sufficient detail to disclose type and degree of offenses, whether or not contested, and the approximate time spent on such cases. The reports shall include a statement of administration costs detailing the expenses incurred during the quarterly period in connection with the operation of NHPD. One copy of each such report shall be submitted by NHPD to:

1. The New Hampshire Judicial Council,
2. The Governor,
3. Each member of the Executive Council,
4. The Attorney General, and,
5. Further copies shall be made available to such other offices, courts or agencies as the Judicial Council may specify.

F. Within sixty (60) days following the conclusion of State Fiscal Year 2024, NHPD shall provide the Judicial Council with a final statement of all expenses associated with operation of NHPD for that Fiscal Year.

G. Within sixty (60) days following the conclusion of State Fiscal Year 2025, NHPD shall provide the Judicial Council with a final statement of all expenses associated with operation of the NHPD for that Fiscal Year.

H. Within ninety (90) days of the end of State Fiscal Year 2024, NHPD shall also provide the Judicial Council with a copy of its annual audit by a certified public accountant.

I. Within ninety (90) days of the end of State Fiscal Year 2025, NHPD shall provide the Judicial Council with a copy of its annual audit by a certified public accountant.

J. Within ninety (90) days of the end of the 2024-2025 biennium, NHPD will provide an accounting of those item of equipment in which the State retains a reversionary interest. This accounting shall include a complete inventory list as well as a statement of the value of the assets listed.

3. Equipment

The State shall retain a reversionary interest in all equipment with a useful life of greater than two years, such as books, office equipment, telephones, desks and chairs, purchased by NHPD during the period of the Agreement with funds provided pursuant to this Agreement. The State shall not retain a reversionary interest in consumable supplies. In the event that NHPD ceases to operate, NHPD will return all items of said equipment within thirty (30) days of a request by the State.

4. Professional Liability Insurance

NHPD shall carry professional liability insurance covering all services to be performed pursuant to this Agreement, shall provide to the Judicial Council proof of such insurance upon the commencement of the term of this Agreement, and shall notify the Judicial Council immediately if such coverage is cancelled or expires for any reason.

5. Assignment/Delegation/Subcontracts

Paragraph 12 of Form P-37 is inapplicable and deleted.

NHPD shall have the option to sub-contract for attorney services as may be deemed necessary or appropriate to provide the representation specified under this Agreement. NHPD shall obtain pre-approval from the Judicial Council when the Program sub-contracts for attorney services.

6. Capital Case Representation

If the Addison Petition for Post-Conviction Relief should result in a remedy that requires the Public Defender Program to provide any additional representation, the parties agree to amend the Price Limitation set forth in Block 1.8 of this Agreement, notwithstanding the provisions of Section 5.4.

In the event that the Public Defender Program is called upon to provide representation to any defendant charged with capital murder, the parties agree to amend the Price Limitation set forth in Block 1.8 of this Agreement, notwithstanding the provisions of Section 5.4.

7. General Liability Insurance

NHPD may substitute comprehensive general liability insurance in the amount of \$1,000,000 per occurrence and excess/umbrella liability insurance in the amount of \$3,000,000 per occurrence for the \$2,000,000 per occurrence identified in Paragraph 14.1.1 of the P-37.

EXHIBIT B
SCOPE OF SERVICES

1. The New Hampshire Public Defender Program (NHPD) shall provide statewide legal representation at all stages of criminal proceedings for all criminal defendants, juveniles in delinquency cases, and respondents in involuntary commitment proceedings under RSA 135-E, qualifying as indigents. Consistent with the statutory scheme of appointment described in RSA 604-A:2 II, the Public Defender shall accept all indigent case appointments in the Circuit Court's District, Family and Probate Divisions, Superior Court, and Supreme Courts, except in those cases in which the Rules of Professional Conduct would bar the representation, and except in those cases in which caseload limits as defined herein have been reached.

2. NHPD shall provide such other representation as is necessary and consistent with professional norms and standards for criminal defense, including but not limited to representation in specialty courts, as required by the provisions of the United States and New Hampshire Constitutions, as well as related activities. For purposes of this provision, "related activities" includes but is not limited to the following:

A) Representation in matters arising under RSA 169-D which are factually and procedurally related to juvenile delinquency matters such that effective representation in the matter to which NHPD has been appointed requires participation;

B) Representation in non-criminal matters such as motor vehicle and other violations, Class B misdemeanors, proceedings brought under RSA Chapter 173-B, Grand Jury proceedings, proceedings related to RSA 265-A:30, and similar matters, when such representation is required to provide effective representation in a matter to which NHPD has been appointed;

C) Representation in proceedings under RSA Chapters 135 and 135-C related to a finding of a lack of competency to stand trial in a case to which NHPD has been appointed. In such matters, NHPD may seek compensation from other agencies if such compensation is normally made for such representation when provided by non-NHPD counsel.

3. NHPD shall employ an Executive Director to supervise the Program. NHPD shall hire such other staff as is necessary to provide the services under this contract. It is understood and agreed that the staffing levels will be supported by the expenditure of funds under this Agreement to purchase and install necessary equipment such as books, office equipment, computer hardware and software, telephones, desks, and chairs.

4. The present NHPD offices located in Manchester, Concord, Nashua, Laconia, Stratham, Dover, Keene, Littleton, Newport, and Orford will continue to be staffed with full-time attorneys and part time attorneys. Office locations will not be modified without prior written approval from the Judicial Council (Council). NHPD attorneys shall not be otherwise engaged in the practice of law. Contract attorneys, other than appellate attorneys, will be compensated on a caseload basis rather than on an hourly or per diem basis.

5. Subject to the normal turnover of staff and the availability of qualified replacements, NHPD

shall employ not fewer than 132 full-time attorneys or the equivalent for the period of this agreement. Attorney staff not specifically designated for areas of representation by this Agreement shall be assigned responsibilities by NHPD based upon caseload growth. NHPD shall maintain specific minimum attorney staffing by employing no fewer than:

- A) 26 full-time attorneys serving Northern Hillsborough County.
- B) 18 full-time attorneys serving Southern Hillsborough County.
- C) 20 full-time attorneys serving Rockingham County.
- D) 20 full-time attorneys serving Merrimack County.
- E) 7 full-time attorneys serving in Cheshire County.
- F) 4 full-time attorneys serving in Sullivan County.
- G) 13 full-time attorneys serving Strafford County.
- H) 11 full-time attorneys serving Belknap and Carroll Counties.
- I) 4 full-time attorneys serving Coos County.
- J) 6 full-time attorneys serving Grafton County.
- K) 3 full-time attorneys providing appellate representation.

6. NHPD and the Council acknowledge that staffing levels contemplated under this agreement do not make provision for the capacity of NHPD to provide representation in trial level, capital-case litigation.

7. NHPD shall have the option to sub-contract for attorney services as may be deemed necessary or appropriate to provide the representation specified under this Agreement. The use of all subcontractors must be pre-approved by the Council or the Indigent Defense Subcommittee (IDS). NHPD shall provide the Council with copies of all proposed subcontracting agreements and information on the role the subcontractor will play, how they will be used, assigned cases, supervised and paid.

8. For purposes of determining the minimum staffing requirements set forth above, "full-time attorneys or equivalent" shall be computed as follows: Full-time attorney staff shall be those attorneys who are salaried and devote 100% of their time to NHPD representation; part-time attorney staff shall be given equivalent value based upon the ratio of their caseload responsibilities compared to the workload of full-time salaried attorney staff; contract attorneys shall be given equivalent value based upon the ratio of their contract workload responsibilities compared to the workload of full-time salaried attorney staff.

9. The caseloads of NHPD attorneys shall be consistent with the Rules of Professional Conduct and shall conform to the requirements of the plan adopted by NHPD and approved and monitored on a continuing basis by the Council (See Exhibit A-1). Said plan shall allocate cases between NHPD and other counsel, shall establish caseload limits for defender attorneys in accordance with professional standards under the Rules of Professional Conduct, and shall provide for appointment of other counsel only when maximum caseloads have been reached, when conflicts exist or when NHPD attorneys are otherwise unavailable.

10. In all accepted cases, the assigned NHPD attorney will provide the client with a closing letter after the case has resolved. The closing letter will summarize the resolution of the case, including any action that the client is required to take. It will also provide basic information about the annulment process, if appropriate. The closing letter can be provided to the client electronically.

11. NHPD shall operate and administer the Conflict Case Administrator Office (CCA). The CCA

shall distribute conflict cases to contract attorneys and assigned counsel. In the event that NHPD reduces or closes case intake from a particular court or courts, the CCA shall assign all of the cases refused by NHPD. In the event that NHPD reduces or closes case intake from a particular court or courts and the CCA is called upon to assign all of the cases refused by NHPD, NHPD shall sufficiently augment the resources made available to the CCA in order to accommodate the workload increase.

12. NHPD shall continue to implement recommendations made in Berry Dunn's October 9, 2020 Operational Assessment (Assessment) and April 5, 2023 Review of Implementation of Assessment Recommendations, including but not limited to maintaining a Financial Expert, as defined in the Assessment, as a member of its Board of Directors. NHPD shall conduct such further assessments or implementation reviews as requested by the Council and shall provide the results to the Council within ten (10) days of receiving such assessments or reviews.

**EXHIBIT B-1
CASELOAD MANAGEMENT PLAN**

Because persistently excessive caseloads threaten a lawyer's ability to provide competent representation to the accused, the New Hampshire legislature enacted RSA Chapter 604-B:6, requiring that a plan for caseload management be adopted by the New Hampshire Public Defender (NHPD) and approved by the Judicial Council. Accordingly, the parties hereto adopt the following Caseload Management Plan:

1. Representation

NHPD shall represent any eligible, indigent person in the Circuit Court's District, Family and Probate Divisions, Superior Court, and Supreme Courts at all stages of criminal prosecutions, delinquency matters, and proceedings concerning the involuntary commitment of dangerous persons. NHPD is authorized to provide such other representation as is necessary and consistent with normal criminal, delinquency, and civil-commitment defense as required by the provisions of the United States and New Hampshire Constitutions. Representation shall be provided in accordance with this Plan.

2. Rules of Professional Conduct

NHPD shall not represent an individual when doing so would constitute a violation of the Rules of Professional Conduct.

3. "Case" Definition

A "case" for the purposes of this agreement is defined as a single charge; or, multiple related charges that occurred at the same time and place which are to be tried as one case regardless of the number of complaints; or, multiple charges that involve the same type of offense committed over a proximate period of time which are to be tried as one case regardless of the number of complaints.

4. Caseload Management

In order to ensure adequate representation for the accused, NHPD's Executive Director shall monitor the caseloads of attorneys. If caseloads become excessive and the Executive Director determines that closing off or reducing case intake is necessary, NHPD's Executive Director will consult with the Judicial Council's Executive Director prior to taking either of these steps. If and when a decision is made to close or reduce the intake of new cases temporarily, the Conflict Case Administrator shall assign alternate counsel pursuant to RSA 604-A:2 II.

5. Staff Attorney Caseloads

Full-time attorneys providing general felony, misdemeanor, and juvenile delinquency representation shall maintain a caseload of not more than 70 open and active cases. Lawyers may be assigned caseloads of specific case types for efficiency purposes, but when attorney caseloads are a mixture of felony, misdemeanor, juvenile, and other cases, there will be acknowledged maximums in each of these categories fixed as follows:

- | | |
|------------------------------------|---|
| (a) Felony Maximum - 35 cases | (c) Juvenile Delinquency Maximum - 20 cases |
| (b) Misdemeanor Maximum - 35 cases | (d) Other Cases - 15 cases |

The mix of cases totaling 70 for each attorney shall be determined by NHPD's Executive Director based upon the experience level of the staff attorney and the concentration of case types in the geographic area served by the office in which the attorney works.

6. Homicide Representation

The Public Defender Program shall assign two attorneys to represent individuals charged with homicide offenses (first-degree murder, second-degree murder, and manslaughter cases). At least one lawyer shall be assigned from among the senior NHPD lawyers who possess homicide case experience. NHPD attorneys carrying a mixed caseload will carry no more than two homicides at a time, and their caseloads shall be adjusted in accordance with the complexities and demands of the homicide case.

7. Capital Case Representation

In the event that NHPD is called upon to provide trial-level representation in a new capital case, the parties agree to amend the Price Limitation set forth in Block 1.8 of this Agreement, notwithstanding the provisions of Section 5.4. When NHPD assigns lawyers to provide representation in a capital case, NHPD will do so in a manner consistent with the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

8. Juvenile Representation

NHPD shall assign attorneys to provide representation in juvenile delinquency proceedings who through selection and training meet the eligibility requirements established by the Judicial Council under the provisions of RSA 604-A:2-e.

9. Appellate Representation

The Appellate Defender Office shall be staffed by no fewer than three (3) attorneys. Appellate Defender attorneys shall maintain a caseload that requires them to research, write, and argue not more than 24 appeals in any year.

10. Civil Commitment of Sexually Violent Predator Representation

NHPD shall assign two (2) attorneys to represent any individual sought to be committed as a sexually violent predator pursuant to RSA 135-E. Attorneys carrying a mixed caseload will carry no more than two open and active civil commitment cases at a time. The caseload of any attorney handling a civil commitment case shall be adjusted in accordance with the complexities and demands of the civil commitment case.

11. Amendment and Review

No change shall be made in this Plan except upon approval of both parties. Either party may propose amendments to this Plan whenever said amendments appear to be appropriate and necessary. In addition, the Judicial Council shall review the operations of NHPD and shall also review NHPD's quarterly statistics to ensure that representation of indigents by NHPD is consistent with this Plan and legislative mandates.

**EXHIBIT C
METHOD OF PAYMENT**

1. It is agreed that the sums advanced above shall be expended by the New Hampshire Public Defender (NHPD) for the sole purpose of paying the expenses of administration of NHPD, including payment of salaries of personnel assigned to it, social security and payroll taxes or benefits computed on payroll, travel, insurance, rent, telephone, office supplies and equipment. All expenses incurred shall be reasonably related to and necessary for the operation of NHPD.

2. Notwithstanding Paragraph 1 of this Exhibit, NHPD is authorized to make training presentations and materials available to attorneys not employed by NHPD who provide indigent defense services funded by the State of New Hampshire.

3. In consideration of the satisfactory operation of NHPD from the effective date of this contract until the end of Fiscal Year 2024, the State of New Hampshire shall advance to NHPD in State Fiscal Year 2024:

\$13,897,277 for the period July 1, 2023 through December 31, 2023,
and
\$13,897,277 for the period January 1, 2024 through June 30, 2024.

In consideration of the satisfactory operation of NHPD from the effective date of this contract until the end of Fiscal Year 2025, the State of New Hampshire shall advance to NHPD in State Fiscal Year 2025:

\$13,897,277 for the period July 1, 2024 through December 31, 2024,
and
\$13,897,277 for the period January 1, 2025 through June 30, 2025.

5. The amount, if any, by which the total semi-annual payments specified above for State Fiscal Year 2024 exceed the amount of total expenses associated with operation of the NHPD for that year shall be utilized by NHPD to help to defray expenses associated with operation of NHPD incurred during State Fiscal Year 2025.

6. Within 80 days following conclusion of State Fiscal Year 2025, NHPD shall return to the State the amount, if any, by which the total of the payments specified above for both fiscal years exceeds the total expenses incurred for operation of NHPD for the two fiscal years.