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Yolanda Richardson  
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10/16/03  
Date

2003 HOUSE HUMAN SERVICES

HCR 3003

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10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3003

House Human Services Committee

Conference Committee

Hearing Date January 14, 2003

Tape Number	Side A	Side B	Meter #
1	X		0.6 - 15.7
2	X		7.9 - 11.0
Committee Clerk Signature <i>Sharon Ruffalo</i>			

Jennifer Clark of Legislative Council appeared neutral on the resolution to explain the bill and handed out the study, stating this basically is a study as to who is more appropriate to administer child support.

Questions by the committee as to locking in the counties and if Indian Counties were treated differently. SWAP 1997 legislation and who is responsible for paying whom and what.

Terry Traynor of the Assoc. of Counties appeared in support and explained the SWAP legislation stating the costs were left with the State but the costs of staff, social work funded at the County level. Was a proposal to ship all the grant costs in economic assistance to the dept. Whatever wasn't funded with federal dollars became a state cost. All the administrative costs became a county cost and the federal reimbursement that the counties normally would have gotten accrued to the state to help cover the costs.

No opposition.

Page 2  
House Human Services Committee  
Bill/Resolution Number HCR 3003  
Hearing Date January 14, 2003

Kathy Hook, Director of the Cass County Social Services & president of the ND County Social Services Directors Assoc. appeared to answer questions of the committee regarding consolidated shared services and liability issues on multi-county sharing and who is liable and if liability should be addressed in the study.

Rep. Devlin notes that they looked at the consolidation of counties & Human Services (SWAP) and noted that they consolidated from 46 to 35 and moves the amendment that states "Whereas, the consolidation of County Human Service Administration was one of the goals of the "Swap" legislation and a review of whether that goal has been fully accomplished needs to be made; and", second by Rep. Wieland. 13 - Aye, 0 - no, 0 - absent.

Discussion: Liability issue and that the interim study will address this and take care of itself.

Rep. Porter motioned a DO PASS as Amended and placed on the Consent Calendar, second by Rep. Pollert. 13 - 0 - 0. Rep. Wieland will carry the bill.

Yolanda Richardson  
Operator's Signature

10/16/03  
Date

33017.0101  
Title.0200

Adopted by the Human Services Committee  
January 14, 2003

VR  
1/15/03

HOUSE AMENDMENT TO HCR 3003 HS 1-15-03

Page 1, after line 5, insert:

**"WHEREAS**, the consolidation of county human service administration was one of the goals of the "swap" legislation and a review of whether that goal has been fully accomplished is necessary; and"

Renumber accordingly

Page No. 1

33017.0101

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Calista Rickford  
Operator's Signature

10/6/03  
Date

LR

Date: 1-14-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3003

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DP as Amended & Placed on Consent

Motion Made By Rep. Porter Seconded By Rep. Pollert

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz	✓		Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Ugiem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Wieland

If the vote is on an amendment, briefly indicate intent:

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Yolanda Richardson 10/16/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
January 15, 2003 2:14 p.m.

Module No: HR-07-0616  
Carrier: Wieland  
Insert LC: 33017.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

HCR 3003: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3003 was placed on the Sixth order on the calendar.

Page 1, after line 5, insert:

"WHEREAS, the consolidation of county human service administration was one of the goals of the "swap" legislation and a review of whether that goal has been fully accomplished is necessary; and"

Renumber accordingly

2003 SENATE HUMAN SERVICES

HCR 3003

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10/16/03  
Date



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3003

Senate Human Services Committee

Conference Committee

Hearing Date March 4, 2003

Tape Number	Side A	Side B	Meter #
1		X	5145 - end
2	X		0 - 567
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR BROWN, Vice Chairman, opened the public hearing for HCR 3003 directing the Legislative Council to study state and local funding obligations for social services, including child support enforcement services.

MIKE SCHWINDT, Director of Child Support Enforcement Unit, testified in a neutral position.

He would like to see this thing studied because there are a lot of issues on understanding what goes on in this law. It would be helpful for everybody to understand the financing that really is driving how the counties pay property tax. A lot of money is used for the social services programs. ... (Meter #5235 - 5325)

SENATOR BROWN: If you think the issue should be studied, why are you neutral?

MIKE SCHWINDT: Last session, questions raised. ... Department hasn't taken any position.

Continued discussion regarding bill providing money for child support enforcement. Question as to whether there is an inequity in counties and response. (Meter # 5446 - 6168)

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*Yolanda Richardson*  
Operator's Signature

*10/16/03*  
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HCR 3003

Hearing Date March 4, 2003

JENNIFER CLARK, with the Legislative Council, testified as to where the resolution came from. The feasibility ... good for child support. (Tape 1, Side B, Meter # 6174 - end and Tape 2, Side A, 0 - 140)

MICHON SAX, McKenzie County Social Service Director, answered questions and discussion with the committee. Stated a lot of concern, problem with in-kind contribution and SWAP referred. Supported a very thorough study. (Meter # 164 - 370)

CHERYL KULAS, with ND Indian Affairs Commission, testified in support. Stated issue is important to the tribal government. Study needed. (Meter # 420 - 494)

SENATOR LEE closed the public hearing. (Meter # 543)

SENATOR FISCHER made a motion to DO PASS.

SENATOR POLOVITZ seconded the motion.

Roll call was read. 6 yeas. 0 nays.

SENATOR LEE to be the carrier. (Meter # 567)

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*Salveta Richardson*  
Operator's Signature

*10/16/03*  
Date

Date: 03-04-03  
Roll Call Vote #: ①

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3603

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Sen. Fischer Seconded By Sen. Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Lee

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Yolanda Richardson 10/16/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
March 4, 2003 2:02 p.m.

Module No: SR-38-3868  
Carrier: J. Lee  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HCR 3003, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HCR 3003 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-38-3868

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*Salvatore Riccardi*  
Operator's Signature

*10/6/03*  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3004

Senate Judiciary Committee

Conference Committee

Hearing Date 03/17/03

Tape Number	Side A	Side B	Meter #
1	X		26 - 37
Committee Clerk Signature <i>Mina Solberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the House Concurrent Resolution:

**Testimony in Support of HCR 3004**

Representative Klemm - Introduced the Bill (meter 27) The public defender and the current method provided for indigent defense are both in the same department. This resolution is drafted to continue the study that is already being done. Handed out and discussed Bismarck Tribune story - Attachment #1. and Exert from the legislative council's report on the study being done on the establishment of the system. - Attachment #2. Discussed the new department of office of indigent defense and hiring of FTE's.

Sen. Traynor - is the legislature capable of creating an office of public defender's system during this session

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*Loiseta Richardson*  
Operator's Signature

*10/16/03*  
Date

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number HCR 3004  
Hearing Date 03/17/03

Rep. Klemin responded that he did not think we're there yet and the study should proceed this.

Including a separate agency-along with an Executive Director a staff of attorney's, a support staff. We are not in the position to do all of that now, possible could start it with the office of Administration. This would be an increase in spending and we are having a problem with funding right now.

Vonette Ricktor - Legislative Council (meter 33) Staff council of this committee. Some of the findings from the committee are in the "whereas" clauses contained in the resolution. We are the only state in the union using a contract system. Discussed conflict of issues with the contracts among the increase work load with the "meth" crack down.

Sandy Tabor - Attorney General's office (meter 35.3) We encourage a do pass.

**Testimony in Opposition of HCR 3004**

None

**Testimony Neutral to HCR 3004**

None

**Motion Made to DO PASS HCR 3004 Senator Thomas L. Trenbeath and seconded by Senator Dick Dever.**

**Roll Call Vote: 5 Yes. 0 No. 1 Absent**

**Motion Passed**

**Floor Assignment: Senator Thomas L. Trenbeath**

**Senator John T. Traynor, Chairman closed the hearing**

Volosta Rickford  
Operator's Signature

10/16/03  
Date

Date: March 17, 2003  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3004

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Senator Trenbeath Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Trenbeath

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Salvatore Riccardi 10/16/03  
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
March 17, 2003 12:44 p.m.

Module No: SR-47-4912  
Carrier: Trenboath  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
HCR 3004: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3004 was placed on the  
Fourteenth order on the calendar.

(2) D:SK, (3) COMM

Page No. 1

SR-47-4912

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10/16/03  
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2003 TESTIMONY

HCR 3004

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10/16/03  
Date

# Drug arrests, economy swell public defender caseloads

FARGO (AP) — An increase in drug arrests and a slowdown in the economy have meant more criminal defendants who cannot afford legal help, public defenders and court officials say.

One Cass County public defender was assigned 528 cases in the fiscal year ending June 30. The American Bar Association recommends a caseload of about 200 per year.

In Minnesota, public defenders regularly carry more than 300 cases a year.

"I think our folks are doing the best they can," said John Stuart, Minnesota's chief public defender. "But there's more of a risk of innocent people being convicted of crimes."

Under Minnesota's public defender system, the state hires attorneys who are required to take every case that meets income guidelines.

In North Dakota, public defenders are contract employees selected by judges. Twenty-eight

attorneys and 17 law firms contract with the state to provide public defender services. The contracts cover two years.

"There's a certain percentage that look askance at public defenders," said Monty Mertz, who works as a public defender in North Dakota's East Central Judicial District.

"My job isn't to get guilty people off. My job is to make sure the state follows the rules," he said.

The contract system, which pays attorneys a set amount each year based on past caseloads, led to a problem in one county last year when public defenders gave notice they were canceling their contracts.

Williston attorney Jeff Nehring, a public defender since 1997, said the area's "extra aggressive" drug task force developed so many methamphetamine cases that his public defender hours went up and his pay fell from a target of \$65 an hour to about \$50 an hour.

In one case, a woman was arrested three separate times on meth-related charges in the span of a few weeks, he said.

"I probably had six or seven bond hearings, three different preliminary hearings and I was preparing for three jury trials — all of it happening in the course of a couple months," Nehring said.

"The state's attorneys office has the luxury of having the sheriff's department or the police department go out and interview witnesses and do investigations," Nehring said.

In contrast, he said, "We're our own investigator. I need to contact witnesses myself. I need to go to the scene of the crime to inspect it myself. That takes even more of our time."

Nehring said public defender work represents about half of his practice. He is renegotiating his contract with the state. Meanwhile, he continues to do defense work, billing the state at \$65 an hour, about half of what he

charges in his private practice.

The problems in Williston worry Ted Gladden, North Dakota's court administrator.

"We're now back to the point of hiring attorneys on a case-by-case basis, and the costs are going to be horrendous," Gladden said. "This is a huge problem."

Gladden said the goal under the contract system is to pay attorneys \$65 an hour, a rate based on caseloads from previous years.

Gerald VandeWalle, the chief justice of the North Dakota Supreme Court, believes North Dakota should consider having someone other than a judge decide who gets public defender contracts.

"Our judges contract for the services of the lawyers. To a certain extent, there's a conflict of interest there," VandeWalle said.

The Legislature is considering a bill that would transfer the responsibility of hiring and assigning public defenders from



Public defender Monty Mertz confers with a client moments after being appointed his attorney following initial appearance in Cass County District Court in Fargo, Jan. 14. An increase in drug arrests and a slowdown in the economy have meant more criminal defendants who cannot afford legal help, public defenders and court officials say.

the judicial branch to the state Office of Administrative Hearings. It has passed the House.

Steve Mottinger, a public defender in Cass County, said the growing complexity of drug cases poses the biggest challenge for defense attorneys.

People should not fault

lawyers for standing up for accused of crimes, he said.

"If it was your kid, brother that was in trouble, you would want that attorney to be with anybody," Mottinger said. "Why should it be difficult because somebody does 50 cents to their name?"

PH #1

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Operator's signature: Rick [unclear]  
Date: 10/16/03

HCOZ 3004 AH #2

With a budget of \$875,000 for that district, the average amount per case was \$220.

The committee also received information on the costs attributable to prosecuting defendants. It was reported that counties do not keep specific numbers on the costs of prosecution, but approximately 60 to 80 percent of a county state's attorney's budget is spent on criminal cases, and 20 to 40 percent is spent on civil actions and other duties. The committee was also provided with information on the estimated costs of prosecuting an actual murder case that occurred in the state. According to the testimony, state's attorneys do not keep track of the hours spent on each criminal case, but to arrive at an estimate in this case, files were reviewed, major tasks identified, and an estimate of how much time was spent on each task was done. For this particular case, the estimated prosecution cost was \$13,379.08. According to the testimony, this figure did not include office space, equipment, or supply costs. Testimony received from the attorney who provided the indigent defense services for the murder case estimated that if this client had been a paying client and he had billed his client by the hour, the case would have cost an estimated \$20,000 to \$25,000. According to the attorney's testimony, the state's attorneys have technology, law enforcement resources, and other sources of information at their disposal which are not available to the contract attorneys.

The committee also received testimony from an attorney who represented an indigent client in a double murder case. According to the testimony, the prosecution had the resources to fly in witnesses and Federal Bureau of Investigation experts and had the state crime laboratory at its disposal. The attorney testified that two full-time state's attorneys tried the case with a third state's attorney rotating with the other two. According to the testimony, as an indigent defense attorney he was compensated \$2,500 to represent the defendant. It was argued that defendants have a constitutional right to an adequate and competent defense and that the attorneys providing that service need to be adequately compensated. According to the testimony, the federal system pays indigent defense attorneys \$90 per hour, and under the state's current system, defendants are being represented by the lowest bidder.

Another indigent defense attorney pointed out there is no comparison between the resources of state's attorneys when prosecuting indigent defendants and the resources of indigent defense attorneys when defending the indigent defendant.

#### State-Funded Indigent Defense

North Dakota's indigent defense system is administered through the judiciary. As part of the court unification process, although the payment of indigent defense for criminal cases became a state obligation, each of the counties is responsible for funding assigned counsel representation of indigents who are facing mental health commitment proceedings or proceedings for the commitment of sexually dangerous individuals. The county is also responsible for costs associated with the

appointment of guardians ad litem for indigents. The committee received information that the counties spend an estimated \$200,000 to \$300,000 per biennium on indigent defense services. In 2001 Cass County spent \$16,000 on indigent defense and \$13,500 on guardian ad litem services; Burleigh County spent \$35,000 on indigent defense and \$10,000 on guardian ad litem services; Grand Forks County spent \$3,042 on indigent defense and \$12,273 on guardian ad litem services; and Stutsman County spent \$15,254 on indigent defense and \$5,000 on guardian ad litem services.

The committee considered a bill draft that provided that the state rather than the counties is responsible for paying the cost of indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardian ad litem costs. Testimony in support of the bill draft indicated that not making these indigent defense costs a state responsibility may have been an oversight at the time court unification was implemented. Other testimony indicated that currently these three types of indigent defense services are being provided by the attorneys with whom the state has contracted, but the costs of services are paid by the county. There was no testimony in opposition to the bill draft.

#### Establishment of a Public Defender System

The committee received testimony regarding the implementation of a public defender office in the state. According to the testimony, a public defender program is a public or private nonprofit organization staffed by full-time or part-time attorneys and is designated by a given jurisdiction to provide representation to indigent defendants in criminal cases. While there are many variations among public defender programs, the defining characteristic is the employment of staff attorneys to provide representation.

The committee received testimony in support of and in opposition to the establishment of a public defender system in the state. Testimony in support of a public defender system indicated the system would be a separate, freestanding office, thus eliminating conflict of interest concerns. It was argued that the state needs a system that does not include the involvement of district judges in the process. Other testimony in support of a public defender system indicated a public defense system is operated like a law office and a business, with the more experienced attorneys assigned the more difficult cases and the less-experienced attorneys assigned the less-complicated cases. It was argued that under the current system the better attorneys are not rewarded. According to the testimony, a public defender office would require the hiring of an executive director, regional directors, and staff attorneys. Several attorneys who are currently or formerly involved in the indigent defense contract process also testified in support of the establishment of a public defender program. According to the testimony, a public defender would have a greater commitment to public defense and would not have other nonindigent cases to handle. In addition, it was argued

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Richard Costa  
Operator's Signature

10/16/03  
Date

that a public defender would be provided with a support staff. This would eliminate the duplication of expenses for rent, support services, and other overhead costs.

Testimony in opposition to a public defender program indicated the current system of awarding contracts and providing indigent defense is working well. According to the testimony, a public defender program would be considerably more expensive to the state than the current system and would create another agency of government. Other testimony in opposition to a public defender program indicated there are a number of ways the current system can be improved without replacing it with a more costly process. It was noted there are ways the application and eligibility process could be improved. Testimony in opposition also indicated that even if the state implemented a public defender program, there will still be conflict of interest instances in which there will be a need to hire outside counsel. It also was noted that the problem of a shortage of attorneys willing to do indigent defense work would not be resolved by establishing a public defender program. According to the testimony, being an indigent defense attorney is a "burn-out" job, and therefore, it may be difficult to recruit attorneys who are willing to work as full-time public defenders. As a part of its study of a public defender program, the committee also reviewed the Uniform Model Public Defender Act.

Several committee members indicated that at some point the state should consider moving to a public defender system, but that remaining court consolidation and clerk of court consolidation issues should be settled first. One committee member suggested the committee may want a continuation of the indigent defense study in the next interim.

The committee considered a resolution that directed the Legislative Council to study the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system. Committee discussion on the resolution indicated the issues raised during this study should be further studied and monitored.

#### Recommendations

The committee recommends House Bill No. 1044 to transfer from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services. The bill requires the Office of Administrative Hearings to establish and implement a process of contracting with and assigning licensed attorneys who are willing to provide legal services to indigent persons. The bill also provides that of the money deposited in the indigent defense administration fund, 50 percent would be appropriated to the Office of Administrative Hearings for the administration of the indigent defense system and 50 percent would be appropriated to the judicial branch to be used for the collection of those indigent defense costs required to be reimbursed.

The committee recommends House Bill No. 1045 to provide that the state rather than the counties is

responsible for paying for the costs of providing indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardian ad litem costs.

The committee recommends House Concurrent Resolution No. 3004 to direct a Legislative Council study of the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system.

## CLERK OF COURT AND COLLECTION OF RESTITUTION STUDY

### Background

#### Court Unification

In 1991 the Legislative Assembly unified the court system through elimination of county courts and the creation of district court judgeships from county court judgeships. In 1991 there were 53 district and county judges. Under unification the law provided that the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court began eliminating judgeships and by January 2, 1995, the primary implementation date for consolidation of trial courts, the number of judgeships was reduced to 47. At the end of 2000 the final judgeship was eliminated and the number of district judgeships was reduced to 42.

#### Office of Clerk of District Court

Historically, the clerks of court have been elected county officials whose salaries have been set by state law but were paid by the counties. The duties of the clerk are prescribed by state law, and the duties of the clerk are essentially performed for the district court. In 1989 the Legislative Assembly enacted legislation that provided counties the option of seeking state funding for the clerks of district court. The legislation, codified as NDCC Section 11-17-11, provides that "[t]he board of county commissioners of any county may initiate the option to transfer responsibility for funding of the clerk of district court to the state by the filing of written notice to the state court administrator . . . ."

In 1997 the Legislative Assembly expressed its intent to provide for the state funding of clerks of court by stating in Section 6 of 1997 Senate Bill No. 2002 that "the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts."

In 1999 the Legislative Assembly enacted legislation to provide for the state funding of clerk of district court services. The legislation, codified as NDCC Chapter 27-05.2, provides for the transfer of the funding for clerk of district court services to the state effective April 1, 2001. The legislation defined clerk of district court services as "those duties and services, as provided by statute or rule of the supreme court, that directly serve the judicial system and the provision of effective and efficient judicial services to the public." The legislation provided that the options available to a county regarding state funding of clerk of district court services depended upon the number of full-time equivalent (FTE) positions