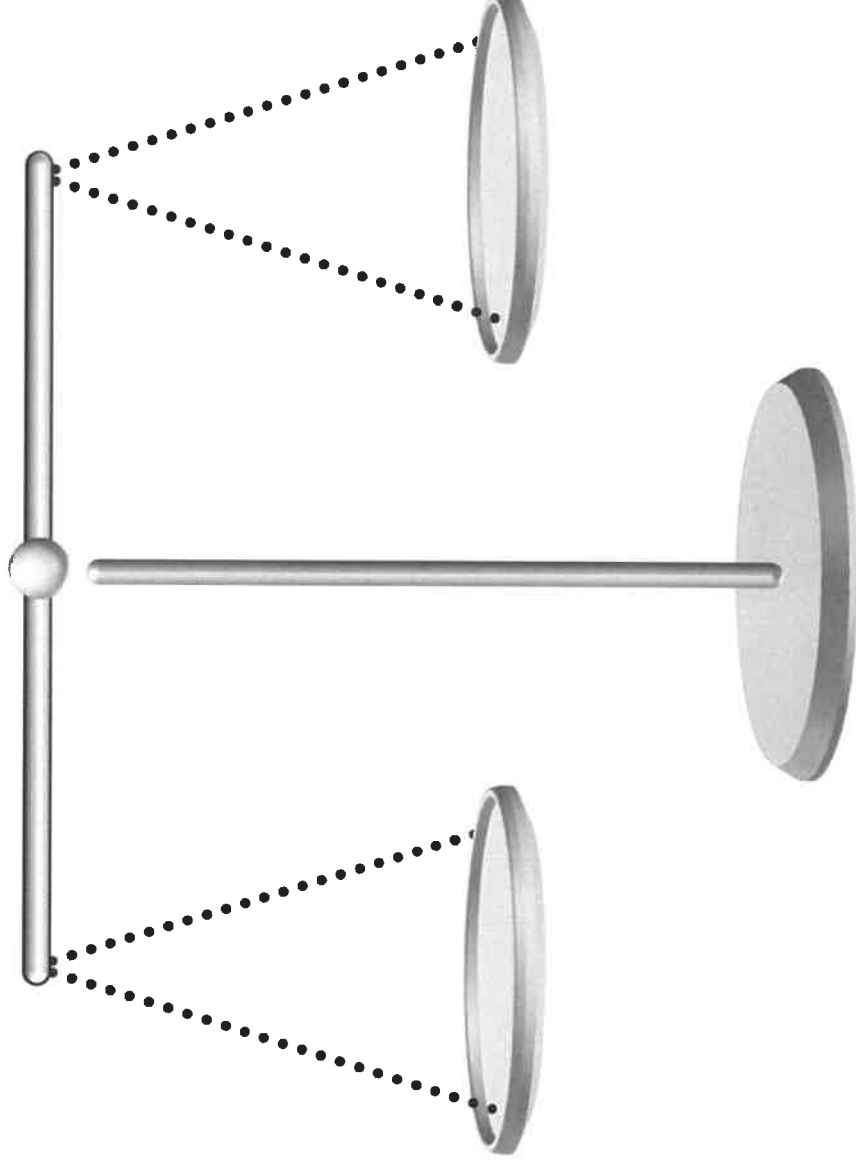


SB 2022

N.D. Comm. on Legal Counsel for Indigent
House Appropriations: Government Operations Division
Budget Presentation
March 4, 2021



North Dakota Century Code and Major Statutory Responsibilities

- The Commission operating statute is N.D.C.C. 54-61

The Statutory responsibilities of the Commission are found in NDCC 54-61-02

- The Commission is tasked with developing standards governing the delivery of indigent services. 54-61-02(1)(a)
- The Commission is tasked with implementing a process of contracting for legal services for indigents. 54-61-02 (1)(b)
- The Commission is tasked with establishing public defender offices in regions of the state as it considers necessary and appropriate. 54-61-02 (1)(c)
- The Commission is tasked with establishing a method for accurately tracking and monitoring caseloads of contract counsel and public defenders. 54-61-02 (1)(d)
- The Commission is tasked with approving and submitting a biennial budget to the Office of Management and Budget. 54-61-02 (1)(e)

- The Commission is further given statutory authority to do the following:
 - Enter into agreements with a County or City to provide services in which the County or city would have to provide. 54-61-02(2)
 - Adopt rules for the exercise of its authority. 54-61-02(3)
 - Request records from other agencies to verify indigence. 54-61-02(4)

The Purpose of the Agency's Various Programs

- The Commission is the agency which provides the attorneys and related services to indigent persons when there is a constitutional, statutory, or rule-based right to counsel at public expense.
- 54-61-01 provides that the Commission was "established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to standards and policies of the commission governing eligibility for such services."
- The North Dakota Commission on Legal Counsel for Indigents' mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at reasonable cost to the community.
- The Commission consists of 7 members: 1 member of the legislature from each house, 2 appointed by the Governor (one must be from a county of not more than 10,000), 2 appointed by the Chief Justice (one must be from a county with a population of not more than 10,000) and one member appointed by the Board of Governors, State Bar Assoc.
- The Commission has 9 total offices: 8 regional public defender offices and the administrative office in Valley City.
- Org chart is attached to my testimony

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Report on financial audit findings and actions taken

- The latest financial audit for the biennium ending June 30, 2019 as released by the office of the State Auditor on January 30, 2020, did not identify any exceptions or defaults.

Full Time Equivalent Positions

- The Commission is requesting the FTE number remain the same for the next biennium as it is in the current biennium
- Currently the Agency has 40 FTE's

Funding and Collections:

- The Commission is funded through one line
- The one line consists of the general fund and the Indigent defense administration fund (282)
- Fund 282 is funded through the collection of statutory fees assessed in criminal cases:
 - 1) A \$35 indigent defense application fee pursuant to NDCC 29-07-01.1; and
 - 2) A portion of the \$100 court administration/indigent defense fee pursuant to NDCC 29-26-22(2). This fee is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two

→ **Collections in the special fund have been lower so far this biennium in** _____ **comparison to previous biennia.**

- The fee's are collected by the Judiciary and deposited with the State Treasurer.

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Funding in Comparison to Last Biennium with Executive Recommendation

- The total funds for the current Biennium are \$20,374,662
 - \$18,384,627 from the General Fund
 - \$1,990,035 in spending authority from the Special Fund, Fund 282
- All Executive branch agencies were instructed to submit a budget at a 10% reduction. We did so and asked for a single change: Restoration of \$919,000, or approximately a 50% of the reduction. This equates to a total budget reduction of approximately 5%.
- The total funds recommended in the Governor's Executive Recommendation are \$19,709,703
 - \$17,712,805 from the General Fund
 - \$1,996,898 in spending authority from the Special Fund, Fund 282
 - The Executive Budget includes \$5,949 for MS365 costs and funding for the proposed compensation package. The special fund increased authority is to offset the salary increase of the one employee who is paid out of the special fund

Senate Amendments to Budget

- The Senate provided one amendment to last biennium budget
 - The sole amendment was to provide for the salary increases as proposed for state employees, to continue to fund raises given last biennium, and to offset costs of Microsoft 365 upgrades for a total of \$604,064

Federal Funds/COVID 19 Pandemic Funds

- The agency did not directly apply for any federal funds or COVID 19 funds. We have been awarded some technology through CARES dollars granted to ITD to allow for remote court access

Expenses and Impact of Cuts

- The major components making up the base level appropriation are salaries and benefits, professional fees and services (legal fees), ITD expense, and rent of office space
 - As of November 30, 2020, this constituted 96.1 % of the expenses so far this biennium
 - Therefore, to meet the governor's recommendation, we will have to trim professional services.
 - These services are mandated by the legislature and attorneys can only ethically take so many cases. Additionally, we already run at such trim staffing levels, we would be incapable of meeting the mission if staff are cut
 - We base our contracts for services and staffing levels based upon case assignments in the different judicial districts.
 - Case assignment numbers were down last fiscal year, likely due to Covid-19, however, they are up the first part of this fiscal year.
 - While overall assignments were down, the number of violent cases rose drastically. As of January 5, 2021, Commission attorneys had 27 open criminal case assignments alleging murder.
 - There will be agency turnback this year, but not as much as thought

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Accomplishments

- The agency served as an integral part in the rollout of the pretrial service pilot program in three judicial districts
- The Commission opened an office in Devils Lake, ND to meet the need by reassigning and reclassifying a current FTE.
- The Commission has moved the assignment of counsel to a centralized function of the administrative office. We were once again able to do this by repurposing an FTE from another location.
- When Covid-19 struck, we have been able to continue to meet the demands the criminal justice system placed upon us. Several courts continued in person hearings, even during the height of the pandemic. We struggled to find access to PPE given our classification, but we met our mission

Other Bills Effect

- There are two bills working through the legislature that may have a noticeable effect
 - Expansion of Pre-trial services: May be more administrative costs
 - HB 1035 seeks to rewrite the juvenile court act
 - The bill makes all children eligible for counsel regardless of income, which will have us appointed to many more juvenile delinquency cases. A fiscal note was submitted estimating a fiscal impact of \$450,000 per biennium
 - There is a provision in the house version of the bill for reimbursement of the attorneys fees, however, it is unknown how much that collection would be. The Commission does have presumed rates of reimbursement.

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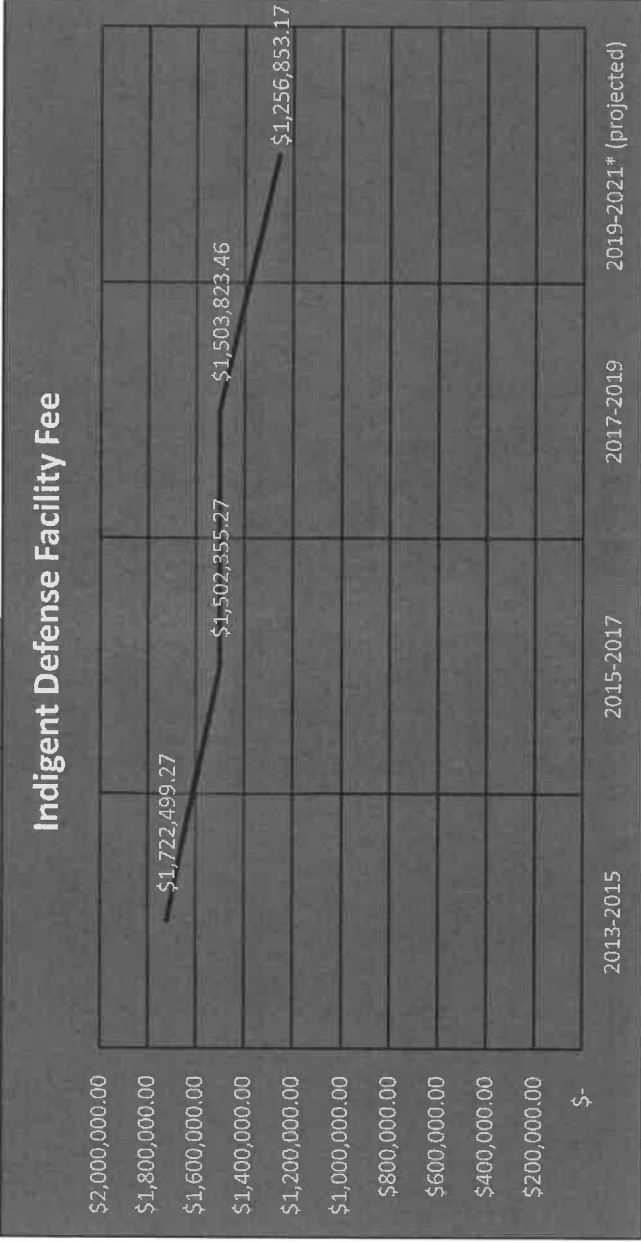
Challenges

- There are two challenges that continue to plague the agency:
 - 1) Turnover due to lack of competitive pay
 - Last session, the agency requested equity increases to combat historic turnover. The senate did amend in 60,000 for attorney salaries in Williston.
 - However, turnover continues to be vast, and exit interviews suggest it is a compensation issue. We continue to exceed the turnover rate of other state agencies and typically find ourselves in the top three for agency turnover annually
 - Eventually, we will have to address this issue or face a constitutional crisis
 - 2) Difficulty in finding contract attorneys given contractor rate of compensation
 - Our current rate of contractor compensation has not changed since 2012.
 - The Commission currently pays \$75 dollars an hour, in comparison the Federal CJA Panel rate is \$152 per hour.
 - Last session it was recommended to increase this by \$5 per hour, which was not funded

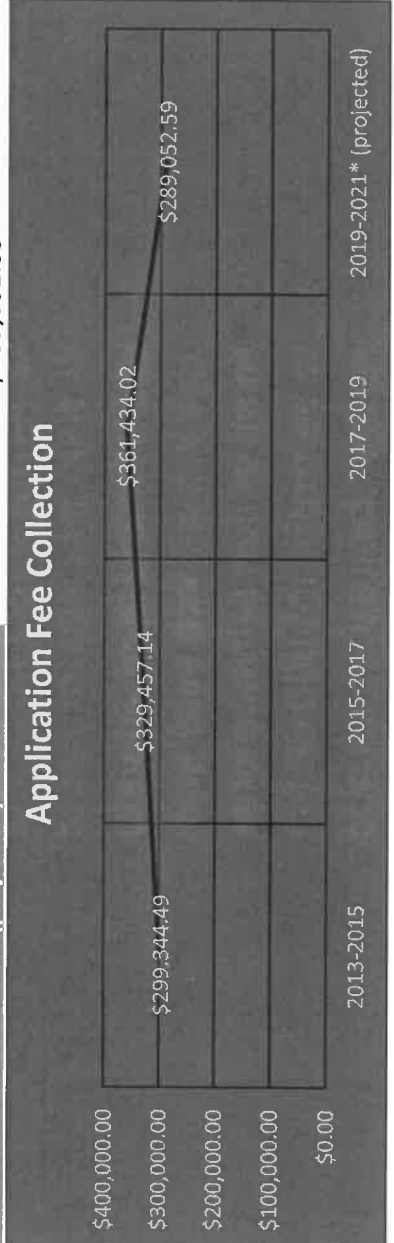
Goals

- We need to find a way to increase equity funding for our employees to allow us to compete to attract and retain the best employees
 - Especially to rural areas of the state
- We will need to find ways to increase contractor compensation
- Continue to find ways to get information out about the great work our employees do

Biennium	Indigent Defense Facility Fee
2013-2015	\$1,722,499.27
2015-2017	\$1,502,355.27
2017-2019	\$1,503,823.46
2019-2021 (projected)	\$1,256,853.17

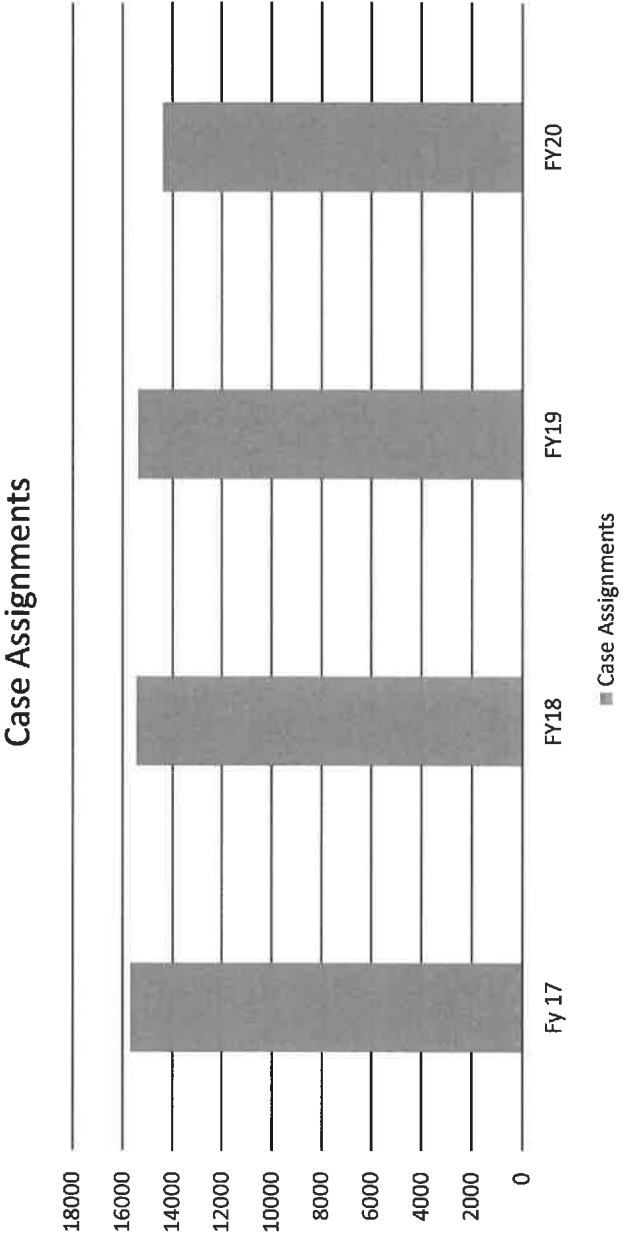


Biennium	Application Fee Collection
2013-2015	\$299,344.49
2015-2017	\$329,457.14
2017-2019	\$361,434.02
2019-2021 (projected)	\$289,052.59



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Fiscal Year	Number of Case Assignments
FY 2017	15700
FY2018	15452
FY2019	15395
FY2020	14395



21.0304.01001
Title.02000
Fiscal No. 1

Prepared by the Legislative Council staff for
Senator Hogue
February 4, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2022

Page 1, replace lines 10 through 17 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Commission on legal counsel for indigents	\$20,374,662	\$604,064	\$20,978,726
Total all funds	\$20,374,662	\$604,064	\$20,978,726
Less estimated income	1,990,035	5,664	1,995,699
Total general fund	\$18,384,627	\$598,400	\$18,983,027
Full-time equivalent positions	40.00	0.00	40.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Comm. on Legal Counsel for Indigents - Senate Action

	Base Budget	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$20,374,662	\$604,064	\$20,978,726
Total all funds	\$20,374,662	\$604,064	\$20,978,726
Less estimated income	1,990,035	5,664	1,995,699
General fund	\$18,384,627	\$598,400	\$18,983,027
FTE	40.00	0.00	40.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Adds Funding for Microsoft Office 365 Licenses ³	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$391,102	\$207,013	\$5,949	\$604,064
Total all funds	\$391,102	\$207,013	\$5,949	\$604,064
Less estimated income	0	5,664	0	5,664
General fund	\$391,102	\$201,349	\$5,949	\$598,400
FTE	0.00	0.00	0.00	0.00

BACK

PRESUMED RATE FOR ATTORNEY FEE REIMBURSEMENT

NDCC §§12.1-32-08, 27-20-49, 29-07-01.1, 29-32.1-05

The following presumed rates for attorney fee reimbursement have been set by the Commission on Legal Counsel for Indigents at its May 28, 2020 meeting:

<u>Type of case assignment</u>	<u>Presumed amount per case</u>
Misdemeanor case	\$300.00
Felony case	575.00
Juvenile case(non TPR)	450.00
Termination of Parent Rights	750.00
Appeal Case	2,250.00
Post-conviction case	1,350.00

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