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



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

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Philip H. Utter, Esq.
Hon. Robert S. Stephen

December 19, 2025

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 \$1,000,000, effective upon Governor and Council approval, through June 30, 2027. On December 19, 2025, the Fiscal Committee (FIS 25-292) approved an amended request for additional appropriations in the amount of \$1,000,000. **100% General Funds.**

Funding is to be budgeted in 02-07-07-070010-10930000 CONTRACT COUNSEL as follows:

Class/Expense	Class Title	Current Budget	Change	Revised Budget
102/500731	Provider Payments Legal Services	\$1,735,000	\$1,000,000	\$2,735,000

EXPLANATION

This account funds the work of contract counsel for indigent criminal defendants. Contract counsel provide this representation on a fixed fee basis. The Judicial Council utilizes contract counsel when the New Hampshire Public Defender (NHPD) has a conflict in a case or is closed to intake. Contract counsel have priority in assignment for these cases.

There are currently more than 300 defendants who are without counsel, and of those, more than 100 are incarcerated. These cases cannot move forward without counsel. The State is constitutionally required to provide representation for indigent criminal defendants facing incarceration. Adequate funds for this budget line are necessary to fund this required representation and ensure that sufficient attorneys are available to accept cases.

The Judicial Council does not determine who qualifies for counsel, i.e., who is indigent. These determinations are made by the Judicial Branch. The Supreme Court has recently instituted a task force to improve the process to ensure that accurate eligibility determinations are made.

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 contract counsel system is based on a per unit basis of payment. Different representation types have different unit values. The factors that have led to the increased need for assigned and contract counsel are very similar and include:

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. 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.
5. Contract 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 has led to ongoing attorney shortages at certain offices.
6. There is a lack of 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 02-07-07-070010-10930000 are insufficient to pay for the expected number of cases between now and the end of the current fiscal year. Based on the trends so far this fiscal year, the Judicial Council determines that the account will require the addition of at least \$1,000,000 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. Buckley
Executive Director



MICHAEL W. KANE, MPA
Legislative Budget Assistant
(603) 271-3161

CHRISTOPHER M. SHEA, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

State of New Hampshire

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

CHRISTINE L. YOUNG, CPA
Director, Audit Division
(603) 271-2785

December 19, 2025

Jay M. Buckey, Executive Director
Judicial Council
One Granite Place, Suite 226
Concord, New Hampshire 03301

Dear Executive Director Buckey,

The Fiscal Committee, pursuant to the provisions of RSA 604-A:1-b, on December 19, 2025, **amended** and approved the request of the Judicial Council, to receive an additional appropriation from funds not otherwise appropriated in the total amount of **\$1,000,000** through June 30, 2027, not the \$2,000,000 as specified in the request dated November 25, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Kane".

Michael W. Kane
Legislative Budget Assistant

MWK/pe
Attachment

Nina Gardner, Chair
 Richard E. Sampereil, Esq., Vice Chair
 Hon. Melissa B. Countway
 James T. Boffetti, Esq.
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 Hon. Robert S. Stephen

November 25, 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 \$2,000,000, effective upon Fiscal Committee and Governor and Council approval, through June 30, 2027. **100% General Funds.**

Funding is to be budgeted in 02-07-07-070010-10930000 CONTRACT COUNSEL as follows:

Class/Expense	Class Title	Current Budget	Change	Revised Budget
102/500731	Provider Payments Legal Services	\$1,735,000	\$2,000,000	\$3,735,000

EXPLANATION

This account funds the work of contract counsel for indigent criminal defendants. Contract counsel provide this representation on a fixed fee basis. The Judicial Council utilizes contract counsel when the New Hampshire Public Defender (NHPD) has a conflict in a case or is closed to intake. Contract counsel have priority in assignment for these cases. 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 300 defendants who are without counsel, and of those, 100 are incarcerated. These cases cannot move forward without counsel. The State is constitutionally required to provide representation for indigent criminal defendants facing incarceration. Adequate funds for this budget line are necessary to fund this required representation and ensure that sufficient attorneys are available to accept cases.

The Judicial Council does not determine who qualifies for counsel, i.e., who is indigent. These determinations are made by the Judicial Branch. The Supreme Court has recently instituted a task force to improve the process to ensure that accurate eligibility determinations are made.

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 contract counsel system is based on a per unit basis of payment. Different representation types have different unit values. The factors that have led to the increased need for assigned and contract counsel are very similar and include:

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. 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.
5. Contract 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 has led to ongoing attorney shortages at certain offices.
6. There is a lack of attorneys willing to accept contracts with the Judicial Council, which leads to increased reliance on assigned counsel.

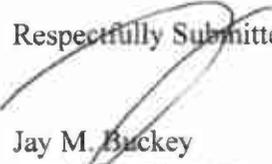
Despite efforts at recruitment and retention, New Hampshire lacks adequate numbers of attorneys willing and able to accept indigent defense cases. Neighboring states Maine and Massachusetts have also recently confronted acute shortages of indigent defense attorneys, which has led to defendants in both 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 02-07-07-070010-10930000 are insufficient to pay for the expected number of cases between now and the end of the current fiscal year. Based on the trends so far this fiscal year, the Judicial Council determines that the account will require the addition of at least \$2,000,000 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