

New Hampshire Judicial Council Responsibilities and Budget

Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown. New Hampshire Constitution, Article 15.

Judicial Council as an advisory body: The Judicial Council was created by statute in 1946 to serve as a disinterested forum for the discussion and presentation of ideas about how to improve the delivery of justice in New Hampshire. The Council itself meets at least four times per year; the Council is made up of ex officio members and appointees of the Supreme Court and Governor and Council.

Judicial Council as an agency: Over time, the Council has become tasked with payment and oversight responsibilities. The agency is staffed by three full time employees: the executive director, an administrative assistant and an accounting technician, and one part-time accounting technician. The Judicial Council oversees the indigent-defense system for both criminal and civil matters.

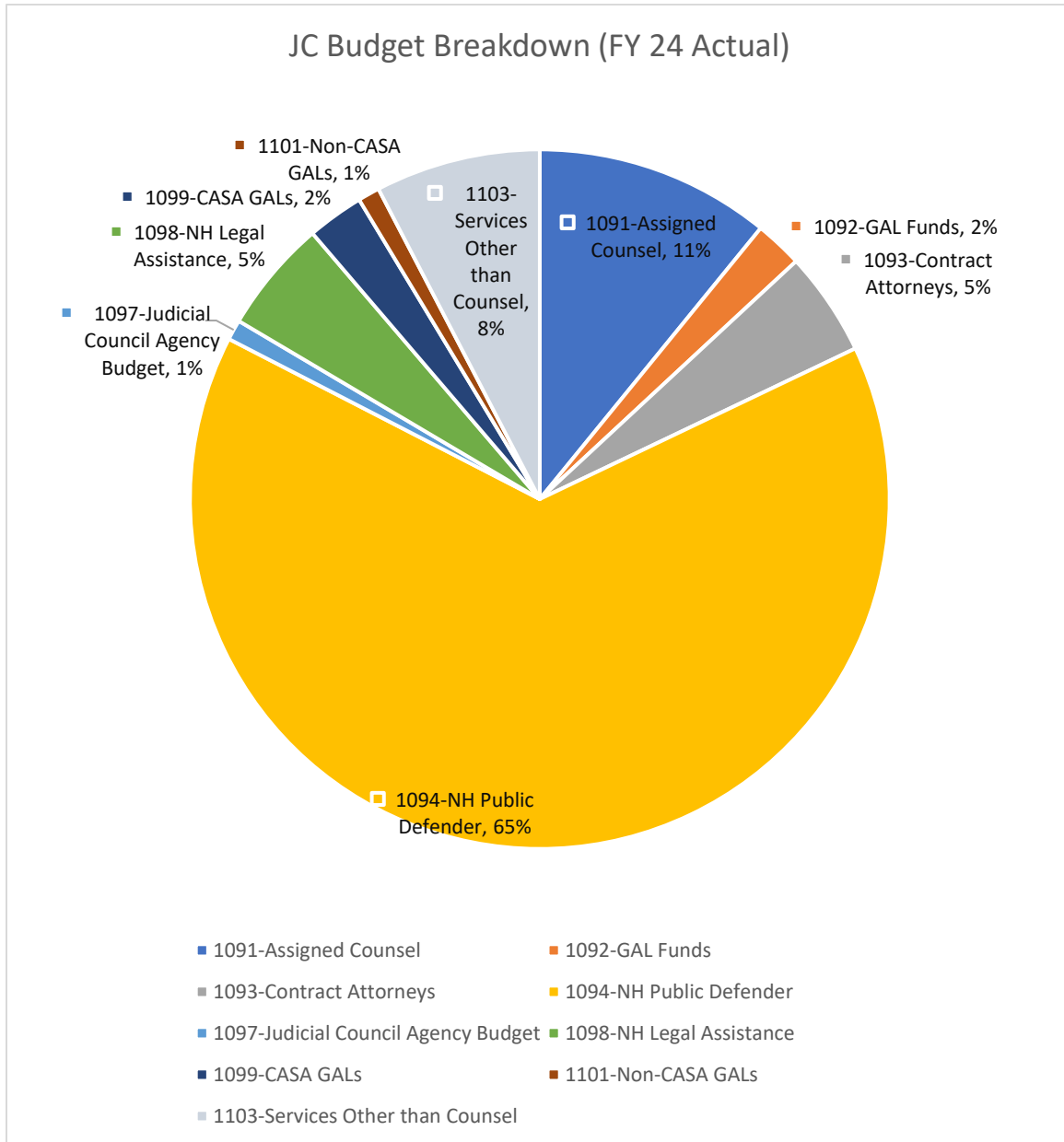
Criminal Indigent Defense Responsibilities

1. **The New Hampshire Public Defender** serves as the State's primary means of providing representation to indigent criminal defendants, (RSA 604-B), handling approximately 85% of all indigent criminal representation in the State through its ten offices and 130 attorneys.
2. The **Contract Attorney Program**, (RSA 604-A:2-b), used when NHPD has a conflict or is unavailable, provides indigent defense services to indigent defendants on a contract basis.
3. **Assigned Counsel**, (RSA 604-A:2), used when NHPD has a conflict or is unavailable, are attorneys in private practice who are appointed to represent the accused on an hourly basis. Any juvenile case that cannot be handled by NHPD must be handled by assigned counsel (604-A:2-b).
4. **Services other than Counsel** (RSA 604-A:6) funds the court-approved requests made by criminal defendants for forensic, psychiatric, interpretive, and other expert services required to ensure an adequate defense for the indigent accused.

Civil Indigent Defense Responsibilities

1. **Attorneys for parents** (RSA 169-C:10, 170-C:13) in abuse and neglect cases and termination of parental rights cases who are at risk of losing legal rights to their children.
2. **Attorneys for children** (RSA 169-C:10) who are in placement or at risk of placement, or otherwise appointed by a judge in an abuse and neglect or termination of parental rights proceeding.
3. **Guardians ad Litem (GALs) for children** (RSA 169-C:15:III(a)) The Judicial Council pays for the services for guardians ad litem appointed by the courts to represent the best interests of neglected or abused children. The Council does this through a partnership with CASA of NH, which accepts appointment as guardians ad litem (GALs) in abuse and neglect cases statewide. The Council pays private GALs when CASA is unavailable.

4. **Services in Probate Court** (RSA 463, RSA 464 A:6); The Judicial Council pays for guardianships of incapacitated adults and minors; and representation in Supreme Court appeals from any of these case types.
5. **Funding for Civil Legal Services** (RSA 525-A:1) Since 1997, the Legislature has provided vital funding for NH Legal Services in support of its efforts to provide legal aid to low-income and working-class residents of NH. The State funding for NHLA has been a cornerstone of civil justice for vulnerable elders, veterans, unemployed workers, the disabled, and families with children.



Judicial Council Budget Priority #1: New Hampshire Public Defender (NHPD) (1094)¹

FY 26/27 Governor's recommended budget: \$27,030,362 (FY26)/ \$27,014,609 (FY27)
FY 26/27 *Adjusted* Governor's recommended budget: \$28,807,405 (FY26)/ \$28,807,405 (FY27)
FY 26/27 Judicial Council Recommendation: \$37,063,498 (FY26)/ \$37,063,498 (FY27)

The recommended budget is a cut to the NHPD budget that the program cannot afford.

Indigent Defense is in Crisis in New Hampshire

“[I]ndigent defendants' rights for a speedy trial and assistance of counsel are not being met. The number of attorneys willing to provide adequate defense representation to indigents does not meet the demand, causing some indigent criminal defendants to be incarcerated while they wait for counsel.” Legislative Budget Assistant Internal Control Review Revenue and Expenditures (hereinafter “Audit”), October 2024, pg. 11.

“[D]uring the month of March 2024, the number of incarcerated defendants awaiting counsel services ranged from 20 to 40, non-incarcerated defendants awaiting counsel services ranged from 100 to 125, and there were approximately ten juveniles awaiting counsel services. The lack of timely assignment of counsel to indigent defendants violates the Sixth Amendment of the U.S. Constitution, and the rights of the defendants” Audit, pg. 12.

New Hampshire struggles to retain public defenders amid high caseloads, low pay

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Updated: 6:20 PM EDT Oct 4, 2024

NHBA Indigent Defense Crisis Series: Understanding the Public Defender Shortage, Part One

This article is the first in a series examining the indigent defense crisis in the Granite State.

By Tom Jarvis

¹ Governor's Operating Budget, pg. 513.

Additional Funding is Necessary for the New Hampshire Public Defender to Continue Current Statewide Services

The Judicial Council contracts with the New Hampshire Public Defender (“NHPD”) to provide most indigent defense services in the state. By statute, every court appointed criminal defense case goes to NHPD in the first instance.

NHPD provides indigent defense services statewide, including:

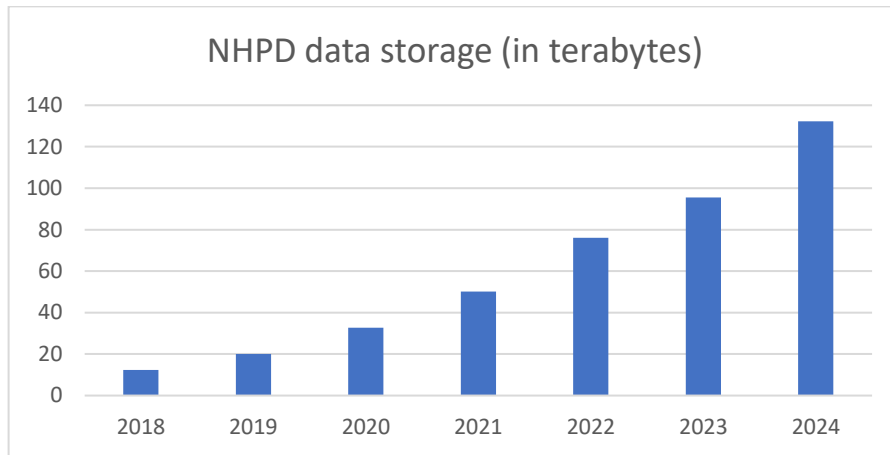
1. 10 offices statewide that provide representation in felony, misdemeanor, and juvenile delinquency cases.
2. Coverage of drug courts, veteran courts, mental health courts and treatment courts statewide.
3. Appellate representation of indigent defendants before the Supreme Court.
4. Investigation, administrative, and training services.

In 2024, NHPD opened 14 homicide cases, 6,352 felonies, 71 Supreme Court appeals, 9,086 misdemeanors, 1,497 delinquencies, 218 parole violations, 875 violations of probation, 1,934 sentence related cases, and 2,212 miscellaneous cases (citizen advice etc...). In 2024, the public defender opened 72% of all felonies filed in the state. **Providing indigent defense services through the public defender system saves millions of dollars when compared to providing these services through other means.**

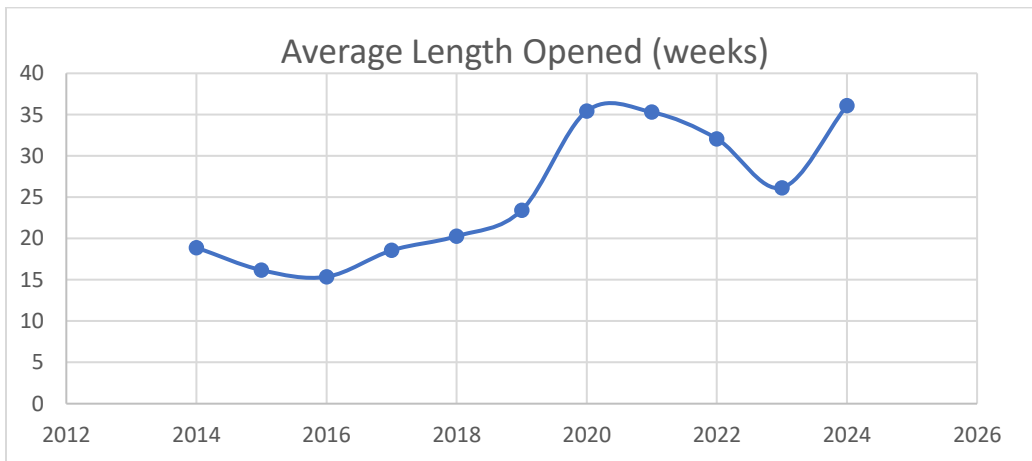
The indigent defense contract with the state sets caseloads at 70 at a time per attorney. Currently, several offices have caseloads more than 100. This has led some offices to cease accepting new cases from certain courts.

NHPD requires additional funding to continue its current level of services statewide. Criminal cases have become more complex and lengthier. The end of “felonies first” has led to more hearings and increased the logistical burden of arraignments. The creation of specialty courts has led to increased time commitments for attorneys outside of their regular caseloads. This has led to unsustainable caseloads that are over what the current contract specifies.

Data related to cases has partially driven complexity. Data storage related to cases has increased exponentially due to body camera footage and other digital media.



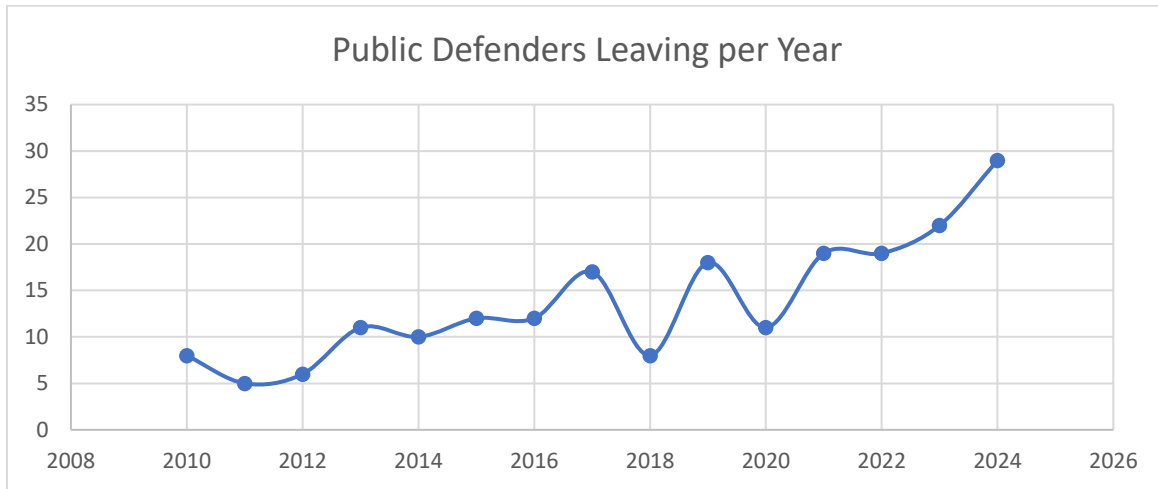
The end of “felonies first” has also contributed to cases lasting longer (similar to during the Covid-19 pandemic):



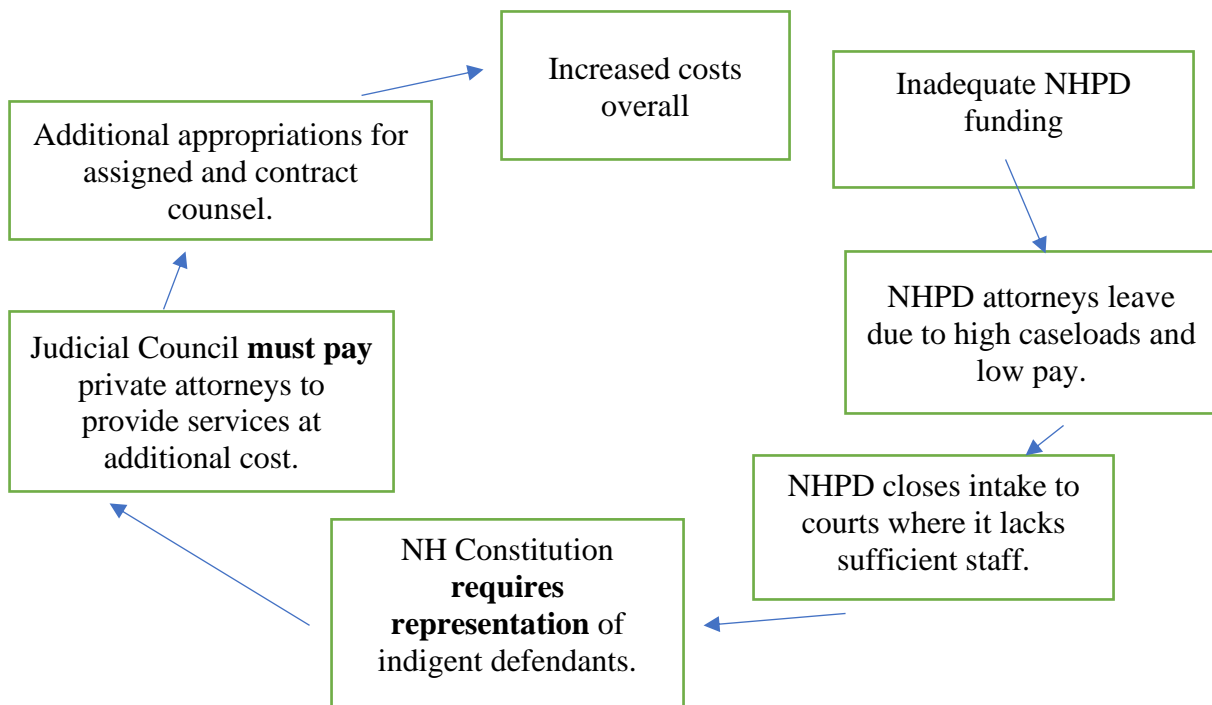
More complex, longer lasting cases increase caseloads for attorneys.

NHPD attorney starting salary for attorneys (\$65,000) is lower than every County Attorney (prosecutor) office in the state. NHPD is also the lowest paying public defender in New England.

Low pay and high caseloads have led to skyrocketing attrition rates (262.5% increase), the overall number of attorneys essentially stayed flat (118 in 2010 and 116 in 2024):



Inadequate Funding of NHPD costs the State More in the Long Term:



The Judicial Council prioritized needs budget is designed to:

1. Add attorneys to reach sustainable caseloads.
2. Bring NHPD salaries in line with comparable county attorney salaries.
3. Stop the ongoing attrition at NHPD.

Aside from the increased costs, when NHPD is unavailable, there are often not enough lawyers willing to accept cases in their place. Especially in rural areas, it is difficult to locate adequate numbers of attorneys to accept indigent defense cases. The inability to assign counsel in a timely manner causes delays in the legal process, threatens public safety, and creates the potential for unlawful or unnecessary detention of those presumed to be innocent under the law. Other states have recently faced serious consequences for not adequately funding indigent defense:

GOVERNMENT + POLITICS JUSTICE UNCATEGORIZED

ACLU given green light to sue State of Maine for failing to provide legal counsel

See the timeline of the rights group's ongoing legal battle over Maine's indigent defense system

BY: EESHA PENDHARKAR - AUGUST 15, 2024 4:47 PM



U.S. NEWS

Oregon defendants without a lawyer must be released from jail, US appeals court says

MAINE

Shortage of public defenders in Maine allowed release of man who caused fiery standoff

A Maine State Police tactical team fatally shot Leein Hinkley, who was on a rooftop, early Saturday after the standoff, which began after a person who fought with him apparently died

By David Sharp • Published June 18, 2024 • Updated on June 18, 2024 at 9:17 am



The Council Also Requests Additional Staff Recommended by Legislative Budget Assistant (1097-Agency Budget)²

Governor's Recommended Budget: \$494,737 (FY26)/ \$511,263 (FY27)
Judicial Council Request (adjusted): \$629,491 (FY26)/ \$654,907 (FY 27)

"We recommend the Judicial Council strengthen its core financial accounting resources by establishing a financial manager position to oversee the daily financial operations of the Judicial Council..." Audit, pg. 20.

The Judicial Council has a mandate to oversee indigent defense in New Hampshire. The size of this responsibility has grown substantially over the last ten years. For example, the transactions related to assigned counsel that the agency processes have more than tripled since 2013. The agency is also responsible for managing funding to NH Public Defender, CASA, and New Hampshire Legal Assistance.

The prioritized needs budget request is dedicated to funding a finance director. This position would improve financial oversight and processes. The addition of this position, if combined with proposed statutory changes, would also assist the Judicial Council with controlling the increasing costs for services other than counsel.

² Governor's recommended budget 511.

Additional Resources Will be Needed for Assigned and Contract Counsel, GALs, and Services other than Counsel

FY 26 Governor's Recommendation (1091, 1092, 1093, 1101, 1103): \$6,788,050

FY 24 Actual Assigned Counsel & GALs (1091, 1092, 1093, 1101, 1103): \$11,409,446

The Judicial Council pays the court approved expenses for assigned counsel in criminal and civil cases, for Guardian's ad Litem for adults and children, and for approved services other than counsel. The Judicial Council also contracts with attorneys to provide fixed cost legal representation for adults. The expenditures on these lines are expected to grow due to:

1. Increasing costs and complexity across case types (especially related to large cases such as YDC litigation).
2. Recent legislation expanding counsel for children.
3. Recent rate increases to ensure adequate staffing across case types.

Maintaining Funding to Court Appointed Special Advocates (CASA) (1099) and New Hampshire Legal Assistance (NHLA) (1098) is Crucial to Protect Children and Access to Justice.

CASA (1099) Governor’s Recommended Budget: \$1,126,550.00 (both FY26 and FY27)

Court Appointed Special Advocates (“CASA”) provides services statewide on a volunteer basis to represent the best interests of children in abuse and neglect and parental termination cases. When there is no CASA available, the state must pay a private GAL to provide these services.

There was a 17% increase in cases CASA was asked to take in FY 22/23 over FY 20/21. This trend is expected to continue. CASA has needed to make salary adjustments for new staff and current staff, and the cost of employee health benefits has increased by 35%. Continuing funding to CASA is necessary to ensure that that CASA can continue to accomplish its mission of providing GAL services to children.

NHLA (1098) Governor’s Recommended Budget: \$2,250,000 (both FY26 and FY27)

The Judicial Council’s investment in NHLA provides a wide array of services to NH citizens in civil litigation. This assistance ranges from aid to domestic abuse survivors to assistance with housing and accessing federal benefits. NHLA serves thousands of New Hampshire citizens on a modest budget. The Judicial Council strongly supports NHLA’s continued funding so that it can continue to provide services in an efficient and innovative matter.