

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 8, 2021

The Honorable Lynne Ober, Chair
and Committee Members of House Finance Division I
State House
Concord, New Hampshire 03301

REQUESTED ACTION

The Department of Justice proposes a technical correction to the submitted Fiscal Year 2022 to 2023 Biennium Budget as follows:

**02-20-20-202010 Medical Examiner Operations
1037 Medico-Legal Investigative Fund**

Class & Object	Class Title	FY 2022 Submitted	Requested Action	FY 2022 Revised	FY 2023 Submitted	Requested Action	FY 2023 Revised
Expenditures							
010-500100	Personal Services Perm Class.	\$48,598	\$0	\$48,598	\$52,572	\$0	\$52,572
014-500134	Personal Services Unclassified	\$260,600	(\$260,600)	\$0	\$275,640	(\$275,640)	\$0
018-500106	Overtime	\$500	\$0	\$500	\$500	\$0	\$500
020-500200	Current Expense	\$2,575	\$0	\$2,575	\$2,575	\$0	\$2,575
022-500255	Rents-Leases Other Than State	\$125	\$0	\$125	\$125	\$0	\$125
027-582703	Transfers To DoIT	\$4,500	\$0	\$4,500	\$4,256	\$0	\$4,256
030-500301	Equipment New/Replace	\$8,250	(\$8,000)	\$250	\$250	\$0	\$250
037-500174	Technology Hardware	\$6,000	(\$4,800)	\$1,200	\$0	\$0	\$0
038-500175	Technology Software	\$4,800	(\$3,800)	\$1,000	\$0	\$0	\$0
039-500188	Telecommunications	\$5,250	(\$4,700)	\$550	\$5,250	(\$4,700)	\$550
040-501587	Indirect Costs	\$1,164	\$0	\$1,164	\$1,164	\$0	\$1,164
042-500620	Additional Fringe Benefits	\$4,296	\$0	\$4,296	\$4,647	\$0	\$4,647
050-500109	Personal Services-Temp/Appointee	\$725,000	(\$725,000)	\$0	\$725,000	(\$725,000)	\$0
060-500601	Benefits	\$327,104	(\$294,664)	\$32,440	\$336,512	(\$301,927)	\$34,585
070-500704	In State Travel Reimbursement	\$4,500	(\$4,000)	\$500	\$4,500	(\$4,000)	\$500
102-500731	Contracts For Program Services	\$1	\$1,299,999	\$1,300,000	\$1	\$1,299,999	\$1,300,000
	Total:	\$1,403,263	(\$5,565)	\$1,397,698	\$1,412,992	(\$11,268)	\$1,401,724
Revenue							
005-407319	Private Local Funds	\$631,466	(\$2,504)	\$628,962	\$635,838	(\$5,070)	\$630,768
009-405296	Agency Income	\$771,797	(\$3,061)	\$768,736	\$777,154	(\$6,198)	\$770,956
	Total:	\$1,403,263	(\$5,565)	\$1,397,698	\$1,412,992	(\$11,268)	\$1,401,724

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The Department of Justice further proposes a technical correction to House Bill 2-As Introduced:

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150 New Paragraph; Office of the Chief Medical Examiner; Definitions. Amend RSA 611-B:1 by inserting after paragraph II the following new paragraph:

II-a. "Associate medical examiner" means the licensed physician certified by the American Board of Pathology as a qualified pathologist and appointed pursuant to RSA 611-B:3-a.

151 New Paragraph; Office of the Chief Medical Examiner; Authority. Amend RSA 611-B:2 by inserting after paragraph II the following new paragraph:

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III. The chief medical examiner may appoint a chief forensic investigator ~~and deputy chief forensic investigators~~ who shall be *an* unclassified employees. The chief forensic investigator ~~and deputy chief forensic investigators~~ shall possess all the powers granted to medical examiners under this chapter and be sworn in the same manner.

152 New Section; Office of the Chief Medical Examiner; Associate Medical Examiner. Amend RSA 611-B by inserting after section 3 the following new section:

611-B:3-a Associate Medical Examiner. There is hereby established within the office of the chief medical examiner the position of associate medical examiner. The associate medical examiner shall be appointed in the same manner as the chief medical examiner as provided in RSA 611-B:2, and shall be a licensed physician, certified by the American Board of Pathology as a qualified pathologist, with training and experience in forensic medicine. The associate medical examiner shall serve under the professional direction and supervision of the chief medical examiner and deputy chief medical examiner and shall act as the chief medical examiner whenever the chief medical examiner and deputy chief medical examiner are absent, or unable to act for any cause.

153 Office of the Chief Medical Examiner; Acting Chief Medical Examiner. Amend RSA 611-B:4 to read as follows:

611-B:4 Acting Chief Medical Examiner. The chief medical examiner may designate in writing an acting chief medical examiner who shall be a licensed physician, certified by the American Board of Pathology as a qualified pathologist with training and experience in forensic medicine. The acting chief medical examiner shall act as the chief medical examiner whenever the chief medical examiner, ~~and the~~ deputy chief medical examiner, and the associate medical examiner are absent, or unable to act ~~from~~ *for* any cause.

154 Office of the Chief Medical Examiner; County Reimbursement of Investigation Costs. Amend RSA 611-B:27 to read as follows:

611-B:27 [Assistant Deputy Medical Examiner Accounts.] County Reimbursement of Investigation Costs.

~~[-]~~ Assistant deputy medical examiners shall be paid at the following rates: telephone consultations-\$25; death investigations involving an external examination of the body-\$140, plus mileage at the state rate; pre-cremation examinations conducted pursuant to RSA 325-A:18-\$50.

~~[-]~~ Assistant deputy medical examiners shall submit all claims for telephone consultation

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~~fees, death investigation fees and expenses, and pre-cremation examination fees to the office of the chief medical examiner, which shall authorize such claims and submit them for payment to the state treasurer, chargeable to the medico-legal investigation fund established pursuant to RSA 611-B:28.]~~
On a monthly basis, the office of the chief medical examiner shall bill each of the counties for the services provided to that county by the chief forensic investigator, deputy chief investigators and assistant deputy medical examiners during the previous month, and any body transportation costs associated with the billed services, as provided under RSA 611-B:15, I. Services shall be billed at the

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following rates: telephone consultation-\$25; death investigation-\$140; travel expenses-the state mileage rate. The county treasurer shall submit payment to the state treasurer, for deposit in the medico-legal investigation fund.

~~155 Positions Established; Deputy Chief Forensic Investigators. There is established within the department of justice unclassified positions of deputy chief forensic investigators. The deputy chief forensic investigators shall be qualified to hold the positions by reason of education and experience, and shall be appointed to serve at the pleasure of the chief medical examiner. The deputy chief forensic investigators shall perform the duties of medical examiner pursuant to RSA 611-B. The salary of the deputy chief forensic investigators shall be determined after assessment and review of the appropriate letter grade allocation in RSA 94:1-a, I for positions which shall be conducted pursuant to RSA 94:1-d and RSA 14:14-c. Funding shall be appropriated from expenditure class 014 within accounting unit 02-20-20-202010-1037.~~

All other language, starting at line 15, should remain the same.

EXPLANATION

On January 5, 2018, the Department of Justice was notified, by the United States Internal Revenue Service (IRS), of an audit to its 2015 activities related to contracted Assistant Deputy Medical Examiners (ADMEs). The IRS determined that the ADMEs were not properly deemed independent contractors, and, instead, were employees for whom the State owed unemployment taxes. The IRS levied a fine of up to \$44,124, as well as penalties and interest, with the same potential exposure for subsequent years. The Department filed an administrative appeal, which the IRS denied, and then filed suit in the United States Tax Court to challenge the IRS' determination.

In response to the IRS audit, and findings in both the 2005 and 2014 Legislative Budget Assistant audit regarding ADME's employment status, the Department requested four full-time Deputy Forensic Investigators and approximately 20 part-time Assistant Deputy Medical Examiners for the Fiscal Year 2022-2023 Biennium. These would be self-funded employee positions and cost neutral to the Medico Legal Fund.

In response to the Department's summary judgment motion in the U.S. Tax Court case earlier this year, the IRS reversed its position and conceded the Department's position. The parties memorialized the disposition of the appeal in the Department's favor by stipulation dated February 17, 2021. Although the IRS could commence additional audits for the years following

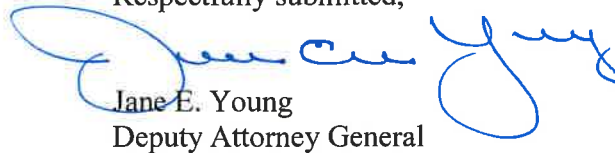
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2015, the Department requests to propose technical corrections, to the submitted Fiscal Year 2022-2023 Biennium Budget and House Bill 2-As Introduced, to return the ADMs to contractor status.

Please let me know if you have any questions concerning this request. Thank you for your consideration of this request.

Respectfully submitted,



Jane E. Young
Deputy Attorney General

Cc: Matthew Mailloux, Governor's Office