



**State Bar Association
of North Dakota**

**Justice System Energy
Impact Task Force
Report**



August 16, 2012

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INTRODUCTION

North Dakota is experiencing unprecedented growth and development because of energy development and oil production in the western part of the State. The population is exploding. New wealth is providing unanticipated benefits for landowners. Businesses are thriving. Unemployment is non-existent for practical purposes. Tax revenues are up, way up. The State's financial status is the envy of every other state in the nation.

At the same time, there is a recognition that the infrastructure simply is not adequate to support the boom growth. It's evident that there is a woefully short supply of housing, roads are inadequate, law enforcement resources are desperately needed, and government bodies are challenged.

It may not be as evident that the justice system is part of the infrastructure and the justice system is vital to maintaining safety and supporting growth and development in energy-impacted areas. When the population increases, there are greater demands on the justice system. Increasing the law enforcement presence naturally increases the demand for access to the criminal justice system. Businesses cannot operate without access to the court system. Probate matters require court oversight and in some cases, court action.

Because the State Bar Association of North Dakota believes that the justice system is a vital part of the infrastructure of the State of North Dakota, a Justice System Energy Impact Task Force was appointed in May, 2012. The Task Force was directed to study needs of the justice system, to gather information, analyze information, and provide direction to the Bar Association in ensuring that the justice system needs are addressed.

An effective, efficient, and responsive justice system is a vital part of the infrastructure, necessary to maintain the quality of life in North Dakota and also necessary to support energy development.

SUMMARY OF RECOMMENDATIONS

I.

There is a constitutional crisis rapidly approaching if the Indigent Defense Commission is not given adequate resources to provide constitutionally-mandated representation for indigents charged with criminal offenses.

- SBAND will make obtaining additional funding for the Indigent Defense Commission a legislative priority during the 2012 legislative session.
- SBAND will support the Indigent Defense Commission's request for five new full-time employees during the next legislative session, to include legal assistants in Williston, Minot, and Dickinson, an administrative assistant in Bismarck, and an additional attorney position.
- SBAND will support the Indigent Defense Commission in seeking \$1.5 million in general fund dollars during the next legislative session and will support a request to increase spending authority from the Commission's special fund by \$500,000 more than authorized in the 2011 biennium.

II.

Additional judicial system resources are required in energy-impacted areas.

- SBAND will support legislation providing for additional judicial positions and clerk positions in energy-impacted areas.
 - ▶ A minimum of two judgeships are desperately needed in the Northwest Judicial District. Those judges should be chambered to most efficiently provide judicial services in Williams, McKenzie, and Mountrail Counties.
 - ▶ There is a critical need for four additional clerk positions in Williams County.
 - ▶ There is a chronic need, impacted by energy development, for additional clerk positions in Stark County, Ward County, Morton County and in Burleigh County.
- SBAND will support requests for additional staffing and space needed by State's Attorneys offices in energy-impacted counties. To the extent county funding is unavailable, SBAND will support requests for State funding to temporarily assist energy-impacted counties in obtaining legal services necessary to alleviate immediate need for services.
- SBAND will assist in developing security standards for county courthouses and will support funding requests to provide necessary security.

III.

Additional funding is needed to provide civil legal services for low-income people so they are not denied access to justice.

- SBAND will reactivate the Pro Bono Task Force to consider the needs related to the energy-impacted areas of the state.
- SBAND will actively support legislation at both the national and state level to increase funding for Legal Services of North Dakota.

- SBAND will partner with Legal Services of North Dakota in seeking private funding sources so that low-income individuals have meaningful access to the courts.

IV.

There is a shortage of attorneys in western North Dakota, which impacts the ability of people to have meaningful access to the court system.

- SBAND will partner with the University of North Dakota School of Law to raise awareness of opportunities for attorneys in western North Dakota.
- SBAND will work with the Law School as it developed a curriculum which will result in graduates being prepared to practice law in solo or small practices.
- SBAND will support efforts to provide housing and other infrastructure necessary to allow attorneys, staff, and other professionals who provide resources necessary for the practice of law to live in energy-impacted areas.

V.

The justice system cannot operate fairly if not supported by law enforcement and mental health resources.

- SBAND will support requests for funding for additional law enforcement officers, personnel at the State Crime Laboratory, process servers working with Sheriff's Departments, mental health treatment professionals, and domestic violence victim advocates.

VOICING THE ISSUES

During a series of informational sessions held by the State Bar Association's Justice System Energy Impact Task Force, members of the Task Force heard about living and practicing law in energy-impacted areas. The story told was a story of too few resources, mounting needs, stress at every turn, and a list of desperate needs.

Indigent Defense Commission Executive Director **Robin Huseby** told SBAND's Justice System Energy Impact Task Force that the difficulty in finding public defenders to represent indigents in Williston is becoming a "full-blown crisis." She noted that her agency is doing the best it can. Resources are being drained from the rest of the State to provide service in oil-impacted areas. Ms. Huseby said her agency has a constitutional mandate to provide legal representation to indigents. "We have to get in front of this thing," she concluded.

Marlyce Wilder, Williams County State's Attorney, indicated that from her point of view, the caseload has doubled. She said the County has hired an attorney who will work from home dealing with planning and zoning issues and violations. Ms. Wilder said she regrets not having more time to spend with crime victims, and said the frustration level in her office is high. "We need to slow down," she said. "But we can't. We're not keeping up, we're doing the best we can."

Bismarck Attorney **Jim Hill** told the Task Force that access to justice is being limited in oil-impacted counties where it is difficult to find an attorney.

Travis Finck, who is the lead attorney with the Public Defender's office in Bismarck, said that he has seen an influx of truly indigent people who can no longer afford to live in the western part of the state.

Richard LeMay, an attorney with Legal Services of North Dakota, said that he was speaking on behalf of the low-income population in the State. He said housing is a problem, especially for low-income people who are charged with criminal offenses and lose housing assistance. He said requests for assistance with housing issues have increased by 60 percent. People who are facing eviction may have to leave the city and even the state. Domestic violence victims are returning to abusive situations because they don't have other housing options.

Kelly Armstrong, a Dickinson attorney, said that many people who come to work in the energy industry have made bad decisions before they came to North Dakota and have more problems when they get to North Dakota. He said there is a legal limbo, particularly in felony cases. People don't qualify for court-appointed attorneys because of their income, but can't pay a retainer to obtain private counsel.

Amber Fiesel, Burke County State's Attorney, said there were 300 cases filed in Burke County in 2006 and 976 in 2011. She predicted there would be more than 1,200 cases filed this year. She noted traffic hearings have increased and that there is an increased demand for bond hearings.

Sherry Mills Moore said her Bismarck law office is receiving calls from people in Williston and Minot who are looking for an attorney to represent them in family law cases.

Kent Reierson, an attorney in private practice in Williston since 1981, said he is facing the same stressors as are faced by public entities. He said he can't refer work to other attorneys, because the other attorneys don't have time. He said it is stressful to live in Williston and deal with constant traffic, waiting in lines, and people who are frustrated.

Pete Furuseth is an attorney in private practice and City Attorney for Williston. He told the Task Force that city commission meetings which used to last an hour now last five hours. He said staffing in law offices is a big issue. He is losing a legal assistant, and can't find

anyone to take the position because of the lack of housing in Williston. He said, "It feels like I have little dogs yapping at my heels . . . and they're there all day."

Katie Barber, a public defender in the Williston office, is expecting a baby in July and will not return to work as a public defender. She lives in Watford City with her husband, but will not return to the defender job because there is no daycare available and no housing in Williston.

Dennis Johnson, McKenzie County State's Attorney, said this is the third oil boom he has experienced. "This is different," he said. "This one is probably here to stay. Most of the people who came here to live and work are good people," he said. He indicated the two groups causing most problems are those who came to earn a lot of money and leave, and the people who have nothing to lose and brought their problems with them to North Dakota.

Williston Court Recorder **Jean Lindvig** stated that she works with Judge David Nelson. She feels like the judicial staff is being pushed constantly. She is concerned about lack of security in courtrooms.

Minot Attorney **Charles DeMakis** noted that all the information the task force has to work with is outdated. Case filing numbers are increasing rapidly. There is not good information concerning population growth, and people living in crew camps or motor homes are not included in census numbers.

Bob Martin, supervising attorney in the Minot Public Defenders' Office, said he travels to Williston two or three days each week. His office's statistics show an increase of 52 per cent in felony cases and 31 per cent in misdemeanor cases in Williston. Mr. Martin said he feels like a little pat of butter on a piece of toast – he's being spread too thin.

THE TASK FORCE

The State Bar Association's Board of Governors decided late in 2011 that in order to gather information necessary to allow the Board to provide assistance and leadership to the justice system in the energy-impacted areas, it was necessary to gather information. The Task Force members were appointed by then President Kristi Pettit Venhuizen. Members of the Task Force are:

Jack McDonald	Bismarck attorney and member of the SBAND Board of Governors, Chair
Aaron Birst	Bismarck, Counsel, ND Association of Counties
Charles DeMakis	Minot attorney and member of the SBAND Board of Governors
Jim Fitzsimmons	Bismarck, Executive Director, Legal Services of North Dakota
Judge Bill Herauf	Dickinson, North Dakota, Southwest Judicial District Court
Robin Huseby	Valley City, Executive Director, ND Commission on Legal Counsel for Indigents
Dennis Johnson	Waford City, McKenzie County State's Attorney
Sen. Stan Lyson	Williston, North Dakota State Senate
Nathan Madden	Williston, Assistant Williams County State's Attorney
Judge Bill McLees	Minot, North Dakota, Northwest Judicial District Court
Rep. Shirley Meyer	Dickinson, North Dakota House of Representatives
Judge David Nelson	Williston, North Dakota, Northwest Judicial District
Carolyn Probst	Minot, Trial Court Administrator, Northwest Judicial District
Hon. Wayne Stenehjem	Bismarck, ND Attorney General
Judge H. Patrick Weir	Dickinson, North Dakota, Southwest Judicial District
Marlyce Wilder	Williston, Williams County State's Attorney

The Task Force was charged with gathering information concerning the justice system needs of the public, attorneys, state and local governments, and the Courts in energy-impacted areas of North Dakota. That information gathered was to be analyzed and provided to those involved with the planning and budgeting necessary to meet those needs during the next biennium.

In creating the Task Force, the Board of Governors assumed that having an effective, efficient, and responsive justice system is a vital part of the infrastructure necessary to support energy development.

The Task Force held four hearings in June. The hearings were held in Bismarck, Dickinson, Williston, and Minot. Each was held at the county courthouse and the public was invited to participate through news releases. Legislators, court personnel, and local government officials received invitations to provide information to the Task Force.

Transcripts of the hearings, written testimony, and supporting documentation are on file at the SBAND office in Bismarck.

THE BOOM IN THE NEWS

Western North Dakota is in the midst of a boom. News stories provide a sense of the population growth, the influx of money into the economy, the shortage of housing, the inadequacy of the infrastructure, rising number of criminal offenses, and the unrelenting stress of living in the energy-impacted areas. There is a direct impact on the cities and counties where oil is being produced, and a significant impact on neighboring communities which are providing housing and services for those who cannot find housing and services where jobs are and in which support services for energy producing companies are located.

The *Legal Services Sentinel*, a publication of Legal Services of North Dakota, summarized news stories about the increases in rent faced by its clients in its Summer, 2012 edition. On September 29, 2011, the **Williston Herald** reported that senior citizens were faced with rents increasing from \$700 per month in September to \$2,000 per month in April, 2012. For seniors on a fixed income, the proposed rent was impossible. On October 10, 2011, the *Minot Daily News* reported that residents of The Manor Apartments, a 97-unit complex, would see rents increase. A one-bedroom unit which had cost \$422 per month would cost \$900 per month. The rent for a three-bedroom unit would be increased from \$541 to \$1,300.

The **Fargo Forum** carried an Associated Press story on July 6, 2012, concerning teachers in the energy-impacted areas. The story quoted Dakota Draper, president of the North Dakota Education Association, who discussed the challenges of school districts in hiring teachers because of the relatively low salaries and the high cost of living.

On July 1, 2012, the **Dickinson Press** carried a story about the difficulty of tracking sex offenders in the "atypical housing situation that's common in Dickinson." The story noted there were people living in campers or other places where they are difficult to locate or track – for instance, a truck stop.

On July 2, 2012, Attorney General Wayne Stenehjem was quoted in the **Fargo Forum** explaining that "crime is up and up considerably in a worrisome way in some of those counties in the oil patch. Stenehjem indicated that the crime rate was increasing because the population was increasing.

On July 20, 2012, the **Williston Herald** reported: "The city of Williston and Williams County are the top money-makers in the state in taxable sales and purchases revenue, surpassing every other North Dakota city and county. The first quarter of 2012 showed a 76.2 percent jump in the city compared to the first quarter of last year, to just over \$791 million, according to Mayor Ward Koeser, citing the new North Dakota Sales and Use Tax Statistical Report. Williams County, meanwhile, hit the \$1 billion mark with about \$1,049,000,000."

POPULATION INCREASE

Over and over again, members of the Task Force heard that current population information is very difficult to obtain. Census information lags and may not account for a transient population. Many people in the oil producing counties are living in motor homes, campsites, crew camps, and other housing situations which are relatively temporary in nature.

A news release dated April 9, 2011, by the North Dakota Commerce Department stated:

The United States Census Bureau today released the agency's first Metro/Micro area and county population estimates since the 2010 census. The estimates show several North Dakota counties and Metro/Micro areas having some of the fastest percentage growth in the nation. North Dakota's total population grew an estimated 1.7 percent to a total of 683,932. The new estimates are as of July 1, 2011.

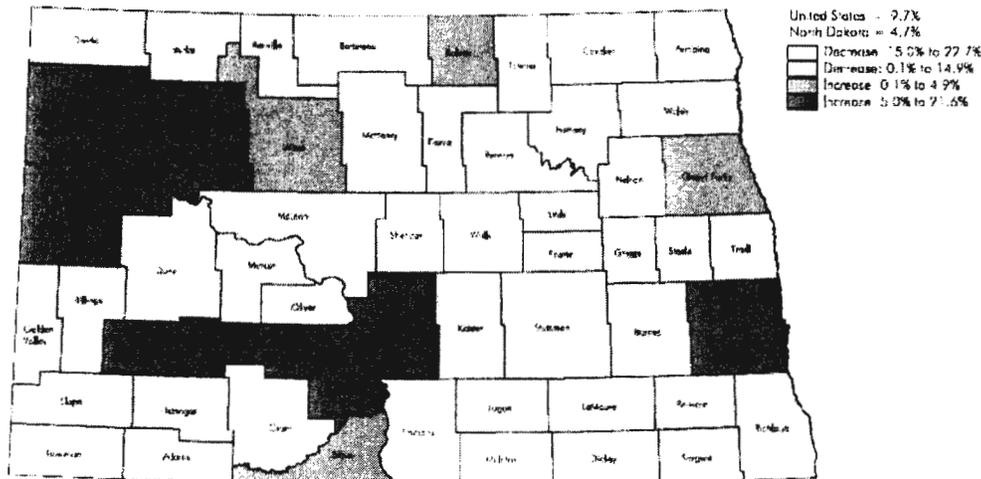
In the 50 fastest growing counties, Williams County was 3rd nationally, up 8.8 percent; Stark County was 20th up 4 percent; and Ward County was 25th up 3.9 percent.

Williston was the fastest growing Micro area in the nation up 8.8 percent, Dickinson was 4th up 4 percent and Minot was 8th up 3.6 percent. Micro areas are defined as an area containing at least one urban cluster of 10,000 but less than 50,000.

In the 50 fastest growing Metro areas, Bismarck was 41st up 2,100 people, or 1.9 percent. Fargo grew 2,763 or 1.3 percent. Metro areas are defined as an area containing one urban cluster of 50,000 or more.

Population data shows that North Dakota's growing population continues to shift into the larger cities and the oil-impacted counties. North Dakota State University Data Center information at http://www.ndsu.edu/sdc/publications/population//PB_25_4press.pdf and the U.S. Census Bureau State and County Quick Facts at [Http://quickfacts.census.gov/qfd/states/38/38015.html](http://quickfacts.census.gov/qfd/states/38/38015.html) show that Williston, Dickinson, and Bismarck are among the fastest growing areas in North Dakota as shown in Figure 1 below.

Figure 2. Percent Change in Total Population in North Dakota by County: 2000 to 2010
Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File, Table P1



HOUSING SHORTAGE

Housing is a major issue for attorneys and their staffs and for court system employees. The Task Force heard testimony indicating an associate was hired to work with a Williston law firm, only to learn apartment rent would be \$2,600 per month. The Indigent Defense Commission has secured a small apartment for attorneys who travel to Williston to assist with the indigent defense caseload. The Commission rented a house for an attorney who agreed to take a position – a 500 square-foot house which rented for \$3,000 per month.

An August 2011 article titled “North Dakota’s Oil Boom is a Blessing and a Curse,” published in *Governing* concludes:

The biggest struggle in the region, though, is the shortage of housing. When people in other parts of the country talk about a “housing shortage,” they don’t mean it literally. There are usually still plenty of available places for residents making decent money. But when people in western North Dakota discuss the housing shortage, they’re serious. There’s literally no place to sleep.

Related to the housing shortage, is the work of the Attorney General led Contractor Compliance Task Force. Random work site inspections have been done and will continue to be done. At a 2011 inspection in Williston, the Task Force conducted 36 contractor inspections at 18 work site locations. Parrell Grossman, director of the Consumer Protection and Antitrust Division of the Attorney General’s Office, reported nine were immediately enjoined from construction work pending enforcement actions and regulatory or licensing compliance. Mr. Grossman indicated that the Attorney General must continue to be vigilant in identifying fraudulent conduct and protection the public in western North Dakota where there is sudden and new wealth.

INFRASTRUCTURE

Task Force members learned that driving is a major stressor for those using North Dakota's justice system. An attorney who has, in the past, done indigent defense work, said she was no longer willing to drive from Watford City to Williston on a daily basis. Attorneys from Dickinson and Minot to Williston told of unpredictable driving conditions, and the heavy truck traffic with which they contend. Judges testified that when they travel to courthouses in the energy-impacted counties, it takes longer than it did several years ago, adding to the amount of time necessary to handle the increasing caseload.

An August 2011 article titled "North Dakota's Oil Boom is a Blessing and a Curse," published in *Governing* notes:

The other major impact of the industry is the damage to the county road system, a grid that in many places comprises little more than two-lane gravel and dirt roads. Initially designed for farm-to-market travel, they weren't built for the big trucks that use them to access rigs and wells. Drilling each new well requires more than 2,000 truck trips, and the heavy rigs are destroying the roadways. "Simply put, the roads are falling apart in many cases," says Alan Dybing, a researcher at the Upper Great Plains Transportation Institute, which estimates that fixing the roads will require an investment of more than \$900 million over the next 20 years. The situation reached a boiling point earlier this year when Williams County closed the entire county and township road system to oil trucks. Local leaders insisted the move was necessary since the roads had deteriorated to the point that they were unsafe, although some critics have suggested it was also intended to send a message to the industry.

The Task Force also heard testimony about the need for services in areas not traditionally included in infrastructure. Several attorneys who practice as prosecutors or criminal defense counsel indicated there is a significant delay in obtaining information from the State Crime Laboratory, which is overwhelmed with the amount of evidence to be analyzed. There is a lack of available services for individuals who are chemically addicted or mentally ill and become involved in the justice system. Those who provide services to individuals in abusive situations lack resources necessary to provide required services. They are hindered in providing help by the lack of housing and the overall stress of living in the energy-impacted areas.

Courthouse security is another area which must be addressed as the courthouses become busier and stress and frustration become part of the daily life in courtrooms and clerks' offices overwhelmed by increasing demands. Sheriffs have the responsibility for providing security in courthouses, but the Task Force heard requests for State assistance in providing security for judges and other state employees in the courthouses.

I.

Indigent Defense Commission

Robin Huseby, Executive Director of the North Dakota Commission on Legal Counsel for Indigents, testified at all four input sessions held by the Task Force. Ms. Huseby candidly states that the State is approaching a severe crisis in provision of indigent defense services and notes that provision of indigent defense is mandated by the constitution.

Ms. Huseby advised the Task Force that there are two full-time public defenders in Williston and she is unable to hire private contractors to assist. The \$75 per hour rate is part of the difficulty, the other factor is the business of the attorneys working in the Williston area. Attorneys have to be sent from Minot, Dickinson, and Bismarck. On occasion, attorneys from Fargo, Grand Forks, and Wahpeton have taken cases. Use of attorneys who require travel time doubles or triples the cost of providing representation.

Ms. Huseby said when she is able to locate attorneys to take cases in Williston, it is difficult to find hotel rooms. The Indigent Defense Commission has rented an efficiency apartment in the same building as its office space. In hiring a new attorney to replace an attorney who has left the public defender's office, a 500-square-foot house was rented for three months for \$3,000 per month.

There is an ongoing concern about how it is determined whether clients are indigent. An individual may apply for court-appointed counsel while incarcerated and not employed. However, if released on bond, the individual may quickly find employment, and often very good employment. Technically, that individual should report employment to the court, but that often isn't done. The court-appointed attorney cannot point out the fact of employment to the court. Even if a judge learns an individual has become employed, there is reluctance to relieve court-appointed counsel because it delays handling of the case.

The crisis in provision of indigent defense in Williston also impacts Minot, Dickinson, and Bismarck. Public defenders from those cities are called on to assist in Williston, leaving the other offices short of staff.

II.

Judicial System Resources

In all of the judicial districts visited by the Task Force, caseloads are increasing. In the South Central Judicial District, which includes Bismarck and Mandan, the total filings have increased 19.3 percent from 2006 to 2011. Significantly, the felony caseload has increased by more than 34 percent during that time period. Felony cases are more complex and require more time from everyone involved in the criminal justice system than do less serious criminal cases. Involuntary commitment cases have increased by 33 percent and juvenile cases by more than 21 percent

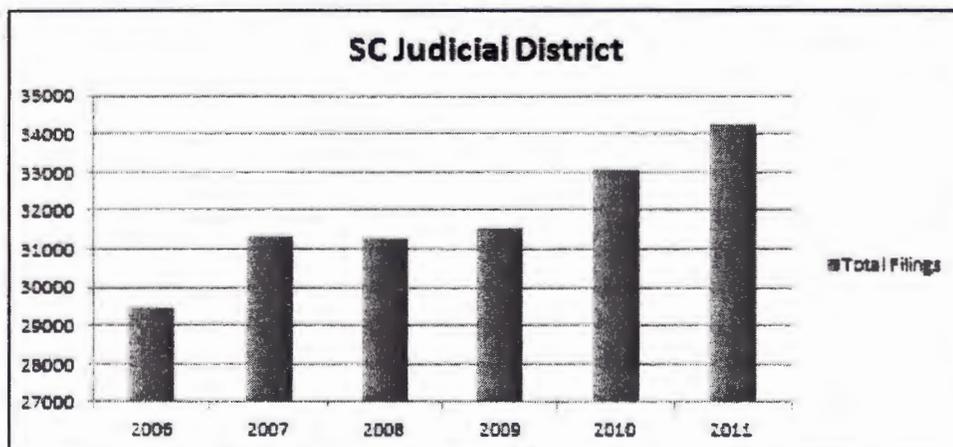
**South Central Judicial District
2006 Through 2011 Comparison of Case Filings**

Civil							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Divorce	462	483	440	443	478	477	3.2%
Child Support	775	746	860	801	857	528	-31.9%
Domestic - other	658	710	674	729	717	738	12.2%
Small Claims	798	867	767	732	735	730	-8.5%
Probate and Trust	554	551	645	644	617	643	16.1%
Mental Health	94	116	102	118	126	125	33.0%
Administrative Appeal	86	72	65	48	45	48	-44.2%
Other Civil	3,076	3,693	4,050	3,855	4,043	4,191	36.2%
Juvenile	421	424	541	546	552	512	21.6%
Total Civil Cases	6,924	7,662	8,144	7,916	8,170	7,992	15.4%

Criminal							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Felony	842	926	920	1,018	877	1,129	34.1%
Misdemeanor	3,978	4,375	4,067	3,810	4,156	4,188	5.3%
Infraction	320	308	326	291	187	162	-49.4%
Total Criminal Cases	5,140	5,609	5,313	5,119	5,220	5,479	6.6%

Traffic							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Total Traffic Cases	17,429	18,069	17,827	18,504	19,656	20,786	19.3%

Total Filings							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Total South Central	29,493	31,340	31,284	31,539	33,046	34,257	16.2%



In the Southwest Judicial District, which includes Dickinson, the caseload increased by 58 percent between 2006 and 2011. Felony cases increased more than 85 percent and probate and trust cases increased a whopping 154 percent.

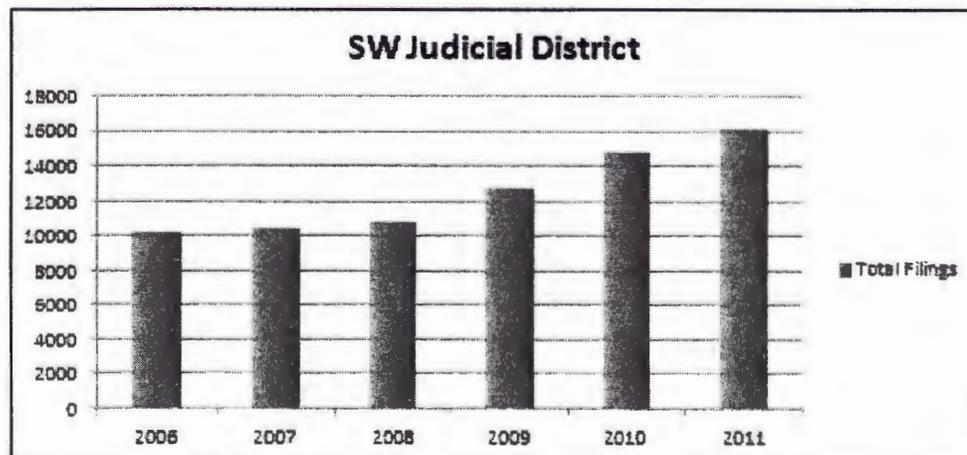
**Southwest Judicial District
2006 Through 2011 Comparison of Case Filings**

Civil							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Divorce	115	114	126	131	146	148	28.7%
Child Support	206	230	212	208	170	152	-26.2%
Domestic - other	122	116	106	123	125	130	6.6%
Small Claims	250	206	198	195	219	178	-28.8%
Probate and Trust	296	300	433	394	441	754	154.7%
Mental Health	46	51	38	54	39	57	23.9%
Administrative Appeal	23	33	34	27	14	12	-47.8%
Other Civil	845	895	915	875	1,088	1,187	40.5%
Juvenile	97	101	91	88	72	98	1.0%
Total Civil Cases	2,000	2,046	2,153	2,095	2,314	2,716	35.8%

Criminal							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Felony	170	179	166	195	208	315	85.3%
Misdemeanor	1,649	1,550	1,387	1,478	1,683	1,817	10.2%
Infraction	382	217	170	181	196	118	-69.1%
Total Criminal Cases	2,201	1,946	1,723	1,854	2,087	2,250	2.2%

Traffic							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Total Traffic Cases	5,972	6,453	6,931	8,857	10,345	11,121	86.2%

Total Filings							2011/2006
	2006	2007	2008	2009	2010	2011	Change %
Total Southwest	10,173	10,445	10,807	12,806	14,746	16,087	58.1%



In the Northwest Judicial District, which includes both Williston and Minot, the caseload has increased more than 41 percent between 2006 and 2011. Probate and trust filings have increased 168.9 percent and administrative appeals have increased 160 percent. The felony case filings have increased 52.9 percent.

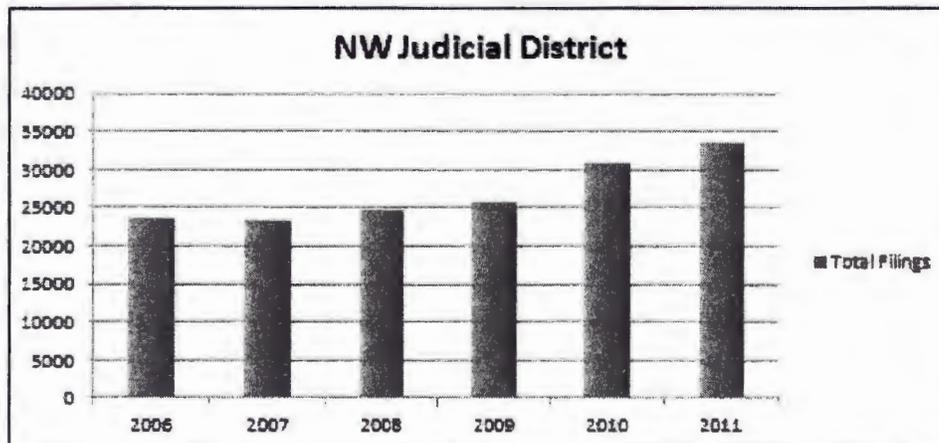
**Northwest Judicial District
2006 Through 2011 Comparison of Case Filings**

Civil	2006	2007	2008	2009	2010	2011	2011/2006 Change %
Divorce	431	441	402	427	551	506	17.4%
Child Support	504	577	563	700	734	477	-5.4%
Domestic - other	492	570	509	548	553	572	16.3%
Small Claims	661	627	535	601	606	503	-23.9%
Probate and Trust	627	705	1,052	1,196	1,531	1,686	168.9%
Mental Health	274	286	305	303	292	326	19.0%
Administrative Appeal	25	25	24	26	46	65	160.0%
Other Civil	2,127	2,712	2,716	2,587	2,702	2,671	25.6%
Juvenile	309	305	315	327	391	352	13.9%
Total Civil Cases	5,450	6,248	6,421	6,715	7,406	7,158	31.3%

Criminal	2006	2007	2008	2009	2010	2011	2011/2006 Change %
Felony	599	596	587	583	677	916	52.9%
Misdemeanor	4,357	3,999	3,901	3,912	4,640	6,255	43.6%
Infraction	362	389	296	231	264	219	-39.5%
Total Criminal Cases	5,318	4,984	4,784	4,726	5,581	7,390	39.0%

Traffic	2006	2007	2008	2009	2010	2011	2011/2006 Change %
Total Traffic Cases	12,854	12,040	13,605	14,347	17,806	18,977	47.6%

Total Filings	2006	2007	2008	2009	2010	2011	2011/2006 Change %
Total Northwest	23,622	23,272	24,810	25,788	30,793	33,525	41.9%



In addition to the raw case numbers reflected above, the North Dakota court system recently completed a weighted caseload study. The sense is that simply comparing case numbers might not accurately reflect the need for judge time in each area. Some types of cases require much less judge time than other types of cases. The weighted caseload study measured the amount of time judges spent on defined categories of cases, and then assigned a weight (or average time) to each category of cases. Case filings were then analyzed so that a determination could be made as to the judge need in each judicial district.

There are problems with analyzing case need either by simply considering case filing numbers or by utilizing the weighted caseload study. When case numbers are considered without regard for the amount of time needed for specific types of cases, the need for judge time can be skewed by either a large number of filings of cases which require relatively little time or a large number of filings of cases which demand a great commitment of time. While it was suggested that the increase in filings of traffic cases was significant, those cases traditionally take very little judge time. Even if the number of hearings in those cases quadrupled, there would be little impact on judge time. However, probate cases require a greater time commitment and the increases in the number of probate filings or filings of felony cases would greatly impact the judge need.

However, while the weighted caseload study provides useful information, it still leaves questions concerning need for judicial resources. The weighted caseload study uses an average of filings in 2010 and 2011 to arrive at the number of filings for each judicial district. Such averaging is not reasonable in areas where the only reasonable expectation is an expectation that caseloads will continue to increase significantly each year. The weighted caseload uses data collected from judges around the state and reflects time currently spent on each type of case, and not necessarily the time which would be spent in an ideal situation where judges were free to spend as much time as they felt necessary to do a good job on each case. While the weighted caseload study accounts for necessary travel time, it does not account for the economies of scale which may be available in courthouses where a large volume of cases are handled.

The weighted caseload study indicated a need for 2.35 additional judges in the Northwest Judicial District and for 1.36 additional judges in the South Central Judicial District. The Southwest Judicial District shows a need for .23 additional judges. The East Central Judicial District (which includes Fargo) showed a need for an additional 2.17 judges. However, the total need statewide was 3.5 judges because some districts appeared to have excess judicial resources.

It may be that some of the judge need can be met through use of existing judicial resources. However, based on the certainty of a rising caseload in the Northwest Judicial District and the shortage based on an average of 2010 and 2011 case filings, it is absolutely necessary that the Legislature be asked to add two judgeships in the Northwest Judicial District.

At the same time the weighted caseload study was being done to assess need for additional judges, a similar study was done to determine need for additional staff in clerk of court offices. The study indicates an additional 25.74 full-time positions are needed in clerk of court offices. This need is the result of a chronic unmet need for additional staff in clerks' offices and the increased demands on clerks' offices in the energy-impacted areas.

The Task Force heard more than one attorney indicate that in Williams County it takes weeks for routine documents necessary for probate cases to be signed. The delay has been caused by a severe shortage in the clerk of court's office. The court system now uses electronic files and documents must either be e-filed or scanned by a member of the clerk's staff. In energy-impacted areas, the clerk's staff has an enormous demand to provide

information to the public both at the office and over the telephone. The shortage of staff has made it impossible to keep up with filings. Attorneys voiced frustration because they file documents but when their clients check the clerk's records which are available to them, they do not see the documents. Clients may assume the attorney failed to file paperwork, or that the judge has neglected to deal with the paperwork.

It is imperative that the staff in the clerk's office in Williams County be increased by at least four full-time staff members. The Burleigh County Clerk of Court's office shows a need for five additional staff members. Ward County shows a need for two additional staff members in the clerk's office. Morton County and Stark County each need one additional staff member in the clerk's office. Full-time staff members are needed. Because of the training required to work effectively in the clerks' offices, temporary employees are not a good solution for filling staffing needs.

III.

Legal Services of North Dakota

Legal Services of North Dakota (LSND) is the statewide civil legal services program in North Dakota. With funding from various sources, LSND provides legal advice, representation and education to low-income and disadvantaged elderly in North Dakota. Approximately 60 per cent of the funding LSND receives is from the federal government.

Over the past two years, LSND has experienced a 19 percent cut in federal legal services funding. The result is a reduction in legal services attorneys, cases accepted, outreach, intake hours, court cases and much more during 2012. LSND anticipates double-digit reductions in the percentage of clients helped in 2012 as a result of these cuts.

The reality of federal funding cuts means fewer low-income and elderly North Dakotans will receive the legal help they need. Access to the civil justice system is becoming more and more dependent on one's economical means.

Meanwhile, as LSND deals with this crisis, the program is seeing additional demand for low-income civil legal help in western North Dakota, generated by the oil boom and influx of populations. This additional demand is not being adequately addressed due to lack of funding and resources.

LSND's offices in Minot and Bismarck continue to make periodic outreach visits to Dickinson and Williston, but the demands far exceed the available resources. Additional attorneys are needed to help low-income individuals gain access to the civil legal system in western North Dakota.

IV. Lawyer Shortage

One attorney told the Task Force that he feels like he has little dogs yapping at his heels when he gets to his office in the morning, and the dogs keep yapping all day long. Another attorney compared himself to a pat of butter, spread too thin. Many privately practicing attorneys said they turn clients away and have no one to refer the clients to. Attorneys advise prospective clients to contact attorneys in Bismarck or Minot and to file cases in courts outside the most significantly energy-impacted counties. There is a lack of attorneys practicing family law in the energy-impacted counties, and attorneys from other areas are reluctant to take cases which will require travel to the energy-impacted counties. This shortage of attorneys increases the cost of representation, and when attorneys are hired, clients do not have easy access to their attorneys.

The shortage of attorneys means there are fewer attorneys who take pro bono cases. One attorney suggested that it's not fair or reasonable to expect that the attorneys in the energy-impacted counties take on a greater load of pro bono work. He explained that the attorneys themselves are stressed by the challenges of living and raising a family and being part of the community.

Legal Services of North Dakota (LSND) has seen dramatic cuts in federal funding. Their staff has been reduced and their ability to provide needed assistance has been reduced. The Task Force heard suggestions that all funding avenues for LSND must be explored and sought.

Dean Kathryn Rand testified that the UND School of Law currently is exploring ways in which the law school can support and facilitate the administration of justice in western North Dakota. Possibilities include: assisting in lawyer referrals; working with the courts and state agencies to develop student externship programs, perhaps via distance technology; expanding current programs, such as Attorney Services and Central Legal Research, to better serve needs in western North Dakota; and providing research and administrative assistance, office space, or other support to attorneys and organizations that serve low-income clients.

V. Related Needs

At Task Force hearings, information was gathered concerning needs for resources vital to the effective operation of the justice system.

Assistant Attorney General Jonathan Byers indicated the number of requests for extraditions has almost doubled. Extraditions require that legal documents be prepared in State's Attorneys' offices, the Attorney General's Office and the Governor's office. Mr. Byers also testified that the number of sex offenders or offenders against children required to register in Williams County has increased four times and the number in Ward County has doubled.

The Attorney General's Office has been impacted significantly in many respects. The Attorney General's Consumer Fraud Unit and Licensing Divisions have been impacted by the growth of wealth and the need for construction in the energy-impacted areas. A number of attorneys involved in criminal justice indicated that there is significant delay in obtaining results of evidence tested at the State Laboratory, and this delay results in criminal prosecutions being slowed.

There is an identified short-term need for funding for State's Attorneys offices in energy-impacted counties where county revenues are not available to meet immediate needs resulting from an extraordinary increase in criminal offenses, involuntary commitment proceedings, social services child protection matters, juvenile court proceedings, and county land use planning.

Jails in the western half of the state are stressed with increasing numbers of criminal prosecutions. Transient defendants and allegations of violent offenses mean higher bonds are set and there is more pre-trial detention.

There is an increasing recognition of the need for security in courthouses. Local sheriffs and their staffs are working at capacity and request assistance from the State in providing security for courtrooms and court staff. Service of civil process is another area where sheriff's departments are facing increasing demands. Service is more difficult because the lack of housing requires a transient population to seek housing in atypical settings.

Caseload is increasing for advocates for domestic violence victims, and those working with victims are stressed. It is difficult to find housing for victims, or to obtain legal services for them. A Dickinson attorney noted that the shortage of attorneys means there are few resources available to children who are involved in family law proceedings. Child protection teams are staffing many more cases than in the past, often dealing with families who have been the subject of proceedings in other states before moving to North Dakota.

Prosecutors testified that they have less time to spend with crime victims. Several prosecutors called for additional resources to serve crime victims and witnesses.

The number of involuntary commitment cases has seen a dramatic increase, particularly in the Williston area.

Probationers who cannot afford to live in the Williston area have moved to Bismarck, leaving Bismarck parole and probation officers carrying an average caseload of 90 while those in Minot have a caseload of 70.

There is a significant need for additional addiction treatment services and other services provided through the human services departments in the energy-impacted counties.

Municipal courts have seen caseloads double and law enforcement witnesses are often unavailable for municipal court trials because they have found new, more lucrative employment.