

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

FIS 23-205

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CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
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JAMES T. BOFFETTI
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July 20, 2023

The Honorable Ken Weyler, Chairman
Fiscal Committee of the General Court
State House
Concord, New Hampshire 03301

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

REQUESTED ACTION

Pursuant to RSA 7:12, authorize the Department of Justice (DOJ) to accept and expend a sum, not to exceed \$6,906,316, in general litigation expenses incurred in the defense of the State and the prosecution of criminal laws effective with the approvals of the Fiscal Committee and the Governor and Executive Council through June 30, 2025. 100% General Funds.

These funds are to be budgeted in account #02-20-20-200010-2601 entitled "Attorney General" as follows:

Class & Object	Class Title	FY 2024 Current Adjusted Authorized	Requested Action	FY 2024 Revised Adjusted Authorized
Expenditures				
010-500100	PERSONAL SERVICES PERM CLASS	\$460,180	\$0	\$460,180
011-500126	PERSONAL SERVICES UNCLASSIFI	\$142,272	\$0	\$142,272
012-500128	PERSONAL SERVICES UNCLASSIFI	\$128,802	\$0	\$128,802
013-500132	PERSONAL SERVICES UNCLASSIFI	\$120,000	\$0	\$120,000
014-500134	PERSONAL SERVICES UNCLASSIFI	\$98,798	\$0	\$98,798
015-500137	PERSONAL SERVICES UNCLASSIFI	\$112,782	\$0	\$112,782
017-500147	FT EMPLOYEES SPECIAL PAYMENT	\$12,000	\$0	\$12,000
018-500106	OVERTIME	\$6,500	\$0	\$6,500
020-500200	CURRENT EXPENSES	\$51,400	\$0	\$51,400

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022-500255	RENTS-LEASES OTHER THAN STAT	\$3,927	\$0	\$3,927
024-500225	MAINT OTHER THAN BUILD-GRN	\$2,200	\$0	\$2,200
026-500251	ORGANIZATIONAL DUES	\$38,000	\$0	\$38,000
027-582703	TRANSFERS TO DOIT	\$67,036	\$0	\$67,036
028-582814	TRANSFERS TO GENERAL SERVICES	\$85,852	\$0	\$85,852
030-500301	EQUIPMENT NEW REPLACEMENT	\$5,000	\$0	\$5,000
037-500174	TECHNOLOGY-HARDWARE	\$6,800	\$0	\$6,800
038-500175	TECHNOLOGY-SOFTWARE	\$2,200	\$0	\$2,200
039-500188	TELECOMMUNICATIONS	\$18,925	\$0	\$18,925
040-501587	INDIRECT COSTS	\$2,773	\$0	\$2,773
042-500620	ADDITIONAL FRINGE BENEFITS	\$4,100	\$0	\$4,100
049-584995	TRANSFER TO OTHER STATE AGEN	\$6,537	\$0	\$6,537
057-500531	BOOKS PERIODICALS SUBSCRIPTI	\$92,800	\$0	\$92,800
060-500601	BENEFITS	\$478,299	\$0	\$478,299
066-500543	EMPLOYEE TRAINING	\$1,500	\$0	\$1,500
070-500704	IN STATE TRAVEL REIMBURSEMEN	\$3,250	\$0	\$3,250
073-500580	GRANTS NON FEDERAL	\$4,535,391	\$0	\$4,535,391
080-500713	OUT OF STATE TRAVEL REIMB	\$7,350	\$0	\$7,350
089-501543	TRANSFER TO DAS MAINTENANCE FUND	\$2,712	\$0	\$2,712
233-500769	LITIGATION EXPENSE	\$391,219	\$6,906,316	\$7,297,535
	Total:	\$6,888,605	\$6,906,316	\$13,794,921
Revenue Source:				
009-407079	AGENCY INCOME	\$23,424	\$0	\$23,424
00S-000010	GENERAL FUNDS	\$6,865,181	\$6,906,316	\$13,771,497
	Total:	\$6,888,605	\$6,906,316	\$13,794,921

EXPLANATION

RSA 7:12 provides a means to fund expenses incurred by DOJ in the prosecution of crimes and the defense of the State. The expenses span a range of litigation-related costs. In the current biennium, DOJ was appropriated a sum of \$350,000 in Fiscal Year 2024 and \$350,000 in Fiscal Year 2025 for these expenses. The Fiscal Year 2024 appropriation has been nearly exhausted.

At this juncture, DOJ estimates it will need an additional \$6,906,316 for on-going legal expenses. The majority of this request is based on the funding needs of the Criminal Bureau and the Civil Bureau due to the number of particularly complex and labor-intensive cases that we

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currently have in these bureaus. Set forth below is a discussion of the specific, ongoing needs of the litigation fund.

Expenses Relating to the Criminal Bureau

DOJ estimates that the Criminal Bureau will require approximately \$1,264,000 for investigations and prosecutions of crimes for the balance of Fiscal Year 2024. The vast majority of this request, approximately \$1,100,000, relates to DOJ's investigation and prosecution of alleged crimes at the former Youth Development Center. This investigation, as well as the criminal cases that stem from it, involves a very large volume of documents and decades of records. The present request includes funds we anticipate needing to help review, store, and manage those documents. As the investigation has proceeded, and as we get closer to trials for indicted defendants, the number of documents requiring review has steadily increased and has far eclipsed the number of documents anticipated at the beginning of the investigation. This has resulted in additional costs.

In addition to the investigation, the Department continues to prepare for criminal trials. While all trials were continued due to the volume of discovery, we expect that the first trials will be scheduled for the spring of 2024.

While this fiscal year's litigation fund request for the YDC criminal cases remains significant, as discovery in the YDC cases gets closer to completion, and as we have dedicated increased internal resources to these cases, we have been able to reduce our anticipated litigation fund request down from the \$2,200,000 we requested for these cases in Fiscal Year 2023.

The balance of the request for the Criminal Justice Bureau involves lab testing, crime-scene evaluation, depositions, expert review, and other work for pending prosecutions of homicides, illegal drug-related cases and other criminal investigations.

Expenses Relating to the Civil Bureau

DOJ estimates that the Civil Bureau will require approximately \$4,925,000 for defense of claims brought against the State and associated expenses for the balance of Fiscal Year 2024. This high annual expense stems from the fact that the Department is currently handling a larger, more complex civil litigation load than at any time in recent memory, including an unusually high number of complex and high-profile cases.

The *Amanda D., et al. v. Hassan, et al.* case resulted in a 2014 settlement agreement relating to the community mental health system. There are ongoing expenses relating to legal fees for plaintiffs' counsel, as well as fees for the court-retained expert reviewer. DOJ estimates that for Fiscal Year 2024, these expenses will total \$175,000.

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The Civil Bureau also expects to incur approximately \$2,900,000 in expenses for litigation and other activities related to the former Youth Development Center. This includes litigation of civil cases brought against the State by former residents of the State's Youth Development Center who allege they were sexually or physically abused while there. This also includes the provision of assistance to the Department of Health and Human Services in providing documents to the Criminal Justice Bureau in connection with the YDC criminal investigation. As mentioned, this investigation includes the review of large amounts of documents, and the Civil Bureau assists DHHS with reviewing these documents to ensure that the State maintains confidentiality for former YDC residents who are not involved in the criminal investigation at this time. This requires extensive and careful reviews, and outside counsel is periodically engaged to assist in these efforts.

The Civil Bureau, in conjunction with the Election Law Unit, is also handling two separate redistricting cases that involve challenges to the new State House map, the new State Senate map, and the new Executive Council map. The DOJ expects to incur approximately \$100,000 in expenses for these cases in this fiscal year for multiple experts, depositions, and data retention.

In addition to the above, the Civil Bureau is defending the Department of Health and Services in two major federal court civil cases that survived motions to dismiss in the Fall of 2021. The first case is *Stephanie Price, et al. v. Commissioner of the New Hampshire Department of Health and Human Services, et al.* This case is a putative class action and involves a challenge to DHHS' administration of the New Hampshire Choices for Independence Program lead by three individuals with disabilities who are enrolled in the program and on behalf of others who are similarly situated. The second case is *G.K., by their next friend, Katherine Cooper, et al. v. Sununu, et al.* This case, another putative class action, was brought by four children with mental disabilities who are in the state foster care system who, on behalf of themselves and others who are similarly situated, are challenging the State's compliance with case planning requirements under the Adoption Assistance and Child Welfare Act of 1980, the integration mandate in Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Both of these cases are extremely complex, involve substantial discovery, and are very labor intensive and time consuming. The DOJ expects to incur approximately \$1,500,000 in expenses in this fiscal year to defend these cases.

The Civil Bureau expects to incur other expenses estimated at \$250,000 in defense of the state.

The remaining funding requests are for Administration, to maintain the case management system, and the Consumer Protection Bureau, the Environmental Protection Bureau, the Transportation and Construction Bureau and the Charitable Trust Unit for costs associated with

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depositions, experts and document storage. The anticipated expenses for these four functions are \$717,316.

Please let me know if you have any questions regarding this request. Your consideration is greatly appreciated.

Respectfully submitted,



John M. Formella
Attorney General

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