

Senate Bill 2002
House Appropriations Committee – Government Operations Division

Testimony Presented by Sally Holewa
State Court Administrator
March 9, 2021

Good morning, Chairman Vigesaa and members of the Committee. For the record, my name is Sally Holewa. I am the State Court Administrator. I will be providing an overview of the major items in our appropriations request and the senate changes. Our Director of Finance, Don Wolf, will provide more details on the entire bill.

You have before you engrossed senate bill 2002 which reflects the changes the senate made to our original appropriation request. The bill in its current form is going to strike you as very odd. That is because the Senate incorporated the policy provisions of another bill, SB 2082, that is related to child support duties, and then killed off SB 2082. You will hear more about this “ghost bill” and the reasons for why it was handled in this manner later in my testimony when I talk about clerk of court services.

The Judicial Branch appropriation funds the personnel, programs, and operating costs of the Supreme Court, the district courts, and the Judicial Conduct Commission and Attorney Disciplinary Board (JCCDB). Our original appropriation request for the 2021-2023 biennium was **\$118,161,669**. This is an increase of **\$8,663,681** from our 2019-2021 base budget. That increase primarily consists of one-time funding requests and increased salary and benefit costs. The Senate reduced the overall request to **\$117,996,743** which is an increase of **\$8,498,755**.

Salary and Benefits - \$4,284,319

Our budget request includes **\$1,906,082** to cover the executive branch compensation package. This includes the cost for proposed salary increases, and increased health insurance and retirement contributions. It also includes **\$1,729,688** to cover the cost to continue 2019-2021 salary increases

Our budget proposal also includes a 2% per year increase in supreme court justice and district court judge salaries. The cost for this increase would be **\$648,549**. Under the senate version this amount did not change. As always, it is our request that if the legislature settles on a more generous increase for state employees that the same increase be extended to our judicial officers.

One-Time Funding - \$4,517,600

Juvenile Case Management System: We are requesting **\$2 million** for the replacement of our juvenile case management system. Our current juvenile case management system is an off-the-shelf system that runs on an Oracle database and was purchased in 1998. There are enough technological and functional deficiencies in the system that a complete replacement is necessary in order to reach our goals. Some of these goals include better data retrieval and analysis, electronic filing and storage of documents, automated work processes, text messaging, and integration with software used by the division of juvenile services, department of human services, and the department of transportation. In October, 2020 we were notified by the vendor that they would no longer be providing any updates or modifications to this system. Long before we received that notice, we began looking for a replacement system. In fact, our original request to the legislature for funds

to replace the system was in 2015. We renewed that request in 2017 but omitted it in 2019 due to the budget situation.

Supreme Court Docket System: We are requesting **\$2 million** for the replacement of the Supreme Court Docket System. The current docket management system is a homegrown system built in 1993 that has since migrated to using MS SQL Server as a database. The vendor who wrote the system employed a single individual capable of supporting the system. The vendor closed his business in 2019 and his employee left to pursue full-time work elsewhere. Given these circumstances, migration to an off-the-shelf commercial case management system is the most prudent course of action to preserve existing case records and to take advantage of functionality offered by newer software systems. Some of these advances include true electronic filing and electronic document storage, automated workflow, integrated accounting packages, and integrated collaboration tools.

Recognizing the urgency of the situation facing us, the Senate left the funding for both of these software replacement projects in place.

Courtroom and Conference Room Video Equipment: We are requesting \$360,000 for video equipment for 41 courtrooms and 4 conference rooms. This equipment is necessary for us to hold hearings and meetings using Zoom. The North Dakota Court System, like most court systems in the United States, has chosen Zoom as its preferred platform because of its ability to meet the unique needs of courts. There is a company that produces a piece of Zoom-specific equipment, called D-TEN, that we are using to quickly convert courtrooms and conference rooms that have no video-

capability at all into “Zoom Rooms.” These additional zoom rooms will greatly increase the number of hearings we can hold remotely and are a major component in our plan to address the backlog of cases that has been created due to the pandemic.

Courtroom Wi-Fi Access: We are requesting \$157,600 to install wi-fi access points in 80 courtrooms. As many of you know, our court records are maintained in electronic format so it is imperative that the judge and attorneys have access to them while in the courtroom. Additionally, many more attorneys are now maintaining their files electronically and most of the legal reference that a judge or attorney might need during a court proceeding are electronic. There are also more types of wireless technology being used in courtrooms. These 80 courtrooms we have identified have weak wi-fi signals that need to be supplemented with additional access points.

The Senate left the funding for both of these IT equipment requests in place but added Section 13 (SB 2002, pg. 8, lines 26-29) to the appropriation bill to indicate that it is their intent that the Court use federal funds for these two projects. The tool to obtain those funds is in HB 1395, which you are probably aware is the bill that allows for adjustments of the Emergency Commission’s authorization to expend federal coronavirus relief funds. We have made a request to the Legislative Council to seek \$360,000 of additional CARES funding for the Zoom monitors when the Senate takes up HB 1395. Although the intent of Section 13 of SB 2002 is that we will use federal funding for both the courtroom video equipment and the Wi-Fi access, it does not appear that the Wi-Fi access points will qualify for this funding.

Juvenile Services – Increase of \$1,221,086

When drafting our appropriation request last year, we attempted to stay as close to a hold even budget as we could. To do this, we decreased our request for funding of juvenile services by \$1,221,086. The Senate restored all of this funding. So, although it looks like an increase in the funding level for these services it is actually the same level of funding we received for the current biennium. Since restoration of funding that was voluntarily cut by an agency (or in this case – branch of government) is not typical, let me explain what happened.

We eliminated in-home family counseling for families in child abuse and neglect cases which resulted in a budget savings of \$500,000. This was not an easy cut for us to make because we recognize the value in getting these services to families at the earliest opportunity. However, we were hopeful that the Department of Human Services would be able to pick up these services through the shared services fund they have proposed. The senate restored this funding because of the uncertainty of the level of services the Department of Human Services will be able to provide.

We eliminated the three youth cultural achievement programs we have been providing. In Bismarck and Devils Lake these programs work with Native American children and their families and in Fargo they work with new Americans and their families when a child has been charged with a delinquent offense. These cuts resulted in a budget savings of \$455,000. The senate restored this funding because there does not appear to be an alternative method of funding them through a state agency or non-profit.

We cut an additional \$266,086 by reducing funding for the Day Report Program, which is an afterschool program that provides tutoring and life skills training for children under the supervision of the court, and by reducing funding for the victim-centered restorative justice and accountability conferencing programs run by Lutheran Social Services. The senate restored the funding for the restorative justice and accountability conferencing programs at our request when Lutheran Social Services closed their programs down. Our intent had been to reduce the number of referrals to these programs, not eliminate their use altogether. We were fortunate that the Consensus Council has agreed to take on these programs, but to do so they needed an assurance that the funding for them would be available beyond June 30th of this year. We also recognized that their start-up costs and administrative costs would be slightly higher which is why we requested a full reinstatement of the funds.

Clerk of Court Services/Transfer of Child Support Duties

We are requesting \$4,953,974 for the clerk of court services that we obtain through contracts with 39 counties. This is a slight increase of \$25,034 from the current appropriation. The amount is based on the number and types of cases filed during the period of January 2018 through January 2020 and the court staff salary in effect on January 2020.

Since 2001, clerk of court services are delivered in two ways in North Dakota. In fourteen counties,¹ the state employs the personnel for this office.

¹ The fourteen counties where clerk offices are state employees are: Barnes, Burleigh, Cass, Grand Forks, McKenzie, Morton, Ramsey, Richland, Rolette, Stark, Stutsman, Walsh, Ward, and Williams.

In the remaining 39 counties, the state contracts with the county to perform those duties under NDCC 27-05.2-02. The contracts for those counties are calculated using the court's workload assessment formula. This formula determines the amount of work required based on number and types of cases filed using a two-year average.

I have attached a copy of Chief Justice Jensen's State of the Judiciary speech from this past January. During that speech, he discussed a future plan to move the remaining contract clerk counties to state funding. Doing this will provide us with greater flexibility in assigning work and will allow us to provide better oversight and consistency in the services that are delivered.

As promised when I started my testimony, this is where I begin to explain the "ghost of SB 2082" which has now materialized as sections 5, 6, 7, 8, 9 and 12 of the bill you have before you today. SB 2082 was introduced by the Supreme Court to help us reach our twin goals of meeting the trial court judges' need for better support in their decision-making duties and to reduce a perennial shortage of clerk of court staff without the need to request additional FTEs from the legislature. To meet those goals, we have begun reclassifying court reporter positions as they become vacant and examining clerk of court duties for more efficiencies. In examining the child support enforcement duties being done by clerks of court we realized that they were at odds with the Court's position as a neutral arbiter of disputes because those duties require the clerk of court to actively assist one side (the obligee) in a case. In no other case type do clerks take an active role in assisting just

Seven counties are eligible to transfer clerk services to the state but have elected to retain those services. Those counties are: Dunn, McHenry, McLean, Mercer, Mountrail, Pembina and Traill.

one side of a dispute. We also recognized the inefficiency of having 53 clerk's offices performing duties that could be handled faster and better by the child support unit. With that goal in mind, we introduced SB 2082. I'm not going to repeat all of my testimony from the hearings on that bill but I have attached a copy of the testimony I presented to the Senate Appropriations Committee along with a copy of the fiscal note that was prepared by the Department of Human Services. I will note, though, that in the copy of the testimony I have attached I corrected a reference to "obligor" to say "obligee".

In drafting SB 2082 we worked closely with Jim Fleming and his staff to write a bill that was as complete as possible. In saying this, I do want to be clear that while Mr. Fleming and his staff assisted with this endeavor, they do not support the transfer of duties without a sufficient appropriation and additional authorized FTEs. SB 2082 did not include transfer of FTEs for the simple reason that the Court System does not have the staff to give them. While child support enforcement duties are done in all 53 counties, only the staff in 14 counties are state employees. Those 14 counties with state-employed clerks are not adequately staffed. We have a minimal staff of 2 FTEs in three of those 14 counties. The staffing shortage in six of the other counties ranges from 15-31%. We do annual staffing studies based on number and types of case filings. Our 2020 staffing study showed a shortage of 15 clerks for those six counties. In 2019, the number was 17 clerks short.

The Senate reduced our FTE numbers by 1.5 FTE (SB 2002, pg. 2, line 27) with the intent of transferring those FTEs to the Department of Human Services. We are asking to have those FTEs restored to the judicial branch

and instead support a transfer of general funds equivalent to what the Department of Human Services would need to hire 3.5 FTEs. Based on the fiscal note for SB 2082 the difference between the general funds DHS would need to employ 3.5 additional FTEs (\$300,126) and the offset to that from federal funding (\$206,662) is \$83,126.

Federal Funds

This budget includes an increase in federal funding of **\$187,643** in the Court Improvement Program grants. This amount has increased since the first half of the session because additional funds were awarded to each state under the Consolidated Appropriations Act of 2021 that was signed into law on December 28, 2020. Court Improvement Grants are awarded to each state to study and strengthen their response to abused and neglected children. This grant funds three temporary staff positions. The federal fund portion of this project is **\$591,958**. We are able to use in-kind services as the required 15% state match for the grants.

The budget includes \$1,100,000 in federal child support funding for work done by clerks and referees related to child support enforcement. The bill before you anticipates a decrease in these funds of **\$155,281** due to the decrease in the number of hearings we have had during the pandemic. Please note, that if engrossed SB 2002 is passed with the provisions related to the transfer of child support duties from the clerks of court to the child support unit, then this number could be reduced by an additional \$935,000 since the funding follows the duties. If this occurs, that will leave us with \$165,000 in federal child support funding which should be enough to cover the cost of any remaining child support enforcement duties done by the court.

There are just a few other areas I want to touch on, although they do not have a significant budget impact.

Veterans Treatment Court - \$145,247

Our appropriation request includes \$145,247 to establish a veteran's treatment court. The authorization for the court is SB 2246 which received a unanimous Do Pass from the Senate. A veterans treatment court operates similar to a drug court but is limited to veterans, including active service members, who have been charged with a crime and whose conduct is considered to be the result of a service-related trauma. It is not a get out of jail free card for veterans but a more intensive, problem-solving approach to rehabilitating defendants.

Expedited Mediation Program - \$150,000

Since 2008 the Court has had a family mediation program to assist parents with issues related to parenting time (visitation) and parenting responsibility (custody). This is a highly successful program with a 75% settlement rate and an 86% satisfaction rate. However, we quickly realized with the pandemic that we needed a faster and easier way to help parents with those issues so we created the expedited mediation program as a pilot project.

This program is free, voluntary, and designed to be completed within 7 days from the date mediation is requested. A parent or legal guardian can request mediation by filling out an online request form. There is no need to file a motion with the court. The only caveat to participating is that there must be a current North Dakota parenting time order, parenting plan, or court-

ordered visitation schedule in place. In the 9 months the program has been in place, there have been 137 requests for its use. The parties were able to reach agreement in 71% of the cases. Because of the high settlement and satisfaction rates we have included **\$150,000** in our appropriation request so we can continue offering this program.

Law Library Remodel/Savings from Building Rent

In this current biennium we had an appropriation of \$970,000 to remodel our law library space into office space for our IT Department. That project is largely done but we are still waiting on some punch list items to be completed before we can close it out. I do not have a final project cost today but I am confident we are within our budget for the project.

By moving our IT department back to the Capitol we will be saving \$246,500 in rent and \$10,000 in janitorial services per biennium.

I am sure that you are aware that the governor has proposed that general fund entities pay rent for capitol grounds space. If this proposal is adopted, the court system would pay \$755,930 in rent during the 2021-2023 biennium. This amount was included in our appropriation bill but was removed by the senate.

Conclusion

I have attached some additional information about the court system that is not specifically related to our appropriation request. I will be happy to run through that information or let you review it on your own at some other time if that is preference of the committee chair.

Don Wolf, our Director of Finance, will provide more details of our budget request in his presentation.

State of Judiciary Address
Jan. 5, 2021

By Chief Justice Jon Jensen

Thank you for the invitation to report on the state of the judiciary and appear before a Joint Session of the 67th Legislative Assembly of the State of North Dakota. Speaker Koppelman, Lieutenant Governor Sanford, Governor Burgum, members of the House and Senate, elected officials and colleagues on the trial and Supreme Court bench.

This room has special significance to a lot of people. It has special significance to me as well. This room was the location of several significant events in my life. In the fall of 1990, along with my spouse Linda Bata, I was sworn in as a lawyer in these chambers. In the winter of 1991, while working for former Chief Justice Ralph Erickstad, I listened to the state of the judiciary presentation in this room. In 2017, it was the location of my investiture to the North Dakota Supreme Court. Today, I am honored to stand in this room and report on the state of the judiciary.

The judicial branch mission is to provide the people, through an independent judiciary, equal access to fair and timely resolution of disputes under the law. Not only do I believe the judicial branch is meeting this stated mission, I firmly believe we are meeting that mission in an exceptional manner.

I hold that belief for three reasons: the people that are in our judicial system, the partnership we have with the executive branch, and the funding that is provided by this legislature.

I would like to start with the people who are in the judicial system and are performing in an exceptional manner. We have 52 trial court judges in North Dakota, we have five judicial referees, eight judicial districts and 53 clerk of court offices.

In most years we handle approximately 180,000 new cases or reopened cases. Our trial judges are elected, with vacancies filled by temporary appointments until the next general election.

We expect a lot from our district court judges. They are judges of general jurisdiction. What that means is our district court judges will handle family law cases, they will handle criminal cases, car accidents, and contract disputes. Although it's a separate court, they're the same judges who staff our juvenile court system.

On any given day our trial court judges may handle criminal appearances in the morning, later in the morning they may handle a family law matter, and in the afternoon maybe work on juvenile court matters. While it's not unique, it is unusual. Many states have specialist judges that handle either criminal dockets or civil dockets, family law dockets or probate dockets. We expect our judges to know all those subject areas. Our judges work hard. In an average year they are assigned approximately 2,900 new cases and 500 reopened files.

Each of our judicial districts have different challenges. The larger populations in the Northeast Central Judicial District, the East Central Judicial District, the South Central Judicial District and the North Central Judicial District require us to maximize efficiencies in scheduling.

The increase in commercial activity as a result of oil production has imposed significant demands in the Southwest Judicial District and the Northwest Judicial District. Those demands are often lagging: as economic activity increased people were happy and there were fewer disputes; as productivity decreased people became less satisfied and disputes actually increased. Our caseloads in the Southwest Judicial District and the Northwest Judicial District are increasing rather than decreasing.

The Southeast Judicial District and the Northeast Judicial District provide challenges of geography. The Northeast Judicial District has six judges covering 11 counties. Those counties include Pembina County in the east all the way over to Renville County on that district's western border. The Southeast Judicial District has seven judges covering 14 counties. They travel from Richland County in the southeast to Wells County in the center of the state.

The pandemic has raised significant challenges to all our district court judges but I am proud to stand here and say that all 53 of our district court judges as well as all five of our judicial referees continue to provide essential services to your constituents and to all of the State of North Dakota.

In mid-March the North Dakota Supreme Court suspended jury trials statewide and provided guidelines on court operations in response to the pandemic. Our presiding judges were given authority to suspend hearings and trials at the district court level after July. Presiding judges have been considering several factors, including the health and safety of our participants, when deciding whether to suspend court hearings or trials.

Our courts have remained open both in person and using reliable electronic means. Many of our judges excelled at using reliable electronic means. Our reliable electronic means workgroup led by Justice Daniel Crothers included many judges, clerks of court, and administrative personnel. Judge McCullough and Stiel in the East Central Judicial District, Judge McCarthy in the Northeast Central Judicial District and Judge Clark in the Southeast Judicial District, just to name a few, were very adapted to using live electronic means, holding dozens of hearings in single court sessions.

Judge Robin Schimdt, who is the presiding judge in the Northwest Judicial District and has an office in Watford City, explained the need to remain open as follows, and I believe it is a great summary of why the courts needed to remain open. She said that suspending jury trials and trials in general is detrimental to our system. It erodes faith and trust in the judiciary. People depend on governmental functions, especially during challenging times. Precautions can be taken to alleviate risk, however courts are pivotal to protecting citizens and their property and must remain open and accessible in a format that has been tested by time and experience.

Reliable electronic means is not a replacement for in person proceedings, but used in conjunction with in person proceedings it is a fantastic tool for ensuring the prompt and fair resolution of cases. Our judges have used reliable electronic means to complete their essential court functions.

What our judges did during the past year has been truly amazing. An additional group of people within our judicial system, and the largest group of people within the judicial branch, are our clerk of court staff. Those clerk of court staff work in 53 different county offices, one in each county. They are responsible for all of our recording and record keeping and processing filings.

In 2019 former Chief Justice Gerald VandeWalle expressed his concern in his state of the judiciary address that our clerk of court staff is understaffed. When we were previously asked to reduce our budget we set a goal of 82 percent staffing in our clerk of court offices.

Because of increased filings in Grand Forks County and in Cass County, Grand Forks County was operating at 70 percent staff and Cass County was operating at 60 percent staffing. Funding for Cass County and Grand Forks County was addressed in the 2019 legislative session by adding an additional clerk of court staff person to each of those counties. Thank you. We appreciate the additional staffing. It has improved docket currency in both of those districts.

We remain understaffed in our clerk of court offices. As we will discuss later regarding future legislative priorities, we believe we can resolve this issue primarily internally. In addition we will be proposing legislation in 2023 that will continue our growth.

During the pandemic the majority of our clerk of court staff transitioned to working at home and they have been remarkable. We have experienced very minimal initial delays in filings and no delays currently in filing. We continue to meet our benchmarks in our clerk of court offices and we continue to process filings in a timely manner.

In our district courts we have juvenile court staff. Our juvenile court staff is a model for other states. Where other states see 80 percent of their juvenile case being resolved by a judicial officer, we see 80 percent of ours being resolved before the necessity of court intervention. Interaction with juveniles is essential. Working with our court administration staff and our information technology staff, our juvenile court officers were able to make contact with both juveniles and their families during the pandemic.

Later in my remarks with regards to the legislature partnership we have we will discuss House Bill 1036 and I believe it is an important bill for you to consider, although it is not one of our pending bills.

People are one of the three keys to our exceptional judicial system here in North Dakota. Our employees are dedicated, they are essential, and they are truly the engine of what runs the judicial system. We also have executive branch partners and I believe that is the

second key to the foundation of our exceptional judicial system – it would not be possible without the executive branch partnership.

A prime example occurred during the previous year. Correctional centers have a continuous flow of individuals into detention, either awaiting trial or serving a sentence of less than one year. All of that is continuous, it does not stop because of a pandemic. That is usually balanced by an outflow of individuals who have gone to trial and are acquitted, or gone to trial and are convicted and are either being sent to the state penitentiary or some other form of release.

During the pandemic, the state penitentiary stopped admitting new inmates in order to control its COVID issues. Correctional centers did not have that luxury. When someone is arrested for a violent crime and poses a risk to society they are detained. When we suspended jury trials until July, which further compounded the problem because now there was no outflow from our regional correctional centers. Working with the regional correctional centers, the county commissioners, as well as the state penitentiary, we were able to restore balance before there were any significant outbreaks within our regional correctional centers.

Our juvenile courts also have many connections to the executive branch. Our juvenile courts are most effective when there are placement options for juveniles at risk, either because of deprivation, neglect or abuse or in instances where a juvenile is in need of treatment. Using treatment as an example – judges and juvenile court officers often determine treatment is the best course of action for a juvenile, but the judicial system does not and should not operate treatment facilities. The judicial branch does not and should not have treatment providers. Those are executive branch functions.

Over the past biennium the lack of treatment options has become substantially deficient. Working with Chris Jones and his staff at the Department of Human Services as well as the Department of Juvenile Services we were able to secure a small number of additional placement options for juveniles. Unfortunately, even those small gains were eliminated when additional private providers elected not to continue juvenile treatment.

Our juvenile courts cannot function as intended without adequate placement options. While providing treatment services is not a judicial branch function, the juvenile court depends on adequate placement options. I encourage the legislature to look closely at the executive branch's requests in regard to funding juvenile court placement options.

We also have a relationship with counties. As most of you know our facilities for our trial courts are county facilities. County commissions have been outstanding partners with our trial courts and were outstanding partners during the pandemic. We are thankful for all of the resources that our counties have provided.

The judicial branch has an endless interaction with the executive branch we are proud of the cooperation that we have with state agencies, the governor's office and other state departments. Those partnerships are the second key in our exceptional judicial system.

The third key in our exceptional judicial system is legislative funding. We would not be an exceptional judicial system without the funding provided by this legislature.

First I want to thank you for the funding provided in the previous legislative session. The additional juvenile court officer, the additional recorder, the additional judicial officer, the staff for the North Dakota Judicial Conduct Commission and Attorney Disciplinary Board, the additional clerk of court and deputy clerks were appreciated. We believe we have been good stewards of those funds and we believe we will be good stewards of the funds we are provided in the future.

One example of our stewardship of these public funds was demonstrated by our response to social distancing requirements in the pandemic. The district courts needed a solution to allow staff to maintain an official recording of public proceedings while also being efficient and safe. However, the current network configuration and software was not going to provide a good long-term and cost effective solution to meet the need. The court used CARES funds to upgrade sound mixers and then purchased new recording software. That software solution provides the ability to record official court records from anywhere the staff has internet connectivity, including their home or their office, thus keeping them safe by minimizing close contact and maintaining social distancing.

In December, an electronic court recorder in the Northeast Central Judicial District piloted the new software. The judge, electronic court recorder, clerk of court, and all of the parties appeared electronically from different locations without a single person being in the courtroom. The electronic court recorder was able to utilize the interactive television system along with our new software and the recording software to operate both systems remotely.

There are additional features of the software that will make the staff more efficient, including the ability to create tags within the records. The additional capabilities of the software will also be explored with regard to efficiency. We currently expect that we can now do artificial transcription with accuracy close to 90 percent. Staff across the state are being trained on new software as it is being rolled out to the districts with the goal of statewide use by early spring of 2021. Our information technology staff and Justice Jerod Tufte have been instrumental in our technology changes.

During the upcoming legislative session, Sally Holewa, our state court administrator, and others will provide you with the specifics of our budget request. I have a few highlights I would like to discuss today.

When considering our current funding budget request there are three concepts that the judicial branch will keep in mind. Our funding should be driven by looking forward through the windshield not backwards through a rear view mirror. It is unlikely that yesterday's needs will be the same as our needs 5 to 10 years from now. It's much easier to change how we operate in anticipation of changes rather than as a reaction to change.

In December we provided a report to legislative management regarding court reporters. There were many people involved but I would like to extend a special thank you to Senator David Hogue. The report accurately reflects where the judicial system is at and it also provide us an opportunity to look forward to assess our future needs and to anticipate change.

That study provided us with the knowledge of how little support our trial judges are provided and how the recording function is better suited for the clerk of court's office. Fifty-nine percent of our reporter recorder time is actually in the courtroom, 25 percent of their time is transcript related and only 16 percent is spent supporting judges. Internally we have begun a pilot program to reorganize our allocation of resources, moving the recording duties to the clerk of court's office, ultimately eliminating manual transcription through artificial transcription and adopting the electronic record as our official record rather than a paper copy of the record, leveraging our new recording equipment, and reallocating support staff to roles directly supporting judges with research.

At the end of our reallocation it is our anticipation, without any request to this legislature for additional FTEs, we will be able to increase the staffing in our clerk of courts offices by a minimum of 10 FTEs. When fully automated transcription is available we anticipate that there will be an additional equivalent of 10-12 FTEs. At the same time as we increase direct support to judges, we will increase public access to our courts by providing low or no cost transcripts for appeal and we will be closer to meeting our fully funded and staffed clerk of court offices. All of this will be accomplished internally and again without the need for additional legislative funding.

I would like to talk about one of the other legislative initiatives and that is the child support initiative that will be heard in the judiciary committee tomorrow. In partnership with North Dakota Child Support Enforcement, we have begun removing our clerks of court from child support functions. This is a process that actually began several years ago. Those functions are properly an executive branch function.

The courts have previously initiated orders to show cause on behalf of a party, but that is not appropriate for the judicial branch. We do not issue similar orders without a motion by a party in any other civil proceeding. The judicial branch is the appropriate forum for resolving child support issues and in enforcement of child support issues, but we should not be acting as an extension of one of the parties or acting as an extension of the executive branch.

The child support computer system is also not compatible with our computer system. Despite valiant efforts we cannot make our computer system compatible. This session we are asking the legislature to remove the courts from that process.

I also want to discuss electronic filing. While it is not our request, the courts support the current initiative by the Attorney General's Office to bring our county state's attorney's offices into electronic filing of initial criminal proceedings. Our state's attorney's offices are the only parties that are exempt from electronic filing requirements. In some counties

this accounts for up to 20 percent of our deputy clerk of court's time. We have started the project of converting the state's attorney's offices to electronic filing, but it needs funding to continue and sufficient funding to complete it within a reasonable amount of time.

We also have two major technology projects that we are asking the legislature to fund – both are long overdue. One is a document management system for our juvenile courts. Providing service to juveniles should not be impaired by deficiencies in our processing of documentation. The second is a docket management system for the Supreme Court. Our current system was designed as a unique system in 1994. The designer of that system is no longer working and is no longer providing service. The current system cannot be integrated into the same system used by our district courts.

As I mentioned earlier, also pending before the legislature is House Bill 1036, a rewrite of our juvenile justice process. I want to thank Representative Klemin and Justice Lisa Fair McEvers for their work on this project as well as the work of others on this project. It is an important step in reforming our juvenile laws. While not a judicial branch request, we support House Bill 1036.

We are also looking forward to the 2023 legislative session. I realize you have a lot on your plates now, but sometimes it's helpful to discuss into the future what the judicial branch will be looking at in coming years. We are attempting to plan 5-10 years ahead. In the 2023 legislative session we will be asking for complete integration of the county clerk of court offices into the state judicial system.

Currently, the judicial system works and operate with 35 contract counties and the rest of the counties are state counties. We contract with the counties for services by their clerk of court offices. The judicial system is committed to providing service in every county in the State of North Dakota. During the pandemic we confirmed this by having clerks located in every county. We have confirmed that that's beneficial and it does not impede our ability to allocate those resources statewide.

However, because the majority of our clerks are contract clerks, it is hard to integrate them with the rest of our system and it is difficult to properly allocate our resources. We can better allocate services and employee time if we have a uniform workforce. I want to repeat the goal is not to eliminate clerk of court offices in individual counties where deputy clerks are located, the goal is not to relocate clerks of court. The courts will remain open in every county and we are committed to a personal presence in every county. As I mentioned we'll save this topic for 2023

Several sessions ago the legislature allocated funding to restore and expand the Liberty Memorial Building into a judicial center. Following that legislative session the budget forecast changed dramatically and the judicial branch voluntarily agreed to forgo and return to general funds the funding that was allocated to restore and expand the Liberty Memorial Building.

Each year the legislature meets, space to perform legislative functions is at a premium. During the interim the lack of permanent legislative rooms complicates your legislative function. We are providing space within the judicial branch this legislative session and will continue to do so if asked to accommodate committee chairs. When considering a bonding bill it is my request that you consider restoration and expansion of the Liberty Memorial Building to provide the judicial branch with much needed space and provide the legislature with space within the capitol itself

When I began today I told you that one of the events in this room that was special to me was the 1991 state of the judiciary address given by my former boss and former Chief Justice Ralph Erickstad. The year before I arrived, Chief Justice Erickstad and the Court had been involved in budget cuts. While he and I did not speak at length about the budget issues, one thing is memorable. He told me his budget philosophy was to ask the legislature only for what was needed, without exaggeration and without extras. His intention was to build credibility through good stewardship of taxpayer dollars. I believe he followed that philosophy, just as I believe former Chief Justice Gerald VandeWalle in subsequent legislative sessions has followed that philosophy. I intend to protect that credibility. The judicial branch will continue to be good stewards of taxpayer dollars.

We have an exceptional judicial system. It is built on good people, executive branch partnerships, and legislative funding. Thank you for the opportunity to be here today during a joint session of the legislature. It is an honor, and please accept my best wishes for a productive legislative session.

Senate Bill 2082
Senate Appropriations Committee

Testimony Presented by Sally Holewa
State Court Administrator
February 1, 2021

Good morning Chair Holmberg and members of the committee. For the record, my name is Sally Holewa and I am the North Dakota State Court Administrator.

SB 2082 was introduced by the Supreme Court for the purpose of transferring child support duties that clerks of court are currently performing to the Child Support Unit of the Department of Human Services. My purpose in appearing today is to discuss the origins of the bill and its intended effect within the court system.

Chief Justice Jensen has set the twin goals of meeting the need of trial judges for better support in their decision-making duties, and reducing the clerk of court shortage without the need for more FTEs. To do this, we must find more efficiencies within the court while also shedding some responsibilities. After meeting with judges and clerks from around the state, he identified increasing the use of initial criminal e-filing and eliminating child support duties as the two areas where change would have the greatest impact on these goals.

In drafting this bill we worked closely with the Child Support unit to write a bill that was as complete as possible. In saying this, I want to be clear that while Mr. Fleming and his staff assisted in this endeavor, they do not support the transfer of duties without a sufficient appropriation and additional authorized FTEs. They

also have a concern about requiring parents to enforce orders without the assistance that they have been receiving from the clerks of court.

The bill does not include a transfer of FTEs. Child support enforcement work is currently done by clerks in all 53 counties. However, there are only 14 counties in the state where the clerks are state employees. The remaining clerk of court staff are county employees. In those 39 counties we have a contract with the county to pay a portion of the clerk's salary and benefits to cover their cost of performing court work. Put quite simply, the state does not own these FTEs so we are not able to transfer them. None of the clerks in the 14 counties where clerks are state employees work full-time on child support duties. Like all other clerk of court duties, the work is spread out across employees so it becomes only a portion of what any given clerk does on a regular basis. We estimate that if the duties were done by dedicated staff it would equate to a total of 8-10 FTEs. This is an issue for us because we currently have an insufficient number of FTEs to adequately staff most of these offices. Of the 14 counties with state-employed clerks, we currently have three that are minimally staffed at 2 FTEs. We have an additional six offices that have staffing shortages that range from 15-31%. Our staffing studies show that within these 14 counties we currently have a shortage of 17 clerks. Part of our strategy to ease that shortage without requesting additional FTEs is to shed duties that we do not feel are properly within the court's responsibility.

Child support enforcement is one of those areas where the clerk's statutory responsibility puts it at odds with the Court's position as a neutral arbiter of disputes because those duties require the clerk of court to actively assist one side (the obligee) in a case. In no other case type do clerks take an active role in assisting just one side of a dispute.

Because they are more familiar with the computer system that tracks child support obligations, and because of their expertise in the subject matter, we believe that Child Support can carry out these duties more efficiently and more accurately than the clerks of court can.

You may be asking yourself how these duties came to be assigned to clerks to begin with. Mr. Fleming, the director of Child Support, is in the best position to respond to those questions since he has been with the Child Support unit from the beginning. I can give you the shorthand version. The answer to how clerks got to be involved in enforcement goes back to a time before there was a unified court system and before the federal government required state's to create a central child support enforcement unit. Back in the day, the clerk of the county court was responsible for collecting and disbursing child support payments. When the state child support unit was created the state chose not to require all parties use that service unless there was a federal requiring it. For that reason, the statutes were written so many of the duties could be done by either the Child Support unit or the clerks of court. In 1998 the court and the child support enforcement unit agreed on a split of the duties as well as how the federal flow-through dollars for child support enforcement are allocated and we have continued to work closely together since then.

In particular, since Mr. Fleming became the director of the unit, we have partnered with the department to shift some responsibilities from the clerks to child support as they were able to absorb them. I would like to share two specific examples of this partnership. Between 2009 and 2011 we worked with Mr. Fleming to eliminate, reduce or reassign the responsibility for responding to computer system-generated alerts regarding child support cases. Through that effort we were able to reduce the number of alerts that clerks had to respond to by an average of 181,000 alerts per year. This equates to a time savings of approximately 3,000 hours of

clerk time per year, or the equivalent of 1.5 FTE. This past year, Mr. Fleming initiated a change that to-date has resulted in child support taking over the data entry of child support court orders for 28 counties. With this change, we went from clerks entering 100% of the orders to child support entering 31% of the orders. This change has resulted in a noticeable time savings for the clerks in those 28 offices.

While it would be ideal to continue to voluntarily transition duties as resources allow, the fact is that unless more resources are allocated to child support, any transition will be so incremental and occur so gradually that it will never have enough impact to ease the clerk of court shortage. Because we believe that these duties are not appropriate for court staff, and that child support is in the best position to do this work most efficiently we are advocating for the transfer of duties to them along with adequate funding and staff to absorb the work.

State-Employed Clerk of Court Offices

Cass

Burleigh

Grand Forks

Morton

Ward

McKenzie

Ramsey

Barnes

Williams

Richland

Walsh

Rolette

Stark

Stutsman

7 counties eligible to transfer: Dunn, McHenry, McLean, Mercer, Mountrail, Pembina, Traill

FISCAL NOTE
Requested by Legislative Council
01/04/2021

Revised
Amendment to: SB 2082

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2019-2021 Biennium		2021-2023 Biennium		2023-2025 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$308,126	\$(725,285)	\$467,315	\$516,849
Appropriations			\$308,126	\$(725,285)	\$467,315	\$516,849

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2019-2021 Biennium	2021-2023 Biennium	2023-2025 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill transfers work from the Court to Child Support. Some work is eligible for 66% federal reimbursement. DHS will do the work directly, reducing the FFP it pays to the Court. Also, the Court will have savings because the labor to perform the services will no longer be needed.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Since there will be a transfer of work responsibilities from clerks to DHS, the Court will receive \$934,947 less in federal funds from DHS and require \$481,640 less for the General Fund match in IV-D cases and \$70,002 in non-IV-D cases. The General Fund moneys will still be required by the courts to maintain the clerks as there is an overall clerk need shortage and duties will be reallocated to complete necessary court functions. DHS will need an estimated 3.5 FTE to perform the required services for \$516,280, of which \$306,998 is General Fund. DHS will also incur operating costs for postage of \$1,508, of which \$1,128 is General Fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

HB 1012 Base Level Budget contains an appropriation request for operating in the amount of \$1,232,000 which would be reduced by (\$934,947) for payments made to the ND Supreme Court. The Department of Human Services would be able to draw down federal funds of \$506,715 for the additional FTE and operating costs associated with the transfer of these duties and cost that will still be incurred by the ND Supreme Court.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Human Services would incur additional costs for 3.5 FTE in the amount of \$516,280, of which \$306,998 would be General Fund and \$209,282 would be federal funds. There would also be additional operating

costs for postage in the amount of \$1,508, of which \$1,128 are General Fund and \$380 are federal funds. DHS will have a decrease in the operating line budget of (\$934,947), (1,232,000-934,947) for a net payment of \$297,053, of which all is federal fund, to the ND Supreme Court.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

For the 2021-2023 biennium the Department of Human Services would need an appropriation decrease in the operating line of \$933,439 of which \$1,128 would be General Fund, and an increase to salaries in the amount of \$516,280, of which \$306,998 would be General Fund, to HB 1012. For 2023-2025 DHS would need an appropriation increase of \$984,164, of which \$467,315 is General Fund.

Name: Deb Theisen

Agency: Department of Human Services

Telephone: 701-328-2338

Date Prepared: 01/18/2021

North Dakota Courts by the Numbers

Supreme Court

5 – Number of Justices on the Supreme Court

10 years – Length of Term

42 – Number of Years Justice VandeWalle has served on the Supreme Court

29 – Combined years of service on the Supreme Court of the remaining 4 justices

329 – Number of new Supreme Court cases filed in 2020

District Courts

52 – Number of District Court Judges

6 years– Length of Term

31 – Number of district court judges initially reaching the bench through gubernatorial appointment

5 - District Court Referees appointed by the presiding judges

12 - Chambered cities

8 - Judicial Districts

4 - Administrative Units

53 – Clerks of District Court

14 – Number of Clerk of Court offices under state employment

7 – Number of Clerk of Court offices eligible to transfer to state employment

154,812 new district court cases filed in 2020

Municipal Courts

90 – Number of Municipal Courts

75– Number of Municipal Court Judges

4 years– Length of Term

55 – Number of Municipal Court Clerks

18 – Number of municipal court judges who have a law degree

69 – Number of contracts the district courts have with municipalities to hear some or all of their ordinance cases

Unknown – Number of cases filed in municipal courts

Juvenile Court

11 – Number of Juvenile Court Offices

5 – Number of juvenile court offices staffed by a single person

8,877 – Number of new juvenile cases filed in 2020

Finances

315 – Number of FTEs excluding judicial officers

.08 % - Percent of General Fund dollars appropriated to the Judicial Branch for the 2017-2019 biennium

76.5% - Percent of Judicial Branch Budget Spent on Salaries & Wages

\$26.9 Million – Average amount of money collected by the district courts during the 2017-2019 biennium.

Specialized Court Dockets

6 - Number of juvenile drug courts

87 – Number of new cases referred to juvenile drug court in 2020

6 – Number of adult drug courts

1 – Number of domestic violence courts

330 – Number of cases supervised by DV court in first 16 months of operation

Court Services

Self-Help Center

2 - Number of Staff employed in the self-help center

507 - Number of forms and guides available through the self-help center

1,784 - Number of requests received by the Self-Help Center in 2020

Family Mediation Program

604 - Number of cases sent to family mediation program in 2020

72% - Percentage of cases fully or mostly resolved through the family mediation program

Expedited Family Mediation Program

137 - Number of requests for the expedited mediation program since its inception in June 2020

71% - Percentage of cases resolved through the expedited mediation program

Guardianship Monitoring Program

355 - Average number of new guardianship cases filed each year

2,802 - Number of guardianship cases that are currently active

Judicial Conduct Commission & Attorney Disciplinary Board

38 – Number of new judicial conduct complaints filed in 2020

155 – Number of new attorney conduct complaints filed in 2020

State Board of Law Examiners

3,080 – Number of new law licenses issued in 2020