

2021 SENATE APPROPRIATIONS

SB 2022

Department 188 - Commission on Legal Counsel for Indigents
Senate Bill No. 2022

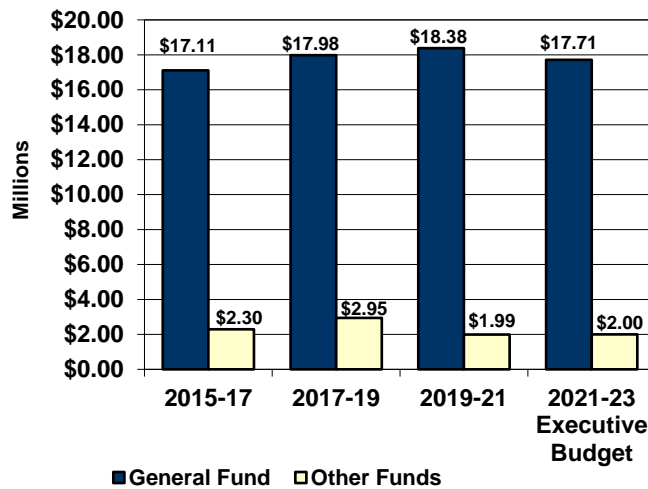
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2021-23 Executive Budget	40.00	\$17,712,805	\$1,996,898	\$19,709,703
2019-21 Legislative Appropriations	40.00	18,384,627	1,990,035	20,374,662
Increase (Decrease)	0.00	(\$671,822)	\$6,863	(\$664,959)

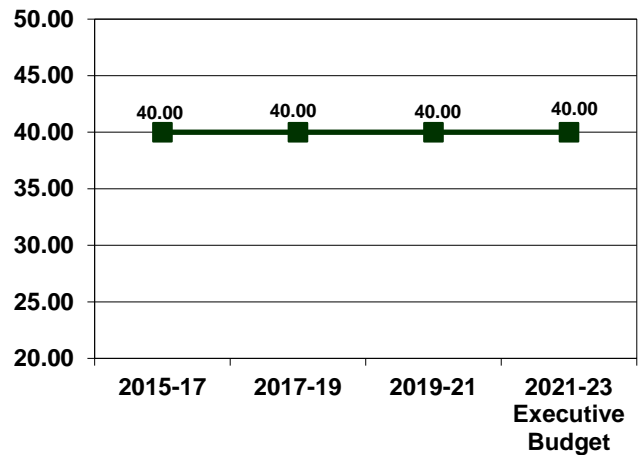
Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2021-23 Executive Budget	\$17,712,805	\$0	\$17,712,805
2019-21 Legislative Appropriations	18,384,627	0	18,384,627
Increase (Decrease)	(\$671,822)	\$0	(\$671,822)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2021-23 Executive Budget	\$17,712,805	\$1,996,898	\$19,709,703
2021-23 Base Level	18,384,627	1,990,035	20,374,662
Increase (Decrease)	(\$671,822)	\$6,863	(\$664,959)

Attached as an appendix is a detailed comparison of the executive budget to the agency's base level appropriations.

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Provides funding for state employee salary and benefit increases, of which \$204,468 is for salary increases, \$1,997 is for health insurance increases, and \$42,090 is for retirement contribution increases	\$241,692	\$6,863	\$248,555
2. Reduces funding for professional service fees to provide a total of \$9,235,136	(\$1,310,565)	\$0	(\$1,310,565)
3. Adds funding for Microsoft Office 365 license expenses	\$5,949	\$0	\$5,949

**Other Sections Recommended to be Added in the Executive Budget
(As Detailed in the Attached Appendix)**

There are no other sections for this agency.

Continuing Appropriations

Indigent defense administration fund - North Dakota Century Code Sections 29-07-01.1 and 29-26-22 - Funding is from a \$35 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 additional amounts are deposited equally into the two funds.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Significant Audit Findings

The operational audit for the Commission on Legal Counsel for Indigents conducted by the State Auditor's office for the period ending June 30, 2019, identified no significant audit findings.

Major Related Legislation

House Bill No. 1035 - Relating to the Uniform Juvenile Court Act, including requiring the Commission on Legal Counsel for Indigents to pay reasonable compensation for services and related expenses for counsel provided related to the care of a child. The commission is required to pay the witness fees, mileage, and travel expenses of witnesses subpoenaed by counsel employed by or contracted with the commission.

Commission on Legal Counsel for Indigents - Budget No. 188
Senate Bill No. 2022
Base Level Funding Changes

	Executive Budget Recommendation			
	FTE Positions	General Fund	Other Funds	Total
2021-23 Biennium Base Level	40.00	\$18,384,627	\$1,990,035	\$20,374,662
2021-23 Ongoing Funding Changes				
Base payroll changes		\$391,102		\$391,102
Salary increase		198,822	\$5,646	204,468
Health insurance increase		1,942	55	1,997
Retirement contribution increase		40,928	1,162	42,090
Reduces funding for professional service fees		(1,310,565)		(1,310,565)
Adds funding for Microsoft Office 365 license expenses		5,949		5,949
Total ongoing funding changes	0.00	(\$671,822)	\$6,863	(\$664,959)
One-time funding items				
No one-time funding items				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	0.00	(\$671,822)	\$6,863	(\$664,959)
2021-23 Total Funding	40.00	\$17,712,805	\$1,996,898	\$19,709,703
<i>Total ongoing changes as a percentage of base level</i>	0.0%	(3.7%)	0.3%	(3.3%)
<i>Total changes as a percentage of base level</i>	0.0%	(3.7%)	0.3%	(3.3%)

Other Sections in Commission on Legal Counsel for Indigents - Budget No. 188

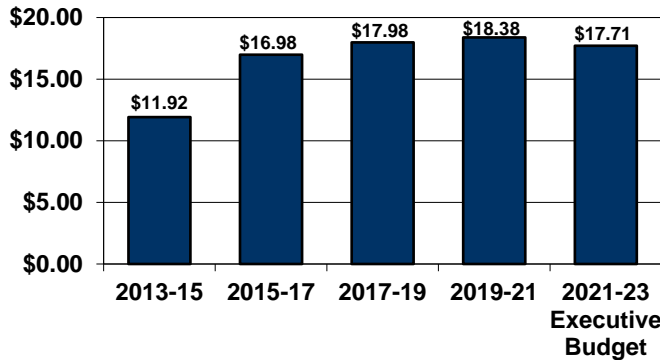
Executive Budget Recommendation
There are no other sections for this agency.

Department 188 - Commission on Legal Counsel for Indigents

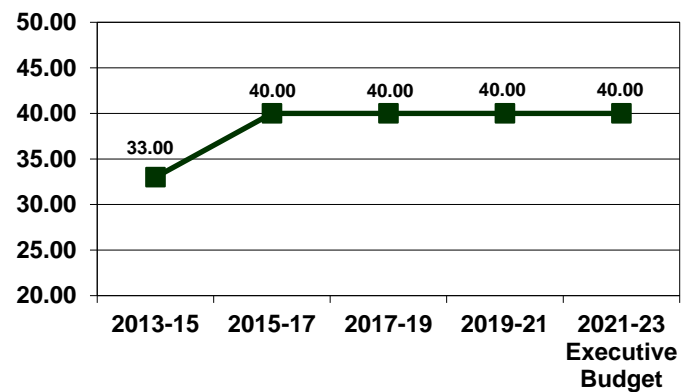
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2013-15

Ongoing General Fund Appropriations (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2013-15	2015-17	2017-19	2019-21	2021-23 Executive Budget
Ongoing general fund appropriations	\$11,923,410	\$16,982,909	\$17,983,876	\$18,384,627	\$17,712,805
Increase (decrease) from previous biennium	N/A	\$5,059,499	\$1,000,967	\$400,751	(\$671,822)
Percentage increase (decrease) from previous biennium	N/A	42.4%	5.9%	2.2%	(3.7%)
Cumulative percentage increase (decrease) from 2013-15 biennium	N/A	42.4%	50.8%	54.2%	48.6%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2015-17 Biennium

1. Added funding for 1 FTE attorney position and 1 FTE administrative position and related operating expenses to establish a Watford City office \$539,555
2. Added funding to convert 5 temporary employees to FTE positions \$720,794
3. Added funding for increased costs of legal fees, contract fees, case-specific fees, and other costs related to increased caseloads \$4,200,000

2017-19 Biennium

1. Increased funding for operating expenses \$130,919
2. Increased funding for professional fees due to increased caseloads to provide a total of \$10,227,500 for professional fees \$500,000

2019-21 Biennium

1. No major changes identified

2021-23 Biennium (Executive Budget Recommendation)

1. Reduces funding for professional service fees to provide a total of \$9,235,136 (\$1,310,565)

**GOVERNOR'S RECOMMENDATION FOR THE
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
AS SUBMITTED BY THE
OFFICE OF MANAGEMENT AND BUDGET**

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2021 and ending June 30, 2023, as follows:

	<u>Base Level</u>	Adjustments or <u>Enhancements</u>	<u>Appropriation</u>
Commission on Legal Counsel	\$20,374,662	(\$664,959)	\$19,709,703
Total All Funds	\$20,374,662	(\$664,959)	\$19,709,703
Less Estimated Income	<u>1,990,035</u>	<u>6,863</u>	<u>1,996,898</u>
Total General Fund	\$18,384,627	(\$671,822)	\$17,712,805
Full-time Equivalent Positions	40.00	0.00	40.00

2021 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2022
1/12/2021
Senate Appropriations Committee

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.
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Senator Holmberg opening the hearing on SB 2022 at 1:53 pm. Senators Holmberg, Krebsbach, Wanzek, Bekkedahl, Poolman, Erbele, Dever, Oehlke, Rust, Davison, Hogue, Sorvaag, Mathern, and Heckaman were present.

Discussion Topics:

- Agency Overview
- Fiscal Impact of HB 1035

Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents (NDCLCI) – Testimony #507 and #508.

Tony Weiler, Executive Director, ND State Bar Association testified in favor of SB 2022 – No written testimony.

Senator Holmberg closed the hearing 2:35 pm.

Rose Laning, Committee Clerk

SB 2022
Senate Appropriations
January 12, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Good Afternoon. Chairman Holmberg, members of the Committee, my name is Travis Finck and I am the Executive Director of the North Dakota Commission on Legal Counsel for Indigents (hereinafter “the Commission”).

AGENCY STATUTORY RESPONSIBILITIES

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. The Commission is governed by North Dakota Century Code Chapter 54-61. Section 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 Commission has established Guidelines to Determine Eligibility for Indigent Defense Services (hereinafter “Guidelines”). For a person to have counsel provided by the Commission, the person must apply for services, be found to be “indigent” and it must be a type of case in which one has a right to counsel at public expense. Application for services is to be made on the Commission’s standard forms. However, the Commission does not make the determination of whether a specific applicant is eligible for services. Pursuant to the statute, the court makes the determination of eligibility.

Under the Guidelines, indigency is determined by looking at income resources, non-income resources (assets) of the applicant’s household, and exceptional factors that might otherwise justify a finding of indigency. Income guidelines are set at 125% of the federal poverty level threshold as defined by the U.S. Department of Health and Human Services.

The Commission’s mission is “to provide high quality, professional, and effective legal representation to eligible clients ... at reasonable cost to the community.” Services should be provided only to those persons who are eligible. It continues to be the policy of the Commission

to seek additional screening and review of applications by the court in questionable cases. Additional screening and review is also sought when it appears that a person may no longer be eligible, such as when someone who was in jail and temporarily unemployed, has bonded out and is now likely employed, and would no longer be considered indigent. To help ensure that services are provided only to eligible individuals, the Commission also provides training to those persons who make the eligibility determinations. For example, the undersigned provided training to many district court judges and clerks of court on January 5, 2020 over a Zoom call.

DELIVERY OF SERVICES

The Commission provides services through its employees in eight public defender offices across the state and through its monthly and conflict contractors. By statute, the Commission is required to contract for services at a minimum level of fifty percent of its biennial caseload. During fiscal year 2020, 68% of case assignments were handled by contract attorneys; 32% were handled by public defenders.

The Commission's monthly contractors each take a specified portion of cases in a geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The Commission's public defenders/staff attorneys take case assignments in the geographical area in which their office is located, conflict matters in nearby districts and in other areas across the state when needed.

The indigent defense system is administered through the agency's administrative office in Valley City. The administrative office coordinates the delivery of indigent services throughout the state, including contracting with attorneys to provide services, staffing the public defender offices, providing support services and providing training to attorneys and staff.

CASE ASSIGNMENTS

The Commission uses the term "case assignment" rather than "case" when referring to assignments and has defined the term based on case type (such as criminal, probation revocation, juvenile delinquency, etc.). "Case assignment" is used so that assignment numbers from different areas of the state will mean the same thing across the state. For example, a criminal case assignment includes all cases arising from the same event whether the prosecution has charged the defendant in multiple complaints, each with its own case number, or whether the defendant has been charged in one complaint with multiple counts, but one case number. A criminal case assignment that includes a felony is considered to be a felony assignment, even if

some of the charges in the assignment are misdemeanors. Thus, it is one felony case assignment where the attorney represents a person charged with a felony DUI and with a misdemeanor driving under suspension charge, both arising from the same traffic stop.

The number of case assignments the agency handles has appeared to level off within the past few biennia. See Attachment 1. The case assignment numbers for FY 2020 dipped significantly which we deduce is an effect of the COVID 19 pandemic. However, we have seen an increase over normal number of cases assignments in the first few months of the current fiscal year. Furthermore, we have noticed a significant increase in the number of violent crimes to which the agency has been required to provide counsel, specifically homicide cases. As of January 5, 2021, the Commission was actively assigned to 27 open criminal case assignments with murder as the primary charge. The increased severity of a case assignment correlates directly with increased cost, as they often require investigators, experts, more attorney time, etc.

It is always difficult to forecast what the case assignment numbers will be in a future time period. The Commission has no control over the number of crimes committed and investigated, the number of persons charged, the charges filed and the number of persons who apply for services and are found eligible

AGENCY FUNDING

Traditionally, the Commission has been funded from two sources: the general fund and “fund 282” (the indigent defense administration fund). The indigent defense administration fund is funded through collection of two statutory fees paid by criminal defendants:

- 1) A \$35 indigent defense application fee pursuant to N.D.C.C. § 29-07-01.1; and
- 2) The Commission’s portion of a \$100 court administration fee (the indigent defense/facility improvement fee) pursuant to N.D.C.C. § 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.

The District Courts also have the authority to order reimbursement of attorney fees, however, any attorneys’ fees that are recouped go into the general fund, not fund 282. Those funds are not collected by the Commission, they are collected and accounted for by the Court.

The collection of the application fee and indigent defense/facility improvement fees is not guaranteed. District Judges, who impose the fees, have the discretion to impose or waive the fees in any particular case. It does appear as if this year the collections deposited into the special fund will be less than the previous biennia. See Attachment 2. We believe this is attributable to the slowdown in court proceedings related to COVID 19 procedures.

The major components making up the “base level” appropriation amount for the Commission are salaries and benefits, professional fees and services (legal fees), ITD expense, and rent of office space. As of November 30, 2020, these comprised 96.1 % of our expenditures for the biennium.

The Commission was directed to submit a budget containing a 10% reduction in general fund. The Commission felt it would be incapable of providing constitutionally mandated services under such a reduction and requested the Governor restore approximately half of the reduction, or \$919,000. The Governor in his executive budget did grant the Commission’s request and proposed the agency base budget general fund dollars be restored by \$919,000. When you consider other adjustments for salary increases proposed by the Governor, Microsoft 365 upgrades and the restoration of half of the reduction, there is a total general fund reduction of \$664, 959 in the Governor’s Executive Budget recommendation.

There are two bills that have been or will be introduced this session that will have a fiscal impact on the Commission. The first is HB 1035 which is the juvenile court rewrite. In the proposed HB 1035, the Commission will provide counsel to all children regardless of income of the parents. It is near impossible to anticipate the costs associated with this measure. However, we worked with the Court and compared their numbers to our database to estimate a fiscal impact of \$450,000 per biennium.

Additionally, it is our understanding the Department of Corrections and Rehabilitation will be seeking to expand the pre trial services program. In 2019 legislative session, the Legislature funded DOCR to create a pre trial services program. Necessarily, appointment of counsel is an essential part of the program. The Commission did not receive any funding to meet any of the additional administrative costs when the program was launched. If the program is expanded there will be a need for funding.

The number of full-time equivalent positions has remained the same in the Governor’s recommended budget. The agency is currently allotted 40 FTE.

The agency currently receives no federal funds or grants.

ACCOMPLISHMENTS AND CHALLENGES

The Commission has been able to accomplish some amazing things this current biennium thanks to the tireless dedication of the employees and contractors of the Commission. We have served as an integral part in the rollout of the pretrial service pilot program. The Commission did not receive any increase funding in relation to the program but have been able to successfully find attorneys to appear at initial appearances with clients. We have worked with the Court and the Pre-Trial service division of DOCR Parole and Probation to streamline a method of individuals applying for counsel. We have worked out orders in each pilot district to allow for earlier application, determination and appointment of counsel.

The Commission also opened a public defender office in Devils Lake, ND. The office was opened in the spring of 2020. The Commission recognized a need for an office due to the inability to contract with private counsel given the current contract rate. The office was established without extra FTE. We were able to transfer an FTE position from another office for an attorney position and are currently staffing the office with a temporary non-classified employee.

The Commission also moved all assignment of counsel to the Valley City administrative office in 2020. In previous years, the public defender office in a Judicial District would make the assignments. Contract attorneys or public defenders would then enter the information into our case reporting system. We have now streamlined this process and we assign all cases and enter all information. This has allowed us to make more informed up to date decisions on placement of resources. We have been able to take over the assignment of counsel because we have gone to an online cloud-based case management system. This system allows us to receive data from the court and assign counsel in a timelier manner across the state. Further, it has allowed us to provide uninterrupted services to the citizenry as many employees have had to work from home.

The two biggest challenges we face are the same now as it has been the last two legislative sessions, employee turnover due to compensation and contractor rate of pay.

The budget requests that were submitted to the Governor was a bare bones budget necessary to provide mandated services. Any further reduction to the base budget would likely result in us having to seek a deficiency appropriation. The Commission recognized the realities

of the world in only asking for a restoration of part of the decrease and did not ask for any other special requests. In the past, the agency has sought additional employee and contractor compensation to address turnover. The proverbial can has been kicked down the road but as turnover rates continue to vastly outpace other similar state agencies, we are running out of real estate.

Our system relies upon the use of private attorneys to serve as contractors to handle cases for the Commission. Our current rate of compensation for contractors is \$75 per hour and has not been increased since 2012. In comparison to Federal Criminal Justice Act appointments (federal court version of contract public defense) we continue to lag significantly behind. In calendar year 2020, the Federal CJA panel rate was \$152/hour, more than double the rate we are able to offer. It was recommended in 2019-2021 executive recommendation to increase funding for the contractors by \$5 per hour. However, the legislature did not fund the recommendation.

The Commission had no formal recommendations in its last financial audit.

I want to thank the Committee for your time and support. I assure you the Commission has always been good stewards of the funds entrusted to us and we will continue to do so.

I am happy to answer any questions you may have. The Commission's Deputy Director Todd Ewell and Account Budget specialist Aaron Petrowitz are also present for any questions.

Respectfully submitted this 12th day of January 2021

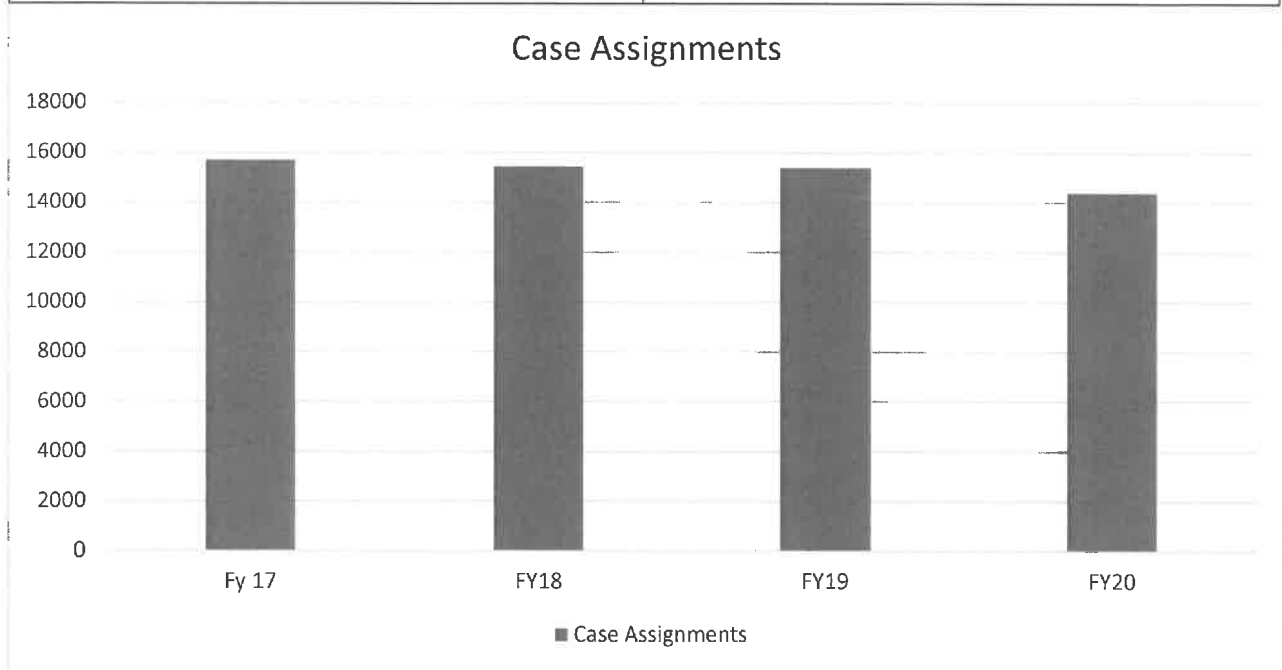
A handwritten signature in dark ink, appearing to read 'Travis W. Finck', is written over a horizontal line.

Travis W. Finck, Executive Director
North Dakota Commission on Legal Counsel for Indigents
(701) 845-8632
tfinck@nd.gov

SB 2022
Senate Appropriations
January 12, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

ATTACHMENT 1

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



SB 2022
Senate Appropriations
January 12, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

ATTACHMENT 2

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

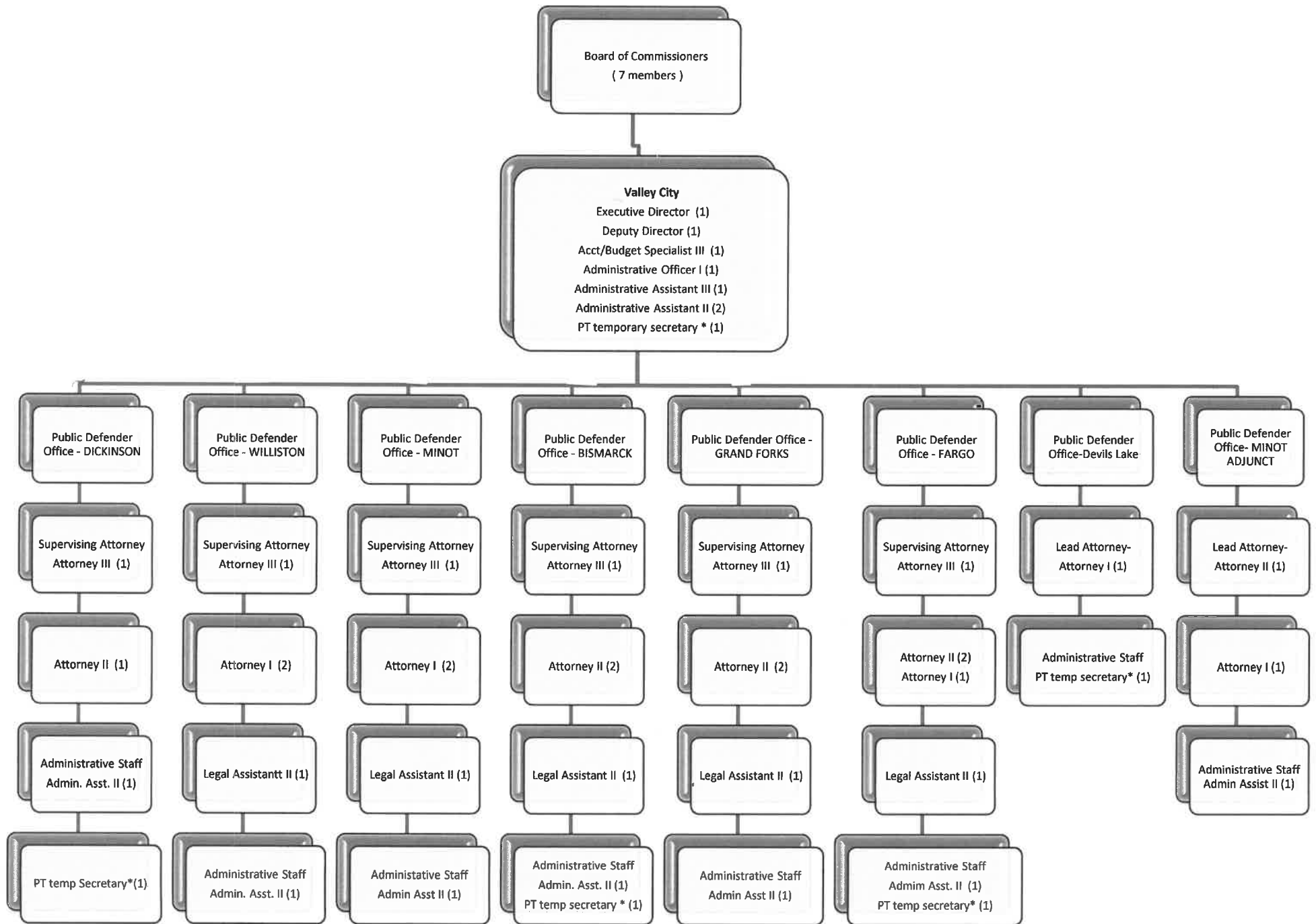


Biennium	Application Fee Collection
2013-2015	\$299,344.49
2015-2017	\$329,457.14
2017-2019	\$361,434.02
2019-2021 (projected)	\$289,052.59



Organizational Chart

ND Commission on Legal Counsel for Indigents



* not an FTE position; temp, non-classified

SB 2022
N.D. Comm. on Legal Counsel for Indigent
Senate Appropriations: Budget Presentation
January 12, 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



Commission on Legal Counsel for Indigents

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 reduced so far this biennium in comparison to previous biennia.**
- The fee's are collected by the Judiciary and deposited with the State Treasurer.

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
- We believe the reduction to be the bare budget necessary to provide constitutionally mandated services.
- There are no one time funds contemplated in the Executive Recommendation.

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 a lot of that will be due to the decreased case numbers in the first part of the biennium.

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

Accomplishments

- The agency served as an integral part in the rollout of the pretrial service pilot program in three judicial districts
 - We were able to absorb the administrative oversight required without additional funding
- 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

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 have exceeded the turnover rate of the average of state agencies. We are 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

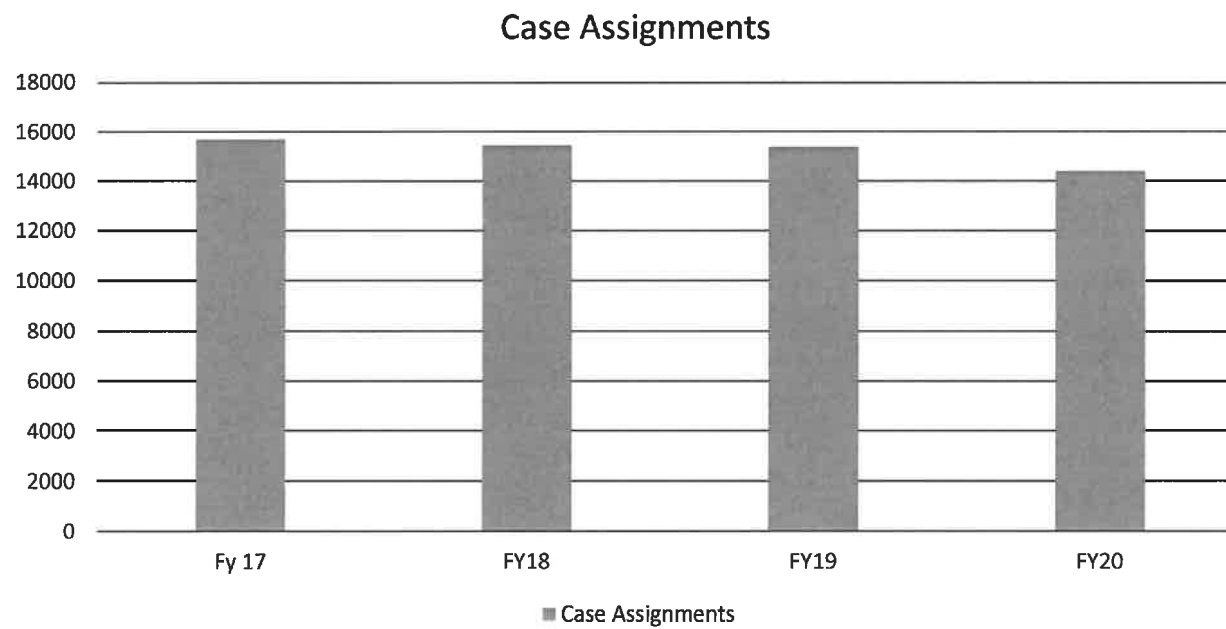


Biennium	Application Fee Collection
2013-2015	\$299,344.49
2015-2017	\$329,457.14
2017-2019	\$361,434.02
2019-2021 (projected)	\$289,052.59



[BACK](#)

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



[BACK](#)

2021 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2022

2/9/2021

Senate Appropriations Committee

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

Committee Work started at 9:58 am.

Senators present: **Holmberg, Krebsbach, Wanzek, Bekkedahl, Poolman, Erbele, Dever, Oehlke, Rust, Davison, Hogue, Sorvaag, Mathern, and Heckaman.** **Bekkedahl** absent.

Discussion Topics:

- Approval of SB 2022

Senator Hogue presented amendment 21.0304.01001 and moved to adopt (#6092)
Senator Krebsbach second.

Senators		Senators	
<i>Senator Holmberg</i>	Y	<i>Senator Hogue</i>	Y
<i>Senator Krebsbach</i>	Y	<i>Senator Oehlke</i>	Y
<i>Senator Wanzek</i>	Y	<i>Senator Poolman</i>	Y
<i>Senator Bekkedahl</i>	A	<i>Senator Rust</i>	Y
<i>Senator Davison</i>	Y	<i>Senator Sorvaag</i>	Y
<i>Senator Dever</i>	Y	<i>Senator Heckaman</i>	Y
<i>Senator Erbele</i>	Y	<i>Senator Mathern</i>	Y

Roll call vote - 13-0-1

Senator Hogue moved DO PASS AS AMENDED.
Senator Krebsbach second.

Senators		Senators	
<i>Senator Holmberg</i>	Y	<i>Senator Hogue</i>	Y
<i>Senator Krebsbach</i>	Y	<i>Senator Oehlke</i>	Y
<i>Senator Wanzek</i>	Y	<i>Senator Poolman</i>	Y
<i>Senator Bekkedahl</i>	A	<i>Senator Rust</i>	Y
<i>Senator Davison</i>	Y	<i>Senator Sorvaag</i>	Y
<i>Senator Dever</i>	Y	<i>Senator Heckaman</i>	Y
<i>Senator Erbele</i>	Y	<i>Senator Mathern</i>	Y

Roll Call Vote – 13-0-1

Senator Hogue will carry the bill.

Committee work ended 10:05 am.

Senate Appropriations Committee
SB 2022
02/09/2021
Page 2

Rose Laning, Committee Clerk

CS
2/9
1081

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

	<u>Base Budget</u>	<u>Senate Changes</u>	<u>Senate Version</u>
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

	<u>Adjusts Funding for Base Payroll Changes¹</u>	<u>Adds Funding for Salary and Benefit Increases²</u>	<u>Adds Funding for Microsoft Office 365 Licenses³</u>	<u>Total Senate Changes</u>
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

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2021-23 biennium salary adjustments of 2 percent on July 1, 2021, with a minimum monthly increase of \$80 and a maximum monthly increase of \$300 and 2 percent on July 1, 2022, and increases in health insurance premiums from \$1,427 to \$1,429 per month:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$199,401	\$5,615	\$205,016
Health insurance increase	1,948	49	1,997
Total	\$201,349	\$5,664	\$207,013

³ Funding is added for Microsoft Office 365 license expenses.

REPORT OF STANDING COMMITTEE

SB 2022: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2022 was placed on the Sixth order on the calendar.

Page 1, replace lines 10 through 17 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
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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

	<u>Adjusts Funding for Base Payroll Changes¹</u>	<u>Adds Funding for Salary and Benefit Increases²</u>	<u>Adds Funding for Microsoft Office 365 Licenses³</u>	<u>Total Senate Changes</u>
Comm. on Legal Counsel for Indigents	<u>\$391,102</u>	<u>\$207,013</u>	<u>\$5,949</u>	<u>\$604,064</u>
Total all funds	\$391,102	\$207,013	\$5,949	\$604,064
Less estimated income	<u>0</u>	<u>5,664</u>	<u>0</u>	<u>5,664</u>
General fund	\$391,102	\$201,349	\$5,949	\$598,400
FTE	0.00	0.00	0.00	0.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2021-23 biennium salary adjustments of 2 percent on July 1, 2021, with a minimum monthly increase of \$80 and a maximum monthly increase of \$300 and 2 percent on July 1, 2022, and increases in health insurance premiums from \$1,427 to \$1,429 per month:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$199,401	\$5,615	\$205,016
Health insurance increase	<u>1,948</u>	<u>49</u>	<u>1,997</u>
Total	\$201,349	\$5,664	\$207,013

³ Funding is added for Microsoft Office 365 license expenses.

21.0304.01001

Sixty-seventh
Legislative Assembly
of North Dakota

SENATE BILL NO. 2022

Introduced by

Appropriations Committee

- 1 A BILL for an Act to provide an appropriation for defraying the expenses of the commission on
2 legal counsel for indigents.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

- 4 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
5 as may be necessary, are appropriated out of any moneys in the general fund in the state
6 treasury, not otherwise appropriated, and from special funds derived from federal funds and
7 other income, to the commission on legal counsel for indigents for the purpose of defraying the
8 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
9 2021, and ending June 30, 2023.

10	<u>Governor's</u>		
11	<u>Base Level</u>	<u>Recommendation</u>	<u>Appropriation</u>
12	Commission on legal counsel	\$20,374,662	\$19,709,703
13	for indigents		\$20,374,662
14	Total all funds	\$20,374,662	\$19,709,703
15	Less estimated income	1,990,035	1,996,898
16	Total general fund	\$18,384,627	\$17,712,805
17	Full-time equivalent positions	40.00	40.00
18	<u>Adjustments or</u>		
19	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
20	<u>Commission on legal counsel</u>	<u>\$20,374,662</u>	<u>\$604,064</u>
21	<u>for indigents</u>		<u>\$20,978,726</u>
22	<u>Total all funds</u>	<u>\$20,374,662</u>	<u>\$604,064</u>
23	<u>Less estimated income</u>	<u>1,990,035</u>	<u>5,664</u>
			<u>1,995,699</u>

Sixty-seventh
Legislative Assembly

1	<u>Total general fund</u>	<u>\$18,384,627</u>	<u>\$598,400</u>	<u>\$18,983,027</u>
2	<u>Full-time equivalent positions</u>	<u>40.00</u>	<u>0.00</u>	<u>40.00</u>

PROPOSED AMENDMENTS TO SENATE BILL NO. 2022

Page 1, replace lines 10 through 17 with:

	Base Level	"Adjustments or Enhancements	Appropriation
Commission on legal counsel for indigents	<u>\$20,374,662</u>	<u>\$604,064</u>	<u>\$20,978,726</u>
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Total general fund	\$18,384,627	\$598,400	\$18,983,027
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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	<u>1,990,035</u>	<u>5,664</u>	<u>1,995,699</u>
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	<u>0</u>	<u>5,664</u>	<u>0</u>	<u>5,664</u>
General fund	\$391,102	\$201,349	\$5,949	\$598,400
FTE	0.00	0.00	0.00	0.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2021-23 biennium salary adjustments of 2 percent on July 1, 2021, with a minimum monthly increase of \$80 and a maximum monthly increase of \$300 and 2 percent on July 1, 2022, and increases in health insurance premiums from \$1,427 to \$1,429 per month:

	General Fund	Other Funds	Total
Salary increase	\$199,401	\$5,615	\$205,016
Health insurance increase	<u>1,948</u>	<u>49</u>	<u>1,997</u>
Total	\$201,349	\$5,664	\$207,013

³ Funding is added for Microsoft Office 365 license expenses.

2021 HOUSE APPROPRIATIONS

SB 2022

Department 188 - Commission on Legal Counsel for Indigents
Senate Bill No. 2022

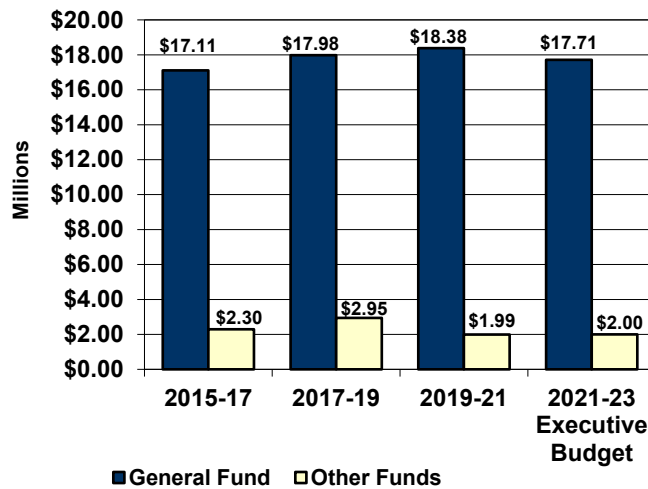
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2021-23 Executive Budget	40.00	\$17,712,805	\$1,996,898	\$19,709,703
2019-21 Legislative Appropriations	40.00	18,384,627	1,990,035	20,374,662
Increase (Decrease)	0.00	(\$671,822)	\$6,863	(\$664,959)

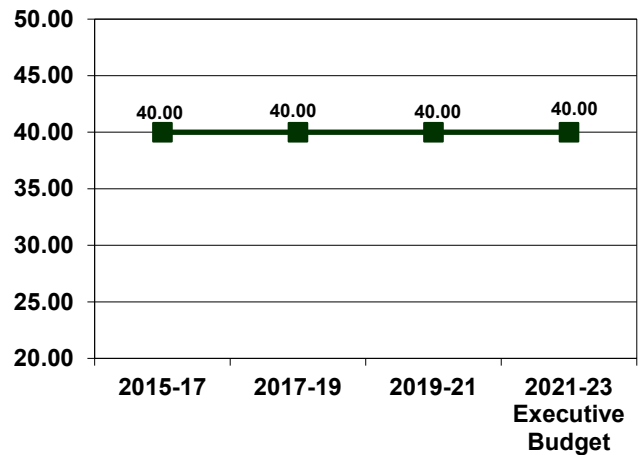
Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2021-23 Executive Budget	\$17,712,805	\$0	\$17,712,805
2019-21 Legislative Appropriations	18,384,627	0	18,384,627
Increase (Decrease)	(\$671,822)	\$0	(\$671,822)

Agency Funding



FTE Positions



Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2021-23 Executive Budget	\$17,712,805	\$1,996,898	\$19,709,703
2021-23 Base Level	18,384,627	1,990,035	20,374,662
Increase (Decrease)	(\$671,822)	\$6,863	(\$664,959)

First House Action

Attached is a comparison worksheet detailing first house changes to base level funding and the executive budget.

Executive Budget Highlights
(With First House Changes in Bold)

- | | General Fund | Other Funds | Total |
|--|--------------|-------------|-----------|
| 1. Provides funding for state employee salary and benefit increases, of which \$204,468 is for salary increases, \$1,997 is for health insurance increases, and \$42,090 is for retirement contribution increases. The Senate added funding for salary adjustments of 2 percent on July 1, 2021, with a minimum monthly increase of \$80 and a maximum monthly increase of \$300 and 2 percent on July 1, 2022, and increases in health insurance premiums from \$1,427 to \$1,429 per month. The Senate did not add funding for retirement contribution increases. | \$241,692 | \$6,863 | \$248,555 |

2. Reduces funding for professional service fees to provide a total of \$9,235,136. The Senate did not reduce funding for professional service fees.	(\$1,310,565)	\$0	(\$1,310,565)
3. Adds funding for Microsoft Office 365 license expenses	\$5,949	\$0	\$5,949

Other Sections in Senate Bill No. 2022

There are no other sections for this agency.

Continuing Appropriations

Indigent defense administration fund - North Dakota Century Code Sections 29-07-01.1 and 29-26-22 - Funding is from a \$35 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 additional amounts are deposited equally into the two funds.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Significant Audit Findings

The operational audit for the Commission on Legal Counsel for Indigents conducted by the State Auditor's office for the period ending June 30, 2019, identified no significant audit findings.

Major Related Legislation

House Bill No. 1035 - Relating to the Uniform Juvenile Court Act, including requiring the Commission on Legal Counsel for Indigents to pay reasonable compensation for services and related expenses for counsel provided related to the care of a child. The commission is required to pay the witness fees, mileage, and travel expenses of witnesses subpoenaed by counsel employed by or contracted with the commission.

Senate Bill No. 2174 - Requires the Bureau of Criminal Investigation to provide a criminal history record check for volunteers or employees of the Commission on Legal Counsel for Indigents if requested by the commission.

Commission on Legal Counsel for Indigents - Budget No. 188

Senate Bill No. 2022

Base Level Funding Changes

	Executive Budget Recommendation				Senate Version			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2021-23 Biennium Base Level	40.00	\$18,384,627	\$1,990,035	\$20,374,662	40.00	\$18,384,627	\$1,990,035	\$20,374,662
2021-23 Ongoing Funding Changes								
Base payroll changes		\$391,102		\$391,102		\$391,102		\$391,102
Salary increase		198,822	\$5,646	204,468		199,401	\$5,615	205,016
Health insurance increase		1,942	55	1,997		1,948	49	1,997
Retirement contribution increase		40,928	1,162	42,090				0
Reduces funding for professional service fees		(1,310,565)		(1,310,565)				0
Adds funding for Microsoft Office 365 license expenses		5,949		5,949		5,949		5,949
Total ongoing funding changes	0.00	(\$671,822)	\$6,863	(\$664,959)	0.00	\$598,400	\$5,664	\$604,064
One-time funding items								
No one-time funding items				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	0.00	(\$671,822)	\$6,863	(\$664,959)	0.00	\$598,400	\$5,664	\$604,064
2021-23 Total Funding	40.00	\$17,712,805	\$1,996,898	\$19,709,703	40.00	\$18,983,027	\$1,995,699	\$20,978,726
<i>Total ongoing changes as a percentage of base level</i>	0.0%	(3.7%)	0.3%	(3.3%)	0.0%	3.3%	0.3%	3.0%
<i>Total changes as a percentage of base level</i>	0.0%	(3.7%)	0.3%	(3.3%)	0.0%	3.3%	0.3%	3.0%

Other Sections in Commission on Legal Counsel for Indigents - Budget No. 188

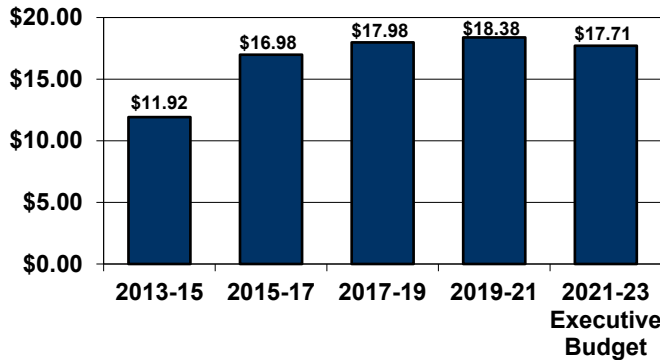
Executive Budget Recommendation	Senate Version
There are no other sections for this agency.	There are no other sections for this agency.

Department 188 - Commission on Legal Counsel for Indigents

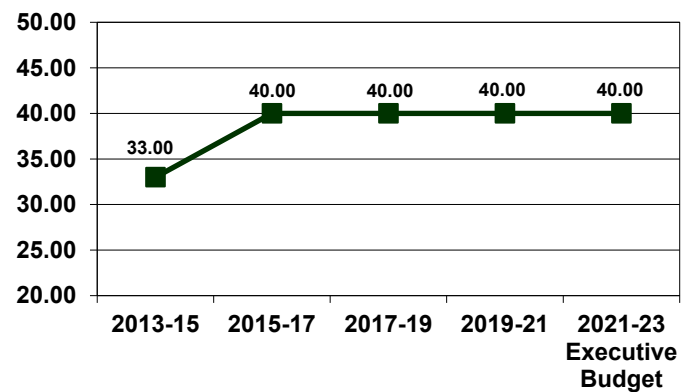
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2013-15

Ongoing General Fund Appropriations (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2013-15	2015-17	2017-19	2019-21	2021-23 Executive Budget
Ongoing general fund appropriations	\$11,923,410	\$16,982,909	\$17,983,876	\$18,384,627	\$17,712,805
Increase (decrease) from previous biennium	N/A	\$5,059,499	\$1,000,967	\$400,751	(\$671,822)
Percentage increase (decrease) from previous biennium	N/A	42.4%	5.9%	2.2%	(3.7%)
Cumulative percentage increase (decrease) from 2013-15 biennium	N/A	42.4%	50.8%	54.2%	48.6%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2015-17 Biennium

1. Added funding for 1 FTE attorney position and 1 FTE administrative position and related operating expenses to establish a Watford City office \$539,555
2. Added funding to convert 5 temporary employees to FTE positions \$720,794
3. Added funding for increased costs of legal fees, contract fees, case-specific fees, and other costs related to increased caseloads \$4,200,000

2017-19 Biennium

1. Increased funding for operating expenses \$130,919
2. Increased funding for professional fees due to increased caseloads to provide a total of \$10,227,500 for professional fees \$500,000

2019-21 Biennium

1. No major changes identified

2021-23 Biennium (Executive Budget Recommendation)

1. Reduces funding for professional service fees to provide a total of \$9,235,136. **The Senate did not reduce funding for professional service fees.** (\$1,310,565)

**GOVERNOR'S RECOMMENDATION FOR THE
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
AS SUBMITTED BY THE
OFFICE OF MANAGEMENT AND BUDGET**

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2021 and ending June 30, 2023, as follows:

	<u>Base Level</u>	Adjustments or <u>Enhancements</u>	<u>Appropriation</u>
Commission on Legal Counsel	\$20,374,662	(\$664,959)	\$19,709,703
Total All Funds	\$20,374,662	(\$664,959)	\$19,709,703
Less Estimated Income	<u>1,990,035</u>	<u>6,863</u>	<u>1,996,898</u>
Total General Fund	\$18,384,627	(\$671,822)	\$17,712,805
Full-time Equivalent Positions	40.00	0.00	40.00

2021 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Brynhild Haugland Room, State Capitol

SB2022
3/15/2021

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

09:01 **Chairman Vigesaa** brought the committee to order. Members present: Chairman Vigesaa, Representative Kempenich, Representative Howe, Representative Bellew, Representative Meier, Representative Mock. Members absent: Vice Chairman Brandenburg.

Discussion Topics:

- Case assignments
- Agency Funding
- Accomplishments and challenges

09:04 **Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents.** Testimony #7267 and #7269.

10:05 **Tony Weiler, Executive Director, ND State Bar Association** testified in support of the bill.

Additional written testimony:

Testimony #8991 was submitted but not discussed.

10:08 **Chairman Vigesaa** adjourned the meeting

Sheri Lewis, Committee Clerk

SB 2022
House Appropriations – Government Operations Sub-Division
March 4, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Good Afternoon! Chairman Vigesaa, members of the Committee, my name is Travis Finck and I am the Executive Director of the North Dakota Commission on Legal Counsel for Indigents (hereinafter “the Commission”).

AGENCY STATUTORY RESPONSIBILITIES

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. The Commission is governed by North Dakota Century Code Chapter 54-61. Section 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 Commission has established Guidelines to Determine Eligibility for Indigent Defense Services (hereinafter “Guidelines”). For a person to have counsel provided by the Commission, the person must apply for services, be found to be “indigent” and it must be a type of case in which one has a right to counsel at public expense. Application for services is to be made on the Commission’s standard forms. However, the Commission does not make the determination of whether a specific applicant is eligible for services. Pursuant to the statute, the court makes the determination of eligibility.

Under the Guidelines, indigency is determined by looking at income resources, non-income resources (assets) of the applicant’s household, and exceptional factors that might otherwise justify a finding of indigency. Income guidelines are set at 125% of the federal poverty level threshold as defined by the U.S. Department of Health and Human Services.

The Commission’s mission is “to provide high quality, professional, and effective legal representation to eligible clients ... at reasonable cost to the community.” Services should be provided only to those persons who are eligible. It continues to be the policy of the Commission

to seek additional screening and review of applications by the court in questionable cases. Additional screening and review is also sought when it appears that a person may no longer be eligible, such as when someone who was in jail and temporarily unemployed, has bonded out and is now likely employed, and would no longer be considered indigent. To help ensure that services are provided only to eligible individuals, the Commission also provides training to those persons who make the eligibility determinations. For example, the undersigned provided training to many district court judges and clerks of court on January 5, 2020 over a Zoom call.

DELIVERY OF SERVICES

The Commission provides services through its employees in eight public defender offices across the state and through its monthly and conflict contractors. By statute, the Commission is required to contract for services at a minimum level of fifty percent of its biennial caseload. During fiscal year 2020, 68% of case assignments were handled by contract attorneys; 32% were handled by public defenders.

The Commission's monthly contractors each take a specified portion of cases in a geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The Commission's public defenders/staff attorneys take case assignments in the geographical area in which their office is located, conflict matters in nearby districts and in other areas across the state when needed.

The indigent defense system is administered through the agency's administrative office in Valley City. The administrative office coordinates the delivery of indigent services throughout the state, including contracting with attorneys to provide services, staffing the public defender offices, providing support services and providing training to attorneys and staff.

CASE ASSIGNMENTS

The Commission uses the term "case assignment" rather than "case" when referring to assignments and has defined the term based on case type (such as criminal, probation revocation, juvenile delinquency, etc.). "Case assignment" is used so that assignment numbers from different areas of the state will mean the same thing across the state. For example, a criminal case assignment includes all cases arising from the same event whether the prosecution has charged the defendant in multiple complaints, each with its own case number, or whether the defendant has been charged in one complaint with multiple counts, but one case number. A criminal case assignment that includes a felony is considered to be a felony assignment, even if

some of the charges in the assignment are misdemeanors. Thus, it is one felony case assignment where the attorney represents a person charged with a felony DUI and with a misdemeanor driving under suspension charge, both arising from the same traffic stop.

The number of case assignments the agency handles has appeared to level off within the past few biennia. See Attachment 1. The case assignment numbers for FY 2020 dipped significantly which we deduce is an effect of the COVID 19 pandemic. However, we have seen an increase over normal number of cases assignments in the first few months of the current fiscal year. Furthermore, we have noticed a significant increase in the number of violent crimes to which the agency has been required to provide counsel, specifically homicide cases. As of January 5, 2021, the Commission was actively assigned to 27 open criminal case assignments with murder as the primary charge. The increased severity of a case assignment correlates directly with increased cost, as they often require investigators, experts, more attorney time, etc.

It is always difficult to forecast what the case assignment numbers will be in a future time period. The Commission has no control over the number of crimes committed and investigated, the number of persons charged, the charges filed and the number of persons who apply for services and are found eligible

AGENCY FUNDING

Traditionally, the Commission has been funded from two sources: the general fund and “fund 282” (the indigent defense administration fund). The indigent defense administration fund is funded through collection of two statutory fees paid by criminal defendants:

- 1) A \$35 indigent defense application fee pursuant to N.D.C.C. § 29-07-01.1; and
- 2) The Commission’s portion of a \$100 court administration fee (the indigent defense/facility improvement fee) pursuant to N.D.C.C. § 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.

The District Courts also have the authority to order reimbursement of attorney fees, however, any attorneys’ fees that are recouped go into the general fund, not fund 282. Those funds are not collected by the Commission, they are collected and accounted for by the Court.

The collection of the application fee and indigent defense/facility improvement fees is not guaranteed. District Judges, who impose the fees, have the discretion to impose or waive the fees in any particular case. It does appear as if this year the collections deposited into the special fund will be less than the previous biennia. See Attachment 2. We believe this is attributable to the slowdown in court proceedings related to COVID 19 procedures.

The major components making up the “base level” appropriation amount for the Commission are salaries and benefits, professional fees and services (legal fees), ITD expense, and rent of office space. As of November 30, 2020, these comprised 96.1 % of our expenditures for the biennium.

The Commission was directed to submit a budget containing a 10% reduction in general fund. The Commission felt it would be incapable of providing constitutionally mandated services under such a reduction and requested the Governor restore approximately half of the reduction, or \$919,000. The Governor in his executive budget did grant the Commission’s request and proposed the agency base budget general fund dollars be restored by \$919,000. When you consider other adjustments for salary increases proposed by the Governor, Microsoft 365 upgrades and the restoration of half of the reduction, there is a total general fund reduction of \$664, 959 in the Governor’s Executive Budget recommendation.

The Senate version of SB 2022 provided for a total appropriation of \$20,978,726. This was an amendment that was adopted and approved allowing for a hold even budget from last biennium with an increase to adjust for base payroll changes, provide additional funds for salary and benefit package increases and Microsoft 365 licenses. The Commission is grateful to the Senate for their work on this budget and ask the house to adopt the same.

There are two bills that have been or will be introduced this session that will have a fiscal impact on the Commission. The first is HB 1035 which is the juvenile court rewrite. In the proposed HB 1035, the Commission will provide counsel to all children regardless of income of the parents. It is near impossible to anticipate the costs associated with this measure. However, we worked with the Court and compared their numbers to our database to estimate a fiscal impact of \$450,000 per biennium.

Additionally, it is our understanding the Department of Corrections and Rehabilitation will be seeking to expand the pre trial services program. In 2019 legislative session, the Legislature funded DOCR to create a pre trial services program. Necessarily, appointment of

counsel is an essential part of the program. The Commission did not receive any funding to meet any of the additional administrative costs when the program was launched. If the program is expanded there will be a need for funding.

The number of full-time equivalent positions has remained the same in the Governor's recommended budget. The agency is currently allotted 40 FTE.

The agency currently receives no federal funds or grants.

ACCOMPLISHMENTS AND CHALLENGES

The Commission has been able to accomplish some amazing things this current biennium thanks to the tireless dedication of the employees and contractors of the Commission. We have served as an integral part in the rollout of the pretrial service pilot program. The Commission did not receive any increase funding in relation to the program but have been able to successfully find attorneys to appear at initial appearances with clients. We have worked with the Court and the Pre-Trial service division of DOCR Parole and Probation to streamline a method of individuals applying for counsel. We have worked out orders in each pilot district to allow for earlier application, determination and appointment of counsel.

The Commission also opened a public defender office in Devils Lake, ND. The office was opened in the spring of 2020. The Commission recognized a need for an office due to the inability to contract with private counsel given the current contract rate. The office was established without extra FTE. We were able to transfer an FTE position from another office for an attorney position and are currently staffing the office with a temporary non-classified employee.

The Commission also moved all assignment of counsel to the Valley City administrative office in 2020. In previous years, the public defender office in a Judicial District would make the assignments. Contract attorneys or public defenders would then enter the information into our case reporting system. We have now streamlined this process and we assign all cases and enter all information. This has allowed us to make more informed up to date decisions on placement of resources. We have been able to take over the assignment of counsel because we have gone to an online cloud-based case management system. This system allows us to receive data from the court and assign counsel in a timelier manner across the state. Further, it has allowed us to provide uninterrupted services to the citizenry as many employees have had to work from home.

The two biggest challenges we face are the same now as it has been the last two legislative sessions, employee turnover due to compensation and contractor rate of pay.

The budget requests that were submitted to the Governor was a bare bones budget necessary to provide mandated services. Any further reduction to the base budget would likely result in us having to seek a deficiency appropriation. The Commission recognized the realities of the world in only asking for a restoration of part of the decrease and did not ask for any other special requests. In the past, the agency has sought additional employee and contractor compensation to address turnover. The proverbial can has been kicked down the road but as turnover rates continue to vastly outpace other similar state agencies, we are running out of real estate.

Our system relies upon the use of private attorneys to serve as contractors to handle cases for the Commission. Our current rate of compensation for contractors is \$75 per hour and has not been increased since 2012. In comparison to Federal Criminal Justice Act appointments (federal court version of contract public defense) we continue to lag significantly behind. In calendar year 2020, the Federal CJA panel rate was \$152/hour, more than double the rate we are able to offer. It was recommended in 2019-2021 executive recommendation to increase funding for the contractors by \$5 per hour. However, the legislature did not fund the recommendation.

The Commission had no formal recommendations in its last financial audit.

I want to thank the Committee for your time and support. I assure you the Commission has always been good stewards of the funds entrusted to us and we will continue to do so.

I am happy to answer any questions you may have. The Commission's Deputy Director Todd Ewell and Account Budget specialist Aaron Petrowitz are also present for any questions.

Respectfully submitted this 4th day of March 2021



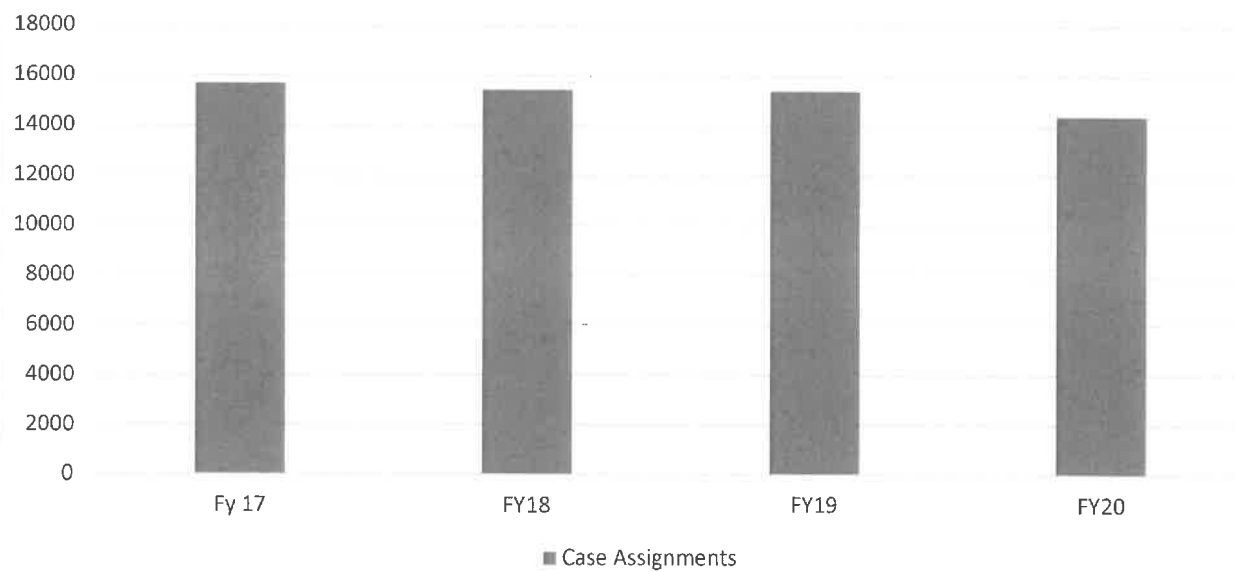
Travis W. Finck, Executive Director
North Dakota Commission on Legal Counsel for Indigents
(701) 845-8632
tfinck@nd.gov

SB 2022
House Appropriations – Government Operations Sub-Division
March 4, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

ATTACHMENT 1

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

Case Assignments



SB 2022
House Appropriations – Government Operations Division
March 4, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

ATTACHMENT 2

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

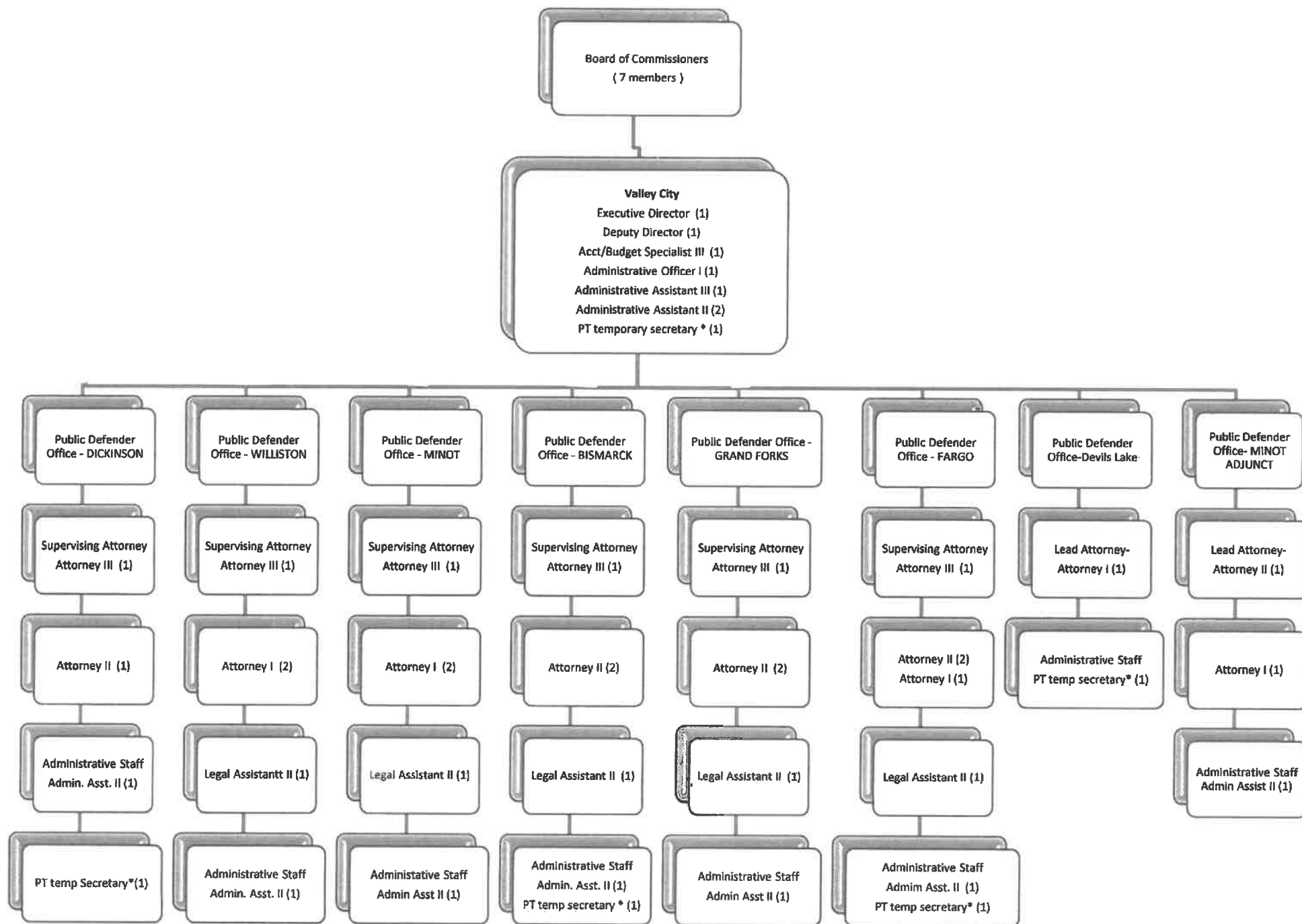


Biennium	Application Fee Collection
2013-2015	\$299,344.49
2015-2017	\$329,457.14
2017-2019	\$361,434.02
2019-2021 (projected)	\$289,052.59



Organizational Chart

ND Commission on Legal Counsel for Indigents



* not an FTE position; temp, non-classified

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	<u>\$20,374,662</u>	<u>\$604,064</u>	<u>\$20,978,726</u>
Total all funds	\$20,374,662	\$604,064	\$20,978,726
Less estimated income	<u>1,990,035</u>	<u>5,664</u>	<u>1,995,699</u>
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

	<u>Base Budget</u>	<u>Senate Changes</u>	<u>Senate Version</u>
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

	<u>Adjusts Funding for Base Payroll Changes¹</u>	<u>Adds Funding for Salary and Benefit Increases²</u>	<u>Adds Funding for Microsoft Office 365 Licenses³</u>	<u>Total Senate Changes</u>
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

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2021-23 biennium salary adjustments of 2 percent on July 1, 2021, with a minimum monthly increase of \$80 and a maximum monthly increase of \$300 and 2 percent on July 1, 2022, and increases in health insurance premiums from \$1,427 to \$1,429 per month:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$199,401	\$5,615	\$205,016
Health insurance increase	<u>1,948</u>	<u>49</u>	<u>1,997</u>
Total	\$201,349	\$5,664	\$207,013

³ Funding is added for Microsoft Office 365 license expenses.

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

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.

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

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.

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

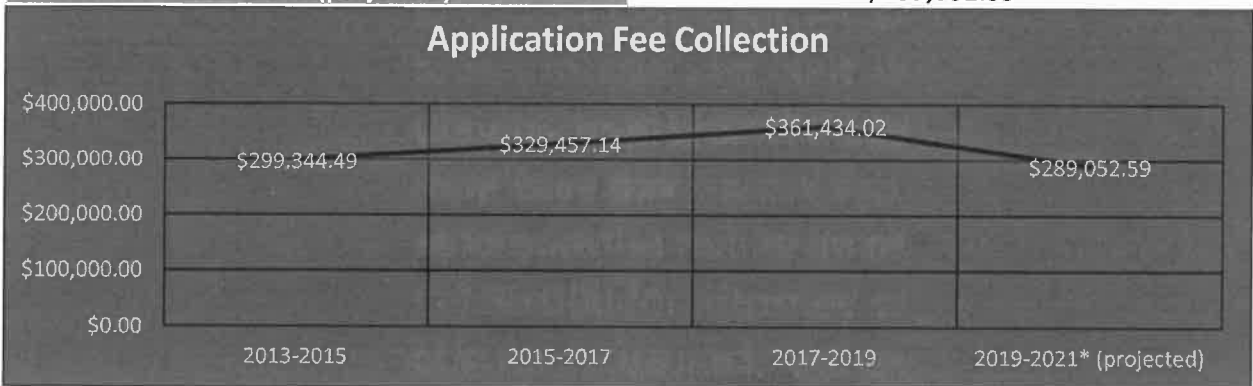
Goals

- 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
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2017-2019	\$1,503,823.46
2019-2021 (projected)	\$1,256,853.17

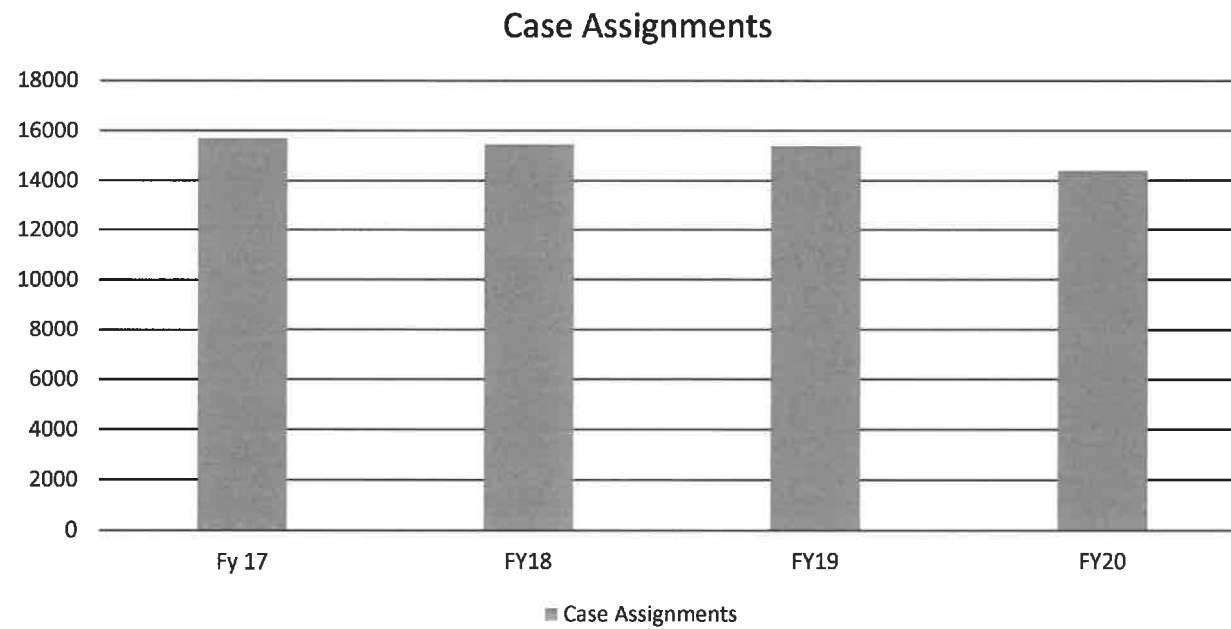


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2013-2015	\$299,344.49
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[BACK](#)

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



[BACK](#)

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

	<u>Base Budget</u>	<u>Senate Changes</u>	<u>Senate Version</u>
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Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	<u>Adjusts Funding for Base Payroll Changes¹</u>	<u>Adds Funding for Salary and Benefit Increases²</u>	<u>Adds Funding for Microsoft Office 365 Licenses³</u>	<u>Total Senate Changes</u>
Comm. on Legal Counsel for Indigents	\$391,102	\$207,013	\$5,949	\$604,064
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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

[BACK](#)

Senate Bill 2022
House Appropriations Committee – Government Operations Division

Testimony Submitted by Sally Holewa
State Court Administrator
March 15, 2021

Chairman Vigesaa and Members of the Committee,

I write in support of the appropriation request submitted by the Commission on Legal Counsel for Indigents. Over the almost 15 years it has been in existence, Indigent Defense has done an admirable job carrying out its duties with a minimal increase in staffing and dollars. This past biennium, they expanded their duties to include work in the pre-trial services pilot program. If HB 1035 passes, next biennium they will be looking at a greatly expanded role in juvenile delinquency cases.

A robust criminal defense system is vital to protecting the constitutional rights of individuals. Underfunding any part of the criminal justice system (courts, prosecutors, defense, and law enforcement) creates delays within the system. Delay for someone who has been charged with a crime can create substantial hardship for the individual in terms of loss of employment, loss of liberty and loss of certainty about their future. It can be costly to the counties who may have to house incarcerated defendants for longer periods. Delay may also result in the degradation of the prosecutor's case as the memories of witnesses fade.

I also have a concern about the high turnover rate of defense attorneys. Those who are eligible for a public defender deserve an attorney who is not only experienced but also has enough time available to provide good service to their client. The legislature needs to

look hard at what can be done to increase public defender salaries to a rate that is competitive with salaries provided to prosecutors.

For all these reasons, I ask that you fund indigent defense at the level approved by the Senate, which I understand is equivalent to the Commission's base budget plus the additional dollars necessary to fund the Senate's proposed salary package.

2021 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

SB2022
3/22/2021

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

11:08 **Chairman Vigesaa** brought the committee to order. Members present: Chairman Vigesaa, Vice Chairman Brandenburg, Representative Kempenich, Representative Howe, Representative Bellew, Representative Meier, Representative Mock.

Discussion Topics:

- Base level funding changes

11:09 **Representative Meier** went through the green sheet.

11:21 **Chairman Vigesaa** adjourned the meeting.

Sheri Lewis, Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

SB2022
3/25/2021

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

3:47 **Chairman Vigesaa** brought the committee to order. Members present: Chairman Vigesaa, Vice Chairman Brandenburg, Representative Kempenich, Representative Howe, Representative Meier, Representative Mock. Members absent: Representative Bellew.

Discussion Topics:

- Salary package

3:45 **Representative Meier** explained testimony #10849.

3:53 **Representative Meier** made a motion to amend the salary package.
Amendment 21.0304.02001. #10867

3:53 **Representative Howe** seconded the motion.

Voice vote.

Motion carried.

3:54 **Representative Meier** made a motion for a "Do Pass as Amended".

3:54 **Representative Howe** seconded the motion.

3:55 Roll call vote 6 Yeas 0 Nays 1 Absent

3:55 Motion carried.

<i>Representatives</i>	Yes	No
<i>Chairman Vigesaa</i>	X	
<i>Vice Chairman Brandenburg</i>	X	
<i>Representative Kempenich</i>	X	
<i>Representative Howe</i>	X	
<i>Representative Meier</i>	X	
<i>Representative Bellew</i>	A	
<i>Representative Mock</i>	X	

3:55 Chairman Vigesaa closed the meeting.

Sheri Lewis, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2022

Page 1, replace lines 12 through 17 with:

"Commission on legal counsel for indigents	<u>\$20,374,662</u>	<u>\$589,551</u>	<u>\$20,964,213</u>
Total all funds	\$20,374,662	\$589,551	\$20,964,213
Less estimated income	<u>1,990,035</u>	<u>4,815</u>	<u>1,994,850</u>
Total general fund	\$18,384,627	\$584,736	\$18,969,363
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 - House Action

	Base Budget	Senate Version	House Changes	House Version
Comm. on Legal Counsel for Indigents	\$20,374,662	\$20,978,726	(\$14,513)	\$20,964,213
Total all funds	\$20,374,662	\$20,978,726	(\$14,513)	\$20,964,213
Less estimated income	<u>1,990,035</u>	<u>1,995,699</u>	<u>(849)</u>	<u>1,994,850</u>
General fund	\$18,384,627	\$18,983,027	(\$13,664)	\$18,969,363
FTE	40.00	40.00	0.00	40.00

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

	Adjusts Funding for Salary Increases¹	Total House Changes
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Meier, Lisa M.

From: Finck, Travis
Sent: Monday, March 22, 2021 6:20 PM
To: Meier, Lisa M.
Cc: Petrowitz, Aaron L.; Ewell, Todd
Subject: Follow up on our conversation today

Rep. Meier:

Thank you for the phone call today. Here is the information you asked for:

Professional Services consists of the following:

- Legal (this accounts for a majority of professional services) (this would be contracts with attorneys – see below)
- Consultants
- Interpreter fees
- Outside doctor & Hospital services (mental health exams with private provides, records, etc)
- Private investigators
- Professionals not otherwise classified.

Our state statute requires we use private contractors (legal above) on at least 50% of our cases a biennium (NDCC 54-61-02.1). We have monthly contractors who agree to take a set amount of cases for a set rate of compensation, we also have attorneys who serve as conflict contractors who take cases on an hourly basis, and bill us at the conclusion of the case. Thus, it is difficult to know how many hours it will take to defend a client at the outset. We have policies to try and give us some certainty, but it is impossible to forecast.

Also, we not only provide the attorneys, we also need to provide the professional services that are necessary for an adequate defense. This may be a private investigator to investigate an alibi defense, a private evaluation for competency, a forensic pathologist in homicide case, etc.

We took the money out of professional services when asked to enter a reduced budget because that is the only place we can cut. The governor's office restored part of that cut. The Senate restored the original budget from last biennium and added on for cost to continue base payroll changes, this years' benefit package, and Microsoft 365 upgrades. We would be requesting at this point to keep the senate version.

It is important to remember we provide constitutionally required services within this category of professional services. Therefore, if we don't get funded for them now and need them, we end up at the emergency commission requesting the funds. If we have additional funds at the end of biennium, we turn it back. I believe we have estimated we will turn back almost \$600,000 at the end of the current biennium.

Lastly, we have no way of knowing how many professional service dollars we will need. We estimate the best we can and then submit the budget. When we had to cut, the only place we could cut is professional services. That is not an indication we don't need them. We don't know how many cases will be charged out, how many crimes will be committed, or the severity of those crimes.

AS always, if I can provide any more information or assist in anyway, please don't hesitate to call my cell.

Sincerely:

Travis Finck

Executive Director

701.845.8632 • tfinck@nd.gov • www.indigents.nd.gov



Commission on Legal Counsel for Indigents

21.0304.02001
Title.

Fiscal No. 1

Prepared by the Legislative Council staff for
House Appropriations - Government
Operations Division Committee
March 25, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2022

Page 1, replace lines 12 through 17 with:

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Total general fund	\$18,384,627	\$584,736	\$18,969,363
Full-time equivalent positions	40.00	0.00	40.00"

Renumber accordingly

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2021 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Brynhild Haugland Room, State Capitol

SB 2022
3/30/2021

BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

3:45 Chairman Delzer- Opened the meeting for SB 2022

Attendance	P/A
Representative Jeff Delzer	P
Representative Keith Kempenich	P
Representative Bert Anderson	P
Representative Larry Bellew	P
Representative Tracy Boe	A
Representative Mike Brandenburg	P
Representative Michael Howe	P
Representative Gary Kreidt	P
Representative Bob Martinson	P
Representative Lisa Meier	P
Representative Alisa Mitskog	P
Representative Corey Mock	P
Representative David Monson	P
Representative Mike Nathe	P
Representative Jon O. Nelson	P
Representative Mark Sanford	P
Representative Mike Schatz	P
Representative Jim Schmidt	P
Representative Randy A. Schobinger	P
Representative Michelle Strinden	P
Representative Don Vigesaa	P

Discussion Topics:

- Budget changes
- Amendment

3:45 Representative Meier – Introduces the budget and the amendment 21.0304.02001

3:46 Representative Meier- Makes a motion to adopt the amendment

Representative Howe Second

Further discussion

3:50 Voice Vote- Motion Carries

3:51 Representative Meier Makes a motion for a Do Pass as Amended

Representative Howe Second

Further discussion

3:51 Roll Call Vote was Taken;

Representatives	Vote
Representative Jeff Delzer	
Representative Keith Kempenich	
Representative Bert Anderson	
Representative Larry Bellew	
Representative Tracy Boe	
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Motion Carries 17-2-2 Representative Meier will casrry the bill

Additional written testimony: No Additional Testimony

3:53 Chairman Delzer- Closes the meeting for SB 2022

Risa Berube,

House Appropriations Committee Clerk

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REPORT OF STANDING COMMITTEE

SB 2022, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (17 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2022 was placed on the Sixth order on the calendar.

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