

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1023

2007 HOUSE APPROPRIATIONS

HB 1023

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1023

House Appropriations Committee
Government Operations Division

Check here for Conference Committee

Hearing Date: 1/11/07

Recorder Job Number: 953

Committee Clerk Signature

Minutes:

Chairman Carlson opened the hearing on House Bill 1023. A bill for an act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

Robin Huseby, Director for the North Dakota Commission on Legal Counsel for Indigents, testified in support of the bill. See attached testimony 1023.1.11.07 A.

Ms. Huseby gave a brief overview and history of the Commission.

Chairman Carlson: Why are the fees split 50/50?

Robin Huseby: I think it was just a formula that they came up with when they figured the court improvement fee would get high enough to meet their needs.

Representative Williams: You were authorized last biennium \$1.2million. This biennium you are requesting \$1.7million, may I ask why the increase?

Robin Huseby: We are asking for the authority to spend that much more. We are asking for a slight budget increase but our base General Fund was down a little bit of what we requested.

Representative Skarphol: Did you have to go through the administrative rules process?

Robin Huseby: According to our statutes, we developed standards of policy like the administrative rules but we do not have to follow them.

Chairman Carlson: Sandy (from OMB), just so I understand the terminology, cost to continue includes what?

Sandy Paulson: Present salary and the 4 & 4 increase.

Chairman Carlson: Is that health care as well?

Sandy Paulson: No it does not include the cost of insurance.

Representative Kroeber: You talked about your special funds coming from fees. How are you collecting those fees?

Robin Huseby: The fees are being collected very aggressively. We cannot collect them. The court system does.

Representative Skarphol: Sandy, as far as the split in these dollars and part going to the court improvement fund, the reason for that was they felt some of the courthouses needed some work done on them. Is there any other request anywhere in the court system for additional monies for court improvement?

Sandy Paulson: To my knowledge there would not be anything going directly to renovations.

Vice Chairman Carlisle: If I understand right, you are replacing the contract employees with the FTEs?

Robin Huseby: Contractors will never be totally replaced. They are to replace some of the contract employees in the smaller districts.

Representative Kempenich: The non-contracting attorney's, can the clients choose who they have defend them and you still pay them?

Robin Huseby: No, the non-contracting attorney's, let me give you an example, in Williston, there is a murder case, and Josh can't take it because of conflict. We have to assign it to an attorney in Williston that is not under contract with us.

Representative Kempenich: Does it make any difference the experience level of attorneys when deciding their case load?

Robin Huseby: They are very experienced.

Chairman Carlson: When I look at the growth of the budget, I am trying to put my finger on the tremendous increase in the budget. Yet we were public defending back then on a contract basis but it was run through judiciary. If this thing keeps spiraling at that cost we have ourselves a pretty major agency that is going to have a tremendous amount of employees. I am not against it or for it. I just look at it and red flags fly like, wow we have more than doubled the budget and now we are asking for an additional ten more employees. I am saying is it or is it not cost effective what we are doing per case?

Robin Huseby: How I look at it and I understand your concerns. The problem is that the system back in 2004 was so broken that it needed to be fixed in a major way. Doubling this budget was not anything exception. It was appropriate. The contractors were way under paid they got a huge increase in 2005. There were many things that needed to be done. When the Supreme Court transferred it over to us, all of their administrative costs have been assumed in the Supreme Court. When I look at the big picture, I don't see this agency ever growing like this ever again.

Chairman Carlson: When you get all done with your expansion, what percentage will be cases handled by employees compared to cases handled by contract.

Robin Huseby: I would have to put pencil to paper to figure that out. One concern I have as an agency head is, when I look at the contractors and what they are getting paid, it is very

difficult to have contractors out there that are being paid so much and that we have so little control over them. The only control we have over a contract attorney is that we can pull the contract.

Representative Skarphol: Don (Legislative Council), was there a reduction in the Supreme Court's budget when this was transferred?

Don Wolf: Yes there was a \$9.5million reduction in their budget.

Mr. Wolf will look into the history of the budget of the Supreme Court.

Joshua Rustad, Supervising Attorney in the Williston Public Defender's Office, testified in support of the bill.

Mr. Rustad discussed his history with the Commission from being a contract defender to the employed defender. He stated that when the case load rose dramatically, he was not working for the \$65.00 per hour he was contracted for but working for about \$30.00 per hour. The Williston office covers the counties of Williams, McKenzie, Mountrail, and Divide Counties.

Chairman Carlson: If you are at \$30.00 per hour and you put in the hours and you are billing for the hours you only get up to your contract amount is that what you are saying?

Joshua Rustad: Basically we were getting an amount every month, regardless whether you put in one hour or a thousand hours. You got that amount of pay.

Mr. Rustad outlined the advantages of the public defender system. These include the fact that they only defend adult and juvenile criminal cases. They also have greater access with to the States Attorney, the Clerks of Court and their clients. The conflicts in cases are resolved quickly. It is also less work for judges and the clerks of court.

Chairman Carlson: Your perspective on how the public defender system works is an important part of that perspective. How that client is going to be served. Our question is trying

to justify if number one does it work? And number two is it cost effective for the state? That should be the sole purpose of our discussion here.

Vice Chairman Carlisle requested Joshua to put some of his perspective in writing.

Bruce Quick, Commissioner in Fargo, testified in support of the bill.

Mr. Quick is a full time criminal attorney for the Vogel Law Firm in Fargo. He gave a brief history of the creation of the Commission for the Legal Counsel of Indigents.

Representative Kempenich: Are States Attorneys and Public Defenders comparable as far as experience?

Bruce Quick: Yes, very comparable.

Representative Williams: Do you still have problems hiring attorneys in Dickinson?

Robin Huseby: They are all hired in Dickinson. They now have two public defenders and there are also more contract attorneys.

Chairman Carlson closed the hearing on House Bill 1023.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1023

House Appropriations Committee
Government Operations Division

Check here for Conference Committee

Hearing Date: 1/26/07

Recorder Job Number: 1998

Committee Clerk Signature

Dave Voegelé

Minutes:

Chairman Carlson opened the discussion on House Bill 1023.

Vice Chairman Carlisle discussed the history of the Commission for Legal Counsel of Indigents.

Robin Huseby stated that the new FTEs will replace some, not all, of the current contract attorneys. Of the 60,000 cases statewide during the biennium, one third of the cases will need appointed counsel.

The set up and transition costs will probably not be an ongoing expense.

The percentage of contract versus employees after this budget is approved will be 50/50. It is not anticipated any surges of need to where that would change.

The way the budget is written, the commission has the flexibility to move money around. The average pay of the public attorneys is around \$58,000 per year.

The motion was made by Representative Carlisle, seconded by Representative Kroeber to recommend a DO PASS to the House Appropriations Full Committee. The committee

was Y=8, N=0, A=0. The bill will be carried by Representative Carlisle.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1023

House Appropriations Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 2955

Committee Clerk Signature

Holly R. Aard

Minutes:

Chm. Svedjan opened the hearing on HB 1023.

Rep. Carlisle described the bill. Right now there are about 60,000 cases per year charged out. Funding comes from the general fund and special funds. The budget does have turn back of \$200,000.

Chm. Svedjan: There are no amendments?

Rep. Carlisle: No.

Rep. Aarsvold: What would be the source of the \$480,000 special funds?

Robin Huseby, Executive Director, North Dakota Commission on Legal Counsel for

Indigents: We receive two funds: \$25 from every criminal defendant on an application fee and a \$100 administration fee (Ref. 3:38).

Rep. Carlisle moved a Do Pass. **Rep. Kroeber** seconded the motion. The motion carried by a roll call vote of 21 ayes, 0 nays and 3 absent and not voting. **Rep. Carlisle** was designated to carry the bill.

Date: 1/26/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1023

House Appropriations- Government Operations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By CARLISLE Seconded By KROEBER

Representatives	Yes	No	Representatives	Yes	No
Chairman Al Carlson	X		Vice Chairman Ron Carlisle	X	
Rep Keith Kempenich	X		Rep Bob Skarphol	X	
Rep Blair Thoreson	X		Rep Eliot Glassheim	X	
Rep Joe Kroeber	X		Rep Clark Williams	X	

Total Yes 8 No 0

Absent 0

Floor Assignment CARLISLE

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

Date: ~~2/16~~ 2/16/07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1023

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Carlisle Seconded By Kroeber

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich					
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleon		
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman		
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 21 No 0

Absent 3

Floor Assignment Carlisle

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

REPORT OF STANDING COMMITTEE (410)
February 8, 2007 9:05 a.m.

Module No: HR-25-2474
Carrier: Carlisle
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1023: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO PASS
(21 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1023 was placed on the
Eleventh order on the calendar.

2007 SENATE APPROPRIATIONS

HB 1023

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1023

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-26-07

Recorder Job Number: 3834

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1023.

Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents,

presented written testimony and testified in support of HB 1023. She discussed the agency statutory authority, the agency mission and description, the major accomplishments, the base budget information with a breakdown of expenditures, what the government approved and additional funding the Governor approved, the FTE's, the turnback of general fund money for 2005-07, the proposed plan for east central and south central districts, the benefits of combined public defender contract system and case assignments in various districts.

Chairman Holmberg indicated this one issue took the legislature a long time to come to a decision on this.

Senator Seymour asked if there are any cases or individuals under the federal jurisdiction.

The response was yes there is some duplication.

Chairman Holmberg indicated she was right about the growth in government.

Senator Tallackson asked what part the county pays in representation. The response was that the defense is the state responsibility.

Kevin McCabe, Supervising Attorney, Dickinson Public Defender's Office, Dickinson, presented written testimony and testified in support of HB 1023 indicating his office has been

operating for one year. He discussed the process in Dickinson in defending indigent cases, what it had been and what it is now.

Chairman Holmberg asked how we can have a state office set up and have it operate out of Valley City.

Senator Wardner asked if he had eight southwest North Dakota Counties and Williston. He responded yes plus cases in Bismarck and Minot.

He was asked what brings him to Bismarck and Minot and the response was he comes to other communities when there is a conflict with judges and attorney's in the case. Also he added that there is often a duplication of charges in federal courts as well as state courts.

Chairman Holmberg closed the hearing on HB 1023.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1023

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 03-06-07

Recorder Job Number: 4482

Committee Clerk Signature

Alice Delzer

Minutes:

Chairman Holmberg opened the hearing on HB 1023. He asked the committee to review the green sheets. There was further discussion regarding the green sheets.

Senator Grindberg moved a DO PASS, seconded by Senator Robinson. A roll call vote was taken resulting in 12 yeas, 0 nays, and 2 absent. The motion carried. Senator Robinson will carry the bill.

The hearing closed on HB 1023.

Date: 3-6-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1023

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Brundberg Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Ray Holmberg	✓		Senator Aaron Krauter	✓	
Vice Chairman Bill Bowman	✓		Senator Elroy N. Lindaas	✓	
Vice Chairman Tony Grindberg	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Sen. Robinson

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

REPORT OF STANDING COMMITTEE (410)
March 6, 2007 3:16 p.m.

Module No: SR-42-4575
Carrier: Robinson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1023: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1023 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

HB 1023

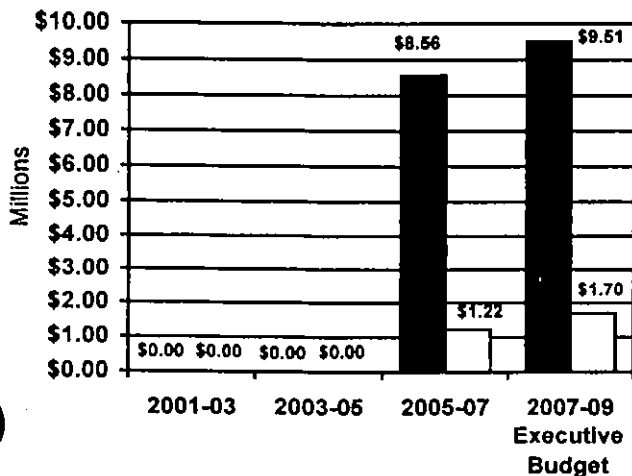
**Department 188 - Commission on Legal Counsel for Indigents
 House Bill No. 1023**

	FTE Positions	General Fund	Other Funds	Total
07-09 Executive Budget	29.00	\$9,512,811	\$1,700,705	\$11,213,516
2005-07 Legislative Appropriations	6.00 ¹	8,560,569	1,220,000	9,780,569 ²
Increase (Decrease)	23.00	\$952,242	\$480,705	\$1,432,947

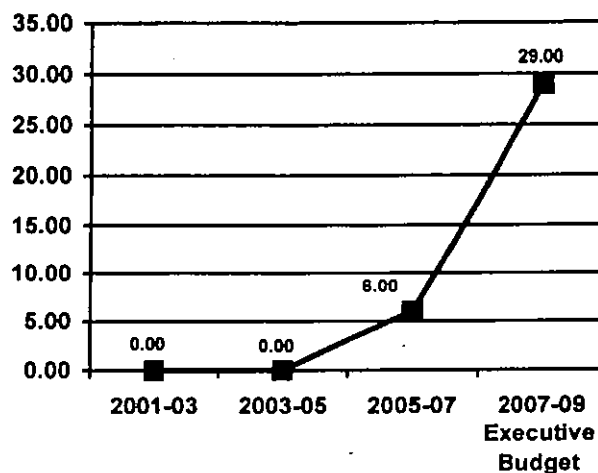
¹A total of six FTE positions were anticipated for the creation of the Commission on Legal Counsel for Indigents. Pursuant to North Dakota Century Code Section 54-61-02, 13 FTE positions were added for the establishment of public defender offices in Minot, Williston, Dickinson, and Grand Forks.

²The 2005-07 appropriation amounts include \$9,530,493, of which \$8,310,493 is from the general fund and \$1,220,000 is indigent defense administration funds, transferred from the judicial branch and \$250,076 of general fund carryover authority.

Agency Funding



FTE Positions



■ General Fund □ Other Funds

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Adds 13 FTE positions for the establishment of public defender offices in Minot, Williston, Dickinson, and Grand Forks per approval by the Commission	\$1,767,637		\$1,767,637
2. Decreases funding for operating costs for professional services due to establishment of public defender offices	(\$1,396,459)		(\$1,396,459)
3. Increases funding for various operating costs, including office rental (\$103,389), travel (\$51,958), and professional supplies (\$41,324), due to establishment of public defender offices	(\$116,263)	\$480,705	\$364,442
4. Adds funding for a phased-in addition of public defender offices in Bismarck and Fargo, including 10 FTE positions	\$1,000,000		\$1,000,000

Continuing Appropriations

Indigent defense administration fund - NDCC Sections 29-07-01.1 and 29-26-22 - Funding is from a \$25 nonrefundable fee for court-appointed defense services and from a \$100 court administration fee in all criminal cases except infractions. The first \$750,000 collected is used for indigent defense services, the next \$460,000 is used for court facilities, and anything above this amount is split evenly between the two funds.

Major Related Legislation

Creation of the Commission on Legal Counsel for Indigents - The 2005 Legislative Assembly approved Senate Bill No. 2027 providing for the establishment of the Commission on Legal Counsel for Indigents for the purpose of providing indigent defense services and provided for the transition of indigent defense services from the Supreme Court to the commission by December 31, 2005.

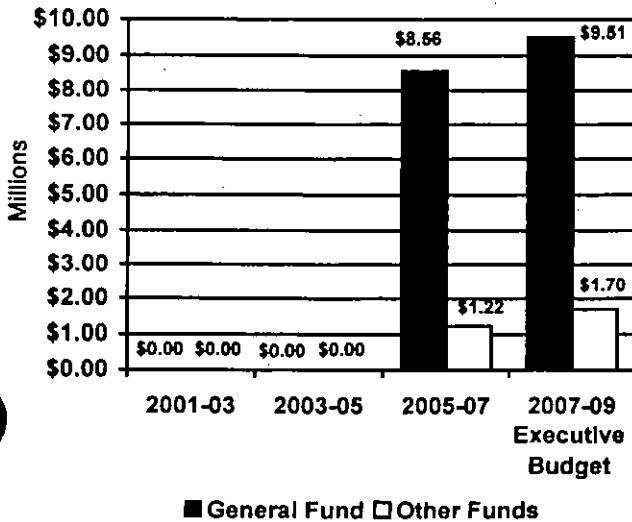
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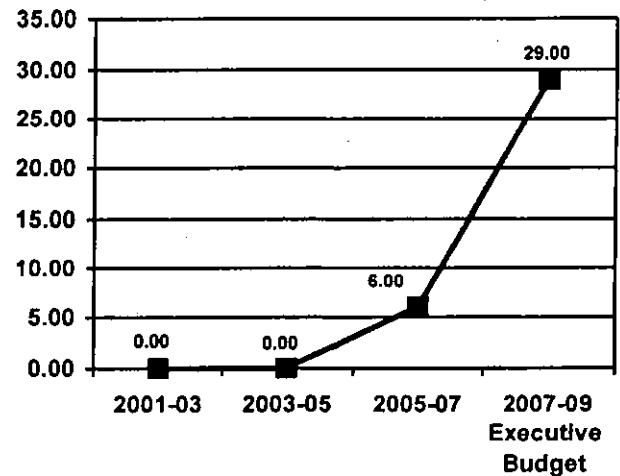
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Agency Funding



FTE Positions



First House Action

The House did not change the executive budget recommendation for the Commission on Legal Counsel for Indigents.

Executive Budget Highlights

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North Dakota Commission on Legal Counsel for Indigents

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12-27-2006

To: Representative Al Carlson
Appropriations Committee-Government Operations

RE: Commission on Legal Counsel for Indigents/Robin Huseby

Dear Representative Carlson:

I note that our agency appears before your committee on January 11th, 2006, at 2:00 p.m. regarding our budget, which is duly noted.

I wanted to ask you or your clerk to please note that I am out of the area on three dates; Friday, February 2nd, 2007, and Thursday and Friday, February 8th and 9th, 2007. I would respectfully ask that if there were any meetings or discussions regarding our budget that they be held on days other than those days as I would like to be present, if possible.

I was not sure of the protocol in giving advance notice of conflict days so I thought I would drop you a note.

Thank you very much,

Sincerely,

Robin Huseby
Executive Director
Commission on Legal Counsel for Indigents
P.O. Box 149
Valley City, ND 58072

C: Tanya Voegelé

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

January 11th, 2007, Government Operations, Great Plains

Same testimony given to Senate

AGENCY STATUTORY AUTHORITY

North Dakota Century Code §54-61-01, et seq, sets forth the creation of the agency, and states the commission's duties and responsibilities. This agency was created in 2005, and commenced as an Executive Branch agency on January 1st, 2006, assuming the duties from the North Dakota Supreme Court. The governing commission consists of seven members appointed by the Chairman of Legislative Council, the Governor, the Board of Governors of the State Bar Association, and the Chief Justice of the Supreme Court. The commission has been meeting every 4-6 weeks since August of 2005.

AGENCY MISSION AND DESCRIPTION

Our agency's mission is to provide high quality, professional, and effective legal representation to eligible clients at a reasonable cost to the community. We are responsible for the delivery of indigent services throughout North Dakota in all District Courts. We have approximately **10,000** case assignments to attorneys in a year period, which include adult cases and juvenile cases. Our attorney services in Williston, Dickinson, and Minot are provided by the combination of public defenders and private counsel assigned on a case by case basis. (Approximately 15-20% of cases represents "conflict" cases and are assigned to area attorneys). In other areas of the state, currently attorney services consist of monthly contracts with private attorneys on a "flat fee" basis. Prior to our agency taking over this system from the Judiciary, North Dakota was the only state in the union with a "flat fee" system. We have a main branch office in Valley City with three full time personnel, and from there we handle payroll, pay agency bills, facilitate the attorney assignments throughout the state, take attorney complaints from clients, and work with varying court personnel in the state. We currently have 14 full time personnel; 3 in Valley City, 3 in Dickinson, 5 in Minot, and 3 in Williston. We will have 19 full time personnel by June 1st, 2006.

AGENCY MAJOR ACCOMPLISHMENTS

During our first year we have been striving to meet our statutory requirements. Our major accomplishments include, in part, the following:

1. The appointment of a Director, Deputy Director, and staff for the agency;
2. The development of agency standards and policies, including performance standards for attorneys, standards regarding conflicts, appeals, case termination, and many agency directives;
3. The establishment of a website on which people can access that information, as well as

agency forms, standards and policies, and miscellaneous information;

4. The establishment of a system for the assignment of counsel throughout the state which eliminated the Judges' involvement in the process;
5. Our commission has voted to open up public defender offices, with full time attorneys doing indigent criminal defense, in areas where deemed appropriate. Offices are now up and running in Minot, Dickinson, and Williston, and one will be opening in Grand Forks;
6. Administering the contracts with counsel providing contract services;
7. Providing, at no cost to the attorney, yearly CLE training for contract counsel and public defenders;
8. Providing support services, when financially feasible, to the attorneys such as on line research and case support services; and
9. Contracting with attorneys to act as appellate counsel to handle conflict cases.

BASE BUDGET INFORMATION

Our agency receives money from two sources; the general fund and special funds (court administration fee and indigent application fee) pursuant to §29-26-22, and §29-07-01.1(1). In 2005-2007 we were authorized to spend **\$1,200,000** of those special funds, and in 2007-2009 we are requesting to spend **\$1,700,705** of the special funds. We receive the first \$750,000 from the administration fees collected, the next \$450,000 is allocated to the court improvement fund, and any fees collected thereafter are split 50/50.

The **2003-2005 biennium** budget was **\$4,681,026**.

The **2005-2007 biennium** projected budget is **\$9,780,569**.

Our requested base budget for **2007-2009** is **\$10,029,758**.

Our general fund appropriation request is **\$8,329,053** (after a carryover and one time expenditure, and adding a cost to continue and 2nd year salary increase-prior thereto it had been \$8,560,571) and our request for our special fund expenditure is **\$1,700,705**.

(Chart A-Governors recommended budget)

BREAKDOWN OF EXPENDITURES

2005-07		2007-09	
Districts (adult) -	\$993,653	Districts (adult) -	\$703,300
Juvenile -	\$220,611	Juvenile -	\$215,250
Contract -	\$5,698,817	Contract -	\$5,571,012
Administration -	\$2,867,488	Administration -	\$3,540,196
Total:	\$9,780,569	Total:	\$10,029,758

According to the Spangenberg Group, who studies indigent defense agencies throughout the nation, North Dakota ranked **50th** in the nation in the amount per capita spent on indigent defense prior to the funding increase in 2005. With that increase, we now rank approximately **39th** in the nation on what we spend per capita on indigent defense.

OPTIONAL BUDGET PACKAGE INFORMATION

We submitted to the Governor an optional package asking for **\$1,678,794** to create a combination system in the two largest judicial districts; the South Central (Bismarck), and East Central (Fargo). This proposal would be a "phased in" project. This combination system would consist of public defenders and contract attorneys.

The proposal was to open one public defender office in each city. The offices' configuration would be similar to that of the Minot office. Those offices would work in conjunction with area attorneys on contracts.

The Governor's Executive Budget recommendation for our agency was a total of **\$11,213,516**. This recommendation is for **\$9,512,811** of general fund money, and **\$1,700,705** of special fund money. This recommendation reflects an increase of general fund money in the amount of **\$952,242**, and of special fund money in the amount of **\$480,705**. His recommendation states that the proposed budget "**Provides \$11.0 million for the statewide delivery of constitutionally adequate services to criminal defendants. Provides for the phased in addition of public defense offices in Bismarck and Fargo in the 2007-09 biennium**".

Our base budget request for 2007-2009 was **\$10,029,758**. The Governor recommends a budget, with optional package dollars, of **\$11,213,516**, which reflects an increase of **\$1,183,758**.

The optional package money is intended to be used for transition costs in switching over the delivery of indigent services from a flat fee contract system to a combination system. In the beginning of a public defender/contract system, the new public defenders begin taking cases from the court system while the contractors wind down their pending cases. The number of open cases a contractor has, and whether he/she wishes to be one of the new contractors, affects the

costs of the transition. We would also be using some of the optional monies to re-configure contracts and decide how many and what types would be appropriate (see discussion regarding case loads below).

FTE'S AND INDEPENDENT CONTRACTORS

The Governor's recommended budget would allow for an additional 10 (ten) FTE's for the next biennium, bringing our total to 29 for the 2007-2009 biennium.

Our agency currently has 45 private attorneys across the state on monthly contracts. We pay **\$229,976** a month to those contractors, and the contract rates generally range from **\$2,000** a month to **\$11,000.00** a month. The amount of the contract depends on the case load and type of contract.

We also have many attorneys throughout the state who have signed contracts with our agency to provide "off contract" case work on an hourly basis, which is \$65.00 an hour.

TURNBACK OF GENERAL FUND MONEY FOR 2005-07

We estimate that our agency will turn back **\$200,000** of general fund dollars. However, our agency is highly subject to varying emergency situations. Two murder cases coming to trial, or a multiple defendant drug bust, assigned to non-contracting attorneys would be an example of how there could be a significant monthly spike in bills. While this amount is an estimate, we are cognizant of the mercurial nature of some of our expenses.

COSTS OF PUBLIC DEFENDER SYSTEM

We do not have a lot of historical data to make comparisons between the costs of public defender offices and the costs of the contract system, because the places where we implemented public defender offices had no major felony contracts at the time they were established. In Williston, Dickinson and Minot, the attorneys who had contracts in prior years declined to contract with the Supreme Court in 2005.

In examining the cost of our present public defender offices and the costs to run systems where there are flat fee monthly contracts only, it is estimated that we can sustain a combination system; public defenders **and** contracts, at a cost which is equal to or less than a flat fee contract system such as we now have in place in the two largest metropolitan areas.

PROPOSED PLAN FOR EAST CENTRAL AND SOUTH CENTRAL DISTRICTS

1. Establish a public defender's office which would be approximately the same size as our Minot office;
2. Transition out the present contract system, and offer smaller contracts to private attorneys to handle the cases not assigned to the public defender offices. We would like to have some of the contracts specialized in nature (juvenile contracts, major case contractors, or possibly misdemeanor contractors);
3. Provide adequate support services for both public defender offices and contractors in terms of case investigators, evaluations and other outside services;
4. Continue to provide training opportunities and support to attorneys from central office, and
5. Promote interchangeability amongst the public defenders throughout the state to reduce paying non-contracted attorneys on assignment cases.

BENEFITS OF COMBINED PUBLIC DEFENDER/CONTRACT SYSTEM

- A. Public defender spends full time on indigent defense; has no private practice competing with his/her job of providing indigent defense;
- B. Public Defender can manage case load by assigning out conflicts as case numbers' ebb and flow;
- C. The number of attorneys doing indigent defense would be increasing and hence their case numbers would be decreasing, which is inherently better for the indigent client;
- D. There is more flexibility to look at "specialty" contracts offering specialized legal services for cases presenting unique challenges (major case specialty, sex offender cases, for example);
- E. Public Defenders can provide conflict assistance to other Public Defenders in State without paying for more legal fees; this collaboration is working well with Williston and Minot. For example, in a conflict in Minot, we can have a Williston public defender go to Minot and do not have to pay extra for his services. An example of where this collaboration would work very well would be in Grand Forks and Fargo; and
- F. Public defender makes case assignments and monitors case loads of his/her attorneys as well as contract attorneys, and would be able to recommend to our agency whether we need to add contracts or increase contract payments with increasing case loads.

CASE ASSIGNMENTS IN VARIOUS DISTRICTS

In 2005, there were 9,344 case assignments made to indigent contractors. In the East Central, there were 2,763 case assignments. In the South-central (Bismarck and surrounding areas) there were 2274 case assignments. The adult case attorneys in the East Central are taking in excess of 375 case assignments a year; in the South Central, the average is around 260 case assignments a year. The case assignments for the year 2006 do not appear to be much different than in 2005; we are still compiling some statistics for case assignments.

The American Bar Association has issued a strong worded Ethics Opinion, #06-441, which states that an indigent contractor or public defender, as well as his/her supervisor and board of supervisors, is responsible ethically to not permit excessive case loads. The opinion goes on to state the attorney should attempt to not take new cases if his/her case load is excessive, or, in the alternative, withdraw from a case if it is over the acceptable limit.

Although there is no set standard in ND for what an "acceptable" case load is, there are some national standards. Those standards state that a person should only take 150 felony case assignments a year, **if he/she does no other cases**. A person should take only 400 misdemeanors a year, **if that is all he/she does**. Those standards would perhaps be "ideal" standards, but clearly, when our "part time" contractors are handling as many cases as some of them are handling case load management is a significant issue and one that has to be dealt with. Our agency is, in fact, studying the issue along with several of the contractors and public defenders.

CONCLUSION

We are requesting a base budget of **\$10,029,757**, which is what is projected to pay for our system in the next biennium. Of that amount, **\$1,700,705** will be from special funds. We are also requesting that the legislature adopt the Governor's recommendation for additional funds for our optional package, which would then bring our budget to **\$11,213,516**, which is an increase of **\$1,183,759**.

We believe that we have made significant progress with providing indigent services throughout the state, and wish to proceed to do so as there is much work to be done. We need the

flexibility to formulate a system in which we can achieve our mission and goals. The commission has voted to ask for the optional money to provide for a phased in public defender/contract system in the two largest metropolitan areas of the state.

REQUEST / RECOMMENDATION COMPARISON SUMMARY

188 COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

Bill#: HB 1023

Biennium: 2007-2009

Description	Expenditures Prev Biennium 2003-2005	Present Budget 2005-2007	2007-2009 Requested		Requested Budget 2007-2009	2007-2009 Recommended		Executive Recommendation 2007-2009
			Incr(Decr)	% Chg		Incr(Decr)	% Chg	
BY MAJOR PROGRAM								
COUNSEL FOR INDIGENTS-DISTRICTS	366,307	993,653	-290,353	-29.2%	703,300	-290,353	-29.2%	703,300
COUNSEL FOR INDIGENTS-JUVENILE	158,535	220,611	-5,361	-2.4%	215,250	-5,361	-2.4%	215,250
COUNSEL FOR INDIGENTS-CONTRACTS	4,156,184	5,698,817	-127,805	-2.2%	5,571,012	-127,805	-2.2%	5,571,012
COUNSEL FOR INDIGENTS-ADMIN	0	2,867,488	672,708	23.5%	3,540,196	1,856,466	64.7%	4,723,954
TOTAL MAJOR PROGRAMS	4,681,026	9,780,569	249,189	2.5%	10,029,758	1,432,947	14.7%	11,213,516
BY LINE ITEM								
LEGAL COUNSEL FOR INDIGENTS	4,681,026	9,780,569	249,189	2.5%	10,029,758	1,432,947	14.7%	11,213,516
TOTAL LINE ITEMS	4,681,026	9,780,569	249,189	2.5%	10,029,758	1,432,947	14.7%	11,213,516
BY FUNDING SOURCE								
GENERAL FUND	4,056,001	8,560,569	-231,516	-2.7%	8,329,053	952,242	11.1%	9,512,811
SPECIAL FUNDS	625,025	1,220,000	480,705	39.4%	1,700,705	480,705	39.4%	1,700,705
TOTAL FUNDING SOURCE	4,681,026	9,780,569	249,189	2.5%	10,029,758	1,432,947	14.7%	11,213,516
TOTAL FTE	.00	19.00	.00	.0%	19.00	10.00	52.6%	29.00

CHART A - 1

OPTIONAL ADJUSTMENT REQUESTS

OPTIONAL ADJUSTMENT PACKAGE

Biennium: 2007-2009

Priority	Description	FTE	General Fund	Federal Funds	Special Funds	Total Funds
04	Staff Equity Adjustments	.00	1,129,043	0	18,682	1,147,725
05	Salary Funding Source Changes	4.00	253,942	0	107,986	361,928
06	Inflationary Increase Adjustments	.00	550,067	0	43,200	593,267
07	Telecommunications Rate Increases	.00	40,898	0	0	40,898
08	Staff Retirements	.00	54,540	0	0	54,540
10	Crime Lab Preventive Maintenance Agreements	.00	85,200	0	0	85,200
SUBTOTAL		185.30	24,148,873	8,754,537	9,466,641	42,370,051
127 OFFICE OF STATE TAX COMMISSIONER						
	Base Budget Request	133.00	22,707,047	0	0	22,707,047
03	Integrated Tax System - First Payments	.00	5,356,702	0	0	5,356,702
05	Loan payoff	.00	9,916,295	0	0	9,916,295
SUBTOTAL		133.00	37,980,044	0	0	37,980,044
140 OFFICE OF ADMINISTRATIVE HEARINGS						
	Base Budget Request	8.00	0	0	1,436,741	1,436,741
03	Optional Increase - Salaries & Benefits	.00	0	0	120,528	120,528
05	Optional Increase - Professional Services	.00	0	0	50,000	50,000
06	Optional Increase - Digital Recording Project	.00	0	0	7,500	7,500
SUBTOTAL		8.00	0	0	1,614,769	1,614,769
150 LEGISLATIVE ASSEMBLY						
	Base Budget Request	.00	13,918,501	0	0	13,918,501
SUBTOTAL		.00	13,918,501	0	0	13,918,501
160 LEGISLATIVE COUNCIL						
	Base Budget Request	33.00	7,967,232	0	0	7,967,232
SUBTOTAL		33.00	7,967,232	0	0	7,967,232
180 JUDICIAL BRANCH						
	Base Budget Request	343.00	64,582,060	1,835,191	294,750	66,712,001
SUBTOTAL		343.00	64,582,060	1,835,191	294,750	66,712,001
188 COMMISSION ON LEGAL COUNSEL FOR INDIGENTS						
	Base Budget Request	19.00	8,329,053	0	1,700,705	10,029,758
01	Optional Change Package	10.00	1,678,794	0	0	1,678,794

OPTIONAL ADJUSTMENT REQUESTS

OPTIONAL ADJUSTMENT PACKAGE

Biennium: 2007-2009

Priority	Description	FTE	General Fund	Federal Funds	Special Funds	Total Funds
SUBTOTAL		29.00	10,007,847	0	1,700,705	11,708,552
190 RETIREMENT AND INVESTMENT OFFICE						
	Base Budget Request	17.00	0	0	3,128,362	3,128,362
	01 Optional Salary Adjustments	.00	0	0	65,301	65,301
	SUBTOTAL	17.00	0	0	3,193,663	3,193,663
192 PUBLIC EMPLOYEES RETIREMENT SYSTEM						
	Base Budget Request	29.00	2,500	0	4,748,157	4,750,657
	02 Salary Equity Adjustment	.00	0	0	202,760	202,760
	03 IT - Legacy Application System Replacement	4.00	0	0	9,352,220	9,352,220
	SUBTOTAL	33.00	2,500	0	14,303,137	14,305,637
201 DEPT OF PUBLIC INSTRUCTION						
	Base Budget Request	97.25	693,519,878	247,991,694	72,915,557	1,014,427,129
	01 Salary Equity Increases	.00	64,300	137,000	0	201,300
	02 Increase in General Fund Operating	.00	350,000	0	0	350,000
	03 New FTE for School Finance Unit	1.00	120,724	0	0	120,724
	04 Computer Application Foundation Aid Re Write	.00	500,000	0	0	500,000
	05 State Assessment Program	.00	1,000,000	0	0	1,000,000
	06 Application Replacement DPI and ESPB	.00	1,000,000	0	0	1,000,000
	07 Limited English Proficient Student Program	.00	40,000	0	0	40,000
	08 North Dakota Governor's School	.00	90,000	0	0	90,000
	09 North Dakota Teacher Center Network	.00	46,000	0	0	46,000
	10 North Dakota LEAD Center	.00	5,000	0	0	5,000
	11 Northern Plains Writing Project	.00	10,000	0	0	10,000
	SUBTOTAL	98.25	696,745,902	248,128,694	72,915,557	1,017,790,153
215 ND UNIVERSITY SYSTEM						
	Base Budget Request	21.00	71,647,862	1,090,600	1,347,210	74,085,672
	10 OPT COLLAB PROJECT	.00	1,000,000	0	0	1,000,000
	11 OPT CAMPUS NETWORK REFURB	.00	2,000,000	0	0	2,000,000
	12 OPT NTHN TIER NETWORK	.00	2,700,000	0	0	2,700,000
	SUBTOTAL	21.00	77,347,862	1,090,600	1,347,210	79,785,672
226 STATE LAND DEPARTMENT						
	Base Budget Request	18.75	0	0	8,954,572	8,954,572

February 26, 2007

Kevin McCabe
Supervising Attorney
Dickinson Public Defender's Office
135 Sims St., Ste. 221
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(701) 227-7460

RE: HB 1023, Commission on Legal Counsel for Indigents Appropriations Bill.

Dear Committee Members:

I appear before you today to state my support of HB 1023, which is the Commission on legal Counsel for Indigents 2007-2008 appropriations bill.

In just a little over two weeks, the Dickinson Public Defender's Office will celebrate its one-year anniversary for providing Public Defender services in SW North Dakota. As we approach this milestone, I have had time to reflect on the differences between the old system in SW North Dakota, whereby attorneys were appointed by the district judges, because no attorney in Dickinson or the surrounding areas wanted to do indigent defense work under the contract system, and our current system, whereby all appointments are directly handled by our office.

At the outset, I can assure you that our current system is working much better than the previous system for the following reasons:

First and foremost, I believe that under our current system, our office is providing better legal services to our clients than we ever possibly could have before. Under the old system, or even under the contract system, private attorneys needed to balance their workload with indigent defense work and other, better paying, work to succeed. As such, that created a system whereby an attorney would only work on indigent cases when it could be fit in his or her schedules. The reality of the system was that an attorney had to do the higher paying work first and let the indigent cases wait until time was available, which usually meant nothing was getting done on the indigent case until right before the hearing or trial, thereby causing the indigent case to suffer. With the current system, that does not happen. As we don't have to worry about how much we bill out each month, we can devote more quality time to providing indigent defense services.

Additionally, as we do only criminal defense work now, I believe that we are providing better legal services because we are specializing in defense work. Again, in the past, work was shifted from civil work and criminal work. By just doing criminal work, one would naturally expect to become better as a criminal defense attorney.

Next, I believe that under the current system, we are able to save the state money. As a private

attorney, I had to make sure that I billed the state for every little thing that is did. If I had copies made, I needed to bill them out. If I received a phone call, it needed to be billed out. If I wrote a letter, it needed to be billed out. If the client came to my office, it needed to get billed. The problem here is that some of these phone calls, letters, or conferences lasted only a minute or two. However, I billed a minimum of at least one-tenth of an hour, or six minutes. So in a day, I possibly could have billed the state for five phone calls on five different clients, which could have only taken a minute a call, but I would have billed thirty minutes for the calls, which was truly acceptable under the rules . Under the current system, we don't do that. We bill for actual time on a call or conference or whatever it is that we are doing. We don't actually submit a bill, but we do submit our time.

Under the current system, we have developed other cost saving measures as well. For example, we save postage by setting up mailboxes at the courthouse. As the state's attorneys and clerks of courts know that we most likely will be there some time in the day, we don't need to send things in the mail, we can just pick up or drop off our correspondence daily.

Finally, I believe that we are providing a positive service to the community. In the past, indigent work was scattered throughout the community to many different attorneys. It was difficult on the attorneys, the courts and the state's attorneys and the clients. Now, most people realize that Dickinson has a Public Defender's Office and know that if they are indigent, they most likely will be assigned one of the two attorneys that work in the office. This is valuable because as a public defender, I have come to know the region's state's attorneys, the probation officers, the law enforcement officers, and the court personnel, and for the most part have developed excellent working relationships with these people. As such, my cases tend to get finished a lot quicker now than they did in the past, which also saves the state money.

In short, I believe that the past year has demonstrated that the opening of Public Defender offices in North Dakota has truly benefitted the state and will continue to do so. The Public Defender system benefits the indigent defendant, is cost effective and it provides a positive service to the community. For these reasons, I strongly urge this committee to support this bill and move it on to the full Senate with the recommendation of "do pass".

Thank you,

Kevin McCabe

