CHAPTER 54-61
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

54-61-01. Commission on legal counsel for indigents - Membership.

1. The commission on legal counsel for indigents is 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 the standards and policies of the commission governing eligibility for such services. For purposes of establishing release conditions at an initial appearance, an incarcerated individual is presumed indigent.
2. The commission consists of the following members:
   a. Two members appointed by the governor, one of whom must be appointed from a county with a population of not more than ten thousand.
   b. Two members of the legislative assembly, one from each house, appointed by the chairman of the legislative management.
   c. Two members appointed by the chief justice of the supreme court, one of whom must be appointed from a county with a population of not more than ten thousand.
   d. One member appointed by the board of governors of the state bar association of North Dakota.
3. Appointing authorities shall make their initial appointments to the commission before August 1, 2005.
4. Initially, as determined by lot, one member will serve for one year, three members will serve for two years, and three members will serve for three years. At the expiration of the initial terms, the appointing authorities designated in subsection 2 shall make appointments for three-year terms. A member may not serve more than two consecutive three-year terms plus any initial term of less than three years.
5. Individuals appointed to the commission should have experience in the defense of criminal cases or other cases in which appointed counsel services are required or should have demonstrated a commitment to quality representation in indigent defense matters. Membership of the commission may not include any individual, or the employee of that individual, who is actively serving as a judge, state's attorney, assistant state's attorney, contract counsel or public defender, or law enforcement officer.
6. A member of the commission is entitled to reimbursement for travel and expenses as provided by law for other state officers. If not otherwise employed by the state of North Dakota, a member is entitled to receive per diem compensation of sixty-two dollars and fifty cents for each day devoted to attending meetings or performing other duties relating to the official business of the commission. A member of the commission who is a member of the legislative assembly is entitled to receive per diem compensation at the rate as provided under section 54-35-10 for each day devoted to attending meetings or performing other duties relating to the official business of the commission. The legislative council shall pay the per diem compensation and reimbursement for travel and expenses as provided by law for any member of the commission who is a member of the legislative assembly.
7. One of the two appointees of the chief justice, as determined by the chief justice, shall convene the commission's first meeting no later than August 15, 2005. The members of the commission shall select the chairman of the commission within thirty days after the commission's first meeting and annually thereafter.

54-61-02. Commission responsibilities.

1. The commission shall:
   a. Develop standards governing the delivery of indigent defense services, including:

(1) Standards governing eligibility for indigent defense services;
(2) Standards for maintaining and operating regional public defender offices if established;
(3) Standards prescribing minimum experience, training, and other qualifications for contract counsel and public defenders;
(4) Standards for contract counsel and public defender caseloads;
(5) Standards for the evaluation of contract counsel and public defenders;
(6) Standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest;
(7) Standards for the reimbursement of expenses incurred by contract counsel; and
(8) Other standards considered necessary and appropriate to ensure the delivery of adequate indigent defense services.

b. Establish and implement a process of contracting for legal counsel services for indigents.

c. Establish public defender offices in the regions of the state as the commission considers necessary and appropriate.

d. Establish a method for accurately tracking and monitoring caseloads of contract counsel and public defenders.

e. Approve and submit a biennial budget request to the office of the budget.

2. Upon the request of a county or city, the commission may agree to provide indigent defense services in the county or city for those cases in which the county or city is otherwise required to provide such services. Moneys received by the commission in accordance with an agreement under this subsection must be deposited in the indigent defense administration fund.

3. The commission shall adopt rules for the exercise of its authority under this chapter in a manner generally consistent with the notice and comment provisions of section 28-32-11.

4. Notwithstanding any provision of state law making the records confidential, but subject to any prohibitions in federal law, in addition to or in lieu of a subpoena, in determining eligibility for public defender services the commission may obtain access, relevant to making an eligibility determination for indigent defense services, to:

a. All records of other state and local government agencies relevant to determination of eligibility for indigent defense services, including:
(1) Vital statistics, including records of marriage, birth, and divorce;
(2) Local tax and revenue records, including information on residence address, employer, income, and assets;
(3) Records concerning real and titled personal property;
(4) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
(5) Employment security records;
(6) Workforce safety and insurance records pursuant to a release signed by an individual or as otherwise provided in section 65-05-32;
(7) Records of all agencies administering public assistance programs;
(8) Records of the department of transportation, which access is not subject to the requirements in section 39-16-03;
(9) Corrections records;
(10) Law enforcement records; and
(11) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and

b. Certain information contained in records held by private entities, subject to safeguards on privacy and information security, consisting of:
(1) The name, address, social security number, and other requested relevant income or asset information of the individual and the name and address of

the employer of the individual, as appearing in customer records of public utilities, including cellular and wireless telephone service providers and cable television companies, pursuant to an administrative subpoena if requested; and

(2) Information on assets and liabilities of the individual held by financial institutions.

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

54-61-02.1. Contract services.

The commission on legal counsel for indigents shall contract for public defender services at a minimum level of fifty percent of its biennial caseload.

54-61-03. Commission director - Responsibilities.

1. The commission shall appoint a director who must be chosen on the basis of training, experience, and other qualifications considered appropriate. The director must be an attorney licensed and eligible to practice law in this state at the time of appointment and at all times during service as director. The director may be removed for cause by a majority vote of commission members.
2. The director shall:
   a. Assist the commission in developing standards for the delivery of adequate indigent defense services;
   b. Administer and coordinate delivery of indigent defense services and supervise compliance with commission standards;
   c. Recommend the establishment of public defender offices when considered necessary and appropriate to the delivery of adequate indigent defense services;
   d. Conduct regular training programs for contract counsel and public defenders;
   e. Subject to policies and procedures established by the commission, hire the professional, technical, and support personnel, including attorneys to serve as public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
   f. Prepare and submit to the commission a proposed biennial budget for the provision of indigent defense services; an annual report containing pertinent data on the operation, needs, and costs of the indigent defense contract system and any established public defender offices; and any other information as the commission may require;
   g. Submit the annual report required under subdivision f to the legislative council; and
   h. Perform other duties as the commission may assign.

54-61-04. Records, files, and information - Accessibility - Confidentiality.

Except as otherwise provided in this section, any file, record, or information regarding representation of a party under sections 54-61-01 through 54-61-03 which is attorney work-product or otherwise subject to any attorney-client privilege is confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. Any file, record, or information regarding representation of a party under this chapter which is attorney work product or otherwise subject to any attorney-client privilege may be disclosed to the party to whom representation was provided, the attorney who provided the representation, and newly assigned counsel with consent of the represented party. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission. Information or records obtained by the commission relating to allegations of misconduct by an attorney in the employ of, or providing indigent services for, the commission are exempt from disclosure except as otherwise provided in rules adopted by the commission

unless and until the matter is referred for formal disposition under rules adopted by the supreme court.

54-61-05. Criminal history record checks.

The commission may require a volunteer or final applicant for employment to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24.