

2023-25 BUDGET

Office of Attorney General
State of North Dakota

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Attorney General

**For the Government Operations
Section of the Senate
Appropriations Committee**

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INTRODUCTION

Office of Attorney General

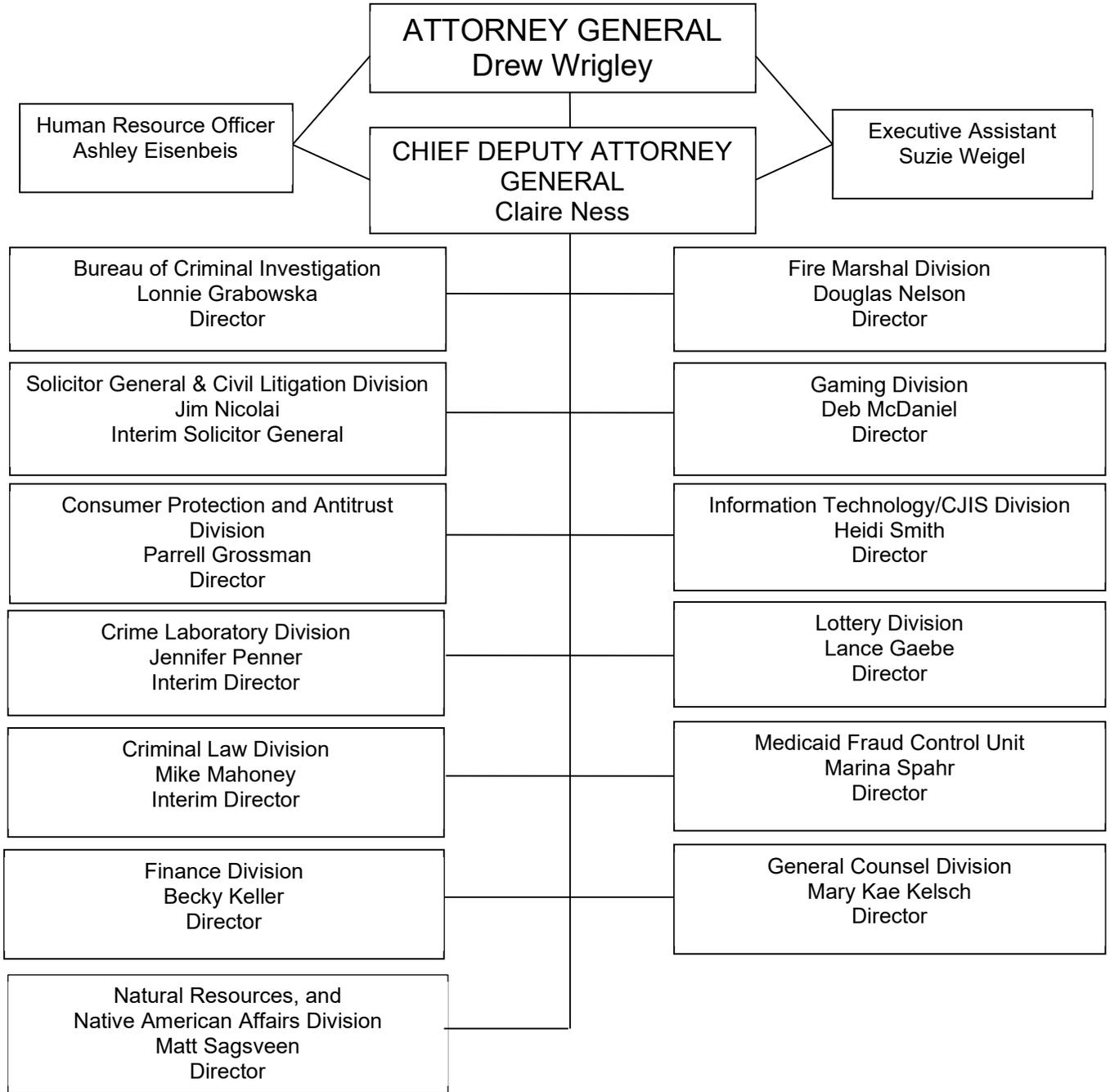
The Office of Attorney General represents and defends the interests of the citizens of North Dakota by executing the responsibilities charged to the North Dakota Attorney General by the North Dakota Constitution, state statutes and administrative rules, North Dakota and federal case law, and common law. The Attorney General is the chief legal counsel and advisor to state government providing legal representation to all facets of state government, including the Governor, all departments of state government, local government and all state agencies, boards, and commissions.

The Attorney General has primary authority to act on behalf of the state of North Dakota in other areas, including criminal investigations; full arrest and law enforcement authority; sex offender risk assessment and registration; Medicaid fraud control; evidence examination and testimony; consumer protection and antitrust; administration, regulation, and enforcement of charitable gaming and lottery activity; and fire inspections, investigations, and mitigation of hazardous materials incidents. Attorney General staff members provided a significant amount of training to North Dakota citizens and others, including law enforcement and the fire services.

The office consists of 14 divisions:

- Administration
- Bureau of Criminal Investigation (BCI)
- Consumer Protection and Antitrust (CPAT)
- Crime Laboratory (Crime Lab)
- Criminal Law
- Criminal Justice Information Sharing (CJIS) and Information Technology (IT)
- Finance
- Fire Marshal
- Gaming
- General Counsel
- Lottery
- Medicaid Fraud Control Unit (MFCU)
- Natural Resources & Native American Affairs
- Solicitor General and Civil Litigation

NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
January 2023



SUMMARY OF OFFICE OF ATTORNEY GENERAL DIVISIONS

OFFICE OF ATTORNEY GENERAL ADMINISTRATION

The Administration Division of the office includes the Attorney General, the Chief Deputy Attorney General, the Human Resources Director, and the Executive Assistant to the Attorney General.

The Administrative Division provides legal, administrative, and human resource support services to the other office divisions, and informational services to citizens and other state agencies.

BUREAU OF CRIMINAL INVESTIGATION

The Bureau of Criminal Investigation (BCI) division is comprised of 92 FTE positions including 53 sworn personnel, and 39 support personnel consisting of criminal intelligence analysts (6), administrative services (4), uniform crime reporting and statistics (1), offender registration (3), information processing (4), concealed weapons (4), criminal history (13), CJIS Systems Officers (3), and Peace Officer Standards and Training and 24/7 Sobriety Program (1). The salary for the director is also included. The Bureau of Criminal Investigation's primary duties are as follows:

- Assist local law enforcement agencies with general and specialized investigations including cyber-crime, homicide, sexual assault, human trafficking, organized crime, child abuse, arson, and terrorism
- Provide drug trafficking reduction support through participation in 10 narcotics task forces, including supervision of 9 of the task forces
- Maintain a statewide sex offender and offenders against children registration system and a registered offenders' website for lifetime registrants and high-risk offenders
- Maintain the statewide criminal history record information system and provide this information to the federal criminal history database
- Maintain the ABIS for identification and criminal investigation purposes
- Provide training for law enforcement and corrections officers, maintain officer training records, and issue peace officer licenses
- Provide training to children and the general public about the dangers of drugs and criminal activity
- Facilitate the 24/7 sobriety program
- As the Criminal Justice Information Services (CJIS) Systems Agency (CSA), BCI is responsible for planning and providing the necessary hardware, software, funding, quality assurance and training for complete access to all FBI CJIS data services for all authorized agencies within the state

- The Concealed Weapons Licensing (CWL) Division is the only agency in the state of North Dakota that processes applications for a North Dakota Concealed Weapons License. NDBCI offers two concealed weapons licenses (Class 1 or Class 2)

Among BCI's many responsibilities and achievements in the 2021-23 biennium, BCI:

1. Expanded the technical expertise in crime scene reconstruction that consists of crime scene mapping, utilization of drones, video enhancement, and agents attending the National Forensic Academy at the University of Tennessee to become crime scene experts.
2. Created the Victim Services Unit consisting of two Victim Witness Coordinators that respond to crime scenes and offer victims and families guidance and support during complex investigations. Each coordinator (currently funded by federal grants) is assigned half of the state which covers a large geographical area. The coordinators also work with the States Attorney's Offices to provide witness services in preparation for court hearings.
3. Expanded the NDBCI Internet Crimes Against Children (ICAC) task force to include the use of two electronic detection K-9's. This supports the growing statewide cyber-crime expansion to include affiliate agencies from police departments and sheriff's offices across the state.

CONSUMER PROTECTION AND ANTI-TRUST DIVISION

The Consumer Protection and Antitrust Division staff consists of the Division director, 3 consumer investigators, 2 assistant attorneys general, 1 paralegal and 2 administrative assistants for a total of 9 FTE positions. Services provided by the Division include:

- Investigating consumer complaints and violations of antitrust, consumer fraud, transient merchant, identity theft, data security breach, privacy, nonprofit corporations, charitable solicitations, and do-not-call laws, etc., and taking legal action to obtain injunctive relief, civil penalties, restitution, and other equitable relief
- Investigation, participation, and prosecution referral of criminal violations
- Statewide consumer fraud and education presentations to the elderly, students, civic, and professional groups, etc., and providing consumer warnings
- Coordinating consumer protection investigations, enforcement, and education with other federal, state and local law enforcement and regulatory agencies, including participation in multi-state investigations and legal actions
- Consumer fraud training for law enforcement
- Researching state and federal consumer fraud law and issues and assisting state and federal legislators in the development and implementation of consumer and antitrust issues legislation

The division's major accomplishments include:

1. Opioids Investigations and Legal Actions (Including Manufacturers, Distributors and Pharmacies) --The Division was involved in the investigation and legal actions regarding the nations opioids settlements regarding the deceptive, misleading, and unconscionable acts or practices of Opioids at the manufacturing, marketing, distribution and retail levels, thereby contributing to the creation of a nationwide opioid epidemic including impacting many North Dakota victims with addiction and, in some instances, death.

The Consumer Protection Division entered into 11 national settlements of approximately \$62M to be paid over terms ranging from 1 to 18 years. To date, the Division has received \$9.1M.

2. North Dakota and 7 other states sued multiple defendants in federal court for making millions of robocalls in our state, and as much as a billion spoofed calls combined in all states, selling health insurance and auto warranties. We have settled with some of the defendants and are proceeding to trial with others. In addition to significant civil penalties, the success of this case will eliminate for our citizens hundreds of thousands or more of unwanted robocalls for health insurance and auto warranty solicitations, and deter other bad actors engaged in robocalls.
3. Dental Office Investigation and Legal Action --The Division investigated a North Dakota dental practice that engaged in the deceptive practice of unauthorized interrupted service fees and unauthorized “interrupted service fees” during COVID-19 and otherwise, unauthorized administrative service fees without the knowledge or consent of the patients. The Division’s legal action recovered \$235,000 for consumer refunds to 504 patients, and resulted in \$25,000 in civil penalties, attorney’s fees and investigation costs.

CRIME LABORATORY DIVISION

The Crime Laboratory Division consists of 25 FTE positions including 22 forensic scientists, a state toxicologist, 1 evidence technician, and 1 administrative assistant. The staff members are responsible for analyzing evidence, preparation of laboratory reports, certified documents, data collection, law enforcement training and certification, courtroom testimony, and associated administrative duties.

The Crime Laboratory's objective is to provide scientific support to the state's law enforcement and criminal justice system by use of accepted techniques in the analysis, identification, and comparison of physical and toxicological evidence involved in the investigation and prosecution of criminal offenses.

Over the 2021-23 biennium, the Crime Lab participated in the launch of the North Dakota Roadside Oral Fluid Drug Screening Pilot Project. Thirty SoToxa Oral Fluid Drug Screening Devices were purchased with Federal DOT funds and thirty-one Drug Recognition Officers (DREs) have been trained on the use of this device. All of the devices are placed in the field and 20 samples have been collected for the pilot project.

The lab accomplished several validations and brought new software and instruments online. One of the instruments is a robotic system that will assist analysts in pipetting and setting up samples to save time and make the processing of cases more efficient.

CRIMINAL LAW DIVISION

The Criminal Law Division includes 7 attorneys and 1 legal assistant to prosecute criminal cases statewide, at the request of the county state’s attorneys. The objectives of the Criminal Law Division are to efficiently and impartially provide quality legal and informational services to the North Dakota government. The program also assists other Office of Attorney General's divisions to provide quality law enforcement, regulatory, and investigatory services, and provides prosecutorial assistance to the

53 county state's attorneys upon request. In addition, the Division handles prosecutions of child sexual abuse offenses.

The division assisted Morton County in the prosecution of Chad Isaak who was charged with four counts of murder, burglary, unlawful entry and unauthorized use of a motor vehicle. Division counsel worked closely with Morton County prosecutors and Isaak was convicted after a three-week jury trial. Isaak was sentenced to life without parole.

When Williams County had a conflict in a vehicular homicide case involving two deaths, division attorneys assumed the prosecution. As the case proceeded towards jury trial, Mark Bearce changed his pleas to guilty on the two most serious charges. Bearce was sentenced to twelve years in prison on each count to be served consecutively.

Division lawyers assist local states attorney's offices by assuming the defense of federal court habeas corpus matters. These cases are brought by inmates arguing a federal constitutional violation. During the biennium, the division defended the state in ten federal habeas corpus cases at the U.S. District Court, seven cases at the 8th Circuit Court of Appeals and one case that was declined to be heard at the U.S. Supreme Court.

The Criminal Law Division provides general counsel to the Peace Officer Standards & Training (POST) Board, which licenses and regulates law enforcement officers. During the biennium, the POST Board conducted 18 administrative hearings relating to licensure of officers. Discipline was imposed for reasons ranging from shoplifting to utilizing a confidential informant without the proper training. In two instances, the incidents were found not to violate POST Board rules, but in the other 16 cases, the officer received some form of license sanction, from probation to revocation, including: The license revocations of two former Dunseith PD officers for conducting a controlled narcotics delivery utilizing a confidential informant when neither officer had the proper training as required by state statute.

FINANCE DIVISION

The Finance Division consists of 14 FTE positions including the financial administrator, 1 accounting manager, 4 grants staff, 3 payroll and accounting staff, 2 licensing staff, 2 administrative assistants and 1 purchasing agent. The division staff provide technical, budget, finance, payroll, grants administration, records management, purchasing, licensing, reception, and other administrative services for the entire office.

FIRE MARSHAL DIVISION

The Fire Marshal's Division's 8 FTE positions consist of the State Fire Marshal, 1 chief deputy fire marshal, 5 deputy fire marshals, and 1 administrative assistant. The Division is responsible for issuance of the fire safety codes and rules for the state, fire investigations, fire inspections, and public fire safety education. The Division is also responsible for a number of special programs including fire reporting, existence of fire departments, delegation of authority, property loss insurance reporting, fire safer cigarettes and emergency response guidebooks.

Among its many duties and achievements during the 2021-23 biennium, the State Fire Marshals Division conducted 196 fire investigations. The State Fire Marshals Division worked with the Bureau of Criminal Investigation and the Bureau of Alcohol, Tobacco and Firearms to establish a team approach to fire investigation to ensure every fire is communicated and collaborated on from the start.

The division also fulfilled its responsibility, pursuant to the North Dakota Century Code, to inspect all schools and state buildings. The division carries out those inspections on a rotating schedule, and the inspections are all up-to-date. The division also completed 225 fire inspections requested by local fire departments.

The division also reviewed 300 new construction plans for compliance with fire code compliance. This is a new service provided by the division, and the reviews resulted in improved code compliance, identification of potential problems during the planning phase of construction, and collaboration with local fire departments.

The division also teamed with the North Dakota Firefighters Association to help develop a fire investigator training class and certification for North Dakota firefighters. The class already proved popular, and there is a waiting list of class participants.

GAMING DIVISION

The Gaming Division consists of the Division Director, 13 auditors, 2 audit technicians, 2 investigators, 1 training and communications specialist and 1 administrative assistant for a total of 20 FTE positions. The Division's duties include:

- Administration, regulation, and provision of enforcement for the charitable gaming industry
- Assistance to local law enforcement officials, gaming organizations, distributors, manufacturers, and the general public regarding gaming laws and rules, recordkeeping, and preparation of tax returns
- State Gaming Commission assistance in drafting proposed gaming laws and rules and conducting public hearings
- Conducting gaming training sessions for organization board members, gaming employees and volunteers
- Developing standard recordkeeping systems and model systems of internal control for gaming organizations
- Gaming compliance and financial office and field audits of gaming, distributor, and manufacturer licensees
- Reviews and processing of Gaming distributor records and gaming tax returns
- Collection of delinquent gaming taxes, interest, penalties, and monetary fines
- Coordination and application of investigations into illegal gaming activity and thefts
- Laboratory testing of pull-tab dispensing devices, electronic pull-tab dispensing devices, electronic bingo devices, bingo card marking devices, and electronic 50/50 raffle systems
- Inspections of gaming businesses manufacturing pull-tabs and paper bingo cards
- Gaming legislative research and legislative testimony at hearings
- Gaming administrative complaints, assessing monetary fines, and imposing appropriate sanctions
- Inspections of tribal casinos to ensure compliance with tribal-state gaming compacts

The division regulates over 350 gaming organizations conducting gaming in over 1,050 sites and has completed over 75 comprehensive and in-office audits and investigated over 197 complaints. The current e-tab activity includes 4,491 devices, 798 sites, and 268 organizations.

GENERAL COUNSEL DIVISION

The General Counsel Division has 14 attorneys, 1 paralegal, 1 legal assistant, and 2 administrative assistants. The General Counsel Division provides general counsel legal services to approximately 100 state agencies, boards, and commissions.

Each legal opinion requires many hours of legal research and analysis as well as drafting time. Each open record or open meeting opinion also requires many hours of communications and analysis in addition to drafting time. The division has issued 7 legal opinions and 13 open records and open meetings opinions so far in this biennium.

General Counsel Division attorneys are relied upon by their many clients to provide guidance on an extremely wide range of day-to-day legal issues. The scope of legal advice provided by the division attorneys covers everything from open records, state procurement requirements, constitutional questions, legislation, occupational licensing, construction contracts, private-public partnerships, board governance, and many other topics. In addition, these attorneys need to be subject matter experts in their particular clients' fields of specialization.

The division draft Attorney General opinions, review all administrative rules adopted by state agencies, and assist client agencies and members of the Legislative Assembly by drafting bills and amendments, explaining the ramifications of proposed legislation, and testifying before legislative committees.

INFORMATION TECHNOLOGY/CRIMINAL JUSTICE INFORMATION SYSTEM

The Information Technology and Criminal Justice Information Sharing (IT/CJIS) Division has 17 FTE positions including the Division Director, 1 architect associate, 1 IT manager, 1 CJIS manager, 1 project manager, 3 business analysts, 3 programmer analysts, 2 system administrators, 1 database design analyst, 1 computer and network specialist, 1 customer tech support specialist, and 1 administrative assistant. IT/CJIS staff provide the following services:

- Support for computer equipment and network needs of all the divisions of the Office of Attorney General with several locations within the Bismarck area as well as 17 remote locations across the state
- Desktop support and troubleshooting for all office staff and several task force personnel
- Administration of servers housed in a secured room within the Division's office area, including maintenance, disaster recovery, and security
- Staff and management of a help desk that supports office staff, as well as any external customers that utilize the office's applications or equipment
- 24 hour, 7 days a week support for computer applications utilized by law enforcement and other criminal justice personnel statewide on a rotating on-call schedule

- On-going support, enhancements, changes, additional functionality, and upgrades to all business applications on a regular basis
- Management and support for several statewide criminal justice systems, including a case management system for North Dakota state's attorneys; a records management system used by 71 local law enforcement agencies and 9 correctional facilities; an information sharing hub for criminal justice personnel; and a statewide victim notification system used for incarceration, court, parole and probation, commitment and protection order notifications as well as a statewide database used to track victim rights assertions
- Access to office records through the CJIS portal to North Dakota criminal justice personnel and through BCI to law enforcement across the entire country
- Audit participation in FBI, Sex Offender, Security, Gaming, grants and other audits, as needed, providing information as needed, determining changes needed, and developing timelines for changes

During the 2021-23 biennium, the division has executed many initiatives. For example, the division implemented the core gaming system and the missing persons database, updated the sex offender website, and signed a contract with a vendor for the new legal case management system. The division also is working with ND BCI and the Crime Lab to implement a new sex assault kit tracking system.

LOTTERY DIVISION

Eight FTE positions make up the Lottery Division, including the Division Director, an account budget specialist, 1 security officer, 2 customer service specialists, 1 sales and marketing manager and two administrative assistants. The Division also has three temporary draw operators.

The North Dakota Lottery is responsible for administering, regulating, enforcing, and promoting the state's lottery. The North Dakota Lottery conducts 5 games: Powerball, Lucky for Life, Mega Millions, Lotto America, and 2by2. The Lottery Division transfers net proceeds annually to the state general fund, and makes quarterly transfers to the multijurisdictional drug task force grant fund and compulsive gambling prevention and treatment fund.

During the 2021-23 biennium:

1. The Lottery transferred \$5.6 million of revenue to the State General Fund, \$800,000 to the Multi-Jurisdictional Drug Task Force Grant Fund, and \$320,000 to the Compulsive Gambling Prevention and Treatment Fund in the first year of the biennium. Similar transfers are underway and anticipated in the second year
2. Due in part to interest generated by three world record level lottery jackpots including \$2 billion Powerball and two separate \$1.3 billion Mega Millions jackpots, lottery ticket sales in the second year of the biennium are 150% of preceding year sales
1. The number of verified members in the North Dakota Lottery Players Club® grew to more than 50,000 and one North Dakota Powerball player participated in the First Millionaire of the Year® promotion in New York City with Dick Clark Productions.

MEDICAID FRAUD CONTROL UNIT

The Medicaid Fraud Control Unit (MFCU) was established by the 2019 Legislative Assembly and is funded jointly by federal and state government but administered by the state in accordance with federal requirements. The program contains salaries and wages for 6 FTEs, including the Unit Director who is an attorney, two investigators that are also BCI agents, two auditors, and one administrative support staff. MFCU investigates and prosecutes health care providers who defraud the ND Medicaid Program. The unit also investigates and prosecutes any provider who abuses, neglects, or financially exploits a patient in any facility that accepts Medicaid funds.

During the 2021-23 biennium, MFCU concluded several investigations and completed their first cases. The cases involved both criminal and civil settlements as well as participating in a weeklong criminal jury trial, all with excellent outcomes and recoveries for the State. Due to these case completions MFCU recovered and received into the State \$512,833.30, which is more than the State has expended on the Unit since its inception in 2019. There is also a deterrent effect that these cases had that is not measurable in dollar amounts. The main challenges for the Unit in the next 3 to 4 years is the need for additional employees to be able to keep pace with the rising number of complaints and referrals received by MFCU and the increasing complexities of the investigations.

NATURAL RESOURCES AND NATIVE AMERICAN AFFAIRS

The Natural Resources and Native American Affairs Division includes 6 attorneys and one paralegal. The Division provides legal advice to state agencies with responsibilities towards the state's natural resources. This includes assisting the Land Department in managing state-owned lands and minerals; the State Engineer in regulating the appropriation of water, regulating dams, dikes, and drains, and managing the beds of navigable rivers and lakes; the Water Commission in developing water resources; the Industrial Commission in regulating the exploration and development of mineral resources and administering grant programs for the lignite and oil and gas industries; the Department of Environmental Quality in protecting our environment; the Game and Fish Department in managing wildlife and wildlife habitat; the Parks and Recreation Department in managing public recreation areas; and the State Mill and Elevator. The division also administers the state's anti-corporate farming law and represents other Boards and Commissions including the Board of Animal Health, and commodity boards. Lastly, the division advises state as well as local officials on Native American law issues.

Division attorneys provided legal counsel to multiple state agencies to resolve the ongoing litigation over mineral ownership and the Missouri River. The division also anticipates being heavily involved in litigation and other legal issues concerning the proposed new Waters of the United States (WOTUS) rule.

Counsel has also assisted the North Dakota Department of Environmental Quality with *NDDEQ, et al. v. Summit Midstream, et al.*, a 2015 joint federal-state case for a pipeline spill of over 700,000 barrels of produced water. NDDEQ, Game and Fish, and the Industrial Commission were all involved. The parties' August 2021 settlement included \$20 million in civil penalties (split between federal and state), comprehensive injunctive relief, and \$1.25 million in natural resource damages.

SOLICITOR GENERAL AND CIVIL LITIGATION

The Civil Litigation Division is led by the Solicitor General and includes 17 FTE positions. In addition to the Solicitor General, the division has 8 attorneys, 4 paralegals, 3 legal assistants and 1 administrative staff officer. The Division represents the State, as well as all elected and appointed officials, the Legislature, state employees, agencies, boards, commissions, and councils in all litigation except when specialized litigation counsel is appointed. The Solicitor General oversees and manages the litigation of Special Assistant Attorneys General.

Despite the small number of attorneys in the division, the division has handled more than 400 cases so far this biennium and saved or obtained millions of dollars for the state. Division attorneys practice in administrative, state, and federal courts on behalf of the state in many different types of litigation. Division attorneys also provide some general counsel services such as advising all state agencies on employment-related matters. In fact, almost all the employment-related legal advice and litigation for state agencies and entities is managed by just one litigator in this division. Among the many other types of litigation the division handles are:

- Implied consent cases for the Department of Transportation;
- Tort cases, including cases involving the state's Risk Management Fund;
- Construction litigation;
- Appeals of economic (e.g. Medicaid) and non-economic program determinations by the Department of Health and Human Services;
- Housing discrimination and wage claims for the Department of Labor and Human Rights;
- Unemployment benefit cases for Job Service;
- Contract claims;
- Cases regarding constitutional questions and the constitutionality of state statutes;
- Cases involving challenges to other types of state regulation; and
- Many others.

CURRENT AND FUTURE CRITICAL ISSUES

The Attorney General's office continues to struggle with structurally engrained salary equity issues. As a result, the office is at significant disadvantage for recruitment and retention of qualified staff across several divisions. The legal divisions, BCI, IT and the Crime Lab struggle to fill and maintain positions because the salaries the office can offer are not competitive with other state agencies and outside entities. Legal cases are becoming more complicated and, coupled with increased workloads and demand for services in these divisions, existing staff are feeling the strain. For many years, the Attorney General's office has been forced to secure millions of dollars to secure outside counsel to meet the legal needs of the state. In its 2023-26 budget request, the Office has requested salary equity funding and several FTE positions to address these issues.

Because of experience requirements, the NDBCI hires Special Agents at approximately age 33-35. Because of the current retirement parameters, these agents and current Senior Agents are required to work beyond the safe and effective age of 55. On average, NDBCI agents are required to work until 67 or 68 years of age to be able to retire. This is directly affected by the low multiplier of 2.0% for sworn personnel (1.75% if hired after 2019 and without previous PERS enrollment). NDBCI is working with Attorney General's office Senior leadership and support the group of legislators to pass HB 1309 which increases the multiplier to 3.0% allowing agents to retire at the safe age of 55.

National Center of Missing and Exploited Children (NCMEC) cyber-tips have increased **545%** since 2016, which has caused an increased demand on all NDBCI Agents. Any of these cyber-tips can be a live child victim inside of ND being assaulted, molested, or abused. The NDBCI Cyber-Crime Unit needs a significant number of additional Agents trained as forensic examiners to meet this important demand.

Consumer fraud and antitrust violations have reached a volume that is increasingly more difficult to effectively combat, as well as the complexity of many of the consumer fraud or antitrust violations. The investigations typically involve the review of thousands of financial transactions or records, or complex technical information such as with data breaches. Similarly, investigations and legal actions involving big tech firms or drug companies engaged in anticompetitive practices, such as price-fixing or elimination of competitive products or services, are significantly more complicated and time and resource intensive.

STATUS OF AUDIT FINDINGS

During the operational audit of the Office for the period ending June 30, 2022, the State Auditor's office identified one finding relating to the use of expired or unapproved gas standards canisters for breath alcohol toxicology results.

The Office has begun the replacement of Intoxilyzer 8000s with Intoxilyzer 9000s. The 9000s are capable of preventing operators from performing tests with expired gas standard canisters. Through December 2022, the Office has purchased forty-two 9000s. The Office's 2023-25 budget request includes funding through a federal grant for fifty-eight 9000s.

STATUS OF 2021-23 BIENNIUM ONE-TIME APPROPRIATIONS

Capital Assets

These funds have been allocated and will be spent.

Statewide Litigation Funding Pool

These funds have been allocated and will be spent.

Criminal History Improvement Project

These funds have been allocated and work on the project continues. It is anticipated the office will request carryover authority for any unspent appropriation.

Missing Persons Database

The missing persons database will be completed this biennium and any unused funds will be turned back.

Automated Fingerprint Identification System

This project is in development and includes an update from a fingerprint identification system to a biometric identification system. Approximately \$176,000 has been spent to date during the 2021-23 biennium. If unforeseen challenges arise, the office may need to request carryover for any unspent appropriation.

Charitable Gaming Technology System

The \$475,000 appropriation will be spent during the 2021-23 biennium. Funding of \$736,000 from gaming taxes and \$214,000 from the general fund has been requested to complete the project in the 2023-25 biennium. The general fund share will be used to complete licensing and deposit solutions for the office.

Charitable Gaming Technology System Updates for Tax Changes

The \$50,000 appropriation will be spent and the project will be completed during the 2021-23 biennium.

Concealed Weapon Rewrite Carryover

\$55,000 of the \$143,531 carryover has been allocated for the 2023-25 biennium. The remaining funding will be requested as carryover to continue the project in the 2023-25 biennium.

Prosecuting Case Management System

These funds have been allocated and work on the project continues. It is anticipated the office will request carryover authority for any unspent appropriation.

2023-25 BIENNIUM ONE-TIME APPROPRIATION REQUESTS

New FTE operating - \$739,492

All new FTE requests include a one-time request for computer equipment and furniture. In addition, specialized FTE such as cyber-crime agents and investigators require start up equipment including forensic computers and weapons. Forensic scientists performing firearms and friction ridge analysis will require specialized training.

Litigation Pool - \$4,650,000

The Office requested one-time funding to continue the litigation pool to assist other agencies in paying for legal services. This request would require a transfer of \$4.65 million from the strategic investment and improvements fund. The Executive Recommendation

Crime Lab Equipment - \$1,640,677

This request includes \$886,000 from the general fund for equipment needed to restore the firearms and friction ridge analysis functions at the Lab; and \$754,677 in federal funding for 52 Intoxilyzer 9000s, one evidence vault and two mass spectrometers.

Crime Lab Expansion - \$4,253,600

This request from the general fund is to expand the existing crime laboratory to provide sufficient space for forensic testing and evidence storage.

New Agent FTE Vehicles and radios - \$511,000

This request will provide vehicles for 7 new BCI agents, 1 Medicaid Fraud agent, 1 CPAT agent and 1 Gaming agent. This request would be funded by \$370,475 from the general fund, \$38,325 in federal funds, \$51,100 from the refund fund and \$51,100 from the charitable gaming operating fund.

Undercover Vehicle replacement - \$200,000

This request includes funding from the general fund to replace 10 undercover agent vehicles.

ICAC Lab Renovation - \$75,000

This request from the general fund is to renovate the ICAC lab space in Fargo to combine two separate digital forensic labs into one lab that will accommodate up to six forensic labs.

Gaming and Licensing Project – \$876,000

This request includes \$177,000 from the general fund and \$699,000 from the charitable gaming operating fund for completion of the Gaming Distributor Solution and enhancements to add the licensing and deposit functions to connect with the gaming system instead of requiring users to go into the Progress system for licensing and deposit information.

SUPPLEMENTAL COVID FUNDING

In January 2020, the Office was awarded \$2.08 million in Coronavirus Emergency Supplemental Funding (CESF) through the Justice Assistance Grant program to assist local law enforcement, victim services, and emergency ambulance services across the state through grants. The Office has expended \$1.67 million since the grant was awarded for the following purposes:

- Grants to local law enforcement agencies and political subdivisions
- Administration of the grant
- Purchase of personal protection equipment including gloves, masks, disinfectants
- Purchase of additional equipment or supplies to prevent the spread of the Covid-19 virus.
- Purchase of laptops and other information technology equipment to allow for teleworking and remote meetings.
- Purchase of additional storage discs due to the increase in online file management.

The Office received authority from the federal government to continue the grant through December 2023 and is requesting carryover authority for the 2023-25 biennium.

FEDERAL STATE FISCAL RECOVERY FUNDING

The Office of Attorney General was authorized to use \$1 million for replacement of the legal case management system, \$300,000 for a missing persons database, and \$50,000 for upgrades to the gaming system for tax rate changes implemented by the legislature.

The Office has implemented the missing persons database at a cost of \$9,558. The cost for the gaming system upgrades was \$45,821. The remaining funding for both of these projects will be returned at the end of the biennium.

The Information Technology Division has signed a contract with a vendor for the new legal case management system. The Office has requested a section be included in SB 2003 to continue this funding in the 2023-25 biennium.

AGENCY COLLECTIONS

The table below provides a summary of agency collection estimates for major funds:

General Fund	2021-23 Estimated Collections	2023-25 Estimated Collections
Beer Licenses	\$306,600	\$300,000
Liquor Licenses	290,200	289,800
Tobacco Wholesale and Retail License	49,575	49,500
Transient Merchant License	18,000	15,000
Wholesale Fireworks License	10,750	11,250
Coin Operated Amusement Machine License	21,975	22,100
Coin Operated Amusement Machine Operator Lic	37,000	38,000
Detection of Deception License	1,400	1,400
Fair Board License	650	650
Gaming Licenses and Stamps	456,530	560,200
Non-Criminal justice record checks	1,167,500	1,167,500
Fines-Forfeitures-Escheat	75,000	75,000
Copier Revenue	<u>800</u>	<u>800</u>
Total General Fund Collections	\$2,435,980	\$2,531,200

Refund Fund	2021-23 Estimated Collections	2023-25 Estimated Collections
Transient Merchant License	\$10,000	\$5,000
Background Checks	30,000	30,000
Opioid Settlements	8,291,921	23,000,000
Unrestricted Settlements	8,500,000	3,000,000
Dental Consumer Refunds (redistributed)	237,414	0
Bis Man Autism Families Refund (redistributed)	<u>25,399</u>	<u>0</u>
Total Refund Fund Collections	\$17,094,734	\$26,035,000

AG Operating Fund	2021-23 Estimated Collections	2023-25 Estimated Collections
Gaming Licenses	\$69,300	\$69,000
Misc License Fees	763,500	700,000
Background Checks	31,315	26,000
Fire Marshal Services	200,000	200,000
Legal Services	<u>4,125,000</u>	<u>4,000,000</u>
Total AG Operating Fund Collections	\$5,189,115	\$4,995,000

Charitable Gaming Operating Fund	2021-23 Estimated Collections	2023-25 Estimated Collections
Gaming Taxes	\$42,525,000	\$43,300,000
Fines – Forfeitures	75,000	54,000
Misc Sales and Services	<u>230,000</u>	<u>150,000</u>
Total AG Operating Fund Collections	\$42,830,000	\$43,504,000

COMPARISON OF BUDGET REQUEST TO BASE BUDGET

Line Item	Base Budget Request	OAG Budget Request	Incr (Decr)
Salaries and Wages	\$51,352,139	\$58,894,806	\$7,542,667
Operating Expenses	15,276,937	19,644,323	4,367,386
Capital Assets	330,000	7,965,277	7,635,277
Grants	3,903,440	3,903,440	-
Human Traffic	1,102,815	1,102,815	-
Victims Grants			
Forensic Nurse	250,889	250,889	-
Examiner Grants			
Litigation Fees	127,500	127,500	-
Litigation Funding Pool	-	4,650,000	4,650,000
Medical Examinations	660,000	660,000	-
North Dakota Lottery	5,276,690	5,288,926	12,236
Arrest & Return Of Fugitives	8,500	8,500	-
Gaming Commission	7,489	7,489	-
Criminal Justice Info Sharing	4,074,707	4,470,304	395,597
Law Enforcement	<u>3,072,318</u>	<u>3,072,318</u>	<u>-</u>
	\$85,443,424	\$110,046,587	\$24,603,163
General Fund	\$42,774,934	\$63,528,825	\$20,753,891
Federal Fund	13,013,260	14,416,567	1,403,307
Other Funds	<u>29,655,230</u>	<u>32,101,195</u>	<u>2,445,965</u>
	\$85,443,424	\$110,046,587	\$24,603,163
FTE Positions	253.00	279.00	26.00

PROPOSED CHANGES TO 2023 SENATE BILL 2003

The Office's optional adjustments requested in the submitted budget and as approved in the Executive Recommendation are shown below.

Description	Priority	General Fund	Federal Fund	Other Funds	Total	FTE
Civil Litigation Attorney	3	\$644,356			\$644,356	2.00
Cybercrime investigators	4	745,990			745,990	2.00
Firearm/fric ridge FTE	5	1,927,321			1,927,321	4.00
Crime lab equipment, vault	5		\$754,677		754,677	
Crime lab equipment maint agreements	5	200,000			200,000	
Crime lab building maint	5	22,000			22,000	
Medicaid Fraud Unit FTE	6	178,549	535,647		714,196	2.00
Fund source change – equity	7	2,060,551		(\$2,060,551)		
Fund source change – operating	7	1,200,000		(1,200,000)		
Replace federal fund grants	10	341,747	(341,747)			
Increase tech fees	11	12,000			12,000	
Increase software maint, subscriptions, active directory	11	407,297			407,297	
MAFIN, GrayKey, Cellebrite	12	384,000	144,000		528,000	
Inflation – ammo, buy fund, rent, utilities, supplies	13	281,463		20,000	301,463	
Discovery software	14	100,000			100,000	
Vehicles, radios for Gaming, CPAT investigators	15			102,200	102,000	
Gaming, licensing, deposit project	16	214,000		736,000	950,000	
IT Servers	17	54,000			54,000	
Sex assault kit tracking software	22		180,000		180,000	
Undercover vehicle replacement (10)	23	200,000			200,000	
Litigation Pool	24	4,557,748		442,252	5,000,000	
Total		\$13,531,022	\$1,272,577	(\$1,960,099)	\$12,843,500	10.00

The Office is requesting the following optional adjustments requested in the submitted budget and **not included** in the Executive Recommendation be restored.

Description	Priority	General Fund	Federal Fund	Other Funds	Total	FTE
Attorney pay schedule	1	974,392	41,512	62,877	1,078,781	
Staff equity	2	295,377		12,236	307,613	
General Counsel FTE	3	558,014			558,014	2.00
Cybercrime agents	4	814,006			814,006	2.00
Criminal Investigators	4	1,050,971			1,050,971	3.00
Forensic Scientists	5	688,658			688,658	3.00
Operating – firearms FTE		152,556			152,556	
Crime lab admin	5	154,356			154,356	1.00
Crime lab building addition	5	4,253,600			4,253,600	
Crime lab equipment maint agreements	5	200,000			200,000	
Crime lab building maint	5	22,000			22,000	
Medicaid Fraud FTE	6	54,680	164,039		218,719	1.00
IT programmers, analysts	8	717,706			717,706	3.00
AG admin FTE	9	186,108			186,108	1.00
IT maintenance, subscriptions	11	70,000			70,000	
Inflation – ammo, rent	13	75,000			75,000	
Reclassifications	18	78,508		14,487	92,995	
Agent multiplier	19	407,685	27,179	108,716	543,580	
Forensic Academy	20	50,000			50,000	
ICAC lab renovation	21	75,000			75,000	
Contingent IT maintenance	25	700,000			700,000	
Total		\$11,578,617	\$232,730	\$198,316	\$12,009,663	16.00

The Governor’s recommendation includes two budget items that were not included in the Office’s request:

1. \$5 million general fund appropriation from the general fund for a Back the Blue grant.
2. \$259,708 general fund appropriation for a rent model change.

The Governor’s recommendation also increased the Office’s request for the litigation pool from \$4.65 million to \$5 million and changed the funding source to \$4.6 million from the general fund and \$442,252 from gaming taxes. The Office’s request included \$4.65 million from the strategic improvement and investments fund.

The following sections are requested to be added to Senate Bill 2003:

SECTION . EXEMPTION - ATTORNEY GENERAL REFUND FUND.

Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund which would otherwise be transferred to the general fund on June 30, 2023.

SECTION . ADDITIONAL INCOME - APPROPRIATION - REPORT.

In addition to the amounts appropriated to the attorney general in section 1 of this Act, there is appropriated from federal or other funds, the sum of \$250,000, or so much of the sum as may be necessary, to the attorney general for the purposes of defraying the expenses of the office, for the

biennium beginning July 1, 2023, and ending June 30, 2025. The attorney general shall notify the office of management and budget and the legislative council of any funding made available pursuant to this section.

SECTION __. CRIMINAL HISTORY RECORD CHECKS - FEES.

Any individual or entity requesting a criminal history record check from the bureau of criminal investigation, as a result of legislation enacted by the sixty-sixth legislative assembly, shall pay a reasonable fee established by the attorney general to the attorney general to be deposited in the state's general fund for the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION __. HUMAN TRAFFICKING VICTIMS GRANT PROGRAM - REQUIREMENTS - REPORTS.

The human trafficking victims grants line item in section 1 of this Act includes \$1,101,879 from the general fund for the purpose of providing grants to organizations involved in providing prevention and treatment services related to human trafficking victims for the biennium beginning July 1, 2023, and ending June 30, 2025. The attorney general may provide grants for the development and implementation of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-seventh legislative assembly on the use of the funds received and the outcomes of its program.

SECTION __. FORENSIC NURSE EXAMINERS GRANT PROGRAM - REPORTS.

The forensic nurse examiners grants line item in section 1 of this Act includes \$250,691 from the general fund for the purpose of providing forensic nurse examiner program grants for community-based or hospital-based sexual assault examiner programs, for the biennium beginning July 1, 2023, and ending June 30, 2025. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-seventh legislative assembly on the use of the funds received and the outcomes of its programs.

SECTION __. EXEMPTION - CONCEALED WEAPON REWRITE PROJECT.

The amount appropriated to the attorney general from the general fund for a concealed weapon rewrite project as contained in section 1 of chapter 37 of the 2015 Session Laws and continued into the 2017-19, 2019-21, and 2021-23 bienniums, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for the concealed weapon rewrite project, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION __. EXEMPTION – CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING.

The amount appropriated to the attorney general from federal funds for coronavirus emergency supplemental funding, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION __. EXEMPTION – STATE FISCAL RECOVERY FUND.

The amount appropriated to the attorney general from federal funds for state fiscal recovery funding, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION __. ESTIMATED INCOME - CHARITABLE GAMING TECHNOLOGY SYSTEM - CHARITABLE GAMING OPERATING FUND.

The estimated income line item in section 1 of this Act includes \$736,000 from the charitable gaming operating fund for defraying expenses related to the continued development and implementation of the charitable gaming technology system.

SECTION __. EXEMPTION – CRIMINAL HISTORY IMPROVEMENT PROJECT.

The amount appropriated to the attorney general from the attorney general refund fund for a criminal history improvement project as contained in section 1 of chapter 3 of the 2021 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for the criminal history improvement project, during the biennium beginning July 1, 2023, and ending June 30, 2025.

SECTION __. EXEMPTION - CONTINGENT FEE ARRANGEMENT.

Notwithstanding section 54-12-08.1, the attorney general may contract for legal services compensated by a contingent fee arrangement for ongoing multistate technology litigation during the period beginning with the effective date of this Act and ending June 30, 2025.

SECTION __. TRANSFER - LAWSUIT SETTLEMENT PROCEEDS - OPIOID ADDICTION PREVENTION AND TREATMENT PROGRAM - APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - ONE-TIME FUNDING - REPORT.

The office of management and budget shall transfer up to \$30,000,000 from opioid-related lawsuit settlement proceeds deposited in the attorney general refund fund to the department of health and human services which is appropriated to the department of health and human services for the purpose of defraying the expenses of an opioid addiction prevention and treatment program during the biennium beginning July 1, 2023, and ending June 30, 2025. The department of health and human services shall consult with the attorney general on the use of funding for the program. The attorney general shall notify the legislative council and office of management and budget of any lawsuit settlement proceeds that become available for transfer to the department of health and human services for this program. This funding is considered a one-time funding item.

SECTION __. AMENDMENT. Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.

There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a lottery promotion, prize on a winning ticket paid by a retailer,

and a retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated operating revenue and expenditures for the current biennium and projected operating revenue and expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Notwithstanding section 53-12.1-10, payment of a marketing expense that is directly offset by cosponsorship funds collected;
3. Payment of a gaming system or related service expense, retailer record and credit check fees, game group dues, and retailer commissions; and
4. Transfer of net proceeds:
 - a. Eighty thousand dollars must be transferred to the state treasurer each quarter for deposit in the gambling disorder prevention and treatment fund;
 - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association;
 - c. Starting July 1, ~~2019~~2023, two hundred fifty thousand dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and

The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

2023 Legislation Having a Fiscal Impact on the Office of Attorney General

Two legislative bills have been introduced thus far, that impact the Office of Attorney General.

- House Bill 1184 provides an \$18 million general fund appropriation to the Office for a peace officer appreciation grant program.
- House Bill 1307 provides a \$5 million general fund appropriation to the Office for a 'Back the Blue' grant program.
- House Bill 1388 provides a \$30,000 general fund appropriation to the Office to create a program to assist local and state law enforcement dogs that are retired by reason of age or medical condition.

- House Bill 1415 provides a \$980,000 general fund appropriation to the Office for a law enforcement staffing grant program.
- Senate Bill 2025 provides a supplemental general fund appropriation of \$75,000 to the Office for the 2021-23 biennium for prosecution witness fees.
- Senate Bill 2124 increases the per diem rate for all state employees from \$35 per day to \$42 dollars per day.
- Senate Bill 2213 provides a \$400,000 general fund appropriation to the Office to provide a grant to a local children’s advocacy center to defray administrative, therapeutic, training, and outreach-related costs of providing mental health and wellness support services to current and retired correctional and law enforcement personnel.

These bills require the Office to administer grant programs that total millions of dollars. The Office would need additional grants staff to successfully implement these grant programs.

Optional Adjustments Summary

01 Attorney Pay Schedule and Merit-Based Tiering System

The Attorney General’s office cannot currently compete with attorney salaries offered by state entities, local government entities, or the private sector. The existing attorney pay schedule for our office is significantly less than the attorney pay schedules for most other state agencies and even some political subdivisions, not to mention private law firms and businesses. For example:

- Some counties pay entry-level attorneys up to \$20,000 more annually than this office can pay them under its current budget, which has historically been based on a longevity pay schedule.
- Several attorneys in the past 2 years left this office to make higher salaries in other state agencies. One state agency hired a second-year attorney from our office by offering him a raise of more than \$30,000 per year, or more than 40% of his salary in this office.
- Multiple attorneys in the past several months have received higher-paying job offers from other state and local government employers. We have not remained competitive within the government.
- At least one attorney doubled his salary by accepting a job for a private company and is now able to work from home.

Additionally, unlike in other state agencies, the Attorney General’s office has no tiering system for attorneys to earn promotions. For many years, an Assistant Attorney General’s salary was based on the number of years the attorney had practiced law, regardless of merit. These factors significantly impair recruitment and retention of legal talent to this office. Newer and mid-level attorneys are most affected by this pre-existing lack of inter-governmental equity, and there is too much inefficient turnover in these ranks as a result.

To improve recruitment and retention, this office plans to adopt a reasonable increase to the attorney pay schedule and implement a merit based tiering system to promote attorneys based on proven ability and achievement of specified goals. Under the new system, an Assistant Attorney General will have to master identified criteria in order to move up from one tier to the next. This system will reward talented, motivated, hard-working attorneys and give them an avenue for advancement based on excellence in legal representation of North Dakota's interests.

02 Staff Equity

The Attorney General's office carefully reviewed classified staff members' salaries based on the state's pay schedules established by the Office of Management and Budget. Far too many staff members, especially some administrative staff, are paid significantly below the midpoints of their relative classifications' pay schedules. These staff members' supervisors were consulted on the reasons for their pay inequities and for input on the appropriate salaries based on the staff members' ability, work capacity, and years of service. The office plans to use this equity funding to increase salaries for the staff members whose salaries diverge the most negatively from the appropriate merit-based salaries for them.

03 New Attorney FTEs (4.0)

The legal matters facing North Dakota continue to unavoidably increase in complexity, expense, and volume. Attorneys in the General Counsel Division and the Solicitor General/Civil Litigation Division of the Office of Attorney General are responsible for the legal representation and litigation impacting the most pressing and important legal matters facing the state. Assistant Attorneys General in both divisions carry extremely large client portfolios and heavy workloads. An attorney in the General Counsel Division typically serves as general counsel for multiple state agencies, boards, and commissions, and each client generates a large volume of legal matters for the attorney to handle. Litigators in the Attorney General's office manage several cases at any given time, many of which are highly complex and often appealed to the North Dakota Supreme Court or Eighth Circuit Court of Appeals. The large workloads have contributed to burn outs, turnovers, loss of expertise and institutional knowledge, and difficulty recruiting new attorneys. Meanwhile, state entities understandably must continuously demand their attorneys acquire more specialized expertise, which takes time to develop and requires workloads be spread among more attorneys. We are at a critical juncture.

The work of the General Counsel Division and Solicitor General/Civil Litigation Division are highly specialized. Attorneys in these divisions must have deep and seasoned understanding of state government as well as the relevant subject matters administered by their clients. Moreover, in lawsuits and contract negotiations, other parties often have teams of attorneys opposing just one of our Assistant Attorneys General, who is representing the state's interests. In particularly specialized cases or when this office's attorneys are unable to take on a new matter, this office must hire outside private attorneys, who are much more expensive and more difficult to supervise than attorneys in this office. Over the past several bienniums, this office was forced by circumstances to expend tens of millions of dollars on outside attorneys. A small portion of those resources could be used to hire more attorneys for the office. If some portion of those funds had instead been used to hire additional in-house Assistant Attorneys General, there would have been substantial short and long-term savings, with an overall positive impact on legal service to North Dakota. We plan to change this trend over the next several years, but that altered course will require the legislative support we are now requesting.

Increasing the number of attorneys in these divisions will:

- Allow Assistant Attorneys General to develop deeper subject matter expertise to better serve state entities;
- Reduce expensive turnover rates and the loss of expertise and institutional knowledge;
- Reduce premature staff burn out;
- Improve recruitment; and
- Significantly reduce the amount of money the state currently expends on outside attorneys.

04 BCI Cyber Crime Agents and Criminal Investigators

BCI's Cyber Crime Unit (CCU) receives and reviews leads of suspected child exploitation from the National Center for Missing and Exploited Children. The number of leads originating from illicit activity in North Dakota is growing at an alarming rate, growing to 1,071 in 2022, compared to 166 in 2016. In 2021, the CCU forensic agents conducted over 899 forensic examinations totaling over 217,554 gigabytes of data, and assisted or investigated 429 in-state cases. BCI currently has just six agents with the specialized training to conduct these investigations. To manage the dramatically escalating number of exploitation tips and investigations requiring digital forensics, BCI needs four additional cybercrime agents. Without these additional agents, child sexual exploitation case investigations will be delayed beyond current backlogs. Put bluntly, without these additional investigative resources, BCI will face increasing difficulty finding and stopping sexual exploitation of children, among other cybercrimes. The salary request is \$74,000 plus benefits for each specially trained agent.

The requested three additional BCI criminal investigators will assist BIA and tribal law enforcement with narcotics investigations on and off reservations, under a new BCI initiative that is already creating unprecedented cooperative investigative/enforcement agreements between tribal, federal, state, county and local law enforcement entities near North Dakota's Indian reservations. The plan establishes BCI-coordinated narcotics task forces in Legislative Districts 2, 9, and 31 with local and tribal officers and jurisdiction on and off tribal lands. Those BCI agents will require all standard equipment assigned to each agent to conduct investigations.

05 Crime Lab FTE, Operating, Equipment

After the 2017 legislative session, the North Dakota State Crime Lab (NDCL) incurred budgetary cuts that led to the reduction in force (RIF) of several NDCL positions, including the forensic scientists trained in firearms and fingerprint analysis. These positions were not resurrected in the 2019 nor 2021 legislative sessions. As a result of the RIF, North Dakota lost the capacity for firearms testing and fingerprint processing. These are essential investigative functions, and law enforcement agencies across the state routinely implore this office to urge that the Legislature fund these disciplines and return this investigative capacity to the NDCL.

After firearm and fingerprint testing capabilities were cut from the NDCL, the NDCL was initially able to contract with the South Dakota Crime Lab for firearms testing. However, after a year, the South Dakota Division of Criminal Investigation ended that contract because of its own workload. As a result, North Dakota's political subdivisions now need to send firearm and fingerprint cases to out-of-state private labs for testing, at significantly elevated expense. Investigations and prosecutions are

negatively impacted by the lack of these capabilities and approving these changes will enhance public safety in our state.

By funding these four new FTEs, the NDCL will be able to hire, train, and fill the requirement of scientists tasked with re-establishing accreditation in firearms and friction ridge/fingerprint disciplines. At the same time, an additional three forensic scientist FTE are needed to handle escalating testing volumes and surmount existing case backlogs and lagging turnaround time at the NDCL. One administrative assistant is needed to assist all crime lab staff.

06 Medicaid Fraud Unit FTE, Operating, Equipment

The Medicaid Fraud Control Unit (MFCU) retrieves more fraud-loss funds for the state than it expends. The more cases it handles, the greater the amount of funds brought into the state. Surprisingly, the MFCU has only one attorney who is also the Unit's director. That person now handles all civil, criminal, and global litigation cases and all administrative duties. The Unit has six employees, so the administrative workload also is significant for the director and detracts from time for her other duties.

The director's responsibilities include the ongoing work of establishing this still-new Unit while also initiating detailed working policies and procedures that support the 12 mandatory performance standards set forth by the federal Department of Health and Human Services. Compliance with those performance standards is mandatory for yearly recertification and qualifying for the yearly federal grant that pays 75% of the MFCU budget. The director also supervises and trains all Unit staff and opens and closes all cases after careful reviews. As the Unit's only attorney, the director also must develop investigative plans and legal work (search warrants, administrative subpoenas, trial prep, trial, etc.). If the director is preparing for trial, in trial, drafting court documents, writing settlement letters, or other legal work, then all the director's administrative work stops. Conversely, if the director is at a mandatory training, supplying recertification statistics and documents, meeting with the Attorney General or stakeholders, training a new staff member, etc., then all attorney work stops. This large workload and start-stop work process means that cases cannot get reviewed, charged, or settled when appropriate. The director has had as many as 40 cases open at one time and now has 15 very large, active cases open. When the MFCU was first established, the Office of Attorney General recommended seven MFCU staff which included the additional attorney now requested.

An additional Special Agent for the MFCU also is imperative. Currently, the Unit is staffed by just two special agents. The cases being investigated by MFCU are extremely document- and medical record-intensive. Each case has several thousand documents to review. Most of these fraud cases take more than a year to investigate fully. Additionally, there is an increasing volume of case referrals to the Unit. During MFCU's first year, the Unit had to issue an informal directive that only felony matters would be charged, and fraud cases would be taken only if they involve fraudulent billings greater than \$10,000.00. When one of our agents is in court, actively investigating a case, at mandatory training, on leave, or ill, the other agent must maintain his/her own case load and address all new cases and situations that occur. The lack of essential resources means that North Dakota is unable to immediately address fraud cases that are detected, and money due to the state is not being returned.

Additionally, the increase in attorneys and investigators will then require that a paralegal be authorized to provide essential legal assistance to the attorneys and investigators.

07 Funding Source Change for Operating and Equity

During the 2021 legislative session and the November 2021 special session, the Legislative Assembly authorized equity increases for BCI agents and Crime Lab scientists. However, the equity increases totaling \$2.06 million were funded through the Attorney General refund fund, an unpredictable, one-time funding source. The refund fund is not able to sustain these increases because a significant number of settlement dollars are legally restricted to specified purposes.

Similarly, the 2021 Legislative Assembly restored \$1.2 million in funding for operating expenses for BCI and IT/CJIS but changed the funding source from general fund to the Attorney General refund fund as explained in the previous paragraph.

08 IT Analysts and Operating

As the responsibilities of the Attorney General's office grow, so do the IT needs of the agency. Demands for IT projects increase every year. With every system that is developed, additional maintenance is also required. In order to sustain the current IT needs of the agency, the IT/CJIS division must increase staffing levels to support and maintain over seventy current systems and several more in development. By adding two Programmer Analyst III FTEs, IT/CJIS will be able to complete projects more efficiently and maintain the current systems at a more manageable level.

A full-time business analyst is needed within the IT/CJIS division. The Attorney General's office has several divisions with IT projects and needs. Lack of IT/CJIS resources causes project delays and workflow bottlenecks. Having a business analyst is vital to provide accurate and efficient IT programs. Doing proper analysis beforehand allows for more detailed requirements and eliminates the risk of rework due to missed requirements. This role also will assist with project management on small- and mid-level projects, eliminating the need to contract additional roles, which reduces project costs.

09 Public Services FTE

The volume of mandates, comments, and requests (including requests for open records) made to the office is increasing rapidly, and the office has a responsibility to respond to the general public and others in a transparent and thorough manner. The position would manage inquiries, comments, and requests made to the office (including those made to the office via the general information email account) by legislators, state residents, state agencies, and others; respond to and track open records requests; track requests for Attorney General opinions and ensure timely opinions are issued to legislators and others; and assist with other mandates and projects as required by a burgeoning officewide workload.

10 Federal Fund Change

The general fund match for the Medicaid Fraud Control Unit has increased from 10 percent to 25 percent. Federal funds available under the High Intensity Drug Trafficking Areas grant have decreased, requiring additional general funds to maintain two attorneys' salaries in the Special Prosecution Unit.

11 Software Maintenance, Subscription Increases

The Attorney General's office utilizes several software systems across each division as well as part of our server infrastructure. Each software system requires support or a maintenance agreement. The

cost for these systems typically increases each year. To continue to use several application or software tools needed to perform daily tasks, an additional \$16,000 in maintenance costs and an additional \$20,000 in subscription costs is needed. These costs include programs like Adobe Acrobat Pro, Nessus (vulnerability scanner), Windows Server Enterprise, SQL Server Standard, VMWare, Atlassian JIRA, and Visual Studio.

The North Dakota Information Technology agency (NDIT) is changing its fee structure (technology fee and Office 365 fee) for state agencies. NDIT's technology fee is tied to the number of Office 365 Premium Users. IT/CJIS pays the fee for this office's staff and task force employees. The technology fee has decreased, but the number of users will increase slightly. This will result in a savings of \$41,000. However, NDIT increased the Office 365 fee from 36.00/user to 43.25/user. The total Office 365 fee increase for this office is \$51,852. The total increase needed for the technology fee and Office 365 fee is \$12,000.

IT/CJIS provide support and maintain the legal case management system, currently JustWare, for this office and several county state's attorneys. The maintenance and support for JustWare increases 5% each year, per the current contract. IT/CJIS anticipates this increase to be \$34,000 from the current budget for the next biennium.

The Atlassian Software subscription recently increased. AGIT uses this product for all help desk support tickets and software development tickets, as well as project and document tracking. This product is an essential tool for an IT department to do daily work. The increase of license for this system is \$11,000 a year, \$22,000 a biennium.

CJIS provides a statewide law enforcement records management and jail management system. The program is the Premiere One (P1) system. P1 maintenance and support increases approximately 5% each year, per the contract. The estimated increase is approximately \$23,282 for the biennium.

The maintenance and support for the ND Statewide Automated Victim Information and Notification system (ND SAVIN) that CJIS supports will increase 5% each year, per the contract. The anticipated increase will be \$38,314.84 for the biennium.

Our conferencing equipment requires maintenance and support. We currently have ten Polycom systems throughout this office which were purchased during 2021-23 biennium. The maintenance on the ten systems is \$12,000.

The yearly subscription cost of the Crime Lab's Failure Analysis - Laboratory Information Management System is increasing, per the contract. For the first year of the next biennium, the cost will increase \$4,500, and the second year's increase will be \$7,200. The total increase for the biennium will be \$11,700.

CJIS provides Active Directory (AD) accounts (state government accounts) for users who need access to the CJIS systems but would otherwise not need an AD account. For example, political subdivisions' law enforcement agencies often need CJIS accounts, which require CJIS to provide them AD accounts. CJIS does this at no cost to the political subdivisions. NDIT informed this office it will increase the monthly price for an AD account from \$1.35 to approximately \$7.10. We currently have 1,620

accounts for users that need access to CJIS programs only, and this number is subject to change. CJIS will need an increase of approximately \$300,000 to be able to continue to allow agencies to use our systems with no cost impact to the users.

12 MAFIN, GrayKey, and Cellebrite

The shared Automated Fingerprint Identification System (AFIS) operated through a partnership with Minnesota known as the Midwest Automated Fingerprint Identification Network (MAFIN) is being upgraded to a new Automated Biometric Identification System (ABIS). This system receives, stores, and analyzes all fingerprint records for North Dakota and Minnesota. This new system will be completed by approximately August of 2023. Once the new system is completed there will be ongoing maintenance costs for North Dakota of \$92,000 per year associated with this cloud-based system.

Mobile devices are more than two-thirds of the devices the NDBCI Cyber Crime Unit (CCU) receives for data extraction. These devices are frequently locked with facial recognition, fingerprints, or pin codes. Opening these devices and extracting the data for law enforcement is paramount to the success of cases. Currently, the two major vendors in this market are Cellebrite Premium and Graykey, but they do not do exactly the same thing. GrayKey is the best tool to open and extract Apple iOS devices, and Cellebrite Premium is the best tool to open and extract Android devices. The annual cost of GrayKey for our three CCU sites (Minot, Bismarck, and Fargo) is \$102,000, and the annual cost of Cellebrite Premium is \$72,000 per year. Achieving the maximum capability and coverage for the state will require \$174,000 per year or \$348,000 per biennium.

13 Inflationary Increases

NDBCI uses ammunition for the qualification, training, and effective carrying of handguns, shotguns, and rifles in the performance of field operations and legislatively assigned duties. NDBCI requires each sworn agent to qualify with their handgun on a minimum of two occasions per year and shoot qualifying scores related to shotgun and rifles on one occasion per year. Successful qualifications for firearms are required for each agent to maintain ND Peace Officer Standards and Training (POST) licensure. NDBCI is moving to a mandatory quarterly range requirement for agents to shoot in every quarter throughout the year. This will help keep the agents proficient in firearms handling and shooting, diagnose any shooting issues, and verify there are no equipment malfunctions.

NDBCI is responsible for supplying undercover buy funds for NDBCI narcotics investigations and multi-jurisdictional drug task force operations. The State of North Dakota currently supports ten narcotic task forces related to buy funds. This responsibility, coupled with a decrease in Byrne/JAG funding, has led NDBCI to closely monitor narcotics buy fund transaction across the State.

Office lease costs have increased for Civil Litigation and BCI's locations in other cities. Crime lab equipment and supply costs continue to increase for supplies and materials required for testing.

14 Discovery Software

The Attorney General's office has tested the Discovery software with a license allowing attorneys to use it for a very limited number of cases. The software has proven to be extremely helpful in managing cases. It searches, sorts, and classifies legal documents in a more reliable and efficient manner than doing so manually. This request will increase the number of cases that can be managed by the software.

15 Gaming and CPAT Investigator Vehicles and Radios

Vehicles and radios are needed for NDBCI investigators located in the Gaming and Consumer Protection and Antitrust divisions.

16 Gaming, Licensing, and Deposit Projects

The Attorney General's office requests these funds for completion of the Gaming Distributor Solution, which includes enhancements for manufacturers, gaming machine management (keeping track of the e-tab devices), the ability to respond to open record requests (requests of tax return copies), and management for bingo paper for distributors. The technology enhancements also will include adding the licensing and deposit functions to connect with the gaming system instead of requiring users to go into the Progress system for licensing and deposit information. These projects will help our staff and gaming industry employees communicate and share data more efficiently and quickly. This will benefit both our regulators and the regulated charitable organizations, manufacturers, and distributors.

17 IT Servers

IT/CJIS currently support and maintain 8 servers, which are critical to the operation of the entire agency. The servers must be replaced every four years, on a rotational basis. The cost to replace these servers has never been funded in this office's base budget. It is important to build the cost into the base budget, so this office has reliable funding each biennium for this necessary equipment. The estimated total cost is \$54,000 per biennium. That amount would allow IT/CJIS to replace two servers each year for a total rotational period of four years.

18 Staff Reclassifications

Pursuant to applicable HRMS guidance, the Consumer Protection and Antitrust Division needs to reclassify 2 consumer fraud investigators from a I to a II in the 2023-25 biennium. The cost for the two reclassifications is \$14,430.

Similarly, NDBCI needs to reclassify 18 agents and analysts throughout the 2023-25 biennium as they meet the requirements for the next step in their careers. The cost for the reclassifications is \$57,327.

Under the very same guidance, the Finance Division will reclassify an account budget specialist II to a III and an administrative assistant from a I to a II. The cost for the two reclassifications is \$21,181.

19 BCI Agent Multiplier

The Attorney General's office is requesting an increase in the multiplier for NDBCI agents' retirement formula. The requested increase is from 2.0 (if the agent is in PERS already) or 1.75 (if the agent is a new employee with no PERS history) to 3.0. Under our new plan, the multiplier would fall to 1.75 after 20 years of service, in order to promote retirement and enhance safety for all agents involved in field operations.

NDBCI requires new applicant Special Agents to have a four-year degree and five years of investigative experience. This is because NDBCI acts as North Dakota's "Detective Division" similarly to the way detectives operate within police departments and sheriffs' offices. The primary duties of an NDBCI agent include supporting political subdivisions on felony level crimes such as homicides, sexual assaults, robberies, theft, suicide, etc., as well as the detection, disruption, and

dismantling of illegal narcotics trafficking (manufacturing and sale) across the state. As a result, the average age of an NDBCI agent at the time of hire is 33 to 35 years of age, as opposed to the significantly lower age of a new officer in a different law enforcement agency. Changing the BCI agent multiplier to 3 would provide target retirement age in-line with parallel law enforcement organizations and would enhance operations and safety.

20 BCI Agents' Attendance at the National Forensic Academy

The National Forensic Academy provides 400 hours of specialized training focused on crime scene processing, evidence collection, and crime scene photography. Currently, 25 agents have successfully completed this 10-week course in Tennessee. NDBCI sends two agents each year at a total cost of \$50,000 (\$25,000 each). The need for this type of training is becoming more evident each day, as North Dakota's population and crime rates increase. Violent crimes are on the rise, and the need to solve them expeditiously is paramount. NDBCI has investigated murders-for-hire, body dumps, aggravated assaults, officer involved shootings, and violent sexual assaults – all of which require the kind of skills and training the National Forensic Academy provides.

21 ICAC Lab Renovation

BCI has been working with the Fargo area law enforcement agencies to create a regional office for investigating crimes against children. This group is responsible for digital forensic analysis of devices seized during investigations. As officers are assigned to assist with the crimes against children unit, they require forensic lab space in the Fargo BCI office. Currently there is an area in the Fargo BCI building built into two separate digital forensic labs, and this office plans to remove walls and use modular work surfaces to allow the space to accommodate up to six forensic labs, all aimed at meeting the demands from the dramatically escalating number of child exploitation and drug trafficking investigations.

22 Sex Assault Kit Tracking System Software Support

The Attorney General's office has been working to implement a sexual assault kit tracking system mandated by the Legislature in 2021 and that will go live in 2023. A yearly maintenance fee of \$85,000 is required to host the software and provide backups, user support, and updates. A federal grant will cover the cost for the 2023-25 biennium.

23 BCI Undercover Vehicle Replacement

As of May 16, 2022, NDBCI has 56 agents who need undercover vehicles. Nine of the agents receive a vehicle from the unit or a federal program in which they work. The remaining 47 vehicles need to be funded through the general fund. NDBCI also would like to purchase warranties for 6 years or 85,000 miles on all vehicles to mitigate costly repairs. To maintain the 6-year replacement cycle on the 47 vehicles, NDBCI must replace 15 vehicles per biennium. The average cost of the 6-year warranty is \$2,000. The average cost of a new vehicle being purchased has been \$35,000. The average trade value of the vehicle being replaced has been \$17,000. This leaves the cost of a vehicle replacement at \$20,000 per vehicle for 15 vehicles, or a total of \$300,000.

24 Litigation Pool from SIFF

The litigation pool has covered a relatively small share of litigation costs for eligible state agencies during the 2023-25 biennium. As the number and complexity of cases for the state increase, the litigation costs likely will increase as well, especially if the state continues to rely on outside counsel rather than hiring additional Assistant Attorneys General for the Civil Litigation, and Natural Resources/Indian Affairs divisions of this office. (The hourly rate for Assistant Attorneys General is less than half the hourly rate of Bismarck private practice attorneys and an even smaller percentage of the hourly rate of attorneys in many out of state markets.) This request to provide litigation funding for state agencies for another biennium would require a transfer of \$4.65 million from the strategic investment and improvements fund to the AG operating fund.

25 Contingent IT Maintenance Increase

If the requested business analyst FTE for IT/CJIS is not authorized, this office will need additional funds to pay for third parties to help maintain equipment and systems.

26 Legislatively Requested Supplement

During meetings and conversations about the budget for the Attorney General's office, several legislators urged the office leadership to include additional FTEs for NDBCI in this appropriations request. In support of their request, legislators identified the importance of public safety, elevated crime rates, the need for additional agents to serve on task forces for reservations pursuant to agreements with tribal nations, the dramatically increased incidence of internet crimes against children, the need to process background checks and cold cases more promptly, and the NDBCI's mission to support local law enforcement agencies. The Attorney General's office thoroughly evaluated these areas of concern to identify targeted FTEs – above those requested in the office's budget submission to OMB – who could improve NDBCI's performance in the noted areas. As a result, this office is requesting an addition 4 NDBCI agents, 1 criminal intelligence analyst for the internet crimes against children unit, and 1 administrative assistant to support NDBCI agents and analysts.

APPENDIX A

Attorney General Responsibilities in the N.D.C.C.

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