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**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL

JANE E. YOUNG  
DEPUTY ATTORNEY GENERAL



December 27, 2021

The Honorable Karen Umberger, 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 \$2,853,691 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, 2022. 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 2022 Current Adjusted Authorized	Requested Action	FY 2022 Revised Adjusted Authorized
<b>Expenditures</b>				
010-500100	PERSONAL SERVICES PERM CLASS	\$411,899	\$0	\$411,899
011-500126	PERSONAL SERVICES UNCLASSIFI	\$139,008	\$0	\$139,008
012-500128	PERSONAL SERVICES UNCLASSIFI	\$132,558	\$0	\$132,558
013-500132	PERSONAL SERVICES UNCLASSIFI	\$95,000	\$0	\$95,000
015-500137	PERSONAL SERVICES UNCLASSIFI	\$109,949	\$0	\$109,949
017-500147	FT EMPLOYEES SPECIAL PAYMENT	\$6,000	\$0	\$6,000
018-500106	OVERTIME	\$8,000	\$0	\$8,000
020-500200	CURRENT EXPENSES	\$51,301	\$0	\$51,301
022-500255	RENTS-LEASES OTHER THAN STAT	\$3,500	\$0	\$3,500
024-500225	MAINT OTHER THAN BUILD-GRN	\$2,200	\$0	\$2,200

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026-500251	ORGANIZATIONAL DUES	\$35,000	\$0	\$35,000
027-582703	TRANSFERS TO DOIT	\$77,710	\$0	\$77,710
030-500301	EQUIPMENT NEW REPLACEMENT	\$2,500	\$0	\$2,500
037-500174	TECHNOLOGY-HARDWARE	\$2,600	\$0	\$2,600
038-500175	TECHNOLOGY-SOFTWARE	\$1,500	\$0	\$1,500
039-500188	TELECOMMUNICATIONS	\$18,500	\$0	\$18,500
040-501587	INDIRECT COSTS	\$43,133	\$0	\$43,133
042-500620	ADDITIONAL FRINGE BENEFITS	\$8,102	\$0	\$8,102
049-584995	TRANSFER TO OTHER STATE AGEN	\$5,221	\$0	\$5,221
057-500531	BOOKS PERIODICALS SUBSCRIPTI	\$95,649	\$0	\$95,649
060-500601	BENEFITS	\$394,363	\$0	\$394,363
066-500543	EMPLOYEE TRAINING	\$1,000	\$0	\$1,000
070-500704	IN STATE TRAVEL REIMBURSEMEN	\$2,950	\$0	\$2,950
073-500580	GRANTS NON FEDERAL	\$722,706	\$0	\$722,706
080-500713	OUT OF STATE TRAVEL REIMB	\$6,700	\$0	\$6,700
211-500757	CATASTROPHIC CASUALTY INS	\$3,934	\$0	\$3,934
233-500769	LITIGATION EXPENSE	\$3,118,579	\$2,853,691	\$5,972,270
	<b>Total:</b>	<b>\$5,499,562</b>	<b>\$2,853,691</b>	<b>\$8,353,253</b>
<b>Revenue</b>				
00D-488502	FEDERAL TRANSFERS FROM OTHER AGENCIES	\$107,296	\$0	\$107,296
001-484981	TRANSFERS FROM OTHER AGENCIES	\$128,066	\$0	\$128,066
009-407079	AGENCY INCOME	\$267,811	\$0	\$267,811
00S-000010	GENERAL FUNDS	\$4,996,389	\$2,853,691	\$7,850,080
	<b>Total:</b>	<b>\$5,499,562</b>	<b>\$2,853,691</b>	<b>\$8,353,253</b>

**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 for these expenses. This appropriation was close to exhausted in July 2021.

In August, 2021, the Department went before the Fiscal Committee of the General Court and the Governor and Executive Council, to budget balance forward funds, in the amount of \$107,296, and to request additional funding, in the amount of \$2,658,748, pursuant to RSA 7:12, for a total of \$2,766,044. At this juncture, DOJ estimates it will need an additional \$2,853,691 to continue with on-going legal expenses through June 30, 2022. The majority of this additional request is based on (1) additional funding needs related to the YDC criminal investigation, (2) additional funding needs for two major federal court civil cases against the State that have moved beyond the motion to dismiss stage, and (3) additional funding needs for an ongoing

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antitrust investigation with respect to a proposed transaction involving large healthcare systems. In addition to these major increases, the Department is currently handling a larger civil litigation load than at any time in recent memory. This has resulted in the need for additional e-discovery tools and other increased litigation costs which, though smaller in amount than the three major items mentioned previously, have added up across the Department's cases and resulted in significant additional funding needs. 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 \$933,450 for investigations and prosecutions of crimes for the balance of Fiscal Year 2022. The majority of this request, \$745,000, relates to DOJ's investigation of alleged crimes at the former Youth Development Center. Over the past 32 months, this has evolved into a complex and multi-faceted investigation. This case involves a very large volume of documents, involving decades of records. The present request includes funds we anticipate needing to help review, store, and manage those documents. As the investigation has proceeded through the Fall, the number of documents requiring review has steadily increased and has far eclipsed the number of documents anticipated at the beginning of the fiscal year. This has resulted in additional costs. The Department received ARPA funding for four part time attorneys, one legal assistant, and one paralegal to assist with this investigation and prosecution. Two of the attorneys just recently started, one additional attorney has been hired and will start in March of 2022, and the Department is actively recruiting for a fourth. The new legal assistant and new paralegal have both been hired and will start in the near future. As the Department staffs up on this investigation and the new hires come up to speed, the need for assistance from outside counsel should decrease, allowing the Department to reduce the Litigation Fund needs for this investigation and prosecution in future fiscal years.

The balance of the request for the Criminal Justice Bureau involves lab testing, crime-scene evaluation, depositions and expert review 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 an additional \$1,526,000 for defense of claims brought against the State and associated expenses for the balance of Fiscal Year 2022. 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 the balance of Fiscal Year 2022, these expenses will total \$150,000. Another case with a significant anticipated expense is *Contoocook Valley School District v. State of New Hampshire*. This case will cost approximately \$500,000 for document discovery, depositions and experts for the balance of Fiscal Year 2022.

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The Civil Bureau also expects to incur an additional \$200,000 in expenses to assist 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.

In addition to the above, two major federal court civil cases survived motions to dismiss in the late Fall, requiring the State to move into discovery and significantly increasing the anticipated expenses associated with those cases for the rest of the fiscal year. The Department estimates that approximately \$500,000 will be needed to assist with the management of discovery in these cases for the balance of Fiscal Year 2022.

The Civil Bureau expects to incur other expenses estimated at \$176,000 in defense of the state.

#### **Expenses Relating to the Consumer Protection and Antitrust Bureau**

DOJ estimates that the Consumer Protection and Antitrust Bureau will require approximately \$454,950 to discharge its crucial public protection functions for the balance of Fiscal Year 2022. The Bureau is continuing its ongoing antitrust investigation with respect to a proposed transaction involving large healthcare systems. This transaction is complex and the Bureau's investigation involves gathering, reviewing and evaluating large volumes of evidence. We have retained outside counsel, experts and economists to assist with this effort. This investigation, originally anticipated to be completed by end of calendar year 2021, will likely need to be extended through March 31, 2022. As such, an additional \$400,000 in estimated funds will be needed to complete this investigation.

The remaining funding requests are for Administration, to maintain the case management system, and the Environmental Protection Bureau, the Transportation and Construction Bureau and the Charitable Trust Unit for costs associated with depositions, experts and document storage. The anticipated expenses for these three functions is \$213,000.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. M. Formella". The signature is fluid and cursive, with a large initial "J" and "M".

John M. Formella  
Attorney General

#3411844