

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Eric Cable

v.

State of New Hampshire

No. 217-2018-cv-00133

PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIM

(ORAL ARGUMENT REQUESTED)

NOW COMES the Plaintiff, Eric Cable, by and through his attorneys, the American Civil Liberties Union of New Hampshire and Lawrence A. Vogelmann, Esq., and hereby moves to dismiss the Defendant's counterclaim pursuant to Superior Court Rule 12(d). In support of his motion, Plaintiff states as follows:

I. INTRODUCTION

1) Plaintiff was an inmate in the custody of the New Hampshire Department of Corrections when he was injured by the Department's negligent failure to manage his Type II diabetes. In response to his lawsuit, the State counterclaimed for the pro-rata share of the cost of his incarceration to set off any eventual judgment. This practice, which appears never to have been done previously by the State, violates Cable's constitutional right to a remedy under Part I, Article 14 of the New Hampshire Constitution and the statutory cap on damages in RSA 541-B:14.

2) Indeed, the Defendant State of New Hampshire's permissive counterclaim under RSA 622:56—a cost of care recoupment statute against former inmates that contains no ability-to-pay provision and is rarely (if ever) invoked by the State—is a transparent effort by the State to retaliate against a low-income plaintiff simply because that plaintiff decided to invoke his

constitutional right to seek relief in the courts against the State prison system. Allowing this counterclaim to proceed would be deeply harmful. It would have the obvious effect of deterring inmates from bringing valid claims—including constitutional claims—against the State prison system. It would also create an environment where the State prison system is not incentivized to comply with civil rights laws concerning inmate care.

- 3) For those reasons, the counterclaim should be dismissed.

II. FACTUAL BACKGROUND

- 4) Cable was an inmate at the New Hampshire State Prison for Men until his release on November 8, 2017. *Counterclaim*, ¶ 1. While incarcerated, Cable was diagnosed with Type II diabetes. *Compl.*, ¶4. Lab tests, microalbumins, foot exams, and eye exams were either not conducted or were not conducted as frequently as the relevant medical standards require. *Compl.*, ¶6. As a result, Cable’s disease was not properly managed, leading to needless injuries and pain and suffering. Cable was indigent when he entered the criminal justice system in 2014. *See* Exhibit 1.

- 5) Cable brought this lawsuit against the State to recover for the injuries he suffered as a result of the State’s negligence. Over two months after answering the allegations, the State brought a counterclaim pursuant to RSA 622:56 for reimbursement for the “cost of care,” *Counterclaim*, ¶5 during Cable’s incarceration. This counterclaim is apparently the first of its kind in the State of New Hampshire.

- 6) The American Civil Liberties Union of New Hampshire (“ACLU-NH”) sent a Right to Know request to the Department of Justice and the Department of Corrections requesting, among other things, “Any policies or procedures maintained by the Department of Corrections or Department of Justice concerning the implementation of RSA 622:56. This request includes any

policies or procedure concerning when to seek cost of care under RSA 622:56.” See Exhibit 2. The Departments responded that they were not in possession of any documents responsive to that request. See Exhibit 3.¹

7) Not only did the Departments not produce any responsive policies or procedures, but in their response to the Right to Know request, the Departments did not produce any petitions filed seeking reimbursement for the cost of incarceration against former inmates under RSA 622:56 since January 1, 2008, including in the form of a counterclaim filed in response to a former inmate’s lawsuit.

8) Here, critically, the State never sought reimbursement for the cost of Cable’s incarceration until he exercised his constitutional right to seek a remedy for the State’s inattention to his medical needs. Solely in response to his lawsuit, the State seeks set-off in excess of \$119,535.93—a figure which may be a significant portion of Cable’s recovery.²

9) Given that the Department of Justice and Department of Corrections have no policies on when to seek recoupment from former inmates, and that the State never sought recoupment until after Cable filed this lawsuit, one can only conclude that the the counterclaim was brought in retaliation to Cable’s availing himself of this Court.

III. “PAY-TO-STAY” STATUTES

10) State and local governments have, for years, authorized prisons to charged inmates for costs associated with incarceration, sometimes called “pay-to-stay.” Eisen, Lauren-Brook, “Paying For Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive

¹ In considering a motion to dismiss, the Court may consider “documents attached to the plaintiff’s pleadings,... documents the authenticity of which are not disputed by the parties[,] *official public records*[,] or documents sufficiently referred to in the [writ].” *Beane v. Dana S. Beane & Co.*, 160 N.H. 708, 711 (2010) (citation, quotation, and ellipses omitted) (emphasis added).

² According to the counterclaim, the “cost of care” increased every year at least since the year ending June 30, 2014. For the year ending June 30, 2017, the annual expense of an inmate was \$36,960 or \$101.26 per day.

Fines Clause, 15 Loy. J. Pub. Int. L. 319, 321 (2014). “By 1988, forty-eight states authorized some form of correctional fees. Room and board fees grew rapidly in the second half of the 1980s, becoming even more common in the 1990s and into the 21st century. By 2004, approximately one-third of county jails and more than fifty percent of state correctional systems had instituted ‘pay-to-stay’ fees, charging inmates for their own incarceration.” *Id.* While proponents of these policies argue that these statutes can offset the burden on the taxpayer of exploding prison populations or “teach inmates valuable lessons,” other commentators argue that these policies are misguided. *Id.* at 323-24.

11) Nationally, these policies disproportionately affect the indigent and racial and ethnic minorities, all of whom are overrepresented in prisons. “In For a Penny: The Rise of America’s New Debtors’ Prisons,” American Civil Liberties Union, October 2010, p. 9, *available at* https://www.aclu.org/files/assets/InForAPenny_web.pdf (“The imposition of [legal financial obligations]—particularly the ‘pay-to-stay’ and booking fees charged once a defendant is incarcerated—disproportionally affects racial and ethnic minorities, because they are disproportionately represented among the prisoner population.”). In addition, saddling prisoners with debt can make successful reentry into society much more difficult. *See* Bannon, Alicia et al., “Criminal Justice Debt: A Barrier to Reentry,” *available at* <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

12) In New Hampshire, the pay-to-stay scheme is codified in RSA 633:53 *et seq.* While an inmate is incarcerated, the Attorney General is to review whether the estate of an inmate has sufficient assets to pay for all or part of the “cost of care” of an inmate. RSA 622:55, IV. That cost shall not be in excess of the per capita cost of maintaining the inmate in the facility or facilities in which he was incarcerated. RSA 622:55, III. If the Attorney General determines an inmate

has sufficient assets, he may file a petition in superior court for reimbursement. RSA 622:55, V. If the inmate objects, the Court shall hold a hearing and order the inmate to pay an amount “appropriate under the circumstances,” and should consider other financial obligations of the inmate, and the financial needs of the inmate for the six months after the inmate’s release. RSA 622:55, VII.

13) By contrast, the pay-to-stay statute for inmates who have already left prison does not have the same explicit protections for former inmate. RSA 622:56, which is at issue here, provides “After release, the department may seek reimbursement of cost of care against any inmate within 6 years of release from imprisonment of such inmate. The department may recover the expense incurred by an inmate during the entire period such inmate was confined in a correctional facility.” There is no ability-to-pay exception in this statute, as the statute is silent as to whether the Attorney General or the Court must consider the former inmate’s ability to pay. Notably, the six year time period is longer than the general three year statute of limitations for claims against the State in New Hampshire. *See* RSA 541-B:14. As a result, the legislature has authorized the State to seek recoupment from a prisoner without time bar whenever a prisoner sues the State for injuries suffered while incarcerated.

IV. ANALYSIS

The counterclaim should be dismissed for two reasons. *First*, the counterclaim brought by the State interferes with Cable’s constitutional right to a remedy. *Second*, RSA 622:56 impermissibly conflicts with RSA 541-B:14 which establishes a statutory cap on damages for tort claims brought against the State.

A. The counterclaim interferes with Cable’s constitutional right to a remedy

14) The counterclaim should be dismissed because the State's actions in this case—filing a counterclaim to charge Cable for the cost of his imprisonment in retaliation for his exercising his constitutional right to seek redress against the State's negligence—interfere with Cable's constitutional right to a remedy.

15) “Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character. . .”. N.H. CONST. Pt. I, Art. 14. “The right to recover for one's injuries, however, is an important substantive right under the New Hampshire Constitution, and an abolition of the rights of a class of persons to recover damages for their injuries in full would contravene the plain language of article 14, part I of the New Hampshire constitution . . .” *Estabrook v. Am. Hoist & Derrick*, 127 N.H. 162, 171 (1985) (citations, quotations, ellipsis omitted) (overruled on other grounds by *Young v. Prevue Prods.*, 130 N.H. 84 (1987)). “The purpose of this provision is to make civil remedies readily available, and to guard against arbitrary and discriminatory infringements on access to courts.” *Opinion of Justices*, 126 N.H. 554, 559 (1985) (citation, quotations, and brackets omitted).

16) In 2017, there were 2,609 inmates in the custody of the New Hampshire Department of Corrections. See <https://www.nh.gov/nhdod/population.html>. Some of those inmates may have experienced substandard medical care, cruel and unusual punishment as proscribed by the Eighth Amendment, or other injuries. Some of those inmates, in turn, may bring lawsuits against the State to recover for those injuries, and to hold the State accountable for its policies and actions which led to those injuries.

17) RSA 622:56, as currently written, permits the State to use the cost of incarceration as a shield to every lawsuit brought by an inmate for injuries sustained in custody. Every timely lawsuit brought against the State will come within the six-year window of RSA 622:56. And the

Department of Justice and Department of Corrections have produced no policies or procedures regarding when to seek the cost of a prisoner's incarceration after that person's release.

18) Indeed, RSA 622:56 would permit the State to use the cost of an inmate's incarceration to offset an award for even the most egregious and wanton constitutional violation to the tune of over \$36,000 per year. In the context of a retaliatory counterclaim, use of RSA 622:56 in this manner is problematic for at least two reasons. *First*, this statute effectively immunizes the State and its agents for all injuries in amounts below the current cost of incarceration. This is true even when a state actor commits an intentional tort within the scope of his employment and without a reasonable belief in the lawfulness of her acts, which would unquestionably conflict with Part I, Article 14. *See Opinion of the Justices*, 126 N.H. 554, 564-65 (1985) (where an intentional tort is not grounded on a reasonable belief in the lawfulness of a disputed act, "the citizen's constitutional right to the redress of injuries prevails."); *Huckins v. McSweeney*, 166 N.H. 176, 182 (2014) ("[I]t is unconstitutional for the State to immunize itself or its municipalities from liability for intentional torts committed by government employees when those torts are not grounded on a reasonable belief in the lawfulness of the disputed act."). *Second*, by permitting the State to reduce any award won by an inmate by over \$36,000 per year, the statute has removed or at least seriously minimized any incentive for the government to respect the rights of inmates. For example, why should the prison provide kosher meals for a Jewish inmate if it can just set off \$36,000 per year against any possible judgment?

19) *Williams v. Murphey*, 2018 U.S. Dist. LEXIS 72833 (D. Conn. March 29, 2018), is instructive. In that case, an inmate held in a state facility sued several corrections officers who placed him in a shared cell despite the inmate's repeated requests for a single occupancy cell due to his safety concerns. *Id.* at *5-7. The plaintiff-inmate was attacked in his cell by his cellmate

and received multiple injuries. *Id.* at *8. The plaintiff-inmate filed a 42 U.S.C. § 1983 claim alleging Eighth Amendment and Fourteenth Amendment violations, and a jury awarded a verdict in his favor against one of the corrections officers. *Id.* at *9-10.

20) After the verdict, the State of Connecticut indemnified the judgment-debtor officer and remitted some of the money to the plaintiff; however, Connecticut also sought to set off a portion of the verdict with the costs for plaintiff's appointed counsel in his criminal case and with the costs of his incarceration. *Id.* at *29-30.³ Plaintiff moved to enforce the jury's verdict, and the Court held that Connecticut's actions in indemnifying the officer and withholding some of the judgment were preempted by the purpose of Section 1983. *Id.* at *3. "The State has, in essence, devised a shell game that allows it to pay a judgment while simultaneously recouping the proceeds. By undertaking such actions, the State has ensured that neither DOC employees nor itself will have the incentive to uphold the constitutional rights vindicated by the judgment in this case." *Id.* at *36. As a result, the Court found that Connecticut's actions of indemnifying the judgment-debtor and refusing to pay the entire verdict "irreconcilably conflicted" with the purpose of Section 1983, and were therefore preempted. *Id.*⁴

21) The State's actions in this case raise the same problems as Connecticut's actions in *Williams*: by seeking to set off over \$119,000 in response to Cable's medical negligence lawsuit, the State is removing or at least significantly minimizing any financial incentive for the Department of Corrections and its personnel to treat Cable and potentially other inmates appropriately. This not only violates Part I, Article 14 of the New Hampshire Constitution, but it

³ The cost of incarceration constituted about 50 percent of plaintiff's judgment, and the cost of his criminal counsel an additional almost 20 percent. *Id.* at *30.

⁴ See also *Hankins v. Finnel*, 964 F.2d 852, 861 (8th Cir. 1992) (finding the Missouri's attaching a judgment issued under Section 1983 to recover the cost of incarceration was preempted as "To allow the State to largely recoup this award would be inimical to the goals of the federal statute.").

is bad policy. This Court must reject the State's retaliatory effort here to immunize itself from a civil rights violation that, if allowed to proceed, would (i) deter former inmates from bringing suit and (ii) incentivize the State to provide inadequate care.

B. RSA 622:56 impermissibly interferes with RSA 541-B:14 which establishes a statutory cap on damages against the State

22) The counterclaim should be dismissed because RSA 622:56, which permits the State to recoup tens of thousands of dollars per year in all cases where an inmate files a lawsuit against the State, conflicts with the statutory cap on damages laid out in RSA 541-B:14.

23) RSA 541-B:14, I provides "All claims arising out of any single incident against any agency for damages in tort actions shall be limited to an award not to exceed \$475,000 per claimant and \$3,750,000 per any single incident, or the proceeds from any insurance policy procured pursuant to RSA 9:27, whichever amount is greater; except that no claim for punitive damages may be awarded under this chapter. The limits applicable to any action shall be the limits in effect at the time of the judgment or settlement."

24) "Legislative history reveals that the legislature intended this chapter to govern all claims against the State and/or its employees unless another remedy is specifically provided by statute. RSA chapter 541-B was introduced in the House of Representatives as House Bill (HB) 440, with 'the intention . . . to provide a comprehensive procedure for bringing claims against the state and its employees.'" *Laramie v. Stone*, 160 N.H. 419, 437 (2010) citing N.H.H.R. Jour. 305 (1985).

25) As the *Laramie* Court recognized, RSA ch. 541-B is a comprehensive scheme for claims against the state. It sets forth a statutory cap on damages, RSA 541-B:14, I, permits the award of interest, RSA 541-B:14, III, requires notice to the State, RSA 541-B:14, IV, sets forth

the jurisdiction of the superior court and board of claims, RSA 541-B:9, sets forth exceptions, RSA 541-B:19, and establishes a right to a jury trial, RSA 541-B:20. Indeed, the scheme specifically sets out that the limits on awards provided in RSA 541-B:14 apply to claims arising from clinical services provided to the Department of Corrections. RSA 541-B:21-a.

26) RSA 622:56 effectively lowers the statutory limit on damages by \$36,000 per year of incarceration, which is contrary to the “comprehensive procedure” laid out by the legislature in RSA 541-B:14. For example, if the State is permitted to offset over \$119,000 from a maximum judgment of \$475,000, Cable’s maximum recovery would be less than seventy-five percent of the limit the legislature intended. And any state prison inmate who was incarcerated for fourteen years would not be able to recover anything for any tort if the State sought and was granted a complete set-off.⁵ Such a result would conflict with the purpose of the comprehensive legislative scheme, which limits to \$475,000 but does not remove (and likely could not without running afoul of the constitutional right to recovery) judgments against the State.

V. CONCLUSION

27) For the reasons discussed above, the counterclaim should be dismissed.

⁵ Assuming the cost of care is \$36,000 per year.

WHEREFORE, Plaintiff respectfully requests that this Court:

- a) Dismiss the Defendant's Counterclaim; and
- b) Grant all other relief that it deems just and equitable.

Respectfully submitted,

ERIC CABLE,

By and through his attorneys,



Date: October 1, 2018

Gilles R. Bissonnette (N.H. Bar No. 265393)
Henry R. Klementowicz (N.H. Bar No. 21177)
American Civil Liberties Union of New Hampshire
18 Low Ave. # 12
Concord, NH 03301
Tel. (603) 225-3080
gilles@aclu-nh.org
henry@aclu-nh.org

Lawrence A. Vogelmann (N.H. Bar. No. 10280)
Nixon, Vogelmann, Slawsky, & Simoneau
77 Central Street
Manchester, NH 03101
Tel. (603) 669-7070
lvogelman@davenixonlaw.com

Certificate of Service

I hereby certify that a copy of the foregoing was sent to Heather Neville, Esq. and Lindsey Courtney of the N.H. Department of Justice.


Henry Klementowicz

October 1, 2018

Exhibit 1

FINANCIAL AFFIDAVIT

NAME Eric Cable BOOKING NO. 96019

PRISON P.O. Box 14
ADDRESS: _____

_____Concord, NH 03302_____

HOME ADDRESS _____

Hooksett NH

03106

WARNING: The information you provide is subject to the following limitations:

- (1) The information is subject to examination by the Department of Justice
- (2) A false or dishonest answer will be taken into consideration by the Adult Parole Board and prison disciplinary board.
- (3) The form must be signed under penalty of perjury.

MARITAL STATUS

Single ☒
 Widowed ☐

Married _____ Divorced _____
Legally Separated _____

DEPENDENTS

Names and ages of dependents: _____

Relation to you: _____

Court ordered child support NA

Court ordered alimony

INCOME

Employer's name Great State Beverage

Employer's address Hooksett Rd Hooksett NH

Monthly wages: Gross 2200.00 Net 1800.00

Public Assistance/Welfare _____ Social Security _____

Pension _____ Other _____

Spouse's employer _____

Employer's address 1 / 1

Monthly Wages: Gross ☐ Net ☒

Public Assistance/Welfare Social Security

Pension	Other

PROPERTY

Real Estate:

	<u>Value</u>	<u>Mortgage</u>	<u>Net</u>
1. Home	_____	_____	_____
2. Other	_____	_____	_____

Motor Vehicles:

	<u>Value</u>	<u>Owned</u>	<u>Net</u>
1.	_____	_____	_____
2.	_____	_____	_____

Personal Property:

	<u>Value</u>	<u>Owned</u>	<u>Net</u>
1. Stereo/T.V.	_____	_____	_____
2. Jewelry and Personal Items	_____	_____	_____
3. Other _____ Identify	_____	_____	_____
4. Other _____ Identify	_____	_____	_____

OTHER ASSETS

Cash _____
 Checking Account _____
 (Include joint accounts)
 Savings Account _____
 (Include joint accounts)
 Credit Union _____
 (Include joint accounts)
 Stocks/bonds/mutual funds _____
 Trust _____
 Inmate Accounts _____
 Retirement Accounts _____

EXPENSES

Monthly Expenses

Rent _____	Insurance _____
Food _____	Other (Identify) _____
Utilities _____	Other (Identify) _____
Cloths _____	Other (Identify) _____
Medical/Dental _____	Other (Identify) _____

DEBTS

Real Estate:

<u>Lender</u>	<u>Total Owed</u>	<u>Monthly Payment</u>
1. _____	_____	_____
2. _____	_____	_____

Other Debts:

<u>Lender</u>	<u>Total Owed</u>	<u>Monthly Payment</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Inmate Account:

List all deposits within the last 3 months (by any person). Use additional pages if necessary.

<u>Date</u>	<u>Amount</u>	<u>Reason</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

List all withdrawals or deductions within the last 3 months (by any person). Use additional pages if Necessary.

<u>Date</u>	<u>Amount</u>	<u>Reason</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

Gifts Transferred

List all monies or property of any kind transferred or give **TO** you from any person (including family members) in the last 3 months. Use additional pages if necessary.

<u>Date</u>	<u>Amount</u>	<u>Reason</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

List all monies or property of any kind transferred or given **FROM** you to any person (including family members) in the last 3 months. Use additional pages if necessary.

<u>Date</u>	<u>Amount</u>	<u>Reason</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

I declare under penalty of perjury that the foregoing information is true, accurate and complete to the best of my knowledge and belief.

2/13/14
Date


Signature

.....
Case No. _____
Case Name _____
Court _____

I declare under penalty of perjury that I have not previously brought a claim in any court arising from the same operative facts as the claim made in the above case.

Date

Signature

Exhibit 2



August 3, 2018

VIA EMAIL (lynmarie.cusack@doj.nh.gov)

Lynmarie C. Cusack
Office of the Attorney General
NH Department of Justice
33 Capitol St.
Concord, NH 03301

Re: Right-to-Know Request Regarding RSA 622:53-58, Reimbursement of Cost of Care by Inmates

Dear Attorney Cusack:

This is a consolidated Right-to-Know request to the New Hampshire Department of Justice and the Department of Corrections pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire ("ACLU-NH"). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Office waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

Below are the specific requests:

1. Any policies or procedures maintained by the Department of Corrections or Department of Justice for determining (i) the cost of care of inmates developed pursuant to RSA 622:55, III and (ii) whether the estate of the inmate is sufficient to reimburse the state for all or part of the cost of care of the inmate pursuant to RSA 622:55, IV. This request includes any policies or procedure concerning when to seek cost of care under RSA 622:55.
2. Any policies or procedures maintained by the Department of Corrections or Department of Justice concerning the implementation of RSA 622:56. This request includes any policies or procedure concerning when to seek cost of care under RSA 622:56.
3. From January 1, 2008 to the present, all reports filed by the New Hampshire Attorney General pursuant to RSA 622:57 on the number of petitions brought under RSA 622:53-58 and the amount of money recovered.
4. To the extent not included in response to document request no. 3, a list of all petitions for cost of care filed under RSA 622:55 and RSA 622:56 from January 1, 2008 to the present, including (i) the names of the inmate, (ii) the date of the filing, (iii) the jurisdiction of the filing and the case number, and (iv) whether the action was filed as a counterclaim in response to a lawsuit.
5. Any financial resources form completed under RSA 622:55 and RSA 622:54, I by former inmate Eric Cable.
6. Documents evidencing any review conducted by the Department of Corrections or Department of Justice as to whether the estate of Mr. Cable is sufficient to reimburse the state for all or part of the cost of care of Mr. Cable pursuant to RSA 622:55, IV. This request includes any independent

investigation conducted by the Department of Justice or Department of Corrections to determine whether Mr. Cable has sufficient estate to pay for all or part of the cost of care.

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, "within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied." *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. See RSA 91-A:4, IV (official must "make such record available" or "deny the request in writing *with reasons*") (emphasis added).

Thank you for your anticipated cooperation. As this request is part of a time-sensitive investigation concerning the matter *Cable v. State*, No. 217-2018-cv-00133 (Merrimack County Superior Court) and given that we are only seeking discrete documents in the possession of the State, we ask for the responsive documents within business 5 days.

Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org

Cc: Heather Neville (heather.neville@doj.nh.gov)
Lindsey Courtney (lindsey.courtney@doj.nh.gov)
Jeff Lyons (Jeffrey.Lyons@doc.nh.gov)

Exhibit 3

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 31, 2018

Gilles R. Bissonnette, Esq.
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301

Re: Right to Know regarding RSA 622:53-58

Dear Attorney Bissonnette:

I am enclosing with this letter documents bates number RTK 1 through 218 which are responsive to your Right to Know request dated August 3, 2018. We are continuing our search for additional responsive documents, but wish to forward these documents to you at this time.

With respect to Request 1, enclosed are documents RTK 1 through 6.

We are not in possession of any documents responsive to Request 2.

Documents RTK 7 through 180 show cost of care reimbursements to the State since 2011 and are responsive to Request 3. We have no documents earlier than 2011 responsive to this request.

Documents RTK 181 through 218 are responsive to Request 4.

As to Request 5, this information is exempt from disclosure under RSA 91-A:5, IV. To the extent that you obtain a release from Mr. Cable, we can then provide that information to you.

We are not in possession of any documents responsive to Request 6. Should you have any questions, please feel free to contact Attorney Lyn Cusack.

Sincerely,

Kathryn L. Amar
Investigative Paralegal
Civil Bureau
(603) 271-3650
kathryn.amar@doj.nh.gov

KLA/kla
Enclosure