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10/2/03  
Date

2003 HOUSE JUDICIARY

HB 1044

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
2	xx		2-42
2		xx	8-15
Committee Clerk Signature <i>A. Penrose</i>			

**Minutes:** 12 members present, 1 member absent (Rep. Bernstein)

**Chairman DeKrey:** We will now open the hearing on HB 1044.

**Vonnette Richter, L.C.:** (see testimony)

**Rep. Boucher:** I am in support of HB 1044, this particular piece of legislation came about as a result of hearings that were conducted during the interim by the Judiciary A Committee discussing the issues of who would have the proper responsibility of handling the indigent defense services. It was decided that the Office of Administrative Hearings would handle the selection of indigent defense counsel, and consequently, it really is a matter of simply trying to avoid and minimize any types of conflict of interest that may arise, either from the courts or the office of the Attorney General and also your state's attorney's office feeling that they are the prosecution and choosing the defense attorney also created a conflict of interest.

**Chairman DeKrey:** Thank you for your time.

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**Chief Justice VandeWalle:** I come in support of HB 1044. We want to do away with the appearance of having a conflict of interest, since we have to be impartial in deciding cases, and if we choose the indigent defense lawyers, that can give the appearance of a conflict. It's not true, but that's the appearance. The bigger issue, our inability in judiciary to experiment with different methods of delivery of services to the indigent. We contract these services out. Most other states have a combination of both employees and contract. This bill would allow us to use something besides independent contractors. I have prepared some amendments to reassure myself. (see amendment)

**Rep. Eckre:** You made a statement that you said this is not true, that means they're not biased.

**Chief Justice VandeWalle:** I think our contract counsel provides pretty good defense. I am not going to tell you that we have not questioned in those instances. Anyone can be ineffective. How objective are we in determining who is effective and not.

**Rep. Eckre:** I think the whole problem comes down to money. We have plenty of good attorneys looking to do this, if the pay were more.

**Chief Justice VandeWalle:** There are two things, I think even really good people can be ineffective at times. I don't deny that money is an issue. If it is an issue, what is the most effective way of delivering services to indigent defense. I don't think a pure contract system is the most effective. I think a combination of contract and full time employees may be the solution, I don't know.

**Rep. Klemin:** The amendment you are proposing about "within the limits of available funding", are you thinking there that the cost of a full or part-time legal services would come out of the monies that would otherwise go to the contract attorneys.



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**Chief Justice VandeWalle:** Yes.

**Rep. Klemin:** Not out of the administration costs.

**Chief Justice VandeWalle:** I think what they are proposing is to hire full time counsel. It provides flexibility. We are very fortunate to have experienced, legal defense lawyers, but we have a lot of turnover in some other things. If you have a permanent employee, that helps to fill in some of these gaps until some of the contract lawyers become more experienced.

**Rep. Klemin:** The courts are going to retain the administration of the indigent defense counsel for the next six months of the next biennium, and that the Office of Administrative Hearings would take over on January 1, is that still the idea.

**Chief Justice VandeWalle:** Mr. Hoberg has an amendment that will adopt this. That would give them some lead time.

**Chairman DeKrey:** Thank you for appearing today, Chief Justice. Do you want to go on record as being in favor of HCR 3004?

**Chief Justice VandeWalle:** Yes, I do, thank you.

**Allen Hoberg, Director, Office of Administrative Hearings:** (see testimony) I am in favor of HB 1044, and will do its best to establish and implement an effective process working with the courts and working with other interested persons.

**Rep. Delmore:** One additional FTE, and your fiscal note is going up \$152,000, even with the money given to you from the funds, etc. Why for a note that high.

**Mr. Hoberg:** Actually, we think it is a little bit too low, we will be hiring a new person, that will work on rule drafting, putting this whole thing in place. We will also need support staff to do that. We don't ask for an FTE for that because we have a vacant FTE in our office right now,

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where it might be possible that we may be able to use that person some of the time to help out and any other time that we need help, we will have to take out of those fund monies and hire a contract person to help out. It is not a high amount, I think it is an amount we can get by with.

**Rep. Delmore:** How many cases are you estimating that there will be in the coming biennium.

**Mr. Hoberg:** I do not know the numbers.

**Rep. Kretschmar:** If the appropriations or the money in the fund is appropriated to your office beginning July 1, and you won't take over until January 1, how will we pay for that six months.

**Mr. Hoberg:** That will be in the appropriations,  $\frac{1}{4}$  (6 months), of that general fund appropriation will stay put for the six months, the other  $\frac{3}{4}$  will go to our offices, for work starting January 1.

**Rep. Klemin:** During the interim study, the Chief Justice brought in a table about the numbers and the costs and the history of the numbers of cases, that's still probably with the materials that the LC has, and maybe we can get a copy of that.

**Chairman DeKrey:** Thank you for appearing. Anyone in favor of HB 1044, anyone in opposition to HB 1044.

**Brenda Neubauer:** I am an attorney practicing in Bismarck. I have been on the indigent defense counsel for 9 years. I am lead firm in our district as well. I am going into my fifth year as lead firm, is that I administer the contract. Every case that comes to our district, comes through my office. What are they actually do when they take over, they are going to hire the attorneys to do the work every two years, why is all this money needed to do that. That is a very simple process. You don't have the appropriation for more attorney services, so you are probably going to be limited to the same pool of applicants, the ones that continue to do this. The bill

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doesn't have anyone taking over the administration of the contract. That is done by the lead firm.

My office for \$450/mo has to keep stats. on every single case, every attorney, every case assigned, keep track of all cases, and do all reports. There is still going to be conflict, because the judges will still process the applications, they will look at the applications that defendant submit, and decide whether they are eligible or not, they are still the ones going to decide when a defendant raises "I have a conflict or ineffective counsel" those go to the court. They are never going to prevent or eliminate this perceived conflict with the court. To put another agency, the Office of Administrative Hearings, in the process, is really unnecessary and a waste of appropriations. This bill hasn't really been thought out, we need to totally study the system, we need to study where we are at in offering our pay to our attorneys. The salary is just not paying enough for the increase in the cases dealing with meth. The attorneys just cannot keep up with the increases.

**Rep. Delmore:** I can understand your wanting to put the dollars into the contracts and not into the agencies, however, if we defeat this bill, we again put it in an interim study, we will set ourselves back farther than we already are?

**Ms. Neubauer:** I don't think this bill is really going to accomplish anything. Let's get caught up.

**Rep. Klemin:** As I read this bill, I believe the Office of Administrative Hearings as having a much larger role than what happens other than just working on the contract. There are a number of distinct functions set out in section 3 regarding this. I understand the intent is that the Office of Administrative Hearings is going to be doing much of the work that you are now currently doing as lead firm, assigning counsel, and a lot of this paperwork, thus leaving you more time to

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actually concentrate on the defense work. (read from bill section 3) Perhaps this will help alleviate some of your concerns such as low pay and not enough time and not enough people to do these things. We are hoping to monitor this and make sure that what's happening is what we intended it to be and come back and look at this in the next session, and monitor this. I'm not sure if we want to bind the Office of Administrative Hearings for 18 months of old contracts as soon as it comes in, so I am not sure how it is going to work, but I think there will be a transition between July 1, 2003 and January 1, 2004. Have you received any notice that when the contract is up at the end of June, 2003, that there would be some sort of transition.

**Ms. Neubauer:** At this point, we have not seen anything on that. But we have not seen anything on what "implement a process" means - not specific enough. That is too open, not specific enough to address the concerns that I have that anything will really get accomplished.

**Chairman DeKrey:** During the process of the interim committee, did you know what was going on? Were you aware of it? Was anyone in your firm have input, or if not, why didn't you show.

**Ms. Neubauer:** It wasn't really put out that there was an interim study going on, we periodically received word that there was a study. I did testify at one meeting about the funding, how far behind we were. I did talk to other attorneys and the consensus is they are not supporting this bill. I was asked to appear and voice that concern.

**Rep. Kretschmar:** The proposed amendment that the Chief Justice brought in is a bit more specific about the duties.

**Ms. Neubauer:** I haven't seen that amendment, so I can't comment on that.

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**Rep. Eckre:** I think they do need to start paying defense attorneys more, and I think we would have a lot more.

**Ms. Neubauer:** The point I'm making is that two years ago, this last contract, our dollars were down and our cases have gone up tremendously, and even if we get an increase this contract period, we are still not going to be where we were in 1999.

**Chairman DeKrey:** Thank you for appearing. Anyone else wishing to appear in opposition to HB 1044? We are going to close the hearing on HB 1044.

(The hearing was closed, but reopened later in the same session)

**Chairman DeKrey:** Just a word about HB 1044 now that we're alone. We did spend a lot of time on that issue in that interim committee. I think with the opposition we heard today, is more of a gripe about what they're getting paid, and we thoroughly researched the conflict of interest in the interim committee, and in my opinion, we do need to pass that bill. I don't know how much more you want to hear in committee about it, if you're not comfortable with that after what we've heard, do you have thoughts on it?

**Rep. Delmore:** I would like to wait to act on it at least until tomorrow, there are a couple of other things, I want to hold off and get more information. I do question the fiscal note.

**Chairman DeKrey:** I do think it is reasonable to think that it is going to cost something to move that to the other office, maybe not \$150,000.

**Rep. Delmore:** That was my thought.

**Rep. Klemin:** Isn't the appropriation committee's job.

**Chairman DeKrey:** If we do pass this bill, we will have to rerefer it to appropriations because with an amount of \$150,000, it has to go there. Even if you hate it, we ought to pass it and send

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it down to appropriation, at least get it over to the Senate and then if there is opposition, they can hear it.

**Rep. Kretschmar:** I certainly agree with the Chief Justice. This should be taken out of the judicial branch of government and put with the executive branch. How they are going to run this show, is up to them. I don't see that great a change from what they are doing now, they are going to be limited by appropriations they do get.

**Chairman DeKrey:** They accept the contract for the dollar amount.

**Rep. Klemin:** Other issues this bill hopes to address, too. One is these contracts are administered now on the judicial district basis, and we have 7 judicial districts. This would provide for some statewide uniformity in how these contracts are handled, because they would all go the same place. Another problem we've got in the more rural counties, is a big difficulty in getting anyone to do it. This would give us a little more flexibility for a central authority to perhaps get attorneys from judicial district over to another county, and handle a case where there's nobody willing to do it. Finally, I don't agree with Brenda that Office of Administrative Hearings is just going to hand out these contracts and she is going to have to do all the administrative work anyway. I don't see it that way. I think that for what the Office of Administrative Hearings is going to have to do to administer this program and not just have a full time person there to do the contacting, we don't need somebody to do that. I think her concern about the administration is a little misplaced, but if it is a valid criticism, we can easily amend this bill to say that, for example, the Office of Administrative Hearings shall establish, implement and administer a process of doing this and doing that. Then it would be clear.

*Yolanda Rickford*  
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**Rep. Eckre:** I know \$50 is a lot for a teacher is a lot per hour, but that is why there are no attorneys in rural North Dakota. If you watch those kids on TV, they are leaving the state because of the wages. The same thing is happening with the lawyers in rural ND, they'll move to the bigger cities.

**Rep. Klemin:** I think part of it is, there are a lot of attorneys who just don't want to do criminal law no matter what the dollar amount.

**Rep. Eckre:** That was brought out, they aren't going to do it for \$65/hr. That is a tough order. They're not going to do it for double that either, high pressure, high stress.

**Rep. Kretschmar:** I think that is where defendants have a legitimate complaint about incompetent counsel. It's not that the lawyers are incompetent, just not well versed in criminal law areas.

**Rep. Eckre:** We met with the Attorney General yesterday afternoon with people from different parts of the state and how much money they are putting into different areas, but one thing we didn't talk about it was how much it is costing defense attorneys for these meth cases.

**Rep. Boehning:** If this bill passes, is the Administrator going to appoint all of the attorneys throughout the state to defend somebody.

**Rep. Eckre:** You have to want to do it.

**Rep. Boehning:** How is this new position going to work, a FTE attorney to represent indigents? Or is he just going to administrate, what is his job going to be?

**Rep. Klemin:** I think he will be the one appointing defense attorneys. It's not going to go to the lead firm anymore to come up with somebody to defend that defendant. When they get a notice

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that somebody has been approved for an attorney, that person is going to have to notify these contract attorneys that he's going to be representing this particular complainant.

**Rep. Boehning:** Is he going to be able to handle the caseload with just one person and a part-time secretary.

**Rep. Klemin:** That's why we have to monitor it and see what happens.

**Chairman DeKrey:** Unless someone has a bill they want to talk about right now, we will close this discussion.



2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-20-03

Tape Number	Side A	Side B	Meter #
1	xx		30-41
Committee Clerk Signature <i>W Penrose</i>			

**Minutes:** 13 members present at the start of the meeting.

**Chairman DeKrey:** Let's take a look at HB 1044; to move indigent defense services out of the Supreme Court and moves it over to the Office of Administrative Hearings.

**Rep. Klemin:** I have the amendment we talked about. What these amendments are a combination of the amendments that were proposed by Mr. Hoberg, in the Office of Admin. Hearings and actually some of his changes were put into a format favored by LC. Second, it includes the amendment proposed by Chief Justice VanderWalle, using the funding for the Office of Administrative Hearings to employ an indigent defense counsel out of those funds in addition to the contract. Third, it includes some transition provisions for the six months in between. So we've got a transition provision and two different effective dates. Vonnette also went through the bill and cleaned it up a little bit and made it a little shorter. The language in Section 2 of the bill on page 4, lines 14-21, this indigent defense fund will change so that all

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monies will go to the Office of Admin. Hearings and that was OK with the Judicial branch. That was not a lot of money.

**Chairman DeKrey:** Any discussion?

**Rep. Wrangham:** Does the amendment have any effect on the fiscal note?

**Rep. Klemin:** The amendment doesn't have any effect on the fiscal note.

**Rep. Grande:** We never did know for sure about the fiscal note, they have an expenditure in here, plus there are going to get 100% of the monies.

**Chairman DeKrey:** This bill will go down to Appropriations from here, and that's something they will take a look at.

**Rep. Boehning:** Is one person going to be able to handle the caseload for all seven districts, that is being handled by different people now.

**Chairman DeKrey:** I discussed that issue with Ted Gladden, and there was no doubt in his mind that one person can handle that.

**Rep. Klemin:** We're talking about assigning jobs, cases. There was an issue of who's doing the administration, and we wanted to make it clear that it was the Office of Admin. Hearings is going to be administering this program, and those amendments on page 4 and 5 will implement and puts in the word administer, so that there's no question about the fact that they are administering the program.

**Rep. Klemin:** I move the amendments.

**Chairman DeKrey:** Rep. Klemin has moved the amendments, 30173.0201 to HB 1044 by passed.

**Rep. Grande:** Seconded.

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**Chairman DeKrey:** Any further discussion on the amendments. Voice Vote: 12 aye, 1 absent.

We now have HB 1044 with amendments. What are your wishes.

**Rep. Klemin:** Do Pass with Amendments be rereferred to Appropriations Committee.

**Rep. Kretschmar:** Seconded.

**Rep. Eckre:** I don't think this bill will solve the problem, of low pay.

**Chairman DeKrey:** I would agree, but I think the crux of the bill is to do away with the appearance of a conflict of interest, with the Supreme Court hiring them and that is what this bill is trying to solve.

**Rep. Eckre:** I don't think it will do away with the conflict of interest.

**Rep. Wrangham:** I don't think we are going to accomplish the goals addressed by the bill, I am going to vote no, because I don't that shifting it from one agency to another, still doesn't remove it from problems.

**Rep. Klemin:** We have contracts presently being handled in seven different judicial districts, and this bill will provide some statewide uniformity throughout the state on all of those contracts, to be done the same way. We have a problem getting attorneys in some of the rural areas. This does make the whole process better and help resolve some of those problems in areas where you can't get anybody to do it.

**Rep. Boehning:** Are all the contracts on the seven districts equal.

**Rep. Klemin:** I would think they would be in the same area where they are at, this bill is providing for a phased implementation to allow the Office of Admin. Hearings set up that process, they've got six months to set up the process. Some of these processes will be taken up with the administrative rulemaking process, that they adopt rules to go by.

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**Rep. Delmore:** I don't think we should give someone free reign in any agency within the government. This bill really lacks where it needs to go. If we're going to move it there, then we need to be more specific.

**Rep. Klemin:** A monitoring of the process is included in the bill. During the interim, the Office of Admin. Hearings will report their progress, and we will be able to monitor this and see what is happening. A committee of the legislature will work with administrative rules.

**Rep. Kretschmar:** The amendment does spell out what they are to do. Defense counsel are given leeway in how they are going to defend the case, so it is just a matter of issuing a contract or getting people to do it. So I think we should certainly agree to get it out of the judicial branch of government and get it over to the executive. The legislature can certainly look at monitoring the bill in the interim. I think it is a good step forward.

**Chairman DeKrey:** We will take the roll call vote on HB 1044 on a Do Pass with Amendments to be rereferred to Appropriations Committee.

**8 YES 4 NO 1 ABSENT DO PASS W/AMENDMENTS CARRIER: Rep. Klemin**

**FISCAL NOTE**  
Requested by Legislative Council  
01/22/2003

Amendment to: HB 1044

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$152,632	\$0	\$151,135	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Narrative:

House Bill No. 1044 requires the Office of Administrative Hearings to establish, implement, and administer a process of contracting for the legal counsel services for indigents which are required to be provided by law. Currently, the process is within the court system accomplished by judges and court administrative and secretarial staff. The bill contemplates that OAH will establish, implement, and administer a process to include reimbursement for those expenses of attorneys under contract and for those expenses of attorneys outside of the contract. OAH will determine the attorneys providing services and make payment to those providing services. Under the amendments, OAH may also employ full-time or part-time attorneys to provide services. However, the courts will retain the ability to determine who is eligible for and in need of indigent defense services, i.e. the application process. OAH is required to periodically review the application process.

The whole process is now completely handled by the courts, encompassing fiscal

administration and contract administration at the state level and district level administration in the state's seven judicial districts. The state level work includes establishing contracts in an accounting system, processing monthly contract counsel bills, processing bills for cases handled outside of contracts, legal review of contracts, contract interpretation, statewide recruitment advertisement, miscellaneous contract administration issues, and preparation of reports, statistics, and budget. The district level work includes bill processing, report generation, recruitment, contract preparation, and overall administration. If OAH is to establish and implement a statewide system, besides the work currently being done it will have to establish new statewide policies, which may include hiring some attorneys, draft new administrative rules, and review current programs, forms and reports and modify them as appropriate, as well as periodically review the application process and make recommendations to the courts regarding that process. In order to allow OAH time to establish new policies, hire personnel, draft new rules, and do all that is necessary to establish a workable new process, OAH asked for and received an amendment to have a delayed effective date for actually beginning the new process. The effective date for the legislation, that is the date when OAH assumes full control of the process is January 1, 2004. Yet, there will be much for OAH to do during the time from July 1, 2003 until implementation of the process on January 1, 2004. The amendments to the bill provide for a transition.

The courts estimate the work currently involves about a total of 3/4 time FTE spread out over seven districts and the state level, including legal, fiscal, secretarial, and general administrative duties of both a ministerial and professional or management type. Additionally, the first six months of the 2003-05 biennium will require considerable work establishing new policies, drafting new rules, and other initial transitional work, possibly involving work in contract drafting, accounting, programming, and advertising to establish a new process and incorporate what should be retained of the old process. Therefore, OAH believes that a full-time new position (1 FTE) will be required to do this work. The position will be filled by an attorney who should be experienced and knowledgeable about the work of indigent defense contracting. The attorney filling this position will be responsible for drafting new policy and rules and for implementing them by January 1, 2003; for establishing all of the systems required to begin and maintain a new process, including form drafting, accounting, bill processing, report generation, and budgeting; for advertising for and hiring new personnel, if necessary, and from January 1, for review of legal contracts,

contract interpretation, recruitment and advertising, preparing reports, statistics, and budget, and preparing legal contracts; for supervising the monthly processing of bills and other monthly ministerial work being done with regard to the process; for answering questions and responding to complaints from attorneys and judges; for making determinations about paying for out-of-contract expenses; for reviewing the application process retained by the courts and making recommendations to the courts about the application process; and for overall administration of the process. The attorney filling this position will essentially be the deputy director in OAH responsible for indigent defense contract administration. The person will report to the director of OAH and will, along with the Director, report to the State Advisory Council, the Legislative Council, and any other entity that maintains a advisory relationship with OAH regarding indigent defense contract administration.

An amendment to HB 1044 requires that all (100%) of the moneys in the indigent defense administration fund be appropriated on a continuing basis to the Office of Administrative Hearings to be used in indigent defense administration. This money will be used as operating funds to allow OAH to contract for secretarial work and to pay other expenses of the establishment of the new process (e.g. expenses of drafting rules, the expenses of recruitment and advertising, if necessary, new computer programming, including new billing programming, if necessary, etc.). OAH is not certain how much time will initially be required for secretarial work or other work to support the full-time work of the administrative person. OAH would rather contract for that work for the first biennium and then reassess both the administrative and supervisory work, and establish positions for the 2005-07 biennium based on actual experience. It may be at that time that OAH will seek something more permanent in additional support, perhaps an additional 1/2 time support position. In any event, all of the moneys from the indigent defense administration fund should be used for the purpose of contracting for secretarial support and other support, and for various expenses, foreseen and unforeseen, in establishing a new process.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

OAH is now funded totally with special funds. OAH bills client agencies for work

performed in providing administrative hearing services. OAH's caseload has increased by about forty cases this calendar year from last calendar year. OAH can not absorb any cost of the work required by HB 1044, at least not without raising the hourly billing rate to its user agencies. However, the additional work required by HB 1044 is work not at all related to the hearings work OAH currently does for its client agencies. Therefore, the funds for the work required by HB 1044 must come from sources other than billing client agencies.

OAH estimates that HB 1044 will require an additional \$152,632 in general fund appropriations as well as an appropriation of \$42,900 in other fund appropriations to accomplish the work of HB 1044. Additionally, the amount of \$2,990,547 from the Supreme Court proposed budget for indigent defense contracts must be transferred to OAH to pay for attorney contracts for adults and juveniles, and to pay for non-contract (outside of the contract) work, for the last three quarters of the 2003-2005 biennium. The Supreme Court will retain \$996,849, one fourth of the amount currently existing in the Supreme Court proposed budget, for the first six months of the biennium until the delayed effective date. The Supreme Court has also retained \$325,000 of the total amount currently in the 2003-05 Supreme Court budget for indigent defense contract services for it to continue to pay for guardian ad litem contracts for the biennium. See page 1 of Engrossed HB 1044 - N.D.C.C. § 27-20-49(2).

Revenues: Approximately \$42,900 in OAH revenues for this work will come from the indigent defense administration fund which is a fund totally dependent on moneys collected by the courts from indigent defendants appointed contract counsel. The amount of this money will vary depending upon the number of applicants for appointment, the number of those determined eligible and receiving appointed counsel services, and the amounts reimbursed by those receiving appointed counsel services. In other words, this amount is subject to conditions outside of the control of OAH, still within the control of the courts. It is estimated that the fund will collect about \$42,900 for the 2001-2003 biennium and, if conditions remain about the same under the new process, the amount should be about the same for the 2003-2005 biennium.

\$152,632 in new general fund moneys will be required to hire the attorney to fill one position that will need to be authorized for OAH and to pay for operating expenses



and equipment for the 2003-2005 biennium. The amount for the 2005-2007 biennium is somewhat less because of fewer equipment requirements.

\$ 2,990,547 will be required to be transferred from the Supreme Court budget to allow OAH to pay indigent defense attorneys under the contract for adult and juvenile defense contract work provided by them statewide and to allow for OAH to pay indigent defense attorneys for work done by them outside of the contract. This amount plus the \$996,849 retained by the Supreme Court for the first six months of the biennium is the amount proposed in the 2003-2005 Supreme Court budget for this work (\$4,312,396 total budget, less \$325,000 for guardian ad litem, less \$996,849 for the first six months = \$2,990,547).

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Again, \$42,900, or whatever amount is available from the indigent defense administration fund, will be spent on contract support (secretarial/ministerial support) for the professional, administrative position as well as on various foreseen and unforeseen operating expenses in establishing the new process.

\$128,987 will be spent on salary and fringe benefits for the attorney filling the new administrative position. \$5393 will be spent on start-up equipment (office furniture, computer, etc.). \$18,252 will be spent on continuing operating costs for the biennium for this position (phone, copying, postage, office supplies, travel, rent, insurance, professional development, printing, and other recurring office expenses). The total expenditures are \$ 152,632 for the biennium (03-05). The total recurring expenditures for the next biennium (05-07) are \$151,135.

\$3,987,396 will be spent by the Supreme Court and OAH during the full biennium on paying contract attorneys pursuant to the contract and for work performed outside of the contract. The current Supreme Court proposed budget allows \$167,800 for non-contract work, \$128,450 for services for juvenile work and \$3,691,146 for contract work.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

This appropriation is a best estimate. Although OAH has obtained information from the courts for input into this fiscal note, this is new ground for OAH. New policies and procedures, or possibly new personnel, may result in unforeseen expenses or work requirements. This estimated appropriation should allow OAH to adequately provide the work required under HB 1044. It may be that change will have to be made in the 2005-2007 OAH budget for this work. Time and experience will tell. The total appropriation for this addition to the OAH budget for the next biennium is estimated to be \$3,186,079. Again, of this, \$42,900 will be other funds obtained by OAH each biennium from the indigent defense administration fund; \$152,632 will be new general fund money this biennium (\$151,135 next biennium); and \$2,990,547 will be general fund moneys transferred from the proposed budget of the Supreme Court. For 2005-2007, the full amount of \$3,987.396 will be part of OAH's budget, and its total budget is estimated to be \$4,181,431.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	01/23/2003

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Operator's Signature

*Yolanda Rickford*

Date

*10/2/03*

**FISCAL NOTE**  
Requested by Legislative Council  
01/10/2003

**REVISION**

Bill/Resolution No.: HB 1044

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$152,632	\$0	\$151,135	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

**Narrative:**

House Bill No. 1044 requires the Office of Administrative Hearings to establish and implement a process of contracting for the legal counsel services for indigents which are required to be provided by law. Currently, the process is within the court system accomplished by judges and court administrative and secretarial staff. The bill contemplates that OAH will establish and implement a process to include reimbursement for those expenses of attorneys under contract and for those expenses of attorneys outside of the contract. OAH will determine the attorneys providing services and make payment to those providing services. However, the courts will retain the ability to determine who is eligible for and in need of indigent defense services, i.e. the application process. OAH is required to periodically review the application process.

The process is now completely handled by the courts, encompassing fiscal administration and contract administration at the state level and district level

*Yolanda Rickford*  
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10/2/03  
Date

administration in the state's seven judicial districts. The state level work includes establishing contracts in an accounting system, processing monthly contract counsel bills, processing bills for cases handled outside of contracts, legal review of contracts, contract interpretation, statewide recruitment advertisement, miscellaneous contract administration issues, and preparation of reports, statistics, and budget. The district level work includes bill processing, report generation, recruitment, contract preparation, and overall administration. If OAH is to establish and implement a statewide system, besides the work currently being done it will have to establish new statewide policies, draft new administrative rules, and review current programs, forms and reports and modify them as appropriate, as well as periodically review the application process and make recommendations to the courts regarding that process. In order to allow OAH time to establish new policies, draft new rules, and do all that is necessary to establish a workable new process, OAH will be asking for an amendment to have a delayed effective date for actually beginning the new process. OAH will ask that the effective date for the legislation, that is the date when OAH assumes full control of the process, be January 1, 2004. Yet, there will be much for OAH to do during the time from July 1, 2003 until implementation of the process on January 1, 2004. The Supreme Court supports a delayed effective date for the legislation.

The courts estimate the work currently involves about a total of 3/4 time FTE spread out over seven districts and the state level, including legal, fiscal, secretarial, and general administrative duties of both a ministerial and professional or management type. Additionally, the first six months of the 2003-05 biennium will require considerable work establishing new policies, drafting new rules, and other initial transitional work, possibly involving work in contract drafting, accounting, programming, and advertising to establish a new process and incorporate what should be retained of the old process. Therefore, OAH believes that a full-time new position (1 FTE) will be required to do this work. The position will be filled by an attorney who should be experienced and knowledgeable about the work of indigent defense contracting. The attorney filling this position will be responsible for drafting new policy and rules and for implementing them by January 1, 2003; for establishing all of the systems required to begin and maintain a new process, including form drafting, accounting, bill processing, report generation, and budgeting; and from January 1, for review of legal contracts, contract interpretation, recruitment and advertising, preparing reports, statistics, and budget, and preparing legal contracts, for supervising

the monthly processing of bills and other monthly ministerial work being done with regard to the process; for answering questions and responding to complaints from attorneys and judges; for making determinations about paying for out-of-contract expenses; for reviewing the application process retained by the courts and making recommendations to the courts about the application process; and for overall administration of the process. The attorney filling this position will essentially be the deputy director in OAH responsible for indigent defense contract administration. The person will report to the director of OAH and will, along with the Director, report to the State Advisory Council as well as any other entity that maintains a advisory relationship with OAH regarding indigent defense contract administration.

OAH will also propose an amendment to HB 1044 to require that all (100%) of the moneys in the indigent defense administration fund be appropriated on a continuing basis to the Office of Administrative Hearings to be used in indigent defense administration. This amendment, too, is supported by the Supreme Court. This money will be used as operating funds to allow OAH to contract for secretarial work and to pay other expenses of the establishment of the new process (e.g. expenses of drafting rules, the expenses of recruitment and advertising, if necessary, new computer programming, including new billing programming, if necessary, etc.). OAH is not certain how much time will initially be required for secretarial work or other work to support the full-time work of the administrative person. OAH would rather contract for that work for the first biennium and then reassess both the administrative and supervisory work, and establish positions for the 2005-07 biennium based on actual experience. It may be at that time that OAH will seek something more permanent in additional support, perhaps an additional 1/2 time support position. In any event, all of the moneys from the indigent defense administration fund should be used for the purpose of contracting for secretarial support and other support, and for various expenses, foreseen and unforeseen, in establishing a new process.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

OAH is now funded totally with special funds. OAH bills client agencies for work performed in providing administrative hearing services. OAH's caseload has increased by over about forty cases this calendar year from last calendar year. OAH can not

absorb any cost of the work required by HB 1044, at least not without raising the hourly billing rate to its user agencies. However, the additional work required by HB 1044 is work not at all related to the hearings work OAH currently does for its client agencies. Therefore, the funds for the work required by HB 1044 must come from sources other than billing client agencies.

OAH estimates that HB 1044 will require an additional \$152,632 in general fund appropriations as well as an appropriation of \$42,900 in other fund appropriations to accomplish the work of HB 1044. Additionally, the amount of \$2,990,547 from the Supreme Court proposed budget for indigent defense contracts must be transferred to OAH to pay for attorney contracts for adults and juveniles, and to pay for non-contract (outside of the contract) work, for the last three quarters of the 2003-2005 biennium. The Supreme Court will retain \$996,849, one fourth of the amount currently existing in the Supreme Court proposed budget, for the first six months of the biennium until the delayed effective date. The Supreme Court has also retained \$325,000 of the total amount currently in the 2003-05 Supreme Court budget for indigent defense contract services for it to continue to pay for guardian ad litem contracts for the biennium. See page 1 of HB 1044 - N.D.C.C. § 27-20-49(2).

Revenues: Approximately \$42,900 in OAH revenues for this work will come from the indigent defense administration fund which is a fund totally dependent on moneys collected by the courts from indigent defendants appointed contract counsel. The amount of this money will vary depending upon the number of applicants for appointment, the number of those determined eligible and receiving appointed counsel services, and the amounts reimbursed by those receiving appointed counsel services. In other words, this amount is subject to conditions outside of the control of OAH, still within the control of the courts. It is estimated that the fund will collect about \$42,900 for the 2001-2003 biennium and, if conditions remain about the same under the new process, the amount should be about the same for the 2003-2005 biennium.

\$152,632 in new general fund moneys will be required to hire the attorney to fill one position that will need to be authorized for OAH and to pay for operating expenses and equipment for the 2003-2005 biennium. The amount for the 2005-2007 biennium is somewhat less because of fewer equipment requirements.

\$ 2,990,547 will be required to be transferred from the Supreme Court budget to allow OAH to pay indigent defense attorneys under the contract for adult and juvenile defense contract work provided by them statewide and to allow for OAH to pay indigent defense attorneys for work done by them outside of the contract. This amount plus the \$996,849 retained by the Supreme Court for the first six months of the biennium is the amount proposed in the 2003-2005 Supreme Court budget for this work (\$4,312,396 total budget, less \$325,000 for guardian ad litem, less \$996,849 for the first six months = \$2,990,547).

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Again, \$42,900 or whatever amount is available from the indigent defense administration fund, will be spent on contract support (secretarial/ministerial support) for the professional, administrative position as well as on various foreseen and unforeseen operating expenses in establishing the new process.

\$128,987 will be spent on salary and fringe benefits for the attorney filling the new administrative position. \$5393 will be spent on start-up equipment (office furniture, computer, etc.). \$18,252 will be spent on continuing operating costs for the biennium for this position (phone, copying, postage, office supplies, travel, rent, insurance, professional development, printing, and other recurring office expenses). The total expenditures are \$152,632 for the biennium (03-05). The total recurring expenditures for the next biennium (05-07) are \$151,135.

\$3,987,396 will be spent by the Supreme Court and OAH during the full biennium on paying contract attorneys pursuant to the contract and for work performed outside of the contract. The current Supreme Court proposed budget allows \$167,800 for non-contract work, \$128,450 for services for juvenile work and \$3,691,146 for contract work.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

This estimated appropriation is just that, a best estimate. Although OAH has obtained information from the courts for input into this fiscal note, this is new ground for OAH, new policies and procedures may result in unforeseen expenses or work requirements. This estimated appropriation should allow OAH to adequately provide the work required under HB 1044. It may be that change will have to be made in the 2005-2007 OAH budget for this work. Time and experience will tell. The total appropriation for this addition to the OAH budget for the next biennium is estimated to be \$3,186,079. Again, of this, \$42,900 will be other funds obtained by OAH each biennium from the indigent defense administration fund; \$152,632 will be new general fund money this biennium (\$151,135 next biennium); and \$2,990,547 will be general fund moneys transferred from the proposed budget of the Supreme Court. For the 2005-2007, the full amount of \$3,987,396 will be part of OAH's budget, and its total budget is estimated to be \$4,181,431.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	12/27/2002

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*Yalosta Rickford*  
Operator's Signature

*10/2/02*  
Date



**FISCAL NOTE**  
Requested by Legislative Council  
01/08/2003

**REVISION**

Bill/Resolution No.: HB 1044

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$152,632	\$0	\$151,135	\$0
Expenditures	\$0	\$0	\$152,632	\$0	\$151,135	\$0
Appropriations	\$0	\$0	\$152,632	\$0	\$151,135	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**Narrative:**

House Bill No. 1044 requires the Office of Administrative Hearings to establish and implement a process of contracting for the legal counsel services for indigents which are required to be provided by law. Currently, the process is within the court system accomplished by judges and court administrative and secretarial staff. The bill contemplates that OAH will establish and implement a process to include reimbursement for those expenses of attorneys under contract and for those expenses of attorneys outside of the contract. OAH will determine the attorneys providing services and make payment to those providing services. However, the courts will retain the ability to determine who is eligible for and in need of indigent defense services, i.e. the application process. OAH is required to periodically review the application process.

The process is now completely handled by the courts, encompassing fiscal administration and contract administration at the state level and district level administration in the state's seven judicial districts. The state level work includes establishing contracts in an accounting system, processing monthly contract counsel bills, processing bills for cases handled outside of contracts, legal review of contracts, contract interpretation, statewide

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10/2/03

recruitment advertisement, miscellaneous contract administration issues, and preparation of reports, statistics, and budget. The district level work includes bill processing, report generation, recruitment, contract preparation, and overall administration. If OAH is to establish and implement a statewide system, besides the work currently being done it will have to establish new statewide policies, draft new administrative rules, and review current programs, forms and reports and modify them as appropriate, as well as periodically review the application process and make recommendations to the courts regarding that process. In order to allow OAH time to establish new policies, draft new rules, and do all that is necessary to establish a workable new process, OAH will be asking for an amendment to have a delayed effective date for actually beginning the new process. OAH will ask that the effective date for the legislation, that is the date when OAH assumes full control of the process, be January 1, 2004. Yet, there will be much for OAH to do during the time from July 1, 2003 until implementation of the process on January 1, 2004. The Supreme Court supports a delayed effective date for the legislation.

The courts estimate the work currently involves about a total of 3/4 time FTE spread out over seven districts and the state level, including legal, fiscal, secretarial, and general administrative duties of both a ministerial and professional or management type.

Additionally, the first six months of the 2003-05 biennium will require considerable work establishing new policies, drafting new rules, and other initial transitional work, possibly involving work in contract drafting, accounting, programming, and advertising to establish a new process and incorporate what should be retained of the old process. Therefore, OAH believes that a full-time new position (1 FTE) will be required to do this work. The position will be filled by an attorney who should be experienced and knowledgeable about the work of indigent defense contracting. The attorney filling this position will be responsible for drafting new policy and rules and for implementing them by January 1, 2003; for establishing all of the systems required to begin and maintain a new process, including form drafting, accounting, bill processing, report generation, and budgeting; and from January 1, for review of legal contracts, contract interpretation, recruitment and advertising, preparing reports, statistics, and budget, and preparing legal contracts, for supervising the monthly processing of bills and other monthly ministerial work being done with regard to the process; for answering questions and responding to complaints from attorneys and judges; for making determinations about paying for out-of-contract expenses; for reviewing the application process retained by the courts and making recommendations to the courts about the application process; and for overall administration of the process. The attorney filling this position will essentially be the deputy director in OAH responsible for indigent defense contract administration. The person will report to the director of OAH and will, along with the Director, report to the State Advisory Council as well as any other entity that maintains a advisory relationship with OAH regarding indigent defense contract administration.

Yalosta Rickford  
Operator's Signature

10/2/03  
Date

OAH will also propose an amendment to HB 1044 to require that all (100%) of the moneys in the indigent defense administration fund be appropriated on a continuing basis to the Office of Administrative Hearings to be used in indigent defense administration. This amendment, too, is supported by the Supreme Court. This money will be used as operating funds to allow OAH to contract for secretarial work and to pay other expenses of the establishment of the new process (e.g. expenses of drafting rules, the expenses of recruitment and advertising, if necessary, new computer programming, including new billing programming, if necessary, etc.). OAH is not certain how much time will initially be required for secretarial work or other work to support the full-time work of the administrative person. OAH would rather contract for that work for the first biennium and then reassess both the administrative and supervisory work, and establish positions for the 2005-07 biennium based on actual experience. It may be at that time that OAH will seek something more permanent in additional support, perhaps an additional 1/2 time support position. In any event, all of the moneys from the indigent defense administration fund should be used for the purpose of contracting for secretarial support and other support, and for various expenses, foreseen and unforeseen, in establishing a new process.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

OAH is now funded totally with special funds. OAH bills client agencies for work performed in providing administrative hearing services. OAH's caseload has increased by over about forty cases this calendar year from last calendar year. OAH can not absorb any cost of the work required by HB 1044, at least not without raising the hourly billing rate to its user agencies. However, the additional work required by HB 1044 is work not at all related to the hearings work OAH currently does for its client agencies. Therefore, the funds for the work required by HB 1044 must come from sources other than billing client agencies.

OAH estimates that HB 1044 will require an additional \$152,632 in general fund appropriations as well as an appropriation of \$42,900 in other fund appropriations to accomplish the work of HB 1044. Additionally, the amount of \$2,990,547 from the Supreme Court proposed budget for indigent defense contracts must be transferred to OAH to pay for attorney contracts for adults and juveniles, and to pay for non-contract (outside of the contract) work, for the last three quarters of the 2003-2005 biennium. The Supreme Court will retain \$996,849, one fourth of the amount currently existing in the Supreme Court proposed budget, for the first six months of the biennium until the delayed effective

date. The Supreme Court has also retained \$325,000 of the total amount currently in the 2003-05 Supreme Court budget for indigent defense contract services for it to continue to pay for guardian ad litem contracts for the biennium. See page 1 of HB 1044 - N.D.C.C. § 27-20-49(2).

**Revenues:** Approximately \$42,900 in OAH revenues for this work will come from the indigent defense administration fund which is a fund totally dependent on moneys collected by the courts from indigent defendants appointed contract counsel. The amount of this money will vary depending upon the number of applicants for appointment, the number of those determined eligible and receiving appointed counsel services, and the amounts reimbursed by those receiving appointed counsel services. In other words, this amount is subject to conditions outside of the control of OAH, still within the control of the courts. It is estimated that the fund will collect about \$42,900 for the 2001-2003 biennium and, if conditions remain about the same under the new process, the amount should be about the same for the 2003-2005 biennium.

\$152,632 in new general fund moneys will be required to hire the attorney to fill one position that will need to be authorized for OAH and to pay for operating expenses and equipment for the 2003-2005 biennium. The amount for the 2005-2007 biennium is somewhat less because of fewer equipment requirements.

\$2,990,547 will be required to be transferred from the Supreme Court budget to allow OAH to pay indigent defense attorneys under the contract for adult and juvenile defense contract work provided by them statewide and to allow for OAH to pay indigent defense attorneys for work done by them outside of the contract. This amount plus the \$996,849 retained by the Supreme Court for the first six months of the biennium is the amount proposed in the 2003-2005 Supreme Court budget for this work (\$4,312,396 total budget, less \$325,000 for guardian ad litem, less \$996,849 for the first six months = \$2,990,547).

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Again, \$42,900 or whatever amount is available from the indigent defense administration fund, will be spent on contract support (secretarial/ministerial support) for the professional, administrative position as well as on various foreseen and unforeseen operating expenses in establishing the new process.

\$128,987 will be spent on salary and fringe benefits for the attorney filling the new

administrative position. \$5393 will be spent on start-up equipment (office furniture, computer, etc.). \$18, 252 will be spent on continuing operating costs for the biennium for this position (phone, copying, postage, office supplies, travel, rent, insurance, professional development, printing, and other recurring office expenses). The total expenditures are \$ 152, 632 for the biennium (03-05). The total recurring expenditures for the next biennium (05-07) are \$151, 135.

\$3,987,396 will be spent by the Supreme Court and OAH during the full biennium on paying contract attorneys pursuant to the contract and for work performed outside of the contract. The current Supreme Court proposed budget allows \$167,800 for non-contract work, \$128,450 for services for juvenile work and \$3,691,146 for contract work.

*C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

This estimated appropriation is just that, a best estimate. Although OAH has obtained information from the courts for input into this fiscal note, this is new ground for OAH, new policies and procedures may result in unforeseen expenses or work requirements. This estimated appropriation should allow OAH to adequately provide the work required under HB 1044. It may be that change will have to be made in the 2005-2007 OAH budget for this work. Time and experience will tell. The total appropriation for this addition to the OAH budget for the next biennium is estimated to be \$3,186,079. Again, of this, \$42,900 will be other funds obtained by OAH each biennium from the indigent defense administration fund; \$152, 632 will be new general fund money this biennium (\$151,135 next biennium); and \$2,990,547 will be general fund moneys transferred from the proposed budget of the Supreme Court. For the 2005-2007, the full amount of \$3,987.396 will be part of OAH's budget, and its total budget is estimated to be \$4,181,431.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	12/27/2002

**FISCAL NOTE**  
Requested by Legislative Council  
12/16/2002

Bill/Resolution No.: HB 1044

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$3,143,178	\$42,900	\$4,138,531	\$42,900
Expenditures	\$0	\$0	\$3,143,178	\$42,900	\$4,138,531	\$42,900
Appropriations	\$0	\$0	\$3,143,178	\$42,900	\$4,138,531	\$42,900

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**Narrative:**

House Bill No. 1044 requires the Office of Administrative Hearings to establish and implement a process of contracting for the legal counsel services for indigents which are required to be provided by law. Currently, the process is within the court system accomplished by judges and court administrative and secretarial staff. The bill contemplates that OAH will establish and implement a process to include reimbursement for those expenses of attorneys under contract and for those expenses of attorneys outside of the contract. OAH will determine the attorneys providing services and make payment to those providing services. However, the courts will retain the ability to determine who is eligible for and in need of indigent defense services, i.e. the application process. OAH is required to periodically review the application process.

The process is now completely handled by the courts, encompassing fiscal administration and contract administration at the state level and district level administration in the state's seven judicial districts. The state level work includes establishing contracts in an accounting system, processing monthly contract counsel bills, processing bills for cases handled outside of contracts, legal review of contracts, contract interpretation, statewide recruitment advertisement, miscellaneous contract administration issues, and preparation of reports, statistics, and budget. The district level work includes bill processing, report generation, recruitment, contract preparation, and overall administration. If OAH is to establish and implement a statewide system, besides the work currently being done it will have to establish new statewide policies, draft new administrative rules, and review current programs, forms and reports and modify them as appropriate, as well as periodically review the application process and make recommendations to the courts regarding that process. In order to allow OAH time to establish new policies, draft new rules, and do all that is necessary to establish a workable new process, OAH will be asking for an amendment to have a delayed

*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date



effective date for actually beginning the new process. OAH will ask that the effective date for the legislation, that is the date when OAH assumes full control of the process, be January 1, 2004. Yet, there will be much for OAH to do during the time from July 1, 2003 until implementation of the process on January 1, 2004. The Supreme Court supports a delayed effective date for the legislation.

The courts estimate the work currently involves about a total of 3/4 time FTE spread out over seven districts and the state level, including legal, fiscal, secretarial, and general administrative duties of both a ministerial and professional or management type. Additionally, the first six months of the 2003-05 biennium will require considerable work establishing new policies, drafting new rules, and other initial transitional work, possibly involving work in contract drafting, accounting, programming, and advertising to establish a new process and incorporate what should be retained of the old process. Therefore, OAH believes that a full-time new position (1 FTE) will be required to do this work. The position will be filled by an attorney who should be experienced and knowledgeable about the work of indigent defense contracting. The attorney filling this position will be responsible for drafting new policy and rules and for implementing them by January 1, 2003; for establishing all of the systems required to begin and maintain a new process, including form drafting, accounting, bill processing, report generation, and budgeting; and from January 1, for review of legal contracts, contract interpretation, recruitment and advertising, preparing reports, statistics, and budget, and preparing legal contracts, for supervising the monthly processing of bills and other monthly ministerial work being done with regard to the process; for answering questions and responding to complaints from attorneys and judges; for making determinations about paying for out-of-contract expenses; for reviewing the application process retained by the courts and making recommendations to the courts about the application process; and for overall administration of the process. The attorney filling this position will essentially be the deputy director in OAH responsible for indigent defense contract administration. The person will report to the director of OAH and will, along with the Director, report to the State Advisory Council as well as any other entity that maintains a advisory relationship with OAH regarding indigent defense contract administration.

OAH will also propose an amendment to HB 1044 to require that all (100%) of the moneys in the indigent defense administration fund be appropriated on a continuing basis to the Office of Administrative Hearings to be used in indigent defense administration. This amendment, too, is supported by the Supreme Court. This money will be used as operating funds to allow OAH to contract for secretarial work and to pay other expenses of the establishment of the new process (e.g. expenses of drafting rules, the expenses of recruitment and advertising, if necessary, new computer programming, including new billing programming, if necessary, etc.). OAH is not certain how much time will initially be required for secretarial work or other work to support the full-time work of the administrative person. OAH would rather contract for that work for the first biennium and then reassess both the administrative and supervisory work, and establish positions for the 2005-07 biennium based on actual experience. It may be at that time that OAH will seek something more permanent in additional support, perhaps an additional 1/2 time support position. In any event, all of the moneys from the indigent defense administration fund should be used for the purpose of contracting for secretarial support and other support, and for various expenses, foreseen and unforeseen, in establishing a new process.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

- A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

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10/2/03

OAH is now funded totally with special funds. OAH bills client agencies for work performed in providing administrative hearing services. OAH's caseload has increased by over about forty cases this calendar year from last calendar year. OAH can not absorb any cost of the work required by HB 1044, at least not without raising the hourly billing rate to its user agencies. However, the additional work required by HB 1044 is work not at all related to the hearings work OAH currently does for its client agencies. Therefore, the funds for the work required by HB 1044 must come from sources other than billing client agencies.

OAH estimates that HB 1044 will require an additional \$152,632 in general fund appropriations as well as an appropriation of \$42,900 in other fund appropriations to accomplish the work of HB 1044. Additionally, the amount of \$2,990,547 from the Supreme Court proposed budget for indigent defense contracts must be transferred to OAH to pay for attorney contracts for adults and juveniles, and to pay for non-contract (outside of the contract) work, for the last three quarters of the 2003-2005 biennium. The Supreme Court will retain \$996,849, one fourth of the amount currently existing in the Supreme Court proposed budget, for the first six months of the biennium until the delayed effective date. The Supreme Court has also retained \$325,000 of the total amount currently in the 2003-05 Supreme Court budget for indigent defense contract services for it to continue to pay for guardian ad litem contracts for the biennium. See page 1 of HB 1044 - N.D.C.C. § 27-20-49(2).

Revenues: Approximately \$42,900 in OAH revenues for this work will come from the indigent defense administration fund which is a fund totally dependent on moneys collected by the courts from indigent defendants appointed contract counsel. The amount of this money will vary depending upon the number of applicants for appointment, the number of those determined eligible and receiving appointed counsel services, and the amounts reimbursed by those receiving appointed counsel services. In other words, this amount is subject to conditions outside of the control of OAH, still within the control of the courts. It is estimated that the fund will collect about \$42,900 for the 2001-2003 biennium and, if conditions remain about the same under the new process, the amount should be about the same for the 2003-2005 biennium.

\$152,632 in new general fund moneys will be required to hire the attorney to fill one position that will need to be authorized for OAH and to pay for operating expenses and equipment for the 2003-2005 biennium. The amount for the 2005-2007 biennium is somewhat less because of fewer equipment requirements.

\$ 2,990,547 will be required to be transferred from the Supreme Court budget to allow OAH to pay indigent defense attorneys under the contract for adult and juvenile defense contract work provided by them statewide and to allow for OAH to pay indigent defense attorneys for work done by them outside of the contract. This amount plus the \$996,849 retained by the Supreme Court for the first six months of the biennium is the amount proposed in the 2003-2005 Supreme Court budget for this work (\$4,312,396 total budget, less \$325,000 for guardian ad litem, less \$996,849 for the first six months = \$2,990,547).

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Again, \$42,900 or whatever amount is available from the indigent defense administration fund, will be



spent on contract support (secretarial/ministerial support) for the professional, administrative position as well as on various foreseen and unforeseen operating expenses in establishing the new process.

\$128,987 will be spent on salary and fringe benefits for the attorney filling the new administrative position. \$5393 will be spent on start-up equipment (office furniture, computer, etc.). \$18,252 will be spent on continuing operating costs for the biennium for this position (phone, copying, postage, office supplies, travel, rent, insurance, professional development, printing, and other recurring office expenses). The total expenditures are \$152,632 for the biennium (03-05). The total recurring expenditures for the next biennium (05-07) are \$151,135.

\$3,987,396 will be spent by the Supreme Court and OAH during the full biennium on paying contract attorneys pursuant to the contract and for work performed outside of the contract. The current Supreme Court proposed budget allows \$167,800 for non-contract work, \$128,450 for services for juvenile work and \$3,691,146 for contract work.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

This estimated appropriation is just that, a best estimate. Although OAH has obtained information from the courts for input into this fiscal note, this is new ground for OAH, new policies and procedures may result in unforeseen expenses or work requirements. This estimated appropriation should allow OAH to adequately provide the work required under HB 1044. It may be that change will have to be made in the 2005-2007 OAH budget for this work. Time and experience will tell. The total appropriation for this addition to the OAH budget for the next biennium is estimated to be \$3,186,079. Again, of this, \$42,900 will be other funds obtained by OAH each biennium from the indigent defense administration fund; \$152,632 will be new general fund money this biennium (\$151,135 next biennium); and \$2,990,547 will be general fund moneys transferred from the proposed budget of the Supreme Court. For the 2005-2007, the full amount of \$3,987.396 will be part of OAH's budget, and its total budget is estimated to be \$4,181,431.

Name:	Allen C. Hoberg	Agency:	Office of Administrative Hearings
Phone Number:	328-3260	Date Prepared:	12/27/2002

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1044

Page 4, line 25, after " for " insert " all or a part of "

Page 4, line 28, after the period insert:

"In addition to or in combination with contracting for legal counsel services  
and within the limits of available funding, the office of administrative hearings  
may employ indigent defense counsel on a full-time or part-time basis to provide  
legal services for indigents. "

Renumber accordingly

Q:\WP\Connie\Jim-2\HR 1044 - Amends.wpd

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Operator's Signature

*Yolanda Rickford*

10/2/03  
Date

30173.0201  
Title.0300

Prepared by the Legislative Council staff for  
Representative Klemin  
January 20, 2003

VR  
1/20/03  
1082

**HOUSE AMENDMENTS TO HOUSE BILL NO. 1044 JUD 1-21-03**

Page 1, line 3, remove the first "and", replace "sections" with "section", and after the third "and" insert "subsections 1 and 4 of section"

Page 1, line 4, after "services" insert "; to provide a report to the legislative council; to provide for transition; and to provide an effective date"

**HOUSE AMENDMENTS TO HB 1044 JUD 1-2-103**

Page 2, line 15, replace "Section" with "Subsection 1 of section"

Page 2, remove lines 17 through 19

**HOUSE AMENDMENTS TO HB 1044 JUD 1-21-03**

Page 3, remove lines 7 through 31

**HOUSE AMENDMENTS TO HB 1044 JUD 1-21-03**

Page 4, replace lines 1 through 13 with:

**"SECTION 3. AMENDMENT.** Subsection 4 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:"

Page 4, line 16, remove the overstrike over "All" and remove "Fifty percent of the"

Page 4, line 19, overstrike "and" and remove "fifty percent or the moneys in the fund are appropriated on a continuing"

Page 4, line 20, remove "basis to the judicial branch to be used for" and overstrike "the collection of indigent defense costs"

Page 4, line 21, overstrike "and expenses required to be reimbursed under this section"

Page 4, line 25, replace "and" with an underscored comma, after "implement" insert ", and administer", and after "for" insert "all or a part of"

Page 4, line 28, after the underscored period insert "In addition to or in combination with contracting for legal counsel services and within the limits of available funding, the office of administrative hearings may employ indigent defense counsel on a full-time or part-time basis to provide legal services for indigents."

Page 4, line 29, replace "and" with an underscored comma and after "implement" insert ", and administer"

**HOUSE AMENDMENTS TO HB 1044 JUD 1-21-03**

Page 5, line 3, after "establish" insert "and administer"

Page 5, after line 5, insert:

HOUSE AMENDMENTS TO HB 1044 JUD 1-21-03

2 of 2

**"SECTION 5. REPORT TO LEGISLATIVE COUNCIL.** During the 2003-04 interim, the office of administrative hearings shall report to the legislative council regarding its progress in the implementation of this Act.

**SECTION 6. TRANSITION.** All contracts for indigent defense services awarded by the supreme court after June 30, 2003, must expire no later than December 31, 2003.

**SECTION 7. EFFECTIVE DATE.** Sections 1, 2, and 4 of this Act become effective on January 1, 2004.

**SECTION 8. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1, 2003. The office of administrative hearings may use moneys appropriated to the office for the biennium beginning July 1, 2003, and ending June 30, 2005, to prepare for the implementation of contracting for indigent defense services required under section 4 of this Act so that the process may be established and implemented by January 1, 2004."

Renumber accordingly

*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

4

Date: 1/20/03  
Roll Call Vote #: 1

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1044**

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30173-0201 .0300

Action Taken Do Pass w/ Amendments

Motion Made By Rep. Klemin Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Vice Chairman Maragos	AB		Rep. Eckre		✓
Rep. Bernstein	✓		Rep. Onstad		✓
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham		✓			

Total (Yes) 8 No 4

Absent 1

Floor Assignment Rep. Klemin

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

Rereferred to Approp.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 21, 2003 10:37 a.m.

Module No: HR-11-0818  
Carrier: Klein  
Insert LC: 30173.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1044: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1044 was placed on the Sixth order on the calendar.**

Page 1, line 3, remove the first "and", replace "sections" with "section", and after the third "and" insert "subsections 1 and 4 of section"

Page 1, line 4, after "services" insert "; to provide a report to the legislative council; to provide for transition; and to provide an effective date"

Page 2, line 15, replace "Section" with "Subsection 1 of section"

Page 2, remove lines 17 through 19

Page 3, remove lines 7 through 31

Page 4, replace lines 1 through 13 with:

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Page 4, line 29, replace "and" with an underscored comma and after "implement" insert ", and administer"

Page 5, line 3, after "establish" insert "and administer"

Page 5, after line 5, insert:

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**SECTION 6. TRANSITION.** All contracts for indigent defense services awarded by the supreme court after June 30, 2003, must expire no later than December 31, 2003.

**REPORT OF STANDING COMMITTEE (410)**  
January 21, 2003 10:37 a.m.

Module No: HR-11-0818  
Carrier: Klemm  
Insert LC: 30173.0201 Title: .0300

**SECTION 7. EFFECTIVE DATE.** Sections 1, 2, and 4 of this Act become effective on January 1, 2004.

**SECTION 8. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1, 2003. The office of administrative hearings may use moneys appropriated to the office for the biennium beginning July 1, 2003, and ending June 30, 2005, to prepare for the implementation of contracting for indigent defense services required under section 4 of this Act so that the process may be established and implemented by January 1, 2004."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 2

HR-11-0818

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Operator's Signature

*Yolanda Rickford*

Date

*10/2/03*

2003 HOUSE APPROPRIATIONS

HB 1044

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*Halista Rickford*  
Operator's Signature

*10/2/03*  
Date



2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

House Appropriations Committee

☐ Conference Committee

Hearing Date 02-11-03

Tape Number	Side A	Side B	Meter #
1	X		0.0-45.8
Committee Clerk Signature <i>Chris J. Nyhus</i>			

Minutes:

**Chairman Svedjan** Opened HB 1044 for discussion. A quorum was present.

**Rep. Dekrey** This bill transfers the indigent defense costs from the Judicial Branch over to the Office of Administrative Hearings. The policy that was made to do that could be an appearance of a conflict of interests having the Supreme Court Appointing the lawyers that can eventually be hearing a case in front of them.

**Chairman Svedjan** In you analysis of this bill you didn't get into what constitutes the \$152,000.

**Rep. Dekrey** We questioned Mr. Holberg on the \$152,000 in the committee. As long as we were transferring a function and contracts already in place we were suspicious as why it would cost that much, but he said he needed it.

**Rep. Aarsvold** The Budget of Administrative Hearings is adding a position to handle what this bill entails.

**Chairman Svedjan** Why do they have \$151,135 in the 05-07 biennium?

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*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

Page 2  
House Appropriations Committee  
Bill/Resolution Number HB 1044  
Hearing Date 02-11-03

**Rep. Dekrey** I wouldn't have a clue as to why they need that.

**Rep. Timm** The Administrative Hearings, do they want to take this program over? Are they putting up any resistance to this?

**Rep. Dekrey** I didn't sense any.

**Chairman Svedjan** How big a potential is the conflict of interest?

**Rep. Dekrey** There have been challenges, but the courts have withstood them.

**Rep. Skarphol** I think the \$151,135 is in anticipating salaries.

**Rep. Carlisle** If we do this we have to transfer 2-3 million dollars out of the Supreme Court Budget?

**Alan Knudson** Yes, if you do pass this bill there should be funding transferred from the Supreme Court budget to the Office of Administrative Hearings budget for actually paying the indigent defense costs, and that is almost 3 million dollars.

**Rep. Glassheim** I have two questions in the prose that accompanies the fiscal note, it says that the Supreme Court will retain \$325,000 of its total amount currently in the budget for indigent defense to continue to pay for guardian ad litem contracts through the biennium. What's that about? The second is if there are \$252,000 of expenses to administer this, are there \$151,000 of expenses in this, are there \$151,000 of savings in the Judiciary budget?

**Rep. Wald** When we heard HB 1018 it said there is a bill considered by the Judiciary A committee and it says "This legislation would have an increase of OAH's budget of \$3,143,179 in general funds and 42,000 in special funds" It says if services are moved to OAH it would require another \$152,652 in new general fund money, and that would be the fiscal note to HB 1044.

Page 3  
House Appropriations Committee  
Bill/Resolution Number HB 1044  
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**Chairman Svedjan** How does all of this relate back to Rep. Aarsvold's remarks? You said there is an FTE in there and one other position as well. Does that relate specifically to this issue?

**Rep., Aarsvold** Yes, a portion of the time for this new professional employee is dedicated to coordinating the indigent defense program.

**Chairman Svedjan** Is any share of that part of this \$151,000?

**Jim Gange, Staff attorney for the office of the State Court Administrator.** With respect to the question of guardian ad litem, they are appointed by court to represent parties in particular cases. Those kinds of things will not be transferred to the Office of Administrative Hearings. What will go to them is simply criminal defense responsibilities. That is why \$300,000 is retained in the Supreme Court budget.

**Rep Skarphol** When you transfer these duties to the OAH, they will want to add an employee. You aren't reducing one. What new duties will your current employees who handle this be doing?

**Gange** Administering the indigent defense system, the responsibilities are scattered out over about 7-10 people. Its just a small part of what they do.

**Rep. Monson** Is there any reason why the Supreme Court wants to get rid of these duties?

**Gange** It is because of the conflict of interests.

**Chairman Svedjan** How does the fiscal note relate to the requested new positions?

**Alan Holberg, Director of the Office of Administrative Hearings** This was a figure obtained by talking to the courts. They determined it would be both a professional and support type of responsibility. It would be approximately 3/4th of 1/4ths person. I have been told that this figure is both estimated high and low by different people.

*Alasta Rickford*  
Operator's Signature

10/2/03  
Date

Page 4  
House Appropriations Committee  
Bill/Resolution Number HB 1044  
Hearing Date 02-11-03

**Rep. Timm** What amount of money appropriated for defense is spent each year?

**Susan Siske, Fiscal Officer for the Supreme Court** All of the indigent defense money will be spent.

**Holberg** That is a big concern I have. Some attorneys won't take these contracts next time because of the minuscule contract salaries.

**Chairman Svedjan** It sounds to me like all of the things that need to happen are being paid in FTE dollars. You need to hire someone to do all these things. Does it have to be redone totally in the Supreme Court?

**Holberg** Yes, yes to everything you said.

**Chairman Svedjan** How does that relate to what Rep. Aarsvold said?

**Holberg** No, that FTE relates to the Worker's Compensation Bureau.

**Chairman Svedjan** The \$152,000 in the fiscal note, is it for people only?

**Holberg** Almost exclusively for 1 FTE.

**Rep. Wald** Are we to assume to fund this project of indigent services we are to take over 3 million out of the Court's budget and put it in your agency?

**Holberg** That all relates to paying for the contracting attorneys that do the indigent defense.

**Rep. Skarphol** I think the Supreme Court's budget calls for a transfer of 2.990 million dollars, rather than 3 million plus. Based on the numbers on the fiscal note, if you can find it, there is a total of 4.3 million in the Supreme Court's budget. Now \$325,000 will be retained for the guardian ad litem, \$996,000 will be retained for the first six months, and 2.99 million would be transferred. It would be new general fund dollars we'd have to put in for the \$151,000 to cover this.

Page 5  
House Appropriations Committee  
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Hearing Date 02-11-03

**Chairman Svedjan** Its hard for me to see why this isn't a budget neutral move.

**Rep. Skarphol** The duties are divided by a bunch of people, now when they transfer it over to OAH they will have to hire another person.

**Chairman Svedjan** So the people in the Supreme Courts Office will have a little time on there hands then?

**Rep. Skarphol** It appears that way.

**Holberg** No, they won't have time on their hands.

**Chairman Svedjan** This is what I call FTE creep!

**Rep. Aarsvold** Are we talking about 9 positions in OAH?

**Holberg** Yes.

**Rep. Skarphol** I asked the Judiciary to prepare a preliminary estimate of what it would cost to develop a public defender's office rather than putting it in OAH, they anticipated the need for probably 15 full-time attorneys, with the cost of about 5.1 million dollars. There are over 30,000 hours contracted for in doing this. This is a big expenditure.

**Chairman Svedjan** -to the Supreme Court- Why can't this be a budget neutral move? Can we move the \$152,000 over to OAH from the Judiciary budget?

**Susan Siske** Since the duties weren't concentrated in one FTE, so we won't be losing any funding.

**Chairman Svedjan** Can you find \$152,000 elsewhere in your budget.

**Siske** We have worked with Rep. Carlisle and we think we can find it.

**Rep. Skarphol** We'd have 108,000 in savings in the Judiciary budget after the \$152,000 for this.

*Yolanda Rickford*  
Operator's Signature

10/2/03  
Date

Page 6  
House Appropriations Committee  
Bill/Resolution Number HB 1044  
Hearing Date 02-11-03

**Rep. Timm** -to Rep. Dekrey- Were you satisfied with the fact that they Judiciary handles this with 7 people, will the system keep going smoothly?

**Rep. Dekrey** Yes, I do. There are three options. We can leave it alone, make this change, or set up a public defender system.

**Rep. Wald** -to Alan Holberg- When you contract for these services, do you hire people in the area?

**Holberg** Yes, we try to contract with local people.

**Rep. Carlisle** I move a Do Pass 2nd by Rep. Warner.

**Rep. Timm** Is there any support in the committee to amend where the funds come from?

**Chairman Svedjan** That is not part of this motion.

**Rep. Monson** I thought that's what we'd do here, but its in another budget.

**Rep. Glassheim** I lean to your earlier suggestion on waiting another 2 years. The current system has potential to be dispersed. I lean towards not making the transfer this year.

**Chairman Svedjan** What are the implications of not implementing this and having there be a successful challenge?

**Gange** The challenge comes from the defendant. There are a number of states that have had to spend lots of money to revamp their systems after a successful challenge.

**Chairman Svedjan** So the challenge comes from the client?

**Gange** Yes, when the client is represented by a different lawyer. This is speculative though.

**Rep. Skarphol** Next biennium we will see a substantial increase in the money needed for these problems.

**Motion Fails.**

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House Appropriations Committee  
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Hearing Date 02-11-03

**Rep. Timm** I move Do Pass, but put language in the motion that takes the funding from the Judicial budget and puts it into the Office of Administrative Hearing budget. 2nd by Rep. Wald.

**Rep. Bellew** How would this motion affect next biennium's budget?

**Chairman Svedjan** We are removing it from the Judiciary budget this time and it will show up in the OAH's budget next time.

**Rep. Glasshelm** Does this motion contemplate an additional \$152,000 from Judiciary, or taking it from money already found.

**Rep. Timm** In addition to the \$152,000.

**Rep. Wrld** Is there an interim study on the public defender issue you raised?

**Rep. Skarphol** Not that I'm aware of.

**Motion Passes to Amend.**

**Rep. Timm** I move a Do Pass As Amended 2nd by Rep. Timm. Motion Passes by 19 yeas, 0 nays, and 4 a/n. Rep. Klemin will carry this bill.

30173.0301  
Title.0400

Prepared by the Legislative Council staff for  
House Appropriations  
February 12, 2003

VK  
2/12/03

**HOUSE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1044 Approp. 2-12-03**

Page 1, line 5, after the second semicolon insert "to provide a statement of legislative intent;"

**HOUSE AMENDMENT TO ENGROSSED HB 1044 Approp. 2-12-03**

Page 4, after line 12, insert:

**"SECTION 7. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the appropriation for the judicial branch in House Bill No. 1002 be reduced by \$3,143,179 from the general fund and that the appropriation for the office of administrative hearings be increased by the same amount to provide funding to administer the provisions of this Act for the biennium beginning July 1, 2003, and ending June 30, 2005."

Renumber accordingly



REPORT OF STANDING COMMITTEE (410)  
February 12, 2003 3:26 p.m.

Module No: HR-27-2472  
Carrier: Klemm  
Insert LC: 30173.0301 Title: .0400

**REPORT OF STANDING COMMITTEE**

HB 1044, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed HB 1044 was placed on the Sixth order on the calendar.

Page 1, line 5, after the second semicolon insert "to provide a statement of legislative intent;"

Page 4, after line 12, insert:

**"SECTION 7. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the appropriation for the judicial branch in House Bill No. 1002 be reduced by \$3,143,179 from the general fund and that the appropriation for the office of administrative hearings be increased by the same amount to provide funding to administer the provisions of this Act for the biennium beginning July 1, 2003, and ending June 30, 2005."

Renumber accordingly

2003 SENATE JUDICIARY  
HB 1044

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Valista Rickford  
Operator's Signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/10/03

Tape Number	Side A	Side B	Meter #
1	X		44.0 - End
1		X	0.0 -29.9
Committee Clerk Signature <i>Maria L Solberg</i>			

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

Testimony Support of HB 1044

Rep. Lawrence R. Klemin, District 47 - Introduced the bill (meter 44) Read Testimony -

Attachment #1 Reviewed Bill noted

Senator John T. Traynor, Chairman asked if the courts have a conflict of interest, have there been any challenges to this? No

Senator Carolyn Nelson wondered what the perimeters for indigent were. (meter 55.4) There is a form they complete to qualify as indigent and submit it to the judge for his decision.

Vonette Richter, Staffed Interim Judiciary A Committee - (meter 57) Read Testimony -

Attachment #2

*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number HB 1044  
Hearing Date 03/10/03

Allen C. Hoberg, Directory of the Office of Administration (tape 1, side 2) Read Testimony -

Attachment #3. There is not enough money in this legislative system to fix this problem

Senator Thomas L. Trenbeath discussed that the problem is money. Without adequate funding we would still have this problem.

Senator John T. Traynor, Chairman question regardless of what agency runs this program it will still cost the same. (meter 4.0)

Senator Thomas L. Trenbeath discussed the problem does not go away just because OAH does not want to do the administration. If we presumed adequate funding, your testimony in support of your legislation that you gave in the house would stand? Yes.

Sen. Traynor discussed that if Mr. Hoberg's agency took over this program it would have a fiscal note of \$152,632 is that the cost? Yes the additional funds are needed to fund the contracts? Yes, that is where we see the real problem is.

Sen. Trenbeath stated that \$152 thousand is not new dollars. You will not do anything different then the Supreme Court is doing? No that would be a transfer of funds.

Senator Carolyn Nelson question section 7 discussion of 3.1 Million dollars in transfer from the judicial branch. You say you need \$630, 000 above that 3.1 million? Yes. Secondly after two years of discussion, some bills we get they have already put this in the budget. Why OAH and the Judiciary did not get together to put the transfer into the budget? I used the numbers I got from the courts and it became more apparent after seeing the letters showing that people will not be providing services at the current rate and we need to have more money than what has been proposed. With the quarts the range of \$630 thousand to \$1, 300 thousand are based from the courts using \$65, \$70, \$75 and that is what the attorneys are saying what they will need to

Page 3  
Senate Judiciary Committee  
Bill/Resolution Number HB 1044  
Hearing Date 03/10/03

provide services. I am not saying that this is what will happen, but we are at a serious risk if we do not provide more money. Four attorneys have told the courts that at the current rate, they will not provide services.

**Testimony in opposition of HB 1044**

None

**Testimony Neutral to HB 1044**

Christine Hogen, State Bar Association (meter 6.4) We are neutral to the transfer of departments. We would like to provide any technical support that we can. We strongly back increased funding. The major issue is the severe under funding of contracts. It is also important to separated this allocation from the judicial overview, completely. Ms. Hogan cited a Supreme Court case (meter 7.3) . The American Bar Association has articulated 10 principles on designing a public defense delivery system. Ms. Hogan pointed out three of them (meter 8.1) Sen. Dever stated that \$40 to \$70 an hour is a very big jump. Discussion (meter 12.8) of what an attorney starting out in a rural area makes. Presently there is not a selection of attorneys do to the fact that we can rarely find even one attorney at present fees.

Discussion of (meter 15.5) the Federal court system if you were appointed by a judge, even without funding you could not dispute his order. Yes courts still can mandate this.

All states provide funds it is part of our constitution

Mr. Gladden - State Court Administrator. (meter 16.7) Discussed some of above issues i.e.:30 Guidelines for council is 125% of poverty- discussion of process. Chief Justice requests to visit with committee Wed. at 8:30 a.m. Discussed rural area lack of objective standards due to lack of attorneys who will work for lower fees. Dollar per hour has dropped do to overload of Meth

Page 4  
Senate Judiciary Committee  
Bill/Resolution Number HB 1044  
Hearing Date 03/10/03

cases etc. We will have to hire attorneys and that is a faster way to break the bank at those fees.

Discussion of conflict of interest.

Sen. Dever discussed (meter 22.3) how if down to one attorney what will be the difference? The difference is the court is not picking the one attorney, a non-bious department is.

More discussion on what attorney's get paid (meter 23.5) Rural vs City. Discussion of Fiscal note and the budget.

Sen. Dever discussed how with our budget problems haw can we justify such a big pay raise? (meter 27.4)

Rep Klemm, closed with a discussion of other bills and resolutions being presented this session.

Senator John T. Traynor, Chairman closed the hearing

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/12/03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 21.0
Committee Clerk Signature <i>Mona L. Solberg</i>			

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

**Testimony in Support of HB 1044**

**Chief Justice Gerald VandeWalle - Reintroduced Bill (meter .05)**

This bill is a product of a study. We started considering this at the time the State took over the indigent defense costs-back in the 80's. Some may recall we bankrupt Adams County with a murder case. At this time the indigent defense fund was transferred to the state, putting it in the courts budget. The concern at that time, that is still present-is not that it is a difficult task, but the conflict of interest that is perceived by the indigent defendant. We had a case three weeks ago, with a gentleman in his orange suit, representing himself. As he stood there with the three guards, trying and appealing the case himself. He was up there for the second time representing himself. I asked him if he was eligible for indigent defense and he said yes. Why didn't you

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1044

Hearing Date 03/12/03

have an indigent defense attorney assigned to you? He looked at me and said "Chief, those are your boys, I don't want one of those". That is the perception we deal with. We hire these people and they are, to use this term, our "boys" and therefore, we have the conflict of interest. The Judiciary does operate on a public perception. The perception is frankly, that we have a conflict of interest. That we would never hold one of those indigent defense persons ineffective because we employ them. We hire them, we contract with them therefore we aren't simply going to do that. I don't agree with that, but that is the perception. The second reason is more important. The ability to experiment with different methods of delivering indigent services, perhaps more effectively and cost efficient. We don't have the flexibility to do that. We have contracted with defense council from the very beginning, causing the cost control issue. We can not hire on a per hour bases and not have a control on how much money would be spent..

We can't do it, this would break us. We have used a contract system and this system is starting to break down due to lack of money. This process started after we were looking at this study for a separate entity other then the courts. An agency that would have more flexibility to deal with these issues. They could use a combination of contracts and full time employee. If we have a conflict of interest contracting with them, we certainly can't hire them and put them on our payroll. Presently they would be with Judiciary and subjected to our personnel policies and that type of things-that would only increase the conflict. I believe an agency could experiment with some other methods of the delivering of services. I asked in the house for an amendment. I suggested to the committee that they bring in a National Group that has expertise in indigent defense, the "Spangenberg Group". They did not bring them in. The courts have heard them and were very impressed.. We are light years ahead of some other states. Spoke what other states do.



Page 3  
Senate Judiciary Committee  
Bill/Resolution Number HB 1044  
Hearing Date 03/12/03

Sen. Traynor referenced the prior discussion of budgeting and the need for approximately \$650-\$750 thousand dollars more. Chief Justice stated unlimited transfer authority on a line item and now presiding judge has recommended a 10% increase. Discussion of Budget process. (meter 6). We cut indigent defense back to 5% increase-this was at a time when the contracts were still holding. They are not holding any longer. We have three districts that have denied contracts-due to too many cases and not enough money. The meth issues have increased the work loads tremendously. Regardless where the location of this administration, we need to increase there income. In the courts we have unlimited budget authority. If we do not have enough for indigent defense, we start selling off our employees in those districts to meet the needs. We have no full time people to the area. At times we have judges who are begging attorneys to take a case. Now you come into a court like that as a defendant, and say that person was ineffective... Discussed advantage of a full time employee; overhead (meter 8) Discussion of Amendment. Attachment #1 Discussed issues of collecting (meter 9.5) Constitutional waiver.

Sen. Trenbeath we are not just talking about meth/drug cases, we are talking about criminal cases a lot of which deal with alcohol related, driving offenses, failure to maintain insurance where the defendant is perfectly capable of paying all the fines and fees associated with the charge. There must be some principal we can use to project what it is. Discussion (meter 11.2)  
Discussion of having 32 new lawyers last year but having burred almost as many.  
Discussion of ways the system would work. (meter 13.4) The way the system presently is.

Page 4  
Senate Judiciary Committee  
Bill/Resolution Number HB 1044  
Hearing Date 03/12/03

Sen. Traynor discussed that even with this amendment you would need someone to collect fees,  
if they are even collectable.

Discussion of full time employees, contract employees pros and cons. (meter 17.5)

Spoke of a \$75/hr would be great but \$65/hr would be good

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

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Yolanda Rickford  
Operator's Signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1044

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/26/03

Tape Number	Side A	Side B	Meter #
1	X		43.5 - 45.9
Committee Clerk Signature <i>Maria L. Solberg</i>			

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

Sen. Nelson made the motion to do not pass Engrossed bill. This bill has been combined with HB 1088.

Motion Made to DO NOT PASS HB 1044 by Senator Carolyn Nelson and seconded by

Sen. Trenbeath

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

Motion Passed

Floor Assignment: Sen. Traynor

Senator John T. Traynor, Chairman closed the hearing.

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*Yalosta Rickford*  
Operator's Signature

*10/2/03*  
Date

Date: March 26, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1044**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

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

Action Taken DO NOT PASS

Motion Made By Sen. Nelson Seconded By Sen. Trenbeath

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

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

Absent ONE (1)

Floor Assignment Sen. Tranor

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

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Yolanda Rickford  
Operator's Signature

10/2/03  
Date

REPORT OF STANDING COMMITTEE (410)  
March 26, 2003 1:21 p.m.

Module No: SR-54-5810  
Carrier: Traynor  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE...  
HB 1044, as reengrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends  
DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed  
HB 1044 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-54-5810

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10/2/03  
Date

2003 TESTIMONY

HB 1044

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Valosta Rickford  
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10/2/03  
Date



Allen C. Hoberg  
DIRECTOR


## OFFICE OF ADMINISTRATIVE HEARINGS

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www.state.nd.us/oah

### MEMORANDUM

TO: Fifty-eighth Legislative Assembly  
State of North Dakota  
House Judiciary Committee

FROM: Allen C. Hoberg, Director   
Office of Administrative Hearings

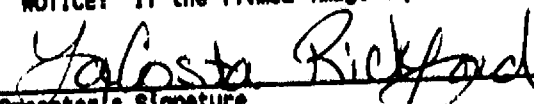
RE: House Bill No. 1044  
Indigent defense counsel contract administration  
- Amendments proposed

DATE: January 14, 2003

The Office of Administrative Hearings is in support of HB 1044, provided that the legislation contains a delayed effective date and provided that OAH receives sufficient personnel and funding to accomplish the work required by this legislation. The amendments OAH proposes in those regards are attached to this memorandum.

OAH believes that it can effectively do this work if it is given time to establish and implement the process required by this bill. OAH proposes that the effective date of this legislation be January 1, 2004. This will give OAH time to hire appropriate personnel to review what currently exists regarding indigent defense counsel services; to meet with the appropriate persons and entities to receive input in regard to a new process; to

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10/2/03  
Date

Fifty-eighth Legislative Assembly  
State of North Dakota  
House Judiciary Committee  
January 14, 2003  
Page 2

review existing forms, contracts, budgets and policies; and to draft and adopt new rules, policies and procedures, as well as new forms and contracts, if necessary. We believe it will take until January 1, 2004 to have everything in place. I understand that the North Dakota Supreme Court agrees with the need to make this legislation effective January 1, 2004, and will continue under the old process until then.

OAH will also ask that its budget be increased and that it be authorized an additional FTE to accomplish this work. I detail this in the fiscal note I provided. I believe that the North Dakota Supreme Court agrees with OAH's requests in this regard, too. OAH will pursue this budget increase and additional FTE in its 2003-2005 proposed budget.

Finally, in the proposed amendments, OAH is also asking that all of the indigent defense administration fund be appropriated to it on a continuing basis effective July 1, 2003, so that OAH may begin work on establishing and implementing a new process on July 1. Again, with the amendment establishing an effective date, actual establishment and implementation of the new process will occur on January 1, 2004.

With these changes, OAH is in support of HB 1044 and will do its best to establish and implement an effective new process, working with the courts and other interested persons and entities.



**PROPOSED AMENDMENTS TO HOUSE BILL 1044**

Page 1, line 3, remove the first "and"

Page 1, line 4, after "services" insert "; and to provide an effective date"

Page 4, line 16, remove the overstrike over "All" and remove "Fifty percent of the"

Page 4, line 19, overstrike "and" and remove "fifty percent of the moneys in the fund are appropriated on a continuing"

Page 4, line 20, remove "basis to the judicial branch to be used for" and overstrike "the collection of indigent defense costs"

Page 4, line 21, overstrike "and expenses required to be reimbursed under this section"

Page 5, after line 5 insert:

**"SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 2004. However, the moneys appropriated to the office of administrative hearings under amendments to subsection 4 of section 29-07-01.1 in section 2 of this Act shall be a continuing appropriation to the office of administrative hearings effective July 1, 2003. Further, the office of administrative hearings may use other monies appropriated to it on July 1, 2003, to begin work on establishing and implementing a process of contracting for the legal counsel services for indigents required by this Act so that the process may be established and implemented January 1, 2004."**

Renumber accordingly

AH 1

**TESTIMONY OF REP. LAWRENCE R. KLEMIN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
HOUSE BILL NO. 1044  
MARCH 10, 2003**

Mr. Chairman and members of the Senate Judiciary Committee. I am Lawrence R. Klemm, Representative from District 47. I served on the Judiciary A Committee during the last interim between the sessions.

House Bill 1044 arises out of an interim study by the Judiciary A Committee on the means of providing defense for persons who have been accused of crimes but who can't afford to hire their own attorney. Every person accused of a crime has the right to counsel by an attorney of his or her choice. However, if they can't afford an attorney, one must be appointed to represent them with the cost to be borne by the government. This is known as indigent defense.

The States handle indigent defense in different ways. Some States have a public defender system with full time lawyers who represent indigent defendants. Some have a combination of a public defender system augmented by contractual relationships or an appointment process with private criminal attorneys. North Dakota is the only State that relies exclusively on contracts with private attorneys to handle indigent defense.

Under the present system, the 7 judicial districts in North Dakota enter into contracts with several lawyers or law firms in each judicial district to provide the defense services. One of the law firms acts as the lead firm in assigning cases to the lawyers. The courts, however, are responsible for selecting, contracting with, and overseeing the lawyers who do the work. Since the judges also act as the judges at the criminal hearings and trials, the courts have a conflict of interest in selecting, supervising, and paying the defense attorneys who practice in their courts. The purpose of the interim study was to find a method of providing indigent defense services while relieving the courts of the conflict of interest. A second purpose was to find a method of representation for criminal defendants in some of the rural districts where there are few, if any, lawyers willing to do the work. The solution is House Bill 1044.

House Bill 1044 retains the contract system, but transfers the duty of contracting with defense attorneys to the North Dakota Office of Administrative Hearings, an administrative agency. The OAH is an entity in state government that has experience in contracting with outside attorneys, mostly for workers compensation hearings. Although the Attorney General's office also hires outside attorneys, the Attorney General is on the prosecution side, so he would also have a conflict of interest in appointing defense attorneys. The OAH is willing to accept this responsibility.

Under House Bill 1044, the courts will still be responsible for appointing guardian ad litem for minors in juvenile court cases where the minor has no parent or guardian to represent his interests, which is the reason for Section 1 of the bill. Section 1 just splits the duties of paying lawyers and paying a guardian ad litem between the OAH and the courts.

Section 2 transfers the duties of contracting with lawyers for indigent defense services from the courts to the OAH. The court, however, is still responsible for the initial determination of whether a defendant is indigent and therefore qualifies for appointed counsel.

Section 3 of the bill transfers responsibility for the indigent defense fund from the courts to the OAH. The amount of this fund for the next biennium is almost \$3 million according to the fiscal note. The cost for OAH to administer the fund is \$152,632. The House Appropriations Committee has amended this bill to provide for Legislative Intent in Section 7 that the total funds needed to administer and pay for the program in the amount of \$3,143,179 be transferred from the Judicial Branch to the OAH for this purpose.

Section 4 of the bill requires the OAH to establish, implement, and administer a process of contracting for legal defense services. The process will include the assignment of attorneys to indigent defendants, so there will no longer be a need for a law firm to act as lead firm in assigning cases. OAH will also determine the rates to be paid to the defense lawyers. The use of a centralized contracting and assignment entity should also make it easier to appoint lawyers to go to some rural counties to handle defense cases where no local attorney wants to do the work.

Section 5 of the bill requires the OAH to report to the Legislature during the next biennium on the progress of the implementation of this bill. There are also transition provisions in Section 6. The courts will remain responsible for handling the contracts with the attorneys for the first 6 months of the next biennium while the OAH develops the rules, hires the staff, and establishes the process. This is the reason why there are 2 effective dates in the bill. OAH will become responsible for administering all aspects of indigent defense services on January 1, 2004 but will start setting up its program beginning on July 1, 2003.

Mr. Chairman and members of the committee. I encourage you to recommend a "do pass" on House Bill 1044.

4  
AH #2

## 2001-03 Interim Judiciary A Committee

### Concerns About the Current Indigent Defense System

The committee received testimony from the Supreme Court and several district judges that the current system of appointing and contracting with attorneys by the judiciary raises conflict of interest concerns. The current system of providing indigent defense is administered at the local level by the seven presiding district judges who contract with attorneys for legal services. According to the testimony the current system requires the judge, who is supposed to be the arbiter, to be in a position to award contracts and select counsel for the defendant. The testimony indicated that the conflict of interest problem would be difficult to resolve unless an independent agency were in charge of the indigent defense program.

The committee also received testimony from a number of attorneys currently and formerly involved in the indigent defense contract process. According to the testimony, the number of indigent defense cases is on the rise and more and more of the contract attorneys' time is required for contract cases. The attorneys cited heavy caseload and inadequate compensation as issues that need to be addressed in the current system.

To address the issue of the judiciary's conflict of interest in contracting with and assigning attorneys, the committee considered a bill draft that transferred from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services. The bill draft required the Office of Administrative Hearings to establish and implement a process of contracting with licensed attorneys who are willing to provide legal services to indigent persons. The bill draft also provided that of the money deposited in the indigent defense administration fund, 50 percent would be appropriated to the Office of Administrative Hearings for the administration of the indigent defense system and 50 percent would be appropriated to the judicial branch to be used for the collection of those indigent defense costs required to be reimbursed. Testimony received from the Office of Administrative Hearings indicated the proposed legislation would take a function arguably belonging to the judicial branch of government and place it in an executive branch agency. According to the testimony, the Office of Administrative Hearings would have the same or a similar conflict of interest problem because at least some of the attorneys with whom the Office of Administrative Hearings would be contracting to provide services will also be appearing before administrative law judges as counsel representing clients in administrative agency hearings. It was argued that although the Office of Administrative Hearings has experience in contracting with temporary administrative law judges to provide hearing officers, the office has no experience in administering lawyers under this type of program. Several committee members indicated the bill draft would work to solve the conflict of interest problems that currently exist. Another committee member expressed concern that the bill draft does not resolve the problem of inadequate compensation for the contract attorneys.

The committee recommends House Bill No. 1044 to transfer from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services. The bill requires the Office of Administrative Hearings to establish and implement a process of contracting with and assigning licensed attorneys who are

UP

willing to provide legal services to indigent persons. The bill also provides that of the money deposited in the indigent defense administration fund, 50 percent would be appropriated to the Office of Administrative Hearings for the administration of the indigent defense system and 50 percent would be appropriated to the judicial branch to be used for the collection of those indigent defense costs required to be reimbursed.

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Yalosta Rickford  
Operator's Signature

10/2/03  
Date



Allen C. Hoberg  
DIRECTOR

**OFFICE OF ADMINISTRATIVE HEARINGS**  
STATE OF NORTH DAKOTA  
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HH #3

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**MEMORANDUM**

TO: Fifty-eighth Legislative Assembly  
State of North Dakota  
Senate Judiciary Committee

FROM: Allen C. Hoberg, Director  
Office of Administrative Hearings *AAH*

RE: Re-engrossed House Bill No. 1044 (Second Engrossment) -  
Indigent defense counsel contract administration

DATE: March 10, 2003

In the House, in January, the Office of Administrative Hearings testified in support of HB 1044, which requires OAH to establish, implement, and administer a process for contracting for legal counsel services in North Dakota. OAH testified in support provided that the legislation was amended to contain a delayed effective date, provided that OAH received sufficient funding for administrative personnel, and provided that OAH received sufficient funding to contract for legal counsel services. The bill was amended to contain a delayed effective date. The bill was amended so that OAH will receive funding for necessary administrative personnel. However, it now appears that there is not enough funding in this legislation for OAH to accomplish the work for which this legislation is designed, the provision of indigent defense counsel services by contract and non-contract agreements.

*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

Fifty-eighth Legislative Assembly  
State of North Dakota  
Senate Judiciary Committee  
Page 2 of 4

Since I testified on January 14, I have learned that the real problem with OAH or anyone else administering the work of indigent defense counsel services during the 2003-2005 biennium will be having enough funding to provide adequate payment for those providing the required contract and non-contract legal services. Already attorneys cannot be obtained to provide services in some areas of some of the state's judicial districts. There are indications that beginning July 1, 2003, more attorneys will stop providing services unless their compensation is increased or workload decreased. There is little hope of a decreased workload. I have now seen four letters from attorneys to judges saying they will not be renewing their contracts under current conditions.

Before the House Judiciary Committee, there was testimony from one attorney that actual compensation for legal services provided to indigents amounted to less than \$40 per hour. The four letters I have seen confirm a current low rate of pay. The North Dakota Legal Counsel for Indigents Commission of the North Dakota Supreme Court in August 2002 recommended reimbursement of attorneys at a rate of \$75 per hour when appointments of indigent defense counsel are made which are not subject to an indigent defense contract, *i.e.*, for non-contract work. The four letters I have seen from attorneys each said that they will no longer provide indigent defense services unless they are paid at least an average of \$75 per hour for both contract and non-contract work.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

Fifty-eighth Legislative Assembly  
State of North Dakota  
Senate Judiciary Committee  
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I have seen estimates from the courts ranging from about \$630,000 to \$1,300,000 regarding the amount of additional funding needed assure that adequate numbers of attorneys can be obtained to do the work required under HB 1044. The higher end numbers are based on an average rate of pay of \$75 per hour. The lower end numbers are based on an average rate of pay of \$65 per hour. Clearly, without additional funding to defray the costs of obtaining legal services from attorneys, the administration of this program, whether administered by the courts or OAH, is at serious risk.

Without additional funding, OAH has no flexibility or leverage for administering this program. OAH's other funding is special funds dedicated to defraying the expenses of providing administrative hearings for state and local agencies. OAH's other work relates to the provision of hearing officers to conduct administrative hearings, not to the provision of or administration of indigent counsel services. I do not know, specifically, what kind of flexibility and leverage the courts will have for administering indigent counsel services without additional funding, but I believe that they are likely to have more flexibility and leverage, fiscal and supervisory, with the attorneys involved, than OAH would have. The courts have been administering this program for many years. OAH would, of course, be new.

Yalosta Rickford  
Operator's Signature

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Date



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Without additional funding of at least \$630,000, OAH can no longer support this legislation. Without additional funding, OAH will likely not have adequate fiscal resources to do the job of providing adequate indigent counsel services.

Further, OAH is not really an appropriate place to locate the administration of this program. I initially opposed this legislation in the interim study, primarily because I believe that OAH is not a proper location for this program. I still believe that OAH is not the proper place to locate indigent defense counsel services. OAH's current work is unrelated to indigent defense services. I later reluctantly said that I would support the legislation and that OAH would do its best to implement this legislation, if OAH was assured of adequate resources. With the bill as amended in the House, OAH cannot be assured that resources will be adequate and, therefore, we believe that it is not in the best interests of the state or OAH to locate indigent defense services in OAH.

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*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date