

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2022-\_\_\_\_\_

IN RE: THE MATTER OF PAMELA SMART

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PETITION FOR WRIT OF MANDAMUS

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APPENDIX – PART III TO  
PETITION FOR WRIT OF MANDAMUS

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**Memorandum in Further Support  
of Pamela Smart's Petition for Commutation**

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## **I. Introduction**

Pamela Smart's Petition for Commutation and her letter to the Governor reflect her deep remorse for the pain and suffering her actions 31-years-ago caused the Smart family, her own family, and so many others. She accepts responsibility in this case and understands the gravity of her actions. She recognized long ago that she could not change the past, but that she could work hard to improve herself and enhance the lives of those she encounters. To that end, she has committed herself tirelessly to positive endeavors, which she hopes (and the letters in support of Pamela Smart's Petition for Commutation show) will leave lasting impacts in their wake. Despite the circumstances of her life without the possibility of parole sentence, when most of us would have likely given up, she continues to give.

Ms. Smart has remained incarcerated for more than thirty years and is now the longest serving inmate in Bedford Hills Correctional Facility. Under prevailing (and shifting) sentencing theories, Ms. Smart's sentence is meaningful retribution for her role in the murder of her husband, Gregg Smart. The underlying facts are simple.

In 1989, Pamela Smart was a 21-year-old Director of Media Services for New Hampshire School District Unit 21, which oversaw media services for eleven schools. She also volunteered as a facilitator for a school-associated project promoting self-esteem. During her work on this project, Ms. Smart met William Flynn, another project facilitator. In early 1990, their relationship evolved into a brief romantic affair.

On May 1, 1990, Flynn and his friends Vance Lattime, Jr., Raymond Fowler, and Patrick Randall staged a murder disguised as a burglary at the home of Ms. Smart and her husband, Gregg. Flynn and Randall entered into and ransacked the empty apartment while waiting for Gregg to come home. The two men then forced Gregg to his knees and, while Randall held him down with a knife, Flynn shot Gregg once in the head.

On June 11, 1990, Lattime, Randall, and Flynn were arrested after Randall and Lattime admitted to their families their participation in the murder. Only after the prosecution threatened to try Lattime, Randall, Fowler, and Flynn as adults, where they would have faced a possible death sentence, did they claim that Ms. Smart orchestrated the murder and assisted in its planning. They were offered reduced pleas in exchange for their cooperation and testimony against Ms. Smart. All four men accepted and entered guilty pleas. All of them were given determinate sentences, portions of which were served at minimum-security facilities, and all the men were released long before the 30-year mark. Notably, each man was paroled to freedom and given a restart at life before serving their full sentences.

Ms. Smart was arrested in August 1990 and stood trial in March 1991. Trial evidence against her included testimony from Lattime, Randall, and Flynn. Notably, Fowler was not called to testify. His pretrial statements conflicted with those of the other men. Flynn testified that he needed to kill Gregg if he wanted his relationship with Ms. Smart to continue and that she assisted in planning the murder.

Between Ms. Smart's arrest in August 1990 and throughout the trial in 1991, there was unprecedented-as-of-then media coverage of the murder and lurid details of the personal relationship between Flynn and Ms. Smart. The trial itself was the first trial covered gavel-to-gavel in the United States on television. Over 1,400 print news stories were published pretrial. The articles were salacious. Many asserted false claims, especially the claim that Ms. Smart was Flynn's teacher, presumptively prejudicing the public against her. Excerpts of witness testimony were played daily during trial on New Hampshire and Boston television. Reporters appeared on talk shows expressing their personal views on guilt, long before there was a jury pool. The media published opinion polls pretrial on Ms. Smart's guilt to excite interest. For many watching, Ms.

Smart's story was captivating "reality TV." Perhaps unsurprisingly, it resulted in four books, one made-for-TV-movie, and one major motion picture.

On March 22, 1991, after a 23-day trial, Ms. Smart was found guilty of being an accomplice to murder in the first degree, conspiring to murder, and tampering with a witness. Her maximum sentences on witness tampering (3-year sentence) and conspiracy (15-year sentence) have been served. She remains imprisoned on her legislatively-mandated life-without-parole sentence as an accomplice to murder. No judicial officer ever evaluated if her sentence was appropriate in the circumstances of the case.

Ms. Smart's past two applications for commutation were denied without even a hearing before the Executive Council. The passage of a significant milestone of 30 years of imprisonment (as Ms. Smart has now served 31 years), and Ms. Smart's continued personal transformation, in addition to the fact that Ms. Smart is the only remaining actor in this case serving prison time, make executive action even more appropriate now. Commutation is Ms. Smart's only opportunity for relief from her sentence.

## **II. Judicial, Social, and Political Sentiments Emphasize a Criminal Justice System with Greater Opportunity for Redemption and Rehabilitation.**

Pardons and commutations have traditionally been used as expressions of mercy—mechanisms for justice independent of legislative constraints and judicial limitations on preserved legal points. These mechanisms are not restricted by the formal procedures and rigid requirements that can force a court's hand even when confronted with an injustice. They permit a humane and holistic examination of the individual, as well as retrospective examination of the fairness of the original proceedings.

Commutation allows the Governor and Executive Council to consider post-trial information (often not considered by any court), changes in circumstances and in the petitioner's

life, as well as contemporary socio-political views toward appropriate punishment. It places power in the Governor to reform a sentence that is no longer appropriate, or that is disproportionate to the sentences of similarly-situated defendants. Ms. Smart's circumstances fall into these categories: (1) the years after the 1960s "get tough on crime" period have seen the arc of sound sentencing move away from overly harsh and mandatory minimum sentences and toward reestablishing the rehabilitative goal of just, individualized judicial sentencing; and (2) Ms. Smart's sentence is patently disproportionate. Equally or more culpable defendants, like the actual murderers, were released after serving just 25 years (Bill Flynn and Pete Randall), and other accomplices were released after serving just 15 years (Vance "JR" Lattime Jr.) and 12 years (Raymond Fowler).<sup>1</sup>

A. The Harsh, Retributive Model of Sentencing Dominant When Pamela Smart Was Convicted Is No Longer the Leading Model.

Ms. Smart's case occurred just after the arc of sentencing moved from rehabilitation to restitution and retribution. Following the civil rights riots in the 1960s, a perceived spike in the crime rate prompted passage of politically popular draconian and aggressive sentences during the 1970s and 1980s, which resulted in mandatory minimum sentencing which trumped rehabilitative goals.<sup>2</sup> Life-without-parole sentences became increasingly enacted in many states, including New Hampshire.<sup>3</sup> Further, many states established legislatively mandatory sentences to end judicial

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<sup>1</sup> Patrick Cronin, *Pamela Smart's 1991 Trial: Where Are They Now?*, SEACOAST ONLINE (Mar. 4, 2021), available at <https://www.seacoastonline.com/story/news/crime/2021/03/04/pamela-smart-case-update-william-billy-flynn-pete-randall-jr-lattime-greeg-smart-family-now/6874378002>.

<sup>2</sup> As evidence of this change, the population of prisoners serving life-without-parole sentences rose from 12,453 in 1992 to 49,081 in 2012, a 394% increase over two decades. What's more, since 1984, the pool of people serving a life sentence has more than quadrupled. Jing Cao, *Commuting Life Without Parole Sentences: The Need for Reason and Justice over Politics*, at 14-15 (March 2015), available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1000&context=sjd>.

<sup>3</sup> Indeed, New Hampshire created the category of first degree murder in 1974, which carried a mandatory life-without-parole sentence. N.H. Rev. Code § 630:1-a(III). In 1971, New Hampshire enacted its criminal code in its current form, including its accomplice statute, which makes accomplices culpable for the same sentences as the principal. N.H. Rev. Code § 626:8(I), (II)(c), (III).

discretion in sentencing.<sup>4</sup> In the almost forty years since, public sentiment, penologists, and academic studies have urged a shift to refocus on individualized sentencing and fairness.

In August of 2017, the 400,000 plus member American Bar Association called for the end of mandatory minimum sentences in *any* criminal case and for *all* offenses. The resolution was unopposed by any ABA delegate, including the delegates from the State of New Hampshire. Alongside the resolution, the ABA published a report identifying the inequities resulting from mandatory minimum sentences—including that mandatory minimum sentences are “excessively severe,” “arbitrary,” result in “sentencing disparities,” and “blind[] the court to the defendant’s role in the offense.”<sup>5</sup>

In further opposition to mandatory minimum policies, the ABA report pointed to bipartisan and widespread support. For example, mandatory minimum reforms have been supported by conservative Republicans and liberal Democrats alike, including Senator Mike Lee (R-UT), Senator Rand Paul (R-KY), Senator Cory Booker (D-NJ), and Senator Dick Durbin (D-IL), as well as former Attorney General Eric Holder.<sup>6</sup> The Federal Judicial Center, Families Against Mandatory Minimums, the Constitution Project’s Sentencing Initiative, and a wide array of academics and judges have also voiced support for reform, including former U.S. Supreme Court

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<sup>4</sup> Ashley Nellis, *Still Life: America’s Increasing Use of Life and Long-Term Sentences*, The Sentencing Project (May 3, 2017), available at <http://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences>.

<sup>5</sup> AMERICAN BAR ASSOCIATION, Resolution 10B (Aug. 2017), available at [https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/opposing\\_minimum\\_sentencing\\_10b.uthcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/opposing_minimum_sentencing_10b.authcheckdam.pdf).

<sup>6</sup> *Durbin, Lee Introduce Smarter Sentencing Act*, SENATE COMMITTEE ON THE JUDICIARY (Mar. 26, 2021), *press release* available at <https://www.judiciary.senate.gov/press/dem/releases/durbin-lee-introduce-smarter-sentencing-act>; Ryland Barton, *Rand Paul Re-Introduces Bill to Ease Mandatory Minimum Sentences*, WFPL (May 17, 2017), available at <https://wfpl.org/rand-paul-re-introduces-bill-to-ease-mandatory-minimums>; Jason M. Breslow, *Eric Holder: If Sentencing Reform Dies, I’d Be Ashamed*, FRONTLINE (Feb. 23, 2016), available at <https://www.pbs.org/wgbh/frontline/article/eric-holder-if-sentencing-reform-dies-id-be-ashamed>; *Federal Sentencing Reform*, AMERICAN BAR ASSOCIATION (2021), available at [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/criminal\\_justice\\_system\\_improvements/federalsentencingreform](https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/criminal_justice_system_improvements/federalsentencingreform).

Justice Anthony Kennedy and current Justice Stephen Breyer.<sup>7</sup> Former Justice Kennedy stated that “[t]his idea of total incarceration just isn’t working,” and that the U.S. Penal System, “[i]n many respects ... [is] broken.”<sup>8</sup> He further noted that “[w]hen the guilt determination phase and the sentencing is over ... the legal system loses all interest in the prisoner. And this must change.”<sup>9</sup> Kennedy emphasized that the issue is “not so much the sentencing guidelines, it’s the mandatory minimums.”<sup>10</sup> Justice Breyer has further relayed that the move toward mandatory minimum sentences in recent years for certain offenders has been a “terrible idea.”<sup>11</sup>

Consistent with the ABA’s resolution, the U.S. Senate Judiciary Committee, in February 2018, passed The Sentencing Reform and Corrections Act of 2017 to reduce several federal mandatory minimum sentences and make those reductions retroactive.<sup>12</sup> Soon after, in December 2018, Congress enacted the First Step Act of 2018, which reduced a number of mandatory minimum sentences and enhanced penalties.<sup>13</sup> The House Committee on Criminal Justice and Public Safety of the House of the New Hampshire legislature recently explored a similar reform, anticipated to be introduced next year.<sup>14</sup>

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<sup>7</sup> *Sentencing*, FEDERAL JUDICIAL CENTER (2021), available at <https://www.fjc.gov/subject/sentencing?page=1>; *Our Mission and Vision*, FAMILIES AGAINST MANDATORY MINIMUMS (2021), available at [FAMM.org](https://famm.org); The Constitution Project’s Sentencing Initiative, *Panel Discussion* (Mar. 9, 2005), available at <https://archive.constitutionproject.org/wp-content/uploads/2012/10/125.pdf>; Lawrence Hurley, *U.S. Justices Voice Support for Criminal Justice Reform*, REUTERS (Mar. 23, 2015), available at <https://www.reuters.com/article/us-usa-court-crime/u-s-justices-voice-support-for-criminal-justice-reform-idUSKBN0MJ2CJ20150323>; Jess Bravin, *Two Supreme Court Justices Say Criminal-Justice System Isn’t Working*, WALL ST. J. (Mar. 24, 2015), available at <https://www.wsj.com/articles/two-supreme-court-justices-say-criminal-justice-system-isnt-working-1427197613>.

<sup>8</sup> Hurley, *supra* note 7; Bravin, *supra* note 7.

<sup>9</sup> Brad Wright, *Justice Kennedy Criticizes Mandatory Minimum Sentences*, CNN (Apr. 9, 2003), available at <https://www.cnn.com/2003/LAW/04/09/kennedy.congress>.

<sup>10</sup> *Id.*

<sup>11</sup> Hurley, *supra* note 7; Bravin, *supra* note 7.

<sup>12</sup> See <https://www.congress.gov/bill/115th-congress/senate-bill/1917/text/toc-idc66ef2f3-411e-4fca-9f6b-11589219c9df>; <https://famm.org/s-1917-sentencing-reform-and-corrections-act-of-2017-115th-congress>.

<sup>13</sup> Pub. L. No. 115-391, 132 Stat. 5194 (2018); UNITED STATES SENTENCING COMMISSION, *First Step Act*, ESP Insider Express (Feb. 2019), available at [https://www.ussc.gov/sites/default/files/pdf/training/newsletters/2019-special\\_FIRST-STEP-Act.pdf](https://www.ussc.gov/sites/default/files/pdf/training/newsletters/2019-special_FIRST-STEP-Act.pdf).

<sup>14</sup> Specifically, the bipartisan House Bill 138 would allow prisoners serving life sentences in New Hampshire to be eligible for parole after 25 years. H.B.138, H.R., Reg. Sess. (N.H. 2021).

Furthermore, several states have enacted legislation to align sentencing with scientific evidence showing that the prefrontal cortex of a young person is not fully developed just because a person has turned 18 years old. For example, in 2019, Illinois enacted a law that allowed parole boards to make release determinations for individuals who were under the age of 21 when they committed certain violent crimes, including certain types of first-degree murder, after the person served 20 years in prison.<sup>15</sup> With similar effect, California classifies inmates who commit their crimes when under the age of 26 as youth offenders.<sup>16</sup> Even more recently, in January of 2021, the District of Columbia passed, and the Mayor signed, a bill to give people who committed crimes when they were under the age of 25, and who have served at least 15 years in prison, a chance to receive reduced sentences.<sup>17</sup> It is likely additional states will enact legislation in the near future that will follow suit.

B. The U.S. Supreme Court's Limitations on the Imposition of Life-Without-Parole Sentences Reflect a Shift in Sentencing Regarding Young Offenders.

In recent years, the U.S. Supreme Court has rejected the use of mandated life-without-parole sentencing schemes as applied to juveniles, and confirmed that its ruling applies retroactively to existing sentences.<sup>18</sup> The principles underlying the Court's decisions can and should be applied to Ms. Smart, who was only 22 at the time of the murder.

In *Miller v. Alabama*, the Court held that life-without-parole sentences for juvenile homicide offenders are unconstitutional when imposed without proper consideration of the defendant's special circumstances and the court's juvenile-specific sentencing principles.<sup>19</sup>

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<sup>15</sup> Ill. Public Act 100-1182 (2019).

<sup>16</sup> *Youth Offender Parole Hearings*, CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION, available at <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview>.

<sup>17</sup> Hailey Fuchs, *D.C. Passes Bill to Give Young Offenders Chance at Reduced Sentences*, N.Y. TIMES (Dec. 15, 2020), available at <https://www.nytimes.com/2020/12/15/us/politics/dc-crime-youth.html>. The Projected Law Date is May 24, 2021. See B23-0127 - *Second Look Amendment Act of 2019* (now known as "*Omnibus Public Safety and Justice Amendment Act of 2020*"), Council of the District of Columbia, available at <https://lims.dccouncil.us/Legislation/B23-0127>.

<sup>18</sup> *Miller v. Alabama*, 567 U.S. 460, 469 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 731 (2016).

<sup>19</sup> *Miller*, 567 U.S. at 489.

Recognizing developments in scientific research establishing that critical parts of the brain associated with planning, decision-making, impulse control, and problem-solving are not fully developed in young persons, the Court concluded that a young mind's rashness, proclivity for risk, and inability to assess consequences reduce a young person's "moral culpability."<sup>20</sup> The Court further acknowledged that a life sentence without parole "forswears altogether the rehabilitative ideal" and imposes "an irrevocable judgment about that person's value and place in society," disregarding one's capacity for change.<sup>21</sup> Such sentencing schemes violate the Eighth Amendment's prohibition on cruel and unusual punishment and the "precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense."<sup>22</sup>

In *Montgomery v. Louisiana*, the Court reiterated these principles, clarifying that its *Miller* ruling applied retroactively and that life-without-parole sentences that had been improperly imposed on juveniles were void.<sup>23</sup> Notably, the Court provided that States may remedy such improper sentences by permitting juvenile homicide offenders to be considered for parole:

Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.<sup>24</sup>

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<sup>20</sup> *Id.* at 472 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)); see also, e.g., Lawrence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (Dec. 2003)); Mariam Arain *et al.*, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRY DISEASE & TREATMENT 449 (2013).

<sup>21</sup> *Miller*, 567 U.S. 473 (quoting *Graham*, 560 U.S. at 74)).

<sup>22</sup> *Id.* at 469 (citing *Roper*, 543 U.S. at 560).

<sup>23</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 731 (2016).

<sup>24</sup> *Id.* at 736.

Since *Miller*, scientific research has shown that critical parts of the brain are not fully developed until age 25, *not* the ages of 18 or 21 as previously thought.<sup>25</sup> By extension, the Court’s reasoning as to what makes a punishment proportional—and why a life-without-parole sentence is inappropriate for juveniles—should be extended to persons under age 25. The Court has recognized that what constitutes appropriate punishment ought to be viewed “according to the evolving standards of decency that mark the progress of a maturing society.”<sup>26</sup> Ms. Smart, who is 54 years old, was only 22 at the time of Gregg Smart’s murder. A decision to eliminate the life-without-parole modifier to Ms. Smart’s sentence is not an act “soft on crime,” but an act of fairness and justice consistent with developments in modern science and the sentencing principles underlying *Miller* and *Montgomery*.

New Hampshire has taken some steps in following the U.S. Supreme Court’s view on the need to reduce the impact of harsh sentences. In 2014, recognizing the vulnerability and immaturity of young persons, New Hampshire raised the age at which a juvenile can be sentenced and appear in court as an adult. New Hampshire also decided to apply *Miller* retroactively, eliminating existing mandatory life-without-parole sentences for juveniles, even before mandated by *Montgomery*.<sup>27</sup> In considering Ms. Smart’s commutation petition, we urge the Governor and Executive Council to consider Ms. Smart’s age at the time of the crime and afford her the benefits of this legal trend toward rehabilitation with leniency for young adult offenders and acceptance of scientific recognition of the continuing cognitive and emotional development of persons up to the age of 26.

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<sup>25</sup> Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRY DISEASE & TREATMENT 449 (2013); see also Andy Murdock, *The Evolutionary Advantage of the Teenage Brain*, UNIV. OF CAL. (Mar. 25, 2020) (“Current literature suggests that it’s around 25 or so when the brain finished the period of adolescence.”).

<sup>26</sup> *Miller*, 567 U.S. at 469 (internal quotation marks omitted).

<sup>27</sup> Nicole D. Porter, The Sentencing Project, *The State of Sentencing 2014: Developments in Policy and Practice* (Feb. 1, 2015), available at <https://www.sentencingproject.org/publications/the-state-of-sentencing-2014-developments-in-policy-and-practice>.

C. Commuting Pamela Smart's Sentence in Recognition of Her Remorse and Rehabilitation Would Be Consistent with Past Actions by New Hampshire Governors.

In at least three cases where petitioners had lesser records of rehabilitation than Ms. Smart, two of which involved women in their early 20s, past New Hampshire governors have granted pardons (not just commutations). In exercising this power, these New Hampshire Governors implicitly accepted the proposition that despite safeguards to prevent disproportionate sentences, “it might still happen occasionally that an individual defendant [does] not receive just results.”<sup>28</sup>

Specifically, in 1996, Governor Steve Merrill granted a pardon to June Briand, a battered woman who killed her husband.<sup>29</sup> Governor Merrill noted in granting the pardon that “[Ms. Briand’s] rehabilitation [was] impressive.”<sup>30</sup> Notably, Ms. Briand had attained an associate degree in prison.<sup>31</sup> She also had a proven record of helping others, and dedicated her post-prison life to rehabilitating other women in her position.<sup>32</sup> Ultimately, “the Governor and Executive Council found that [Ms. Briand] had been remarkably rehabilitated and there was no longer any need to waste the state’s resources to imprison her any longer.”<sup>33</sup>

A similar result would be appropriate here. Ms. Smart has worked hard to rehabilitate herself, educate herself, and become an asset to society, as described in detail in Pamela Smart’s Petition for Commutation. In Ms. Smart’s own words, since her imprisonment, “I have worked hard to redeem myself through good works and to positively affect the lives of those around me, striving to be more than my worst mistakes and behaviors.”<sup>34</sup> Ms. Smart has tutored hundreds of

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<sup>28</sup> Cao, *supra* note 2 at 48-49.

<sup>29</sup> Lois R. Shea, *N.H. Pardons Woman in Husband’s Slaying*, BOSTON GLOBE (Dec. 5, 1995).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See *id.*; Susannah Colt, *Briand, Addison, and the Paths of Pardons and Commutations*, CONCORD MONITOR (Sept. 18, 2020), available at <https://www.concordmonitor.com/New-Hampshire-pardons-36278904>.

<sup>33</sup> Colt, *supra* note 32.

<sup>34</sup> Appendix A at A-1, Letter from Pamela Smart.

inmates for their GEDs and associate's and bachelor's degrees over a 31-year period, provided HIV/AIDS counselling to inmates, and taken on leadership roles within the prison's "Rehabilitation Through the Arts" program and the Church community.<sup>35</sup> She is currently in her *seventh* term as the prison's Inmate Grievance Representative, an elected position.<sup>36</sup> Ms. Smart attained a Master of Science in Law, *summa cum laude*, from Southern California University for Professional Studies in 2001; a Master of Fine Arts in English Literature, *summa cum laude*, from Mercy College in 2003; and a Doctorate in Biblical Studies, *summa cum laude*, from Christian Leadership University in 2021.<sup>37</sup> She is currently enrolled in a Master of Professional Studies program from New York Theological Seminary.<sup>38</sup> With a commutation of her sentence, Ms. Smart would be given an opportunity to become an asset to the world outside of prison as she has been within the prison walls. The rehabilitative principles of Mr. Smart's confinement would be vitiated if she is not even afforded the chance to successfully reintegrate into society.

In two other instances New Hampshire governors pardoned women for their part in the deaths of their husbands: in 1980 Governor Hugh Gallen pardoned Jessie Rullo, and in 1988 Governor John H. Sununu pardoned Kathy Kaplan.<sup>39</sup> Governor John H. Sununu granted requests for executive clemency 17 times during his six years in office.<sup>40</sup>

Two of the women who received pardons were young when they committed their crimes (June Briand, 23, and Kathy Kaplan, 24). These women had time to absorb the weight of their

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<sup>35</sup> Appendix A at A-3 to A-42 (letters of support from some of the women Mr. Smart has tutored over the more than thirty years she has served in prison).

<sup>36</sup> Appendix B at B-1, Pamela Smart Resume (2021).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See Colt, *supra* note 32; Lois R. Shea, *Pardon Sought in Husband's Murder; N.H. Inmate Tells of Abuse and Fear*, BOSTON GLOBE (Nov. 21, 1996); *Abused Wife Who Hired Husband's Killer Asks Freedom*, UNITED PRESS INTERNATIONAL (Nov. 2, 1988).

<sup>40</sup> Norma Love, *NH Governors Historically Stingy in Granting Pardons*, THE EAGLE-TRIBUNE, available at [https://www.eagletribune.com/news/local\\_news/nh-governors-historically-stingy-in-granting-pardons/article\\_1a6df008-0a36-5820-803c-99876b825bca.html](https://www.eagletribune.com/news/local_news/nh-governors-historically-stingy-in-granting-pardons/article_1a6df008-0a36-5820-803c-99876b825bca.html).

mistakes.<sup>41</sup> The same is true of Ms. Smart. As attested to in her letter to the Governor, in her Petition for Commutation, and as discussed herein, Ms. Smart is deeply and genuinely remorseful for her actions 31 years ago.<sup>42</sup> She is not asking the Governor to depart from historical precedent, but simply to follow the steps of his predecessors. She asks the Executive Council to evaluate her petition and recommend that the Governor exercise mercy and compassion to commute her sentence for the reasons stated. Young women sentenced to life in prison who have matured, rehabilitated themselves, and shown that they can be an asset to society outside the bounds of the prison without danger to the public deserve a second chance. Ms. Smart is such a person.

D. Governors Nationwide Use Commutation to Remedy Disproportionate and Life-Without-Parole Sentences in Cases Similar to Pamela Smart's.

Executive officials nationwide are using clemency and commutation to remedy unjust outcomes in the criminal justice system, and to offer second chances to deserving individuals. Governors have shown particular sensitivity to sentencing disparities and a willingness to commute the sentences of individuals convicted of accomplice to murder where, like with Ms. Smart, there is an unjust disparity in the sentence received by the accomplice and the actual killer.

For instance, while serving as Maryland's Governor, Robert Ehrlich (R) viewed granting clemency as a constitutional duty.<sup>43</sup> He lamented situations where the shooter had been released while the accomplice remained incarcerated.<sup>44</sup> Acting on the judicial system's failure to bring justice, Governor Ehrlich commuted the sentence of Walter Arvinger, who was sentenced to life in prison as part of the killing of James R. Brown.<sup>45</sup> Importantly, Mr. Arvinger was a bystander

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<sup>41</sup> See *id.*; Shea, *supra* note 29.

<sup>42</sup> Appendix A at A-1, Letter from Pamela Smart.

<sup>43</sup> Matthew Mosk, *Ehrlich Prolific in Granting Clemency*, WASH. POST (Aug. 25, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/24/AR2006082401851.html>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

and never held the weapon used to beat Mr. Brown to death, yet he had remained in prison longer than any other person involved in the attack, including the man who wielded the weapon.

Similarly, while serving as Maryland's Governor, Martin O'Malley (D) granted Tamara Settles clemency after she served twenty-seven years in prison for felony murder—eighteen years more than the actual shooter.<sup>46</sup> Governor O'Malley considered that Ms. Settles, like Ms. Smart, had received positive reviews and shown her good character while incarcerated. The Governor of Pennsylvania, Ed Rendell (D) also commuted several life sentences. Most significantly, in 2010, he reduced the sentences of three men who played “ancillary roles” in murders—serving as the getaway driver, a lookout, and the disposer of a weapon—yet had each spent more time in prison than their accomplices who had played more significant roles in the crimes.<sup>47</sup> Governor Larry Hogan (R) has carried the torch of compassion forward in Maryland. In April of 2020, he commuted the life sentence of a “model prisoner” who spent 47 years in prison for shooting his wife's boyfriend.<sup>48</sup> The Chairman of Maryland's state parole commission, David Blumberg, noted that the prisoner had a greatly reduced likelihood of future criminality due to his age. Just like Ms. Smart, “[t]he amount of time he served was certainly a consideration and his current age. . . . When you reach the age of 50 and over, your chances for criminality are greatly reduced.”<sup>49</sup>

In 2015, Governor Wolf of Pennsylvania (D) commuted Thurmond Berry's life-without-parole sentence. At age 68, Mr. Berry had spent almost 40 years in prison for a 1976 group robbery during which an accomplice killed a bystander. Despite their disparate involvement in the crime,

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<sup>46</sup> Executive Order of March 29, 2012, Confidential Commutation of Sentence – Tamara Settles, 01.01.2012.07, at 24-29, *available at* <http://mgaleg.maryland.gov/pubs/legislegal/2012-executive-orders.pdf>.

<sup>47</sup> ASSOCIATED PRESS, *Pennsylvania Gov. Ed Rendell Commutes Sentences in 3 Murder Cases*, PENNLIVE, (Dec. 30, 2010), *available at* [http://www.pennlive.com/midstate/index.ssf/2010/12/pennsylvania\\_gov\\_ed\\_rendell\\_co.html](http://www.pennlive.com/midstate/index.ssf/2010/12/pennsylvania_gov_ed_rendell_co.html).

<sup>48</sup> Luke Broadwater, *Maryland Gov. Hogan Commutes Life Sentence of 'Model Inmate' from Baltimore Who's Served 47 Years in Killing*, THE BALTIMORE SUN (Apr. 24, 2019), *available at* <https://www.baltimoresun.com/politics/bs-md-hogan-ash-20190424-story.html>.

<sup>49</sup> *Id.*

Mr. Berry and the killer received identical sentences.<sup>50</sup> In discussing the commutation, Lieutenant Governor Mike Stack explained: “[I]t’s not really smart to keep these people in prison forever . . . if they’ve demonstrated they can make a positive impact.”<sup>51</sup>

Even in states where commutation is rarely granted, petitioners similarly situated to Ms. Smart have been granted relief. Governor Bobby Jindal of Louisiana (R) granted 50 requests for clemency over an eight-year period.<sup>52</sup> One such recipient was Shelby Arabie, who was only 21 when he was sentenced to life without parole for second-degree murder resulting from a drug deal that went awry.<sup>53</sup> Described as a “model prisoner,” Mr. Arabie, like Ms. Smart, had been praised by prison staff for his work rehabilitating other inmates.<sup>54</sup> Unlike Ms. Smart, however, Mr. Arabie’s transformation during incarceration was not immediate. He began his time as an unruly inmate, with 32 disciplinary write-ups during his first few years in prison.<sup>55</sup> He even escaped from the Louisiana State Police Barracks in 1988.<sup>56</sup> Since that time, Mr. Arabie demonstrated personal reform by earning his GED, leading the prison’s technology program, and acting as a mentor for other prisoners.<sup>57</sup> With Governor Jindal’s commutation, Mr. Arabie’s life-without-parole sentence was reduced to 45 years, making him immediately eligible for a parole hearing.

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<sup>50</sup> Laura Benshoff, *With Commutation, the Window to Freedom Opens a Crack for Lifers in Pa.*, WNYX.ORG (May 31, 2016), available at <https://wnyx.org/articles/with-commutation-the-window-to-freedom-opens-a-crack-for-lifers-in-pa>.

<sup>51</sup> *Id.*

<sup>52</sup> Elizabeth Crisp & David Mitchell, *See the List: Jindal Grants Clemency to Personal Butler -- a Convicted Killer - Plus 20 Other People*, THE ADVOCATE (Jan. 13, 2016), available at [http://www.theadvocate.com/baton\\_rouge/news/politics/article\\_fac55ac5-4692-5dc5-bff7-8ca12b75947f.html](http://www.theadvocate.com/baton_rouge/news/politics/article_fac55ac5-4692-5dc5-bff7-8ca12b75947f.html).

<sup>53</sup> Lauren McGaughy, *Jindal Commutes Sentence of Angola Lifer Shelby Arabie*, NOLA.COM (July 13, 2013), available at [http://www.nola.com/crime/index.ssf/2013/07/jindal\\_angola\\_commutes\\_life\\_se.html](http://www.nola.com/crime/index.ssf/2013/07/jindal_angola_commutes_life_se.html).

<sup>54</sup> *Id.*

<sup>55</sup> Jan Moller, *Hundreds of Louisiana Prisoners Wait for Governor to Decide on Pardons*, NOLA.COM (May 17, 2012), available at [http://www.nola.com/crime/index.ssf/2012/05/hundreds\\_of\\_louisiana\\_prisoner.html](http://www.nola.com/crime/index.ssf/2012/05/hundreds_of_louisiana_prisoner.html).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

Indeed, Governor Wolf of Pennsylvania, among other currently serving Governors,<sup>58</sup> continues to commute sentences of those who have life sentences despite indirect involvement in murder, recognizing both the self-improvement that occurred in prison as well as the chance to be an asset outside of prison for these individuals. Specifically, in February of 2021, Governor Wolf commuted the sentence of George Burkhardt for his tertiary part in a robbery that led to two deaths.<sup>59</sup> Wolf noted in granting the commutation, which was one of the 13 commutations Wolf granted in a single day: “These 13 individuals have served time for their crimes and deserve now a second chance . . . . They now have a chance to begin a life outside of prison that I hope is fulfilling.”<sup>60</sup> Current Lieutenant Governor of Pennsylvania, John Fetterman, who helped increase the commutation rate in Pennsylvania in his time serving alongside Governor Wolf, has consistently made clear that Pennsylvania’s commutation system for people serving life sentences, needs to be “remade and refined to maximize opportunities for those [people] who deserve a second chance.”<sup>61</sup> Fetterman even advocated for a state amendment to ease pardon board voting requirements to allow for more commutations in the state: “What I hope I’ve accomplished [by the end of my tenure] is that we’ve given as many second chances as we possibly can to the deserving . . . . It doesn’t serve anyone’s interest to doom a wholesale population to die in prison.”<sup>62</sup>

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<sup>58</sup> Specifically, Governors Cuomo and Newsom of New York and California, respectively, have granted pardons in recent years to those in remarkably similar circumstances as Ms. Smart. See Marc Santora, *Judith Clark, Getaway Driver in Deadly Brink’s Heist, Is Denied Parole*, N.Y. TIMES (Apr. 21, 2017), available at [https://www.nytimes.com/2017/04/21/nyregion/judith-clark-brinks-robber-parole.html?\\_r=0](https://www.nytimes.com/2017/04/21/nyregion/judith-clark-brinks-robber-parole.html?_r=0); Adam Beam, *Newsom Commutes Sentence of East Bay Woman Who Killed Stepfather*, SFGATE (Mar. 14, 2021), available at <https://www.sfgate.com/bayarea/article/California-governor-pardons-commutes-Paulinkonis-16024620.php>. In granting these commutations, Governors Cuomo and Newsom specifically recognized the rehabilitation, self-help, and willingness to help others while in prison which rendered the imprisoned women suitable for release. *Id.*

<sup>59</sup> *Gov. Wolf Commutes Life Sentence of Accomplice in Brutal 1979 Killing*, LANCASTER ONLINE (Feb. 12, 2021), available at [https://lanasteronline.com/news/local/gov-wolf-commutes-life-sentence-of-accomplice-in-brutal-1979-killing-update/article\\_a9898dfc-6d88-11eb-8a76-879f40446590.html](https://lanasteronline.com/news/local/gov-wolf-commutes-life-sentence-of-accomplice-in-brutal-1979-killing-update/article_a9898dfc-6d88-11eb-8a76-879f40446590.html).

<sup>60</sup> *Id.*

<sup>61</sup> Joshua Vaughn, *A Historic Day May Mark The Beginning of the End of Death by Incarceration in Pennsylvania*, THE APPEAL (Sept. 27, 2019), available at <https://theappeal.org/pennsylvania-life-sentences-commutations>.

<sup>62</sup> *Id.*

The current Governor of Missouri, Mike Parsons (R), has exercised executive clemency dozens of times, emphasizing: “There must be serious consequences for criminal behavior, but when the individuals demonstrate a changed a lifestyle and a commitment to abandoning the ways of their past, they should be able to redeem themselves in the eyes of the law.”<sup>63</sup>

Granting Ms. Smart’s petition for commutation would permit the Governor and Executive Council to reinforce the rehabilitative goals of the justice system and correct an unjust sentencing disparity while also giving a worthy individual a second chance. Similar to the examples above, Ms. Smart’s sentence is grossly disproportionate to the sentences received by the four men who carried out the murder of Gregg Smart. Through their own admissions, Mr. Flynn shot Gregg Smart while Mr. Randall held him down on his knees with a knife pressed against his throat. Mr. Lattime drove the getaway car, and Mr. Fowler waited in the car with him. Today, these four men have all been released from prison.<sup>64</sup> In contrast, Ms. Smart, who undisputedly was not present at the time of the murder, has already spent over three decades in prison, and is slated to spend the remainder of her life there, without even the possibility of consideration for release. As more time passes, Ms. Smart’s sentence becomes increasingly disproportionate to the sentences of the four perpetrators.<sup>65</sup> We respectfully request that the Governor and Executive Council follow the approach of governors around the country by commuting Ms. Smart’s sentence.

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<sup>63</sup> Jaclyn Driscoll, *Missouri Governor Releases Names of 24 Inmates Pardoned*, ST. LOUIS PUBLIC RADIO (Dec. 23, 2020), available at <https://news.stlpublicradio.org/government-politics-issues/2020-12-23/missouri-governor-releases-names-of-24-inmates-pardoned>.

<sup>64</sup> Sarah Schweitzer, *Parole Board in N.H. Frees Killer in Pamela Smart Case*, BOSTON GLOBE (Mar. 13, 2015), available at <https://www.bostonglobe.com/metro/2015/03/12/pamela-smart-case-gunman-faces-parole-board/dmtyzBSpBrjtSd9TcPyHqO/story.html>.

<sup>65</sup> Notably, federal judges may consider disparities among co-defendants when determining a sentence. See *Gall v. United States*, 552 U.S. 38, 55 (2007); *United States v. Cirilo-Munoz*, 504 F.3d 106, 134 (1st Cir. 2007).

### III. More Than Thirty Years of Imprisonment for an Accomplice Is Meaningful Retribution.

The timing of Pamela Smart's Petition for Commutation is especially ripe because, as of August 2021, Ms. Smart has served 31 years in prison, a period many states consider sufficient for justice to be served. That is, in most states, the sentence for an accomplice to first-degree murder or its equivalent is something less than life without parole and for many, the maximum sentence is 30 years. Even in this case, the State of New Hampshire deemed 25 years sufficient sentences for Flynn and Randall who, by their own admissions, committed the first-degree, execution-style murder. Considering Ms. Smart's term of incarceration and the consistent assessment throughout the country that a sentence of this length is sufficient retribution, commutation would be appropriate here.

#### A. Criminal Justice Regimes with Mandatory Sentencing Rely on Executive Use of Clemency Power as a Check on Excessive Judicial and Legislatively Mandated Sentences.

A sentence commutation is neither a declaration of innocence nor a grant of forgiveness. It is a way to adjust the legal penalty for a person's crime when circumstances so warrant.<sup>66</sup> Importantly, clemency is not at odds with justice. The United States Supreme Court has gone so far as to say that executive clemency, which includes the commutation power, provides a "fail safe" to protect justice in this country.<sup>67</sup> Clemency and commutation are "justice-enhancing," as "[t]he use of clemency—though an act of mercy—is justified when it is used for the purpose of ensuring that justice was administered."<sup>68</sup> Clemency is available "as a check on the other branches of government when laws exist that result in bad outcomes, injustice, or that fundamentally

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<sup>66</sup> National Governor's Association Center for Policy Research, *Guide to Executive Clemency Among the American States* 5 (U.S. Dep't of Justice 1988), available at <https://www.ncjrs.gov/pdffiles1/Digitization/114588NCJRS.pdf>.

<sup>67</sup> *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

<sup>68</sup> Cao, *supra* note 2, at 48.

undermine the principles of liberty.”<sup>69</sup> With clemency, the governor may consider a general range of factors beyond the statutory requirements applied in fixing a sentence, including evaluating the particular case as a matter of grace and mercy.

The clemency power is perhaps most needed in a mandatory sentencing regime, like the one to which Ms. Smart was subject. Although New Hampshire law provides a mandatory life-without-parole sentence of first-degree murder, the law simultaneously contemplates that a Governor may pardon or commute the sentence.<sup>70</sup> The New Hampshire Supreme Court addressed this issue in *State v. Farrow*, which challenged the constitutionality of a sentence of life without parole.<sup>71</sup> There it was argued that mandatory life-without-parole sentences violated New Hampshire’s constitutional provision that punishments are “not to exterminate mankind.”<sup>72</sup> In rejecting this argument, the Court reasoned that, because the Governor holds clemency powers, a sentence of life without parole is not “extermination” under the New Hampshire constitution.<sup>73</sup> The Court noted that a “prisoner has many opportunities to improve his life, culminating with a pardon if he can demonstrate to the Governor and Council his fitness to return to society without being a threat to it.”<sup>74</sup>

Here, there is no factual basis to question that Ms. Smart possesses the fitness to return to society without being a threat to it. *Farrow* does not address the compelling issue where an

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<sup>69</sup> Aliza B. Kaplan & Venetia Mayhew, *The Governor’s Clemency Power*, 23 LEWIS & CLARK L. REV. 1285, 1327 (2020); see also *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280-81 (1998) (“[T]he heart of executive clemency . . . is to grant clemency as a matter of grace, thus allowing the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations.”); *Dretke v. Haley*, 541 U.S. 386, 399 (2004) (Kennedy, J., dissenting) (“The rigors of the penal system are thought to be mitigated to some degree by the discretion of those who enforce the law. The clemency power is designed to serve the same function. Among its benign if too-often ignored objects, the clemency power can correct injustices that the ordinary criminal process seems unable or unwilling to consider. These mechanisms hold out the promise that mercy is not foreign to our system. The law must serve the cause of justice.” (citation omitted)).

<sup>70</sup> N.H. Rev. Stat. Ann. § 4:21; see also *State v. Farrow*, 386 A.2d 808, 813-14 (N.H. 1978).

<sup>71</sup> *Farrow*, 386 A.2d at 813-14.

<sup>72</sup> *Id.* at 813.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 814.

inmate, despite her demonstration of fitness to return to society, has been unable to obtain a hearing on her Petition for Commutation. Ms. Smart has overcome seemingly insurmountable obstacles, found purpose, and amassed a substantial and consistent record of exceptional growth and achievements, all while serving the entirety of the past three decades in a maximum security facility. She has garnered support for her Petition from the Bedford Hills long-serving superintendent, the former head of the New York Parole Board, prison guards and staff, inmates, celebrities, and dozens of others who have written on her behalf.<sup>75</sup> If Ms. Smart's history, character, and rehabilitation are insufficient for release, then the principles justifying imprisonment have lost their integrity.

Put differently, a sentence of life without parole in New Hampshire is constitutional precisely because the Governor maintains executive clemency powers; it is a hollow formality if petitions like Ms. Smart's are not considered on their merits and the full available process for their consideration is not exercised.

B. Over Thirty Years of Incarceration Satisfies the Purposes of Retributive Justice.

A survey of American law demonstrates that the goal of retributive justice—even for murder—can be served within a 30-year period (which Ms. Smart has now exceeded). As discussed *infra* in Part IV, members of Ms. Smart's jury regarded a life without the possibility of parole sentence as excessive. There was no opportunity for judicial discretion in the original sentence proceeding. Sentencing and parole laws reveal that parole eligibility after 30 (or fewer) years for a person convicted of first-degree murder or its equivalent is an adequate punishment.

Many states have lesser penalties than New Hampshire's life without parole as the minimum penalty for first-degree murder. For example, New Jersey law holds that the minimum

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<sup>75</sup> See Appendix A: Letters in Support of Pamela Smart's Petition for Commutation.

penalty for murder is 30 years and, after that period, even a person sentenced to life will be eligible to apply for parole.<sup>76</sup> In Kansas, parole eligibility starts at the 25-year mark for those convicted of first-degree murder serving life sentences.<sup>77</sup> Idaho allows parole eligibility as early as after 10 years of confinement.<sup>78</sup> Similarly, Georgia currently imposes a minimum life sentence for murder but allows for the possibility of parole after 30 years.<sup>79</sup> Before 1995 an individual in Georgia serving a life sentence could be considered for parole after having served only seven years.<sup>80</sup>

Other states, including North Dakota, specify that life imprisonment without parole is the *maximum* penalty for murder.<sup>81</sup> A person convicted of murder there may be sentenced to any number of years, and when a person receives a life sentence, parole eligibility starts after 30 years, “less sentence reduction earned for good conduct.”<sup>82</sup> Under Oregon law, the equivalent charge to New Hampshire’s first-degree murder would likely be second-degree murder.<sup>83</sup> The minimum sentence for second-degree murder in Oregon is life imprisonment, with the possibility for parole after 25 years.<sup>84</sup> The two even more serious kinds of murder in Oregon, first-degree murder and aggravated murder, carry a life sentence, with parole opportunities at the 30-year mark.<sup>85</sup> Ohio’s crime of aggravated murder is likely that state’s closest equivalent to New Hampshire’s first-degree murder.<sup>86</sup> The range of sentences for the crime varies, but the minimum sentence is life imprisonment with parole eligibility after serving 20 years.<sup>87</sup> Even if the prosecution proves that

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<sup>76</sup> N.J. Stat. § 2C: 11-3(b).

<sup>77</sup> Kan. Stat. Ann. § 21-6620(b)(1).

<sup>78</sup> Idaho Code § 18-4004.

<sup>79</sup> Ga. Code Ann. § 16-5-1(d); STATE BOARD OF PARDONS AND PAROLES, *The Parole Process in Georgia*, available at <https://pap.georgia.gov/parole-process-georgia-0> (last visited Nov. 30, 2020).

<sup>80</sup> *Id.*

<sup>81</sup> N.D. Cent. Code § 12.1-32-01(1); *see also id.* § 12.1-16-01(1) (elements of murder).

<sup>82</sup> *Id.* § 12.1-32-01(1).

<sup>83</sup> Or. Rev. Stat. § 163.115(1); *id.* § 163.107(1) (defining first-degree murder as murder in the second degree accompanied by at least one circumstance enumerated).

<sup>84</sup> *Id.* § 163.115(5)(a)-(b).

<sup>85</sup> *Id.* § 163.107(2)(a) (sentencing for first degree murder); *id.* § 163.105(1)(c) (sentencing for aggravated murder).

<sup>86</sup> Ohio Rev. Code Ann. § 2903.01(A).

<sup>87</sup> *Id.* §§ 2929.02(A), 2929.03(A)(1)(b).

aggravating factors apply, the minimum sentence still provides parole eligibility after 25 years.<sup>88</sup> Of the possible sentences for aggravated murder in Ohio, a life sentence with the opportunity for parole after 30 years is about in the middle in terms of severity.<sup>89</sup>

In New Hampshire, a sentence of life in prison for something other than first-degree murder permits consideration for parole after serving 18 years in prison.<sup>90</sup> Yet Ms. Smart already has served nearly double that time (31 years) without an opportunity to apply for parole. Commutation does not negate the severity of the underlying crime. Rather, it reflects an assessment of Ms. Smart's growth and behavior since the crime and affords her the same relief that a traditional life sentence affords based on whether there is a "reasonable probability that [the petitioner] will remain at liberty without violating the law and will conduct [herself] as a good citizen."<sup>91</sup>

#### **IV. Commutation of Pamela Smart's Sentence Is Consistent with Statements of Key Trial Figures.**

Upon learning of her life-without-parole sentence, members of Pamela Smart's jury expressed shock and disagreement. Some jury members, and even the prosecutor in the case, have expressed that Ms. Smart, and others in her position, should not spend their lives in prison (and some have expressed regret for the outcome of the Ms. Smart's sentencing).

##### **A. Many Jurors Who Convicted Pamela Smart Have Expressed Concern and Shock Over Her Life Sentence.**

Many of the jurors from Ms. Smart's trial have expressed their concern and shock with her life sentence without the possibility of parole. During deliberations, the jurors knew neither the

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<sup>88</sup> *Id.* § 2929.03(C)(2)(a).

<sup>89</sup> *Id.* § 2929.03(A)(1). Still, many other states allow for release of those convicted of the equivalent of first-degree murder before the 30-year mark (whether due to lower minimum sentences or parole), including: the District of Columbia (30-year minimum sentence), D.C. Code § 22-2104(a); California (25-year minimum sentence), Cal. Penal Code § 190(a); *id.* § 12022.5; Connecticut (25-year minimum sentence), Conn. Gen. Stat. § 53a-54a; *id.* § 53a-35a(2); *id.* § 53a-35b; Maine (25-year minimum sentence), Me. Stat. 17-A, § 1603(1); and South Carolina (30-year minimum sentence), S.C. Code Ann. § 16-3-20.

<sup>90</sup> N.H. Rev. Stat. Ann. § 651-A:7.

<sup>91</sup> *Id.* §§ 651-A:6, 651-A:7.

mandatory sentencing scheme nor the sentencing disparity between Ms. Smart's sentence and the sentences of the actual perpetrators of her husband's murder. Juror Alec Beckett later remarked, "That information had been kept from us . . . . [I]t was definitely chilling to learn . . . especially considering that the boys would be getting out of jail at some point."<sup>92</sup> Beckett lamented: "The great injustice to me is that she is in jail forever and the kids who actually perpetrated the crime will get out of jail. By sort of any measure that is not fair."<sup>93</sup> Another juror, recalling when the jury was informed about the sentence, noted that "[there was] not a dry eye in that jury room."<sup>94</sup> That juror even stated that, had she known of the mandatory life-without-parole sentence, she "would have hung that jury [be]cause I was damn close to doing it anyway."<sup>95</sup>

B. The Prosecutor in Pamela Smart's Case Has Openly Advocated for Greater Use of Executive Clemency to Reward Rehabilitation.

Even the prosecuting attorney in Ms. Smart's case, Paul Maggiotto, has actively and openly advocated for pardons in other cases for similar reasons that commutation is now requested for Ms. Smart.<sup>96</sup> In fact, Mr. Maggiotto stated that "[j]ustice would never be served by a blind adherence to a policy stance of being 'tough on crime' which would ignore this extraordinary example and role model of rehabilitation."<sup>97</sup> Mr. Maggiotto has said that pardons, a more extreme resolution than the one sought by Ms. Smart, should not be seen as indictment on the criminal justice system, but viewed as opportunities to acknowledge the successes of the criminal justice system in turning inmates into valuable assets to society.<sup>98</sup> Ms. Smart is a model for rehabilitation

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<sup>92</sup> *Pamela Smart Speaks Out*, OPRAH.COM, available at <http://www.oprah.com/oprahshow/Pamela-Smart-Speaks-Out>.

<sup>93</sup> *Captivated: The Trials of Pamela Smart*, HBO (2014).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Nancy West, *Councilors: Pardon Hearings Blocked*, N.H. SUNDAY NEWS (Dec. 26, 1999).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

and her efforts and accomplishments should be acknowledged through granting the present commutation petition.<sup>99</sup>

## V. Conclusion

Pamela Smart respectfully and humbly submits this Memorandum in Further Support of the Petition for Commutation. Without your intervention, Ms. Smart will die in prison. Her acceptance of responsibility, her conduct and character, her disproportionate sentence discussed in the accompanying memorandum, all warrant consideration in exercising executive grace. Given the foregoing, Ms. Smart's sentence should be modified to eliminate the "without the possibility of parole" condition, and commuted to time served.

Date: August 16, 2021

By:

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<sup>99</sup> Mr. Maggiotto's praise for commutations generally appears to have no applicability to his views on Ms. Smart, for whom his intense bias continues. He has maintained harsh views about Ms. Smart and her sentence. In fact, in a recent interview, Mr. Maggiotto revealed: "If you're going to start giving people hearings, let's start with people who have accepted responsibility for their crimes, and not just because they happen to be a media darling." See Chase Hagaman, *Fact and Fiction of Pamela Smart*, SEACOAST ONLINE (Jan. 27, 2019), available at <https://www.seacoastonline.com/news/20190127/fact-and-fiction-of-pamela-smart>. As described in Ms. Smart's Petition for Commutation, she has accepted responsibility for her role in the murder of her husband. She seeks no special treatment, merely treatment in line with the sentencing standards and norms afforded to others.

## **Exhibit “B”**

GOVERNOR AND EXECUTIVE COUNCIL AGENDA  
State House, Concord, New Hampshire  
March 23, 2022, 10:00 a.m.

**CONSENT CALENDAR AGENDA**

**#1 MOP 150, I, B (1): Expenditure Approvals**

**DEPARTMENT OF SAFETY**

#A. Authorize the request of the Division of State Police for one Trooper to travel over 300 miles one way in their own State Police issued unmarked state vehicle in the amount of \$5,369.60 to attend the Northeast Counterdrug Training Center Polygraph Institute Polygraph program in Annville, PA from April 6, 2022 through June 24, 2022. **87% General, 13% Agency Income.**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Commissioner**

#B. Authorize to enter Jody Farwell into an educational tuition agreement with Granite State College Concord, NH to participate in interdisciplinary seminar and Law and Ethics for Health Care and Human Services, during the period of April 4, 2022 through June 24, 2022 and to pay said costs in the amount of \$915. **Employee Training, 20% Federal, 80% General Funds.**

**DEPARTMENT OF SAFETY**

#C. Authorize the Division of Fire Standards and Training and Emergency Medical Services, to pay the annual membership dues of \$3,000 to the National Association of State EMS Officials, Falls Church, VA for membership. Effective July 1, 2022 through June 30, 2023. **100% Revolving Funds.**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Commissioner**

#D. Authorize the Division of Public Health Services, to pay The Association of Public Health Laboratories, Silver Spring, MD in the amount of \$8,820 for annual membership dues. Effective July 1, 2022 through June 30, 2023. **100% General Funds.**

**#2 MOP 150, I, B (2): Approval of Acceptances**

**OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION**

#A. Authorize to accept a gift for travel reimbursement, not to exceed \$2,500, from the Department of Defense, through the Council of State Governments, to allow the executive director to participate in a Document Team meeting on April 11-12, 2022, in Washington, D.C. for development of social work interstate compact legislation.

**#3 MOP 150, I, B (3): Reports and Findings – NONE**

**#4 MOP 150, I, B (4): Nominations, Confirmations and Appointments**

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#A. Authorize confirmation of Major Austin S. Westbrook, Spokane, WA, for appointment in the rank of Major, NH Air National Guard.

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#B. Authorize confirmation of Major Lucas J. Huebener, Fairchild AFB, WA, for appointment in the rank of Major, NH Air National Guard.

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#C. Authorize confirmation of Major Ryan C. Morrison, La Grange, NC, for appointment in the rank of Major, NH Air National Guard.

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#D. Authorize confirmation of Mario A. Rey II, Deerfield, NH, to the rank of Major, NH Army National Guard.

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#E. Authorize confirmation of Major Jeffrey D. VanGuilder, Hadden Township, NJ for appointment in the rank of Major, NH Air National Guard.

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#F. Authorize confirmation of Timothy B. Gardner, Hanover, NH, to the rank of Major, NH Army National Guard.

**DEPARTMENT OF MILITARY AFFAIRS AND VETERAN SERVICES**

#G. Authorize confirmation of Alexander S. Pagliughi, Hanscom AFB, MA, to the rank of Major, NH Army National Guard.

**DEPARTMENT OF JUSTICE**

#H. Authorize to appoint Gary A. Prince as a Criminal Investigator at a salary level of \$73,528, LG BB, step 5. Effective upon G&C approval or March 25, 2022, whichever is the latter, through a term ending July 1, 2024.

#5 **MOP 150, I, B (5): Other Items**

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

#A. Authorize to exercise a contract amendment with Arcomm Communications Corporation, Hillsborough, NH (originally approved by G&C on 7/14/21, item #53), for Video and Closed Circuit Television Surveillance Systems Maintenance and Repair Services by adding additional language to comply with the Department of Information Technology's "IP Camera Configuration Guide". Effective upon G&C approval. No additional funding.

**REGULAR AGENDA**

**BUSINESS FINANCE AUTHORITY**

#6 Authorize to hold a Public Hearing with respect to the Resolution entitled "A RESOLUTION UNDER RSA 162-I:9 WITH RESPECT TO THE FINANCING OF A COMMERCIAL FACILITY BY THE BUSINESS FINANCE AUTHORITY FOR SIG SAUER INC. IN THE TOWN OF EPPING, NEW HAMPSHIRE AND THE AWARD OF AN UNCONDITIONAL STATE GUARANTEE OF UP TO \$16,000,000 OF PRINCIPAL OF THE FINANCING". The action will authorize a Resolution under RSA 162-I:9 to determine that the project financed will be within the definition of the commercial facility and will create or preserve employment opportunities directly or indirectly within the state.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Commissioner**

#7 Authorize Health Facilities Administration to accept and expend a grant in the amount of \$254,146 from the CARES Act Funds providing funding through CMS for Health Facilities COVID-19 related response for survey and certification activities. Effective upon G&C approval through September 30, 2022. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#8 Authorize to enter into a COVID-19 Vaccination Aid Agreements with an unspecified number of First Responder Organizations and to make unencumbered payments to participating First Responder Organizations that provide personnel to assist the State with administering COVID-19 vaccinations, not to exceed a shared price limitation of \$6,000,000 across all participating organizations. Effective April 1, 2022 or upon G&C approval, whichever is later, through June 30, 2022. **100% Federal Funds.**

#9 Authorize to place Heather Barto at step 6 for the position of Manager, Contract Quality Management, unclassified salary grade EE, earning \$90,298. Effective upon G&C approval. **50% General, 50% Federal Funds.**

#10 Authorize to enter into a **sole source** contract with Mary Hitchcock Memorial Hospital, Lebanon, NH, in the amount of \$9,109,658 to provide clinical and administrative services to meet the specialized health and related clinical and administrative needs of NH residents, Effective upon G&C approval, through June 30, 2025, with the option to renew for up to four additional years. **28% Federal, 72% General Funds.**

#10A Authorize to enter into a **sole source** contract with Deloitte & Touche, LLP, Concord, NH, for a privacy impact assessment on the Department's Immunization Information System, in the amount of \$84,000. Effective upon G&C approval through June 30, 2022. **100% Federal Funds.**

#### **Division of Medicaid Services**

#11 Authorize to enter into a **sole source** contract with Coordinated Transportation Solutions, Inc., Trumbull, CT in the amount of \$456,000 for statewide non-emergency medical transportation for Medicaid Fee-for-Service members. Effective upon G&C approval, through January 31, 2023, with the option to renew for up to one additional year. **54% Federal, 22% General, and 24% other Funds (Medicaid Enhancement Tax and NH Granite Advantage Health Care Program Trust Fund).**

#11A Authorize to enter into a **retroactive sole source** amendment to an existing contract with Accuity Asset Verification Services, Evanston, IL, (originally approved by G&C on 3/22/17, item #16) to continue electronic asset verification services for applicants and Medicaid recipients, by increasing the price limitation by \$139,854 from \$1,689,153 to \$1,829,007 and by extending the completion date from February 28, 2022 to December 31, 2022. **50% Federal, 50% General Funds.**

#### **Financial Services**

#12 Authorize office of Medicaid Services to reduce General funds of \$4,200,000 and matching Federal funds of \$4,204,200. Effective upon approval by G&C through June 30, 2023. **50% Federal, 50% General Funds.** (2) Further authorize to transfer General Funds of \$4,200,000. Effective upon approval by G&C through June 30, 2023. **100% General Funds.** (3) Further authorize to accept and expend additional federal funds in the amount of \$7,807,800. Effective upon approval by G&C through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#### **Division of Finance and Procurement**

#13 Authorize to accept and expend federal funds in the amount of \$3,963,186 from the American Rescue Plan Act to fund a lease for warehouse space storing COVID-19 related supplies and equipment and managing health and human services-related emergency logistics. Effective upon approval by G&C through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#### **Division of Economic & Housing Stability**

#14 Authorize to accept and expend federal funds in the amount of \$19,544 from the U.S. Department of Health and Human Services. Effective upon G&C approval through June 30, 2023. **100% Federal Funds.**

#15 Authorize to enter into a grant agreement with NH Catholic Charities d/b/a NH Food Bank, Manchester, NH, in the amount of \$150,000 to incentivize the purchase of fresh fruits and vegetables for Supplemental Nutrition Assistance Program recipients residing in NH. Effective upon G&C approval through June 30, 2023, with the option to renew for up to 2 additional years. **100% General Funds.**

#### **Division of Public Health Services**

#16 Authorize to accept and expend federal funds in the amount of \$2,689,378 from the Centers for Disease Control and Prevention to fund the Nursing Home & Long Care Facility Strike Team and Infrastructure Project as mandated by the American Rescue Plan. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#17 Authorize to accept and expend federal funds in the amount of \$1,110,992 from the Centers for Disease Control and Prevention to fund the Strengthening Healthcare Associated Infections/Antimicrobial Resistance Program as mandated by the American Rescue Plan. Effective upon G&C approval through June 30, 2023. (2) Further authorize to continue one full-time temporary position. Effective July 1, 2022 upon approval by G&C through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#18 Authorize to accept and expend federal funds in the amount of \$200,000 from the Centers for Disease Control and Prevention to fund the Travelers Health: Protecting the Health of Travelers and Communities in a Globally Mobile World Project as Mandated by the American Rescue Plan. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#19 Authorize to accept and expend federal funds in the amount of \$449,760 from the Centers for Disease Control and Prevention to fund the Detection and Mitigation of COVID-19 in Homeless Service Sites & Other Congregate Settings Project as mandated by the American Rescue Plan. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#20 Authorize to accept and expend federal funds in the amount of \$1,000,000 from the Centers for Disease Control and Prevention to fund the Strengthening STD Prevention and Control program as mandated by the American Rescue Plan. (2) Further authorize to continue five full time temporary positions for this program. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#21 Authorize to pay the National Alliance of State and Territorial AIDS Directors, Washington, DC, in the amount of \$8,256 for annual membership dues. Effective **retroactive** to October 1, 2021 through September 30, 2022. **100% Federal Funds.**

#22 Authorize to enter into a contract with Michael Lazarczyk, Au.D. CCC-A, Franconia, NH, in the amount of \$28,000 for clinical pediatric audiology and consultation activities. Effective upon G&C approval through February 29, 2024, with the option to renew for up to 2 additional years. **100% Federal Funds.**

#23 Authorize to enter into a **sole source retroactive** amendment to an existing contract with On-Site medical Services, LLC, Charlestown, NH, (informational item #J, G&C 4/21/21) for the provision of COVID-19 vaccinations and boosters to individuals across the state, as requested by the Department, by exercising a contract renewal option by increasing the total price limitation by \$3,400,000 from \$31,882,944 to \$35,282,944 and extending the completion dates from March 31, 2022 to June 30, 2022. **100% Federal Funds.**

#### **Glenclyff Home**

#24 Authorize to use funds allocated to Glenclyff Home based on a \$2500 per bed grant to pay a flat rate, time-bound, weekly enhancement for License Nursing Assistants currently paid under the A130 pay scale for recruitment and retention purposes. Flat rate amounts of \$257.88 per week for full-time employees and \$128.94 per week for part-time employees are being requested to make the program comparable to industry norms. Effective March 25, 2022 or upon G&C approval, whichever is later, for a 16 week period. **100% Federal Funds (American Rescue Plan Act).**

#### **Division of Long Term Supports and Services**

#25 Authorize to enter into a memorandum of understanding with the NH Department of Energy, Concord, NH, in the amount of \$82,200 for Senior Energy Assistance Services. Effective October 1, 2022, or upon G&C approval, whichever is later, through September 30, 2024, with the option to renew for up to six additional years. **50% Federal, 50% General Funds.**

#26 Authorize to enter into a **sole source** contract with Evident Change, Madison, WI, in the amount of \$269,300 to review and revise the Structured Decision Making assessment tools used by the Bureau of Elderly Services serving individuals in the Adult Protective Services Program. Effective upon G&C approval through June 30, 2023, with the option to renew for up to two additional years. **100% Federal Funds.**

#27 Authorize to amend an existing contract with City of Nashua, Nashua, NH, (original contract approved by G&C on 9/23/20, item #16) for transportation services to adults ages 60 years and older in the City of Nashua, by exercising a contract renewal option by increasing the price limitation by \$377,874 from \$377,874 to \$755,748 and by extending the completion date from June 30, 2022 to June 30, 2024. **51% Federal, 49% General Funds.**

#28 Authorize to amend an existing contract with the Contractor listed in bold as detailed in letter dated February 9, 2022, (original contract approved by G&C on 5/20/20 item #18) for Aging and Disability Resource Center ServiceLink services, by increasing the total price limitation by \$15,000 from \$6,491,928.02 to \$6,506,928.02 with no change to the contract completion date of June 30, 2022. **57% Federal, 43% General Funds.**

#29 Authorize to enter into a **retroactive** amendment to an existing contract with the Contractor, listed in bold as detailed in letter dated March 3, 2022, for the provision of nutrition services to prevent, prepare for, and to respond to the COVID-19 pandemic to ensure older, isolated, and frail adults live as independently as possible, by increasing the total price limitation by \$25,170 from \$64,778,148 to \$64,803,318 with no change to the contract completion date of June 30, 2022. **100% Federal Funds.**

#### **New Hampshire Hospital**

#30 Authorize to enter into a contract with PM Construction Co. Inc., Saco, ME, in the amount of \$200,000 for maintenance and to repair firestop systems within the Acute Psychiatric Facility, and other buildings at NH Hospital. Effective upon G&C approval through June 30, 2025, with the option to renew for up to four additional years. **70% General, 30% Other Funds (Provider Fees and Intra-Agency Transfers).**

#31 Authorize to enter into a contract with Mary Hitchcock Memorial Hospital, Lebanon, NH, in the amount of \$60,821,398 for the provision of psychiatric and medical services at NH Hospital, the planned NH Forensic Hospital, and Glenclyff Home. Effective upon G&C approval through June 30, 2026, with the option to renew for up to six additional years. **42% General, 58% Other Funds (Provider fees).**

#32 Authorize to enter into a contract with Mary Hitchcock Memorial Hospital, Lebanon, NH, in the amount of \$442,505 for the provision of Neuropsychology Services at the NH Hospital and the planned NH Forensic Hospital. Effective upon G&C approval through June 30, 2023, with the option to renew for up to six additional years. **36% General, 64% Other Funds (Provider Fees).**

#### **Division of Behavioral Health**

#33 Authorize to award a contract with Harbor Home, Inc., d/b/a Harbor Care, Nashua, NH, in the amount of \$4,200,000 for Facilitating Organization Services and Program support for Recovery Community Organizations and Recovery Centers. Effective April 1, 2022, or upon G&C approval, whichever is later, through December 31, 2022, with the option to renew for an additional five years and six months. **66.9% Federal, 8.10% General, and 25% Other Funds (Governors Commission).**

#34 Authorize the Governor's Commission on Alcohol and Other Drugs, to enter into a contract with University of Massachusetts by and through the Commonwealth Medicine as a part of the UMass Chan Medical School, Shrewsbury, MA, in the amount of \$99,997 for research and Development Services for a doula supports and recovery program, including supports for pregnant people affected by perinatal substance use. Effective upon G&C approval through December 31, 2022, with the option to renew for up to one additional year. **100% Other Funds (Governors Commission on Alcohol and Other Drugs).**

#35 Authorize to amend existing contracts with the Contractors detailed in letter dated March 14, 2022 for Substance Use Disorder Treatment and Recovery Support Services, by decreasing the total price limitation by \$192,012 from \$11,665,920 to \$11,473,908 with no change to the contract completion dates of September 29, 2023. **54.745% Federal, 11.873% General, and 33.382% Other Funds (Governor's Commission).**

#### **Division for Children, Youth, & Families**

#35A Authorize to apply additional positions of the same class title a recently approved fifteen percent base hourly wage enhancement to Child Protective Service Workers and Supervisor IV positions, and an eight percent base hourly wage enhancement to Administrator I and Supervisor VI positions currently paid under Wage Schedule – A000 for recruitment and retention purposes. Effective retroactive to the date of original approval, November 5, 2021 through November 4, 2023, the original expiration. **30% Federal, 70% General Funds**

#### **DEPARTMENT OF TRANSPORTATION**

#36 Authorize the Division of Operations to transfer \$500,000 between various classes. (2) Further authorize to transfer \$1,800,000 from the Highway Surplus Account to fund winter maintenance activities. Effective upon G&C approval through June 30, 2022. **100% Highway Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#37 Authorize the Bureau of Aeronautics to accept and expend a grant in the amount of \$730,180, awarded under the American Rescue Plan Act and administered via the Federal Aviation Administration, to cover airport concessions expenses at the Manchester-Boston Regional Airport. Effective **retroactive** to January 20, 2020, through June 30, 2022. (2) Further authorize to **retroactively** award a grant to the City of Manchester for ARPA funding to offset a decline in revenues arising from diminished airport concessions as a result of the COVID-19 Public Health Emergency for the Manchester-Boston Regional Airport, in the amount of \$730,180. Effective upon G&C approval through February 9, 2026. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#38 Authorize Division of Operations to transfer \$1,595,000 between various Accounting Units and classes. Effective upon G&C approval through June 30, 2023. **100% Highway Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#39 Authorize the Bureau of Turnpikes to transfer \$1,767,478 between various classes in Turnpike's Toll Collection. Effective upon G&C approval through June 30, 2022. **100% Turnpike Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#40 Authorize the Bureau of Environment to enter into three individual, pre-qualified, low-bid, cost-based contracts, each at \$100,000, with the following firms: (1) FB Environmental Associates, Dover, NH, (2) Normandeau Associates, Inc., Bedford, NH; and (3) TRC Environmental Corporation, Manchester, NH to undertake wetland and environmental investigations for various transportation-related activities and projects throughout the State. Effective upon G&C approval through April 30, 2025.

#41 Authorize the Bureau of Construction to enter into a contract with Brox Industries, Inc. of Dracut, MA, for Eastern Turnpike Resurfacing, Project No. 42264, on I-95 and the Spaulding Turnpike in North Hampton, Greenland, Portsmouth and Seabrook on the basis of a single bid of \$6,215,741.45. (2) Further authorize that a contingency in the amount of \$310,787.07 be approved for payment of latent conditions, which may appear during the construction of the project. Effective upon G&C approval through September 23, 2022. **100% Turnpike Funds.**

#42 Authorize the Bureau of Construction to enter into a contract with Annseal, Inc. of Johnson City, NY, for the Statewide Crack Seal Tier 2 S, Project No. 43527 involving crack seal of various Tier 2 roads in the southern portion of the state (Wolfeboro, Belmont, Laconia, Gilford, Tilton, Peterborough, Hancock, Bennington, Antrim, Marlborough, Keene, Surry, Westmoreland, Hopkinton, Amherst, Bedford, Somersworth and Rochester), on the basis of a low bid of \$583,760.91. (2) Further authorize that a contingency in the amount of \$58,376.09 be approved for payment of latent conditions, which may appear during the construction project. Effective upon G&C approval through August 19, 2022. **100% Federal Funds.**

#43 Authorize the Bureau of Right-of-Way to sell 0.65 +/- acres of state-owned land located on the corner of NH Route 4 and Black Hall Road, in the Town of Epsom. The sale will be directly to Thomas LeClair for \$51,100 which includes a \$1,100 Administrative Fee. Effective upon G&C approval. The parcel was originally purchased with 20% Highway Funds and 80% Federal Funds.

#44 Authorize the Bureau of Right-of-Way to pay the tenant of an acquired property \$71,199.25 as documented in the Contemplated Awards list, for amounts greater than \$5,000 for the period extending from January 23, 2022, through February 28, 2022. Effective upon G&C approval.

#45 Authorize the Bureau of Right-of-Way to sell 0.37 +/- acres of state-owned land located on the southeasterly side of Central Street in the Town of Hudson. The sale will be directly to Nottingham Square Corporation and Central Hudson LLC for \$83,090, which includes an \$1,100 Administrative fee. Effective upon G&C approval. The parcel was originally purchased with 100% Highway Funds.

#46 Authorize the Bureau of Right-of-Way to sell .54 +/- acres of state-owned land, with improvements, located at 8 Valeska Lane, in the Town of Salem. The sale will be to Jose, Robely, and Ignacio R. Cespedes, for \$325,000 plus an \$1,100 administrative fee. (2) Further authorize to compensate NAI Norwood Group for real estate services, in the amount of \$19,500. Effective upon G&C approval. The parcel was originally purchased with 90% Federal, 10% Highway Funds.

#47 Authorize the Bureau of Planning & Community Assistance to enter into project agreements with sub-recipients to provide funding and services within available state and federal funding programs for various transportation projects located throughout the state. These projects have been identified and selected and are part of the State's Ten Year Plan and will be administered through the Department's local project administration process. (2) Further authorize to annually report an informational item, within 90 days of the end of the Federal Fiscal Year, on the status of all active state and federally funded locally administered projects.

#48 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Community Action Program Belknap-Merrimack Counties, Inc., Concord, NH, (originally approved by G&C 6/15/21, item #90) for public transportation services in the Belknap County and Merrimack County regions by increasing the contract amount by \$116,000 from \$2,304,884 to \$2,420,884. Effective upon G&C approval. **100% Federal Funds.**

#49 Authorize the Bureau of Aeronautics to provide funding to the City of Claremont, NH, to acquire easements for the approaches to Runway 11-29 (phase 1) at the Claremont Municipal Airport in Claremont, NH in the amount of \$334,800. Effective upon G&C approval through July 28, 2025. **100% Federal Funds.**

#50 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Tri-County Community Action Program Inc., Berlin, NH, (originally approved by G&C on 6/15/2021, item #71) for public transportation services in the Coos, Grafton, and Carroll County regions by increasing the contract amount by \$75,000 from \$1,260,484 to \$1,335,484. Effective upon G&C approval. **100% Federal Funds.**

#51 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Southern NH Planning Commission, Manchester, NH, (originally approved by G&C on 6/30/2021, item #70) for coordinated transportation services for seniors and individuals with disabilities by increasing the contract amount by \$110,000 from \$918,800 to \$1,028,800, Effective upon G&C approval. **100% Federal Funds.**

#52 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Cooperative Alliance for Seacoast Transportation, Dover, NH, (originally approved by G&C on 6/30/2021, item #65) for coordinated transportation services for seniors and individuals with disabilities by increasing the contract amount by \$110,000 from \$850,364 to \$960,364. Effective upon G&C approval. **100% Federal Funds.**

#53 Authorize the Bureau of Rail & Transit to enter into a contract amendment with VNA at HCS, Inc., Keene, NH, (originally approved by G&C on 6/15/2021, item #61) for public transportation services in the City of Keene by increasing the contract amount by \$57,600 from \$651,592 to \$709,192. Effective upon G&C approval. **100% Federal Funds.**

#54 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Advance Transit, Inc., Wilder, VT, (originally approved by G&C on 6/15/2021, item #66) for public transportation services in the Hanover-Lebanon area by increasing the contract amount by \$360,300 from \$6,193,964 to \$6,554,264. Effective upon G&C approval. **100% Federal Funds.**

#55 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Nashua Regional Planning Commission, Merrimack, NH, (originally approved by G&C on 6/30/2021, item #62) for coordinated transportation services for seniors and individuals with disabilities by increasing the contract amount by \$140,000 from \$404,000 to \$544,000. Effective upon G&C approval. **100% Federal Funds.**

#56 Authorize the Bureau of Rail & Transit to enter into a contract amendment with Southwestern Community Services, Inc., Keene, NH, (originally approved by G&C on 6/15/2021, item #69) for public transportation services in the Sullivan County region by increasing the contract amount by \$49,200 from \$1,113,892 to \$1,163,092. Effective upon G&C approval. **100% Federal Funds.**

#### **DEPARTMENT OF INFORMATION TECHNOLOGY**

#57 Authorize to accept and expend \$6,744,385 of American Rescue Plan State and Local Fiscal Recovery Funds to implement a Cyber Insurance/Protection Program to replace and enhance current cyber insurance solutions. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#### **OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION**

#58 Authorize to enter into an agreement with Gerald P. Koocher, Ph.D., ABPP, of Chestnut Hill, MA, for psychology consulting services for an amount not to exceed \$30,000. Effective upon G&C approval through December 31, 2023, with the option to extend for two one-year periods. **100% Agency Funds.**

#59 Authorize to enter into an agreement with Shannon Edward Mills, DDS, FAGD, ABFD, FICD, FACD, of Concord, NH, for dental investigative services for an amount not to exceed \$12,600. Effective upon G&C approval through December 31, 2023, with the option to extend for 2 one-year periods. **100% Agency Funds.**

#### **JUDICIAL COUNCIL**

#60 Authorize to receive an additional appropriation from funds not otherwise appropriated in the total amount of \$2,302,141, to provide a temporary salary increase to Public Defender Program staff. Effective upon G&C approval through June 30, 2023. **100% General Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#### **DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES**

#61 Authorize to enter into a Cooperative Service Agreement with the United States Department of Agriculture Animal and Plant Health Inspection Service Wildlife Services, to initiate a woodchuck control program on property located at the State Military Reservation located in Concord, NH. For a price not to exceed \$2,485. Effective upon G&C approval through December 31, 2023. **100% Federal Funds.**

#### **DEPARTMENT OF AGRICULTURE, MARKETS & FOOD**

#62 Authorize the Division of Agriculture Development to enter into a grant with the Cheshire County Conservation District, Walpole, NH, in the amount of \$46,000 to develop a business energy technical assistance program for NH specialty crop farms. Effective upon G&C approval through September 15, 2024. **100% Federal Funds.**

#63 Authorize the Division of Agriculture Development to enter into a grant with the NH Vegetable & Berry Growers Association, So. Hampton, NH in the amount of \$40,000 to develop an online marketing campaign featuring NH vegetables and berries. Effective upon G&C approval through May 1, 2024. **100% Federal Funds.**

#64 Authorize the Division of Agriculture Development to enter into a grant agreement with the Merrimack County Conservation District, Concord, NH in the amount of \$15,510 to provide technical assistance in developing a farmers' market incentive program for food insecure families to purchase NH specialty crop products. Effective upon G&C approval through March 31, 2024. **100% Federal Funds.**

#65 Authorize the Division of Agriculture Development to enter into a grant with the NH Maple Producers Association Hampstead, NH in the amount of \$62,076 to develop and implement a marketing program for the NH maple industry. Effective upon G&C approval through September 29, 2024. **100% Federal Funds.**

#66 Authorize the Division of Agriculture Development to amend an existing agreement with the University of NH, Durham, NH, (original contract approved 2/19/20, item #33) for identifying cold-hardy hydrangea cultivars for cut-flower production and sales in NH under the Specialty Crop Block Grant Project by increasing the price by \$2,926 from \$42,990 to \$45,916 with no change to the contract completion date of September 29, 2022. **100% Federal Funds.**

#67 Authorize the Division of Agriculture Development to enter into a grant with the NH Fruit Growers Association Londonderry, NH, in the amount of \$32,000 to develop and conduct a marketing campaign featuring NH vegetables and berries. Effective upon G&C approval through September 29, 2024. **100% Federal Funds.**

#### **COMMISSION FOR HUMAN RIGHTS**

#68 Authorize to accept and expend federal revenues, received from the U.S. Equal Employment Opportunity Commission, in the amount of \$41,170. Effective upon G&C approval through September 30, 2022. **100% Federal Funds.**

#### **DEPARTMENT OF ENERGY**

#69 Authorize to continue its membership and participation in the National Association of State Energy Officials for an amount of \$4,106.76. Effective retroactive to October 1, 2021 through September 30, 2022 **100% Federal Funds.**

#70 Authorize to amend the contract with The Brattle Group, Inc., (originally approved by G&C 8/4/21, item #43) for providing consulting services to the Department regarding electric vehicle rate design and related electric vehicle rate issues by increasing the contract price by \$20,000, from \$292,950 not to exceed \$312,950. Effective upon G&C approval through February 4, 2023. **100% Other Funds (Special utility Assessment).**

#71 Authorize to enter into a **sole source** contract with Southern NH Services, Manchester, NH, to supplement the Agency's Weatherization Assistance Program in the amount of \$300,000. Effective upon G&C approval through September 30, 2022. **100% Federal Funds (LIHEAP-US-DHHS).**

#72 Authorize to enter into a **sole source** contract with Southwestern Community Services, Keene, NH, to supplement the Agency's Weatherization Assistance Program in the amount of \$50,000. Effective upon G&C approval through September 30, 2022. **100% Federal Funds (LIHEAP-US-DHHS).**

#73 Authorize to enter into a **sole source** contract with Community Action Program Belknap-Merrimack Counties, Inc., Concord, NH, to supplement the Agency's Weatherization Assistance Program in the amount of \$493,520. Effective upon G&C approval through September 30, 2022. **100% Federal Funds (LIHEAP-US-DHHS).**

#74 Authorize to enter into a **sole source** contract with Community Action Partnership of Strafford County, Dover, NH, to supplement the Agency's Weatherization Assistance Program in the amount of \$268,460. Effective upon G&C approval through September 30, 2022. **100% Federal Funds (LIHEAP-US-DHHS).**

#75 Authorize to enter into a **sole source** contract with Tri-County Community Action Program, Berlin, NH, to supplement the Agency's Weatherization Assistance Program in the amount of \$566,060. Effective upon G&C approval through September 30, 2022. **100% Federal Funds (LIHEAP-US-DHHS).**

#### **NEW HAMPSHIRE FISH AND GAME DEPARTMENT**

#76 Authorize to enter into a **sole source** contract with the National Opinion research Center, Chicago, IL, to conduct a survey of NH residents' participation in fishing, hunting and wildlife associated recreation in the amount of \$100,000. Effective **retroactive** to January 1, 2022 through December 31, 2023. **75% Federal, 25% Other Funds.**

#### **GOVERNOR'S OFFICE FOR EMERGENCY RELIEF AND RECOVERY**

#77 Authorize to accept and expend funds in the amount of \$23,000,000 in American Rescue Plan Act State Fiscal Recovery Funds for the Camp NH project, a Veterans campus providing mixed housing, supportive services, and a retreat for Veterans and their families. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#78 Authorize to accept and expend funds in the amount of \$963,463 in American Rescue Plan Act State Fiscal Recovery Funds for the Judicial Branch to provide temporary relief to address emergent guardianship needs to an unusually high number of indigent patients in need of guardian appointment before they are discharged from a hospital. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#### **DEPARTMENT OF BUSINESS AND ECONOMIC AFFAIRS**

#79 Authorize the Division of Economic Development to accept and expend \$1,496,000 in American Rescue Plan Act, State Fiscal Recovery Fund for the administration of the Housing Investment Fund. (2) Further authorize to establish 3 full time temporary positions using ARPA funds for the purpose of administrating the Housing Investment Fund program. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#80 Authorize to amend item #47B approved by G&C on August 4, 2022 by reallocating \$132,633 for better utilization of funds. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#### **DEPARTMENT OF NATURAL AND CULTURAL RESOURCES**

#81 Authorize the Division of the Arts to award Public Value Partnership grants to the Nonprofit Arts Organizations as detailed in letter dated February 24, 2022, in the total amount of \$41,500 to strengthen their capacity for affordable diverse arts programs to NH residents and visitors. Effective upon G&C approval through June 30, 2022. **100% General Funds.**

#82 Authorize the Division of the Arts to award Public Value Partnership grants to the Nonprofit Arts Organizations as detailed in letter dated February 24, 2022, in the total amount of \$30,250 to strengthen their capacity for affordable diverse arts programs to NH residents and visitors. Effective upon G&C approval through June 30, 2022. **100% Federal Funds.**

#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

#83 Authorize to amend item #101 approved by G&C on June 16, 2021 by transferring funds in the amount of \$10,000,000 between class lines. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#84 Authorize to enter into a **sole source** contract for services with the Great Bay Stewards, Inc., Greenland, NH, for the Great Bay Stewards Coastal Neighbors Technical Assistance Program project in the amount of \$4,925. Effective upon G&C approval through August 31, 2023. **100% Federal Funds.**

#85 Authorize to enter into a **sole source** agreement with the university of NH, Sponsored program Administration, Durham, NH to support the Piscataqua Region Monitoring Collaborative project in the amount of \$113,355. Effective upon G&C approval through December 31, 2023. **11% Federal, 53% Other, and 36% General Funds.**

#86 Authorize to enter into a contract with New England Water Distribution Services, LLC, Windham, NH in the amount of \$84,513 in order to conduct leak detection surveys at 30 NH community water systems. Effective upon G&C approval through December 1, 2022. **100% Federal Funds.**

#87 Authorize to enter into a contract with American Leak Detection, Inc., New Haven, CT, in the amount of \$135,692 in order to conduct leak detection surveys at 54 NH community water systems. Effective upon G&C approval through December 1, 2022. **100% Federal Funds.**

#88 Authorize to enter into a Memorandum of Agreement with the NH Fish and Game Department Concord, NH, in an amount not to exceed \$9,407 to improve wetland connectivity for semi-aquatic wildlife vulnerable to wetland loss. Effective upon G&C approval through December 31, 2023. **100% Federal Funds.**

#89 Authorize to amend an agreement with the University of NH, Sponsored Programs Administration, Durham, NH, (original agreement approved by G&C on 3/3/21 item #49) by extending the end date to December 31, 2022 from April 30, 2022 to allow additional time for completion of work tasks. This is a no-cost time extension. **100% Drinking Water Groundwater Trust Funds.**

#90 Authorize to amend an agreement with The Nature Conservancy, Concord, NH, (original agreement approved 4/7/21, item #52) for the Resilient Tidal Crossings Project by extending the completion date to March 31, 2023, from March 31, 2022. Effective upon G&C approval through March 31, 2023. This is a no cost amendment. **100% Federal Funds.**

#91 Authorize to award a Local Source Water Protection grant to the City of Dover in the amount of \$20,652 to complete a project to protect public drinking water supplies. Effective upon G&C approval through May 31, 2023. **100% Federal Funds.**

#92 Authorize to award a Local Source Water Protection grant to the Lake Winnepesaukee Association in the amount of \$20,500 to complete a project to protect public drinking supplies. Effective upon G&C approval through May 31, 2023. **100% Federal Funds.**

#93 Authorize to award a Local Source Water Protection grant to the Laconia Water Works in the amount of \$1,250 to complete a project to protect public drinking supplies. Effective upon G&C approval through May 31, 2023. **100% Federal Funds.**

#94 Authorize to award a Local Source Water Protection grant to the Rockingham Planning Commission in the amount of \$24,989 to complete a project to protect public drinking supplies. Effective upon G&C approval through May 31, 2023. **100% Federal Funds.**

#95 Authorize to award a Local Source Water Protection grant to the Strafford Regional Planning Commission in the amount of \$23,320 to complete a project to protect public drinking supplies. Effective upon G&C approval through May 31, 2023. **100% Federal Funds.**

#96 Authorize to enter into grant agreements with the entities detailed in the letter dated February 25, 2022, for a total of \$114,055 to fund exotic aquatic plant control activities. Effective upon G&C approval through December 31, 2022. **100% Fee Funds.**

#97 Authorize to enter into grant agreements with the entities detailed in the letter dated February 25, 2022, for a total of \$100,860 to fund exotic aquatic plant control activities. Effective upon G&C approval through December 31, 2022. **100% Fee Funds.**

#98 Authorize to enter into grant agreements with the entities detailed in the letter dated February 25, 2022, for a total of \$158,035 to fund exotic aquatic plant control activities. Effective upon G&C approval through December 31, 2022. **100% Fee Funds.**

#99 Authorize to enter into grant agreements with the entities detailed in the letter dated February 25, 2022, for a total of \$21,258 to fund exotic aquatic plant control activities. Effective upon G&C approval through December 31, 2022. **100% Fee Funds.**

#100 Authorize to enter into grant agreements with the entities detailed in the letter dated February 25, 2022, for a total of \$88,071 to fund exotic aquatic plant control activities. Effective upon G&C approval through December 31, 2022.

#101 Authorize to award an Aquatic Resource Mitigation Fund grant to the Society for the Protection of NH Forests, Concord, NH in the amount of \$110,000 for the purposes of conserving a 122-acre parcel of land in Rochester. Effective upon G&C approval through June 30, 2023. **100% ARM Funds.**

#102 Authorize to transfer Wetlands Permit #2019-03651, to the new owners of the subject property, Laura M. and Lawrence F. Morris to perform work on Fresh Creek in Dover. The permit was originally issued to Timothy and Linda Gorman, and approved by G&C on April 8, 2020, item #57.

#102A Authorize to award a grant to the Town of Charlestown, NH, in the amount not to exceed \$1,286,700 for water system improvements. Effective upon G&C approval through December 1, 2023. **100% Federal Funds.** (2) Further authorize to approve a loan agreement with the Town of Charlestown, NH, in the amount not to exceed \$3,002,300 to finance water system improvements. Effective upon G&C approval. **100% Drinking Water State Revolving Loan Fund Repayment Funds.**

#### **DEPARTMENT OF EDUCATION**

#103 Authorize the Division of Workforce Innovation, Bureau of Vocational Rehabilitation to transfer Federal grant funds, in the amount of \$69,700 in FY22 and \$81,700 in FY23 for the support of facilitating client services. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#104 Authorize to accept and expend Child Nutrition Supply Chain Assistance funds in the amount of \$2,794,943 from the United States Department of Agriculture. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#105 Authorize to enter into contract amendment with the Children's Scholarship Fund, Concord, NH, (originally approved by G&C on 8/4/21, item #62) to continue to administrate Educational Freedom Accounts for eligible students by extending the end date from June 30, 2022 to September 30, 2023, with no increase to the contract price. **100% Education Trust Fund.**

#106 Authorize to pay the 2022 National Council of School Facilities membership dues to the National Council on School Facilities, Washington, DC, in an amount not to exceed \$5,000. Effective July 1, 2022 through June 30, 2023. **100% General Funds.**

#107 Authorize to enter Katelyn Komisarek into an educational tuition agreement with Granite State College Concord, NH to participate in an online course entitled Leading Teams, during the period of April 4, 2022 through June 24, 2022 and pay said costs in the amount of \$854.40. **100% Other Agency Income.**

#108 Authorize to enter Katherine Page into an educational tuition agreement with Granite State College Concord, NH to participate in an online course entitled Change Management and Communication, during the period of April 4, 2022 through June 24, 2022 and pay said costs in the amount of \$417. **100% General Funds.**

**NEW HAMPSHIRE POLICE STANDARDS AND TRAINING COUNCIL**

#109 Authorize to transfer \$245,895 between various accounting units and classes. Effective upon G&C approval through June 30, 2022. **100% General Fund. Contingent upon fiscal committee approval on March 18, 2022.**

**DEPARTMENT OF SAFETY**

#110 Authorize the Division of Homeland Security and Emergency Management to **retroactively** amend an existing grant agreement with the Town of Langdon, NH, increasing the grant limitation by \$1,541.40, from \$9,794 to \$11,335.40 and by extending the completion date from December 26, 2012 to January 26, 2023. **100% Federal Funds.**

#111 Authorize the Division of State Police to pay overtime in the amount of \$350,000 for permanent personnel via a transfer from class 10 appropriations for positions that are vacant due to illness, extended leaves of absence, or pending recruitment at Enforcement. The \$350,000 represents the estimate of additional funds needed for the remainder of SFY 2022. Effective upon G&C approval through June 30, 2022. **82% General, 18% Highway Funds.**

#112 Authorize the Division of State Police to pay overtime in the amount of \$135,000 for permanent personnel from class 10 appropriations for positions that are vacant due to illness, extended leaves of absence, or pending recruitment at State Police Communications. The \$135,000 represents the estimate of additional funds needed for the remainder of SFY 2022. **4% General, 24% Highway, 24% Turnpike Funds and 48% Agency Income.**

#113 Authorize the Division of Homeland Security and Emergency Management to **retroactively** amend an existing grant agreement with the City of Concord (informational item #F, G&C 2/17/21). The amendment will extend the completion date only from December 26, 2021 to January 26, 2023. **100% Federal Funds.**

**DEPARTMENT OF JUSTICE**

#114 Authorize to accept and expend a grant in the amount of \$375,000, from the U.S. Department of Justice, Office of Victims of Crime, Transforming America's Response to Elder Abuse: Enhanced Multidisciplinary Teams, for the purpose of creating a temporary Program Specialist IV position, for the Department of Justice Elder Abuse Unit, and for the purpose of coordinating a statewide system to review and triage cases involving elder financial exploitation. Effective upon G&C approval through June 30, 2023. **100% Federal Funds. Contingent upon fiscal committee approval on March 18, 2022.**

#115 Authorize to enter into sub grants with programs detailed in the letter dated March 4, 2022, for the total amount of \$395,744, to support municipalities and state agencies with activities related to relaxed COVID-19 restrictions. Effective upon G&C approval through June 30, 2023. **100% Federal Funds.**

#116 Authorize a salary increase to Jennifer Ramsey, as an Assistant Attorney General, from a salary level of \$97,000 to a salary level of \$100,000. Effective upon G&C approval for March 25, 2022, whichever is later.

#117 Authorize a salary increase to Bryan J. Townsend II, as an Assistant Attorney General, from a salary level of \$89,000 to a salary level of \$92,000. Effective upon G&C approval for March 25, 2022, whichever is later.

#118 Authorize a salary increase to Jesse J. O'Neill, as an Assistant Attorney General, from a salary level of \$88,000 to a salary level of \$91,000. Effective upon G&C approval for March 25, 2022, whichever is later.

#119 Authorize a salary increase to Jennifer Foley, as an Assistant Attorney General, from a salary level of \$98,000 to a salary level of \$101,000. Effective upon G&C approval for March 25, 2022, whichever is later.

#120 NOT USED

#121 Authorize the reappointment of Jennifer Schirmer to serve on the NH Victims' Assistance Commission. Ms. Schirmer's term will be for three years, from April 20, 2022 to April 20, 2025. Effective upon G&C approval.

#122 Authorize to enter into a **retroactive sole source** contract, with Dr. Jeremy Stuelpnagel, as a substitute medical examiner to aid the office of the Chief Medical Examiner for a total not to exceed \$10,000. For the period March 3, 2022 to March 7, 2022. Effective upon G&C approval through May 31, 2022. **100% General Funds.**

#123 Authorize consideration of whether the petition of Theresa Marie Pepin (age 31) requesting a pardon hearing for the offense of Attempted Murder should be granted. The petitioner is not eligible for an annulment.

#124 Authorize consideration of whether the petition of Pamela Smart (age 54) requesting a commutation hearing for the offense of Accomplice to First Degree Murder should be granted. The petitioner is not eligible for an annulment.

#### **DEPARTMENT OF ADMINISTRATIVE SERVICES**

#125 Authorize the request of the Division of Personnel for waiver of classification decisions. Effective upon G&C approval.

#126 Authorize to enter into a contract with RTH Mechanical Contractors Inc., Dover, NH, for steam distribution system inspection, preventative maintenance and repair service, in the amount of \$243,632. The term of the contract will begin on March 23, 2022 or upon G&C approval whichever is later through March 22, 2024, with an option to renew for an additional year subject to G&C approval. **66% General Funds, 34% Transfer from Other Agencies.**

#127 Authorize the Division of Public Works Design and Construction to enter into a contract with Integrated Facilities Construction Corp. Medford, MA, for a total price not to exceed \$2,923,700 for the Addition and Renovation of Manchester 527 Patrol Shed, Manchester, NH. Effective upon G&C approval through October 31, 2022. **96% Highway Funds, 4% Capital-General.** (2) Further authorize the amount of \$63,000 be approved for payment to the Department of Administrative Services, Division of Public Works Design and Construction for engineering services provided, bringing the total to \$2,986,700. **100% Highway Funds.**

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## **TABLED ITEMS**

### **OFFICE OF THE GOVERNOR** *(Tabled at G&C Meeting 1/12/22)*

#34A **TABLED** - The Governor and Council on motion of Councilor Kenney, seconded by Councilor Gatsas, and with Councilors Warmington and Stevens voting **no**, voted to **table** the request to accept and place on file the fact finder report for NH Department of Transportation, State Employees Association of NH, Service Employee International Union, Local 1984, pursuant to an order of the Public Employee Labor Relations Board, which is currently on appeal before the NH Supreme Court.

### **OFFICE OF THE GOVERNOR** *(Tabled at G&C Meeting 1/12/22)*

#34B **TABLED** - The Governor and Council on motion of Councilor Kenney, seconded by Councilor Gatsas, and with Councilors Warmington and Stevens voting **no**, voted to **table** the request to accept and place on file the fact finder report for NH Department of Health and Human Services, NH State Hospital, State Employees Association of NH, Service Employee International Union, Local 1984, pursuant to an order of the Public Employee Labor Relations Board, which is currently on appeal before the NH Supreme Court.

### **OFFICE OF THE GOVERNOR** *(Tabled at G&C Meeting 1/12/22)*

#34C **TABLED** - The Governor and Council on motion of Councilor Kenney, seconded by Councilor Gatsas, and with Councilors Warmington and Stevens voting **no**, voted to **table** the request to accept and place on file the fact finder report for NH Liquor Commission, Retail Division, State Employees Association of NH, Service Employee International Union, Local 1984, pursuant to an order of the Public Employee Labor Relations Board, which is currently on appeal before the NH Supreme Court.

### **OFFICE OF THE GOVERNOR** *(Tabled at G&C Meeting 1/12/22)*

#34D **TABLED** - The Governor and Council on motion of Councilor Kenney, seconded by Councilor Gatsas, and with Councilors Warmington and Stevens voting **no**, voted to **table** the request to accept and place on file the fact finder report for NH Department of Safety, Marine Patrol, State Employees Association of NH, Service Employee International Union, Local 1984, pursuant to an order of the Public Employee Labor Relations Board, which is currently on appeal before the NH Supreme Court.