

Nina Gardner, Chair  
 Richard E. Samdperil, Esq., Vice Chair  
 Hon. Melissa B. Countway  
 James T. Boffetti, Esq.  
 Stephanie Bray, Esq.  
 Sen. Bill Gannon  
 Kimberley Casey  
 Hon. Ellen V. Christo  
 John E. Durkin, Esq.  
 Jennifer Hagggar, Esq.  
 Hon. Mark Howard

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



Jay Buckey, Executive Director  
 One Granite Place, Suite 226  
 Concord, New Hampshire 03301  
 www.judicialcouncil.nh.gov

Heather Kulp, Esq.  
 Robert Lucic, Esq.  
 Steven D. Lubrano  
 Rep. Marjorie Smith  
 Hon. Christopher Keating  
 Brian J. X. Murphy, Esq.  
 Dino Scala  
 Alan Seidman, Ed.D  
 Philip H. Utter, Esq.  
 Hon. Robert S. Stephen

September 24, 2025

The Honorable Ken Weyler, Chairman  
 Fiscal Committee of the General Court and

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

**REQUESTED ACTION**

Pursuant to RSA 604-A:1-b, Additional Funding, authorize the Judicial Council to receive an additional appropriation from funds not otherwise appropriated in the total amount of \$5,500,000, effective upon Fiscal Committee and Governor and Council approval, through June 30, 2027. **100% General Funds.**

Funding is to be budgeted in 02-07-07-070010-10910000 ASSIGNED COUNSEL as follows:

Class/Expense	Class Title	Current Budget	Change	Revised Budget
108/500751	Provider Payments Legal Services	\$2,080,000	\$5,500,000	\$7,580,000

**EXPLANATION**

This account funds the work of assigned counsel for both indigent criminal defendants and juvenile delinquencies (55%) and parents in abuse and neglect cases (45%). In criminal cases, the Judicial Council utilizes assigned counsel when the New Hampshire Public Defender (NHPD) has a conflict in a case and there is no contract counsel willing to take the case. The Judicial Council, in conjunction with the Case Conflict Administrator, must locate counsel for all those who qualify when the NHPD cannot accept a case. There are currently approximately 250 defendants who are without counsel, and of those, 80 are incarcerated. The defendants' cases cannot move forward without counsel.

For abuse and neglect cases, there is no central program akin to NHPD to provide services. RSA 604-A:1-a provides that "[i]n cases involving a neglected or abused child, when an expressed interest attorney is appointed for the child as provided in RSA 169-C:10, the cost of such appointment shall be paid from funds appropriated for indigent defense in this chapter." This section also provides that "[i]n cases involving a neglected or abused child, when an attorney is

appointed to represent a parent determined to be indigent pursuant to RSA 169-C:10, II, at the preliminary hearing or a hearing pursuant to RSA 169-C:6-a, III, whichever occurs earlier, the cost of such appointment, including counsel and investigative, expert, or other services and expenses, shall be paid from funds appropriated for indigent defense pursuant to this chapter. Counsel shall petition the court for investigative, expert, or other services necessary to provide adequate representation.”

Representation in these abuse and neglect cases is solely reliant on assigned counsel (i.e., private attorneys who agree to accept cases). Courts must locate attorneys willing to provide services. This funding is necessary to ensure that defendants and petitioned parents receive constitutionally and statutorily mandated representation.

The Judicial Council does not determine who qualifies for counsel, i.e., who is indigent. These determinations are made by the courts. Counsel is constitutionally required for indigent criminal defendants facing incarceration and statutorily required for certain indigent parents in abuse and neglect cases.

RSA 604-A:1-b provides that “[i]n the event that expenditures for indigent defense by the Judicial Council are greater than amounts appropriated in the operating budget, the Judicial Council may request, with prior approval of the Fiscal Committee of the General Court, that the Governor and Council authorize additional funding. For funds requested and approved, the Governor is authorized to draw a warrant from any money in the treasury not otherwise appropriated.”

The assigned counsel system is based on hourly rates of payment, with a structure of fee caps in place determined by court rules. There are several factors that lead to the increased need for assigned counsel (accounting unit 10910000) funds including:

1. In criminal cases, the shift from “felonies first” to re-filing cases in the circuit court. This has led to more hearings and consequentially more billing for cases.
2. Increasing case complexity and duration.
3. Particularly serious indigent defense assigned cases (i.e., murder and other complex cases such as those involving YDC litigation).
4. Statutory changes that mandate increased usage of assigned counsel.
  - a. RSA 604-A:2-b mandates assigned counsel (instead of contract counsel) in all Juvenile Delinquency cases.
  - b. RSA 169-C has been modified effective January 1, 2026, to mandate court appointed attorneys for children in placement and will allow court appointed counsel for children in an increased number of cases. This will increase the total amount necessary for assigned counsel.
5. The change in bail laws (i.e. HB 592) will likely increase the number of defendants who are incarcerated pretrial and increase the costs related to providing a defense in those cases.
6. The billing rate for assigned counsel under Supreme Court Rules 47, 48, and 48-a increased to \$125 per hour (\$150 in “major crimes”) effective January 1, 2025. This change was supported by the Judicial Council to maintain the number of attorneys willing to take indigent defense cases.

7. Assigned counsel usage increases when NHPD offices are closed due to reaching case capacity. Due to budget uncertainty and constraints, NHPD was unable to hire the full number of attorneys it planned to (hiring 9 instead of 19), which led to ongoing attorney shortages at certain offices.
8. There are not sufficient attorneys willing to accept contracts with the Judicial Council, which leads to increased reliance on assigned counsel.

Despite efforts at recruitment and retention, New Hampshire lacks adequate numbers of attorneys willing and able to accept indigent defense cases. Neighboring states Maine and Massachusetts have also recently confronted acute shortages of indigent defense attorneys, which has led to defendants in both states being released and charges dropped when counsel could not be located in a timely manner. New Hampshire must also compete with neighboring states for qualified attorneys willing to accept these cases.

The funds currently available in account 02-07-07-070010-10910000 are insufficient to pay the court-approved invoices expected to arrive between now and the end of the current fiscal year. Based on the monthly average of expenditures year to date, the Judicial Council determines that the account will require the addition of at least \$5,500,000 to meet the anticipated expenditures in this line through June 30, 2026.

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

Thank you for your consideration.

Respectfully Submitted,



Jay M. Buckey  
Executive Director