

SB 2022
House Appropriations
Government Operations Division
March 7, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

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

I. PURPOSE OF AGENCY AND AGENCY STATUTORY RESPONSIBILITIES.

The Commission is the agency which provides the attorneys and related services to indigent persons when there is a constitutional, statutory, or rule-based right to counsel at public expense. The Commission is governed by North Dakota Century Code Chapter 54-61. Section 54-61-01 provides the Commission was "established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The Commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to standards and policies of the commission governing eligibility for such services."

The Commission has established Guidelines to Determine Eligibility for Indigent Defense Services (hereinafter "Guidelines"). For a person to have counsel provided by the Commission, the person must apply for services, be found to be "indigent" and it must be a type of case in which one has a right to counsel at public expense. Most of the services provided by the Commission are in circumstances in which an individual is charged with a crime and jail time is a possible sanction, in juvenile matters, post-conviction matters and appeals of all the above.

There are a few exceptions to which an individual is presumed to be eligible for our services. All children are presumed indigent, regardless of their income or the income of their parents, in all matters arising out of the Juvenile Court Act. Additionally, an individual who has an attorney at the trial court level, need not reapply for counsel if they wish to appeal. The trial attorney files the notice of appeal and request for transcript on behalf of the indigent person. In other situation\s, an application must be filled out and

filed with the court.

When an individual desires counsel or services, application for services is to be made on the Commission's standard forms. However, the Commission does not make the determination of whether a specific applicant is eligible for services. Pursuant to the statute, the court makes the determination of eligibility based upon the Guidelines of the Commission.

Under the Guidelines, indigency is determined by looking at income resources, non-income resources (assets) of the applicant's household, and exceptional factors that might otherwise justify a finding of indigency. Income guidelines are set at 125% of the federal poverty level threshold as defined by the U.S. Department of Health and Human Services. The mission of the Commission is "to provide high quality, professional, and effective legal representation to eligible clients at reasonable cost to the community." Services should be provided only to those persons who are eligible. It continues to be the policy of the Commission to seek additional screening and review of applications by the court in questionable cases. Additional screening and review are also sought when it appears that a person may no longer be eligible, such as when someone who was in jail and temporarily unemployed, has bonded out and is now likely employed, and would no longer be considered indigent. To help ensure that services are provided only to eligible individuals, the Commission also provides training to those persons who make the eligibility determinations. However, this is not done as frequently in the past due to shortness of staff time and constantly advertising, interviewing and attempting to fill positions.

DELIVERY OF SERVICES

The Commission is administered through the administrative office in Jamestown. The administrative office coordinates the delivery of indigent defense services, assigns counsel, contracts with private attorneys to provide services, staffs the public defender offices, provides support services, and provides training to agency attorneys and staff. Attorneys and indigent defense services are provided through full-time state public defenders in six offices across the state and through private contractors. The public defender offices are led by a supervising/lead attorney who reports directly to the Deputy Director. The Deputy Director then reports to the

Director. All staff in the public defender offices report to the supervising/lead attorney in that office. Our supervising/lead attorneys are provided below:

Williston Public Defender Office: VACANT
Dickinson Public Defender Office: Mr. Kevin McCabe
Bismarck-Mandan Public Defender Office: Mr. Justin Balzer
Fargo Public Defender Office: Mr. Monty Mertz
Grand Forks Public Defender Office: Mr. David Ogren
Minot Public Defender Office: Mr. Eric Baumann

The Commission also provides services through contracts with private firms. This is achieved in the form of monthly contracts for a specified number of cases for a predetermined amount of compensation. In addition, the agency contracts with conflict contractors who take conflict cases on a case assignment by case assignment basis. The current hourly rate for contractors is \$80 per hour.

North Dakota Century Code section 54-61-02.1 mandates the Commission “shall contract for public defender services at a minimum level of fifty percent of its biennial caseload.” During fiscal year 2024, 73% of case assignments were handled by private contractors with 27% handled by full time public defenders.

CASE ASSIGNMENTS

The Commission uses the term "case assignment" rather than "case" when referring to assignments and has defined the term based on case type (such as criminal, probation revocation, juvenile delinquency, etc.). "Case assignment" is used so that assignment numbers from different areas of the state will mean the same thing across the state. For example, a criminal case assignment includes all cases arising from the same event whether the prosecution has charged the defendant in multiple complaints, each with its own case number, or whether the defendant has been charged in one complaint with multiple counts, but one case number. A criminal case assignment that includes a felony is a felony assignment, even if some of the charges in the assignment are misdemeanors. Thus, it is one felony case assignment where the attorney represents a person charged with a felony DUI and with a misdemeanor driving under suspension charge, both arising from the same traffic stop.

The number of case assignments the agency handles has rebounded from the pandemic when courts and cases were slowed. FY 2021 case assignments rebounded from

the COVID low and set a new historical high. FY 2022 remained at a similar level to FY 2021. FY 2023 saw a slight increase, whereas FY 2024 set an all-time record for number of cases handled in a fiscal year. We have also seen an increase over the normal number of case assignments in the first few months of the current fiscal year. Furthermore, we have noticed a significant increase in the number of violent crime case assignments. The increased severity of a case assignment correlates directly with increased cost, as they often require investigators, experts, more attorney time, etc. See Graph 1.

It is always difficult to forecast what the case assignment numbers will be in the future. The Commission has no control over the number of crimes committed and investigated, the number of persons charged, the charges filed and the number of persons who apply for services and are found eligible. One trend we have noticed is the increase in the number of felony case assignments compared to misdemeanor case assignments. Felony case assignments take more time and thus are more expensive to handle. See Graph 1.

II. AUDIT FINDINGS.

The last audit of the Commission did not have any recommendations or findings.

III. CURRENT BIENNIUM ACCOMPLISHMENTS AND NEXT BIENNIUM GOALS AND PLANS.

ACCOMPLISHMENTS

Our attorneys, staff, and contractors continue to do incredible work against all odds and for less pay than their counterparts. The ability to present this budget is an honor and a privilege to represent such a dedicated group of individuals.

The Commission has been able to accomplish some amazing things this current biennium thanks to the tireless dedication of the employees and contractors of the Commission. The Commission continues to partner with local, state, and national partners to provide high quality training for our public defenders, law firms who contract to provide services, and criminal defense attorneys across the state.

The Commission has also played a major role in the expansion of the pretrial service program housed within the Department of Corrections. The Commission did not receive any increase funding in relation to the program but has been able to successfully find

attorneys to appear at initial appearances with clients. Additionally, my assignment staff have spent numerous extra hours fitting into their already tight assignment schedules the assignment of counsel. We have worked with the Court and the Pre-Trial service division of DOCR Parole and Probation to streamline a method of screening individuals applying for counsel. We have worked out orders in each pilot district to allow for earlier application, determination, and appointment of counsel. The Commission also trains all new pre-trial service agents on the guidelines for eligibility for public defense services.

The Commission has served on several committees and workgroups to make the criminal and juvenile legal systems in North Dakota better. We have continued to work on our state's response to the mental health crisis. We have continued to work on issues surrounding juveniles and promoting rehabilitation as part of all programming. Further, we have continued to look at ways to better provide services to our clients to meet our constitutional mandate without the assistance of any additional state funding.

The Commission continues give North Dakota a presence on the national level. The undersigned has been elected to the Board of Directors for the National Association of Criminal Defense Lawyers, becoming the first lawyer from North Dakota to serve in that capacity. Further, we continue to consult with other states and leaders in public defense to make sure the Commission provides the most constitutionally effective services we can.

CHALLENGES

I would like to point out our challenges continue to be the same as they have since I have been in administration since 2016. Continually, our two biggest challenges are the employee turnover due to compensation and contractor rate of pay. We can no longer afford to continue to turn a blind eye to these two issues as we are near a state of constitutional failure. We have consistently brought information to this legislative body indicating we are vastly behind our counterparts in county government prosecutor offices in attorney salaries. Additionally, our staff continue to lag similarly classified staff in other government agencies or branches. This is no longer sustainable. The American Bar Association's 10 Principles of a Public Defense Delivery System provide 10 black letter rules for an efficient system. Principle 2 provides "Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors". This currently does not exist in North Dakota. We

continue to lose qualified lawyers to prosecutor offices who offer higher salaries with their additional funding. In fact, the six largest counties in the state appropriate \$38,975,578 for prosecutors whereas our biennial budget for the whole state is \$22,620,120. Thus, we are not at parity, we are being funded at 53% of the six largest counties.

Given the lack of funding compared to prosecutors, we have been unable to recruit or retain qualified attorneys to our positions based upon salaries we can pay. We currently have 5 vacancies out of 20 total full-time attorneys, this is a 25% vacancy. We were once again forced to close one of our offices because we were unable to recruit and staff the attorney position. In closing the office, we reallocated the FTE positions to better serve the public. Quite simply, it is not sustainable to turn over 25% of your workforce on an annual basis. Graph 2.

The next challenge we face is the inability attract private firms to provide contract services for the Commission. Our statute requires the use of private attorneys to serve as contractors to handle cases for the Commission. Our current rate of compensation for contractors is \$80 per hour. Federal Criminal Justice Act appointments in calendar year 2024, federal court version of contract public defense, was at the rate of \$172/hour, more than double the rate we can offer. Last session the Legislative Assembly did fund the agency to raise our rate from \$75 to \$80 an hour, however, the Commission's increase was not the same as the CJA rate increase and we have fallen even further behind. Graph 3.

An additional challenge the Commission faces is not having access to qualified investigators to serve clients. Since the inception of the agency, the Commission has relied upon using investigators in the private sector to provide services to full-time attorneys and contractors. A lawyer has a duty to investigate all cases to which they are assigned. We have consistently paid \$65 per hour to investigators as not to exceed the rate paid to attorneys. It has become increasingly more difficult to find investigators in the private sector willing to perform work for the Commission at this rate. The National Association of Public Defenders issued a position paper in May of 2020 on Public Defense Staffing for meaningful representation in which it notes "adequate investigation is the most frequent reason courts find ineffective assistance of counsel." To remedy this problem, the Commission did request three FTE positions last session. The 68th Legislative Assembly provided funding for 1 FTE. This investigator was placed in the Bismarck Office, and you

will hear testimony from an attorney in that office as it relates to the effectiveness of having an investigator on staff.

PLANS TO ADDRESS CHALLENGES

The first decision package the Commission recommended to the Governor's office was to restore the 3% cut. Governor Burgum had requested all agencies prepare a budget at a 3% cut. However, this is not feasible for the Commission with an increase in case numbers, an increase in the severity of cases and the inability to provide constitutionally mandated services within the current budget.

The Commission did submit as part of our budget a plan to move to a step program for classified employees like that used by the Judicial Branch and most county governments. This would put the director salary equal to a district court judge, the deputy director at a rate of a magistrate judge, and then equivalent positions would line up according to where they would fall on the Courts scale. A copy of this classification strategy is attached. Attachment 4. The Senate did not fund this and we have since lost an additional employee.

Some of the work to meet this goal has already been achieved. To be competitive with the Court and other like governmental agencies, we have had to reclassify several positions. As you can see in Attachment 4, we have begun the process of reclassifying positions and will continue to do so. To fully implement the strategy, we requested an additional \$805,000. However, since the time we submitted the budget, the Court increased the rate paid to attorneys and our request to the Governor is insufficient to put on par with the Court. This serves to demonstrate the inability to compete the Commission has been placed in. For those reasons, we are requesting the legislature fund the compensation schedule we have proposed along with adding the increases to be given to all state employees. The Senate did add a provision to our budget exempt our attorneys from classified state employees.

The third plan we put in with this budget is an attempt to make us competitive with other legal systems, primarily the federal government, in competing for private firms willing to do contract public defense work. Currently, we are discussing this contract rate every budget cycle. The uncertainty associated with the low contract rate makes our request to private firms unappealing in comparison with the federal government. To combat this, we have prepared a

budget request to fund an increase to the hourly rate at a benchmark of the federal government. The Commission approved the rate to be sixty (60) percent of the federal criminal justice act rate. For this budget cycle, the federal rate when preparing the budget was \$172 per hour. Sixty percent of \$172 would have our rate be at \$103.20. Thus, we submitted a request for \$5,255,134 to increase our hourly contract rate to \$103 per hour. In the event the legislative assembly agrees with this approach. We will have 60% as the benchmark and all future budgets will be requested accordingly. The Senate appropriated \$2,000,000 to increase contractor pay which is insufficient to meet our benchmark.

The final plan we put in place is to address the support staff requirements of an effective public defense delivery system. We have a goal of having a full-time investigator in each public defender office. The American Bar Association (ABA) 10 Principles of a Public Defense Delivery System, Principle 9 provides “public defenders should have the assistance of investigators, social workers, mitigation specialists, experts and other professionals necessary to meet public defense needs.” In preparation for this budget, I spoke with each office, and it is abundantly clear, there is a not enough investigators in the private market willing to take our reduced rate to meet our need. The only way we can provide constitutionally mandated effective representation is to have investigators on staff.

We have had our lead investigator on staff for nearly a year, and the returns have been as expected. The attorneys in that office have praised the ability to have an investigator assist in interviewing clients, reviewing discovery looking for defenses, locating and interviewing witnesses, preparing for trial, taking photos, etc. We need an investigator in each office given the attorney rules of professional conduct conflict rules associated with non-lawyer legal assistants. With only one investigator on staff, he has been tasked with covering the entire state and taking cases in Dickinson, Bismarck, Minot and Fargo. The Senate approved 2 additional FTE which would be investigators.

IV. AGENCY REQUESTS/ RECOMMENDATIONS TOTALS, INCLUDING
 FULL TIME EMPLOYEE REQUESTS COMPARED TO CURRENT
 BIENNIUM.

Current 2023-2025 biennium level	Requested level in 2025-2027 budget	Burgum Recommendation	Armstrong Recommendation	Senate
41 Full Time Employees	46 Full Time Employees	43 Full Time employees	43 Full Time employees	43 FTE
Implement Step program to be competitive	\$805,000 for employee increases	\$805,000 for employee increases	\$805,000 for employee increases	Didn't give any additional beyond all State employees
Pay increase for contract attorneys, currently at \$80 per hour	Increase to 60% of CJA Rate at cost of \$5,255,134	Increase of \$1,500,000 from General Fund to increase pay rate of contracted attorneys	Increase of 2,000,000 from General Fund to increase pay rate of contracted attorneys	\$2,000,000
Total funding levels \$21,137,085.88 General fund \$2,023,067 Special fund	\$28,400,805 General Fund \$2,035,087 in Special Fund spending authority	\$24,815,568 General Fund \$2,054,262 in Special Fund spending authority	\$ 25,231,316 General Funds \$2,051,857 in Special Fund spending authority	\$ 24, 294,666 General funds \$2,049,216 in Special Fund Spending authority

AGENCY FUNDING

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

- 1) A \$35 indigent defense application fee pursuant to N.D.C.C. § 29-07-01.1; and
- 2) The Commission's portion of a \$100 court administration fee (the indigent defense/facility improvement fee) pursuant to N.D.C.C. § 29-26-22(2). This fee is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two.

The District Courts also have the authority to order reimbursement of attorney fees pursuant to NDCC 29-07-01.1 (2). However, any attorneys' fees that are recouped go into the general fund, not fund 282. Those funds are not collected by the Commission, they are collected and accounted for by the Court. The collection of the application fee and indigent defense/facility improvement fees is not guaranteed. District Judges, who impose the fees, have the discretion to impose or waive the fees in any case. The spending authority authorized by the legislature is more than is biennially collected. Current biennium spending authority will outpace collections and consume any carryover balance from previous biennium. Given this trend, there needs to be a shift from reliance upon fees to fund indigent defense to general fund dollars. The House passed House Bill 1417 which eliminates the \$35 application fee and the reimbursement of attorney fees. This will cost the Commission \$310,000 in special funds collections which is offset by an appropriation in HB 1417 of \$310,000 from the General Fund.

EXPENSES

The major components making up the expenses for the Commission are salaries and benefits, professional fees and services (legal fees), ITD expense, and rent of office space. As of November 2024, these totaled 96.5 % of our expenditures for the biennium. These

expenses do not account for such things as statutorily mandated training, expenses related to representation of an individual in a case assignment such as an expert, or other unexpected expenses. Thus, any increases in case assignments such as the increase we are currently seeing this biennium places an extreme challenge to our ability to fund all requests for services.

V. NEW POSITIONS APPROVED IN 2023-25 BIENNIUM.

The 68th Legislative Assembly provided the Commission with one additional full-time employee. The FTE was given to start an on-staff investigator program within the agency. The position was hired as the Lead Investigator and was filled with a starting date of September 18, 2023. \$137,781 was originally appropriated for the position and then was removed into the vacant/new FTE pool at the end of the last legislative session. We did transfer the \$137,781 from the pool upon filling the position and will spend all the amount appropriated for the position. We anticipate we will be requesting the remaining amount taken from the budget for the vacant FTE pool given the lack of savings by having vacant FTE.

VI. EMPLOYEE TURNOVER AND THE NUMBER OF VACANT POSITIONS TO DATE COMPARED TO SAVINGS REMOVED FROM BUDGET IN 23-25 BUDGET.

Employee turnover has been continually around 25% of our workforce over the last several calendar years. During the 2023-2025 biennium we have turned over 19 full time employees of 41 FTE. This is 46.3% of our entire agency turned over so far this biennium. However, as reported to OMB quarterly for the last biennium, vacant FTE spots do not save us money. Of the 19 FTE that left our employ so far this biennium, 11 of those were attorneys. When attorneys leave our agency, we must reassign all of their open cases. Due to increased caseloads stemming from higher case assignment numbers and fewer contract and full-time public defenders, we are having to reassign more cases than in the past due to turnover. Typically, these cases are assigned to private contractors who agree to take extra cases for extra compensation. Assigning a case to a contract attorney costs more money than if it can be handled by a full-time public defender within the office. Furthermore, if

any expenses were spent on the case by the leaving attorney, the new attorney may have a new strategy incurring new expenses.

Eight of the remaining positions were administrative staff. When administrative staff leave our employ, we are forced to have attorneys cover some of their duties within the offices. This is inefficient and does not save money as we have to assign more cases to contractors because attorneys are covering administrative duties. The new and vacant FTE pool did not save the Commission any funds. Governor Burgum in his executive recommendation noted the deficiency in the new and vacant FTE pool as it relates to our Commission and recommended restoring \$391, 375 from the general fund and \$7,134 from the special fund that was removed in 2023-25 budget.

VII. FUNDING IN EACH PROGRAM/LINE.

The Commission does not have separate program lines.

VIII. ONE TIME FUNDING REQUESTS.

The Commission did not submit any one-time funding request in this budget. Our budget is focused on meeting the bare minimums to pass constitutional challenge to our public defense delivery system in North Dakota.

IX. IDENTIFY AND JUSTIFY NEED FOR ANY ONE TIME FUNDING REQUESTED.

This is not applicable to our agency.

X. FEES ASSOCIATED WITH THE AGENCY, APPROPRIATENESS OF THE FEES, AND AMOUNTS DEPOSITED.

The Commission has three main fees associated with our services:

- 1) A \$35 indigent defense application fee pursuant to N.D.C.C. § 29-07-01.1;
- 2) The Commission's portion of a \$100 court administration fee (the indigent defense/facility improvement fee) pursuant to N.D.C.C. § 29-26-22(2). This fee is split pursuant to statute between the indigent defense administration

fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two; and

- 3) The Judge may order reimbursement of attorney fees pursuant to N.D.C.C. § 29-07-01.1(2). However, any fees collected pursuant to a judicial order to reimburse cost of representation are deposited in the general fund.

Collections of fees 1 and 2 above are deposited in the Indigent Defense Administration fund, or fund 282. The collections, as mentioned above, have not kept pace with spending fund authority. The table below summarizes collections and expenditures.

	2019-2021 Biennium	2021-2023 Biennium	2023-2025 Biennium to date (End of November 2024)
Collections	1,587,113.58	1,481,223.21	1,014,721.77
Amount expended	1,701,676.20	1,506,162.83	1,225,825.73
Spending Authority	1,990,035	1,994,850	2,011,220

The appropriateness of the collection of fees is an unsettled question. The Commission supported House Bill 1417 in removing the \$35 application fee and reimbursement of counsel fee. The American Bar Association 10 Principles provide states should not charge an upfront fee for public defense services. Public defense is one of the only, if not THE only constitutionally guaranteed right given to individuals in which they are required to pay a fee. When law enforcement wants to search your home, you don't have to pay a fee to require them to get a warrant exercising your fourth amendment rights. Likewise, when you want to say something at a legislative hearing as a citizen, you don't need to pay a fee to exercise your first amendment right.

XI. FEDERAL STATE FISCAL RELIEF FUNDS REMAINING TO BE SPENT.

We did not receive any Federal Funds in the last biennium.

XII. NEED FOR OTHER SECTIONS TO BE ADDED TO THE BILL.

The Commission is consistently reviewing ways in which we can assist the legislature in providing public defense services. One way that has been identified is the potential of using federal funds to pay for reimbursement of costs associated with providing legal counsel to families in juvenile court. We have worked with the Department of Health and Human Services, Children and Family Services Division, to develop a plan by which we would have access to federal title IV-E funds to assist with providing more holistic public defense services. ND DHHS has included in their budget funds to start this program since they are the federal pass through for federal IV-E funds. If funded, we will be executing a memorandum of understanding with ND DHHS to create the contracts for those public defense services, with the bills to be paid by the Department. Therefore, it should be noted in our budget we have the ability to spend federal funds.

Additionally, the Commission must begin to seek alternative funding sources to implement our vision of providing holistic services. This would require the ability to apply for and receive federal grants and to be subgrantees on formula grants already given to the State of North Dakota. One such grant that has been identified is the Byrne Jag Formula Grant that flows through the Attorney General's office. The federal bureau sponsoring those grants has indicated the funds may be used for court systems of which certain public defense systems would be appropriate subgrantees. In fact, many state and other governmental level public defender offices receive these grants in their respective governments. We do not have an amount submitted with our budget but the use of potential grants and alternative fundings sources would need to be approved by the legislature. At this time, we would be requesting a blanket approval to receive and expend other funds for the provision of public defender services.

XIII. OTHER BILLS BEING CONSIDERED AND POTENTIAL BUDGETARY IMPACT.

There are several bills working their way through the legislative process possessing the ability to affect the budget of the Commission. There are several bills dealing with penalty and punishment. Any increase in penalty or punishment may result in defendant's choosing to exercise their right to a trial versus pleading guilty. If a case goes to trial, there is more time associated with the case and more time means more money expended. One bill that has survived the first half of session that could cause fiscal implications is Senate Bill 2128.

Additionally, there are several bills dealing with the amount charged for the fees discussed above. Senate Bill 2057 would increase the Court Administration/Indigent Defense Fee from \$100 to \$200. However, we are unable to determine a fiscal impact as the fee can be waived and it is impossible to ascertain if increasing this fee will lead to any further collections. House Bill 1417 eliminates the \$35 indigent defense application fee. This would cause a special fund reduction but is offset by an appropriation of \$310,000.

Senate Bill 2226 creates a presumption of indigence for someone who is in custody and having an initial appearance. This bill also has an appropriation of \$615,734 or so much as may be necessary. This amount of money will likely save the state from much more costly litigation. Advocacy groups are closely watching an 8th Circuit Court of Appeals case that could mandate this type of service be provided by the State. In fact, the American Bar Association has asked me to come out and be on a panel at the ABA Summit on Public Defense discussing this very topic.

XIV. ADDITIONAL INFORMATION.

Indigent Defense is a constitutionally mandated program. We have asked for increases for employees and contractors in the past and have met varying degrees of success. We are continuously asked to trim our requests or what programs we can live without. This is a survival budget. We would not have asked for any of these packages if we did not need them to survive. Indigent defense systems around the country are

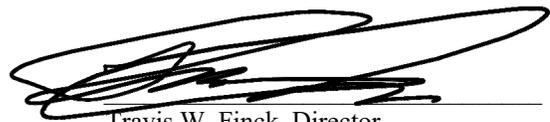
being sued for failure to provide adequate resources. In Wisconsin, they state public defender has been in litigation for not having sufficient resources since 2022. Idaho has been in middle of a lawsuit over their system since 2015. Louisiana has been in middle of a lawsuit since 2017. Just in 2024, Pennsylvania has been named a defendant in another suit alleging indigent defendants are not provided effective representation.

The Commission is an integral part of the criminal, juvenile and civil legal system in the great state of North Dakota. To continue the administration of the court system in the state, the budget we submitted is not a want budget, it is a survival budget. In my time as director of this agency, we have consistently requested to be on a level playing field with prosecutors as required by the American Bar Association. However, with the increases prosecutors have received from their respective county governments, we are not even in the arena. Thus, we are at least trying to be competitive with other governmental agencies whose budgets are completed by this legislative assembly. We have been and will always continue to be good stewards of the monies entrusted to us. To meet the challenges of the day, we must work together.

CLOSING

I want to thank the Committee for your time. I ask you consider the position in which the state finds itself regarding Indigent Defense. The time is now to fully fund the agency to provide constitutionally required services.

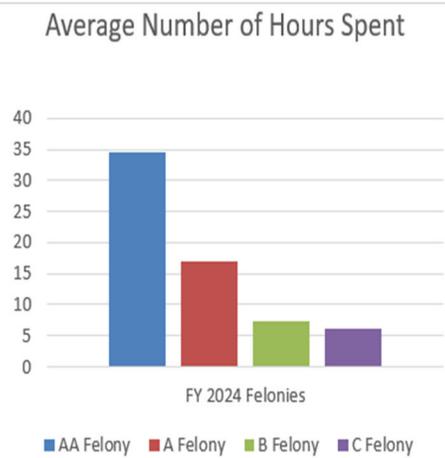
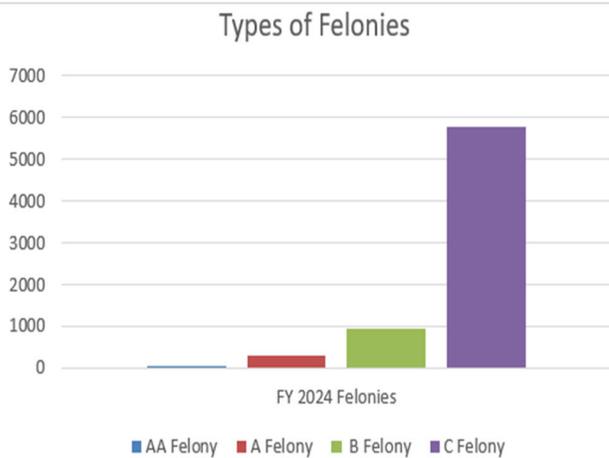
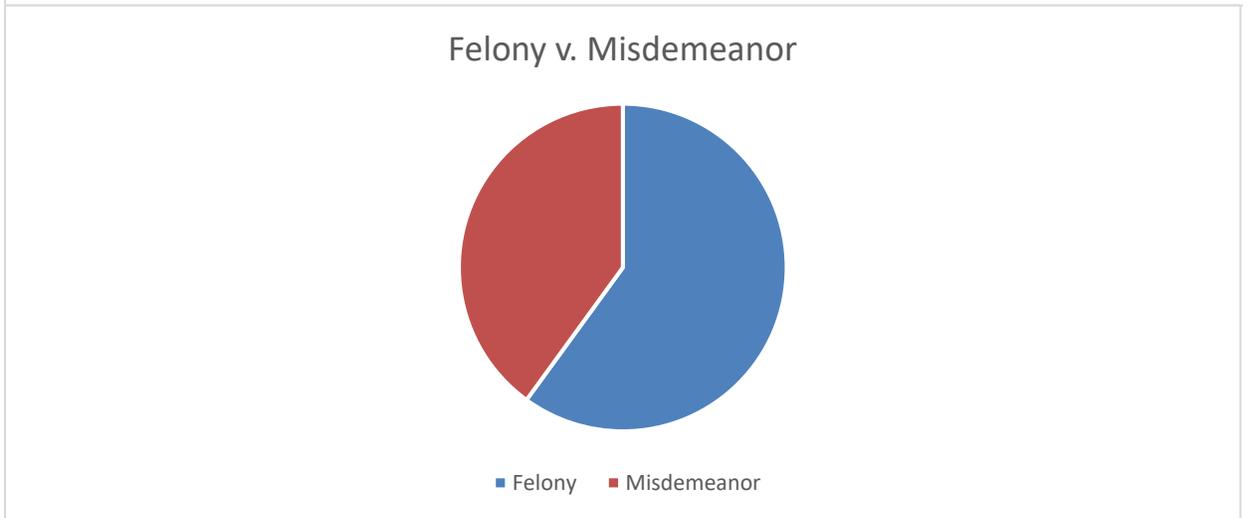
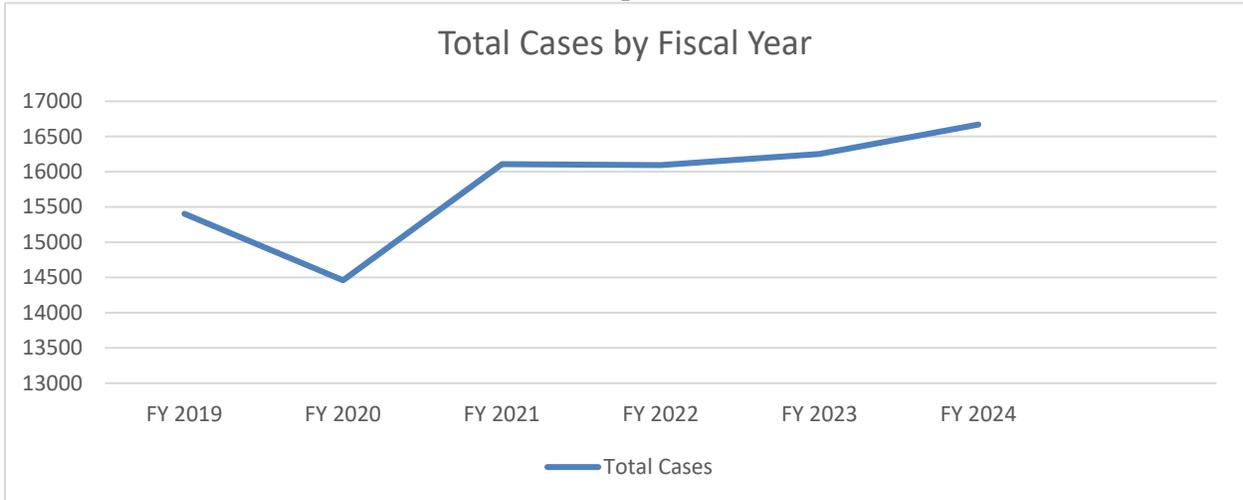
Respectfully submitted:



Travis W. Finck, Director
N.D. Comm. on Legal Counsel for Indigents

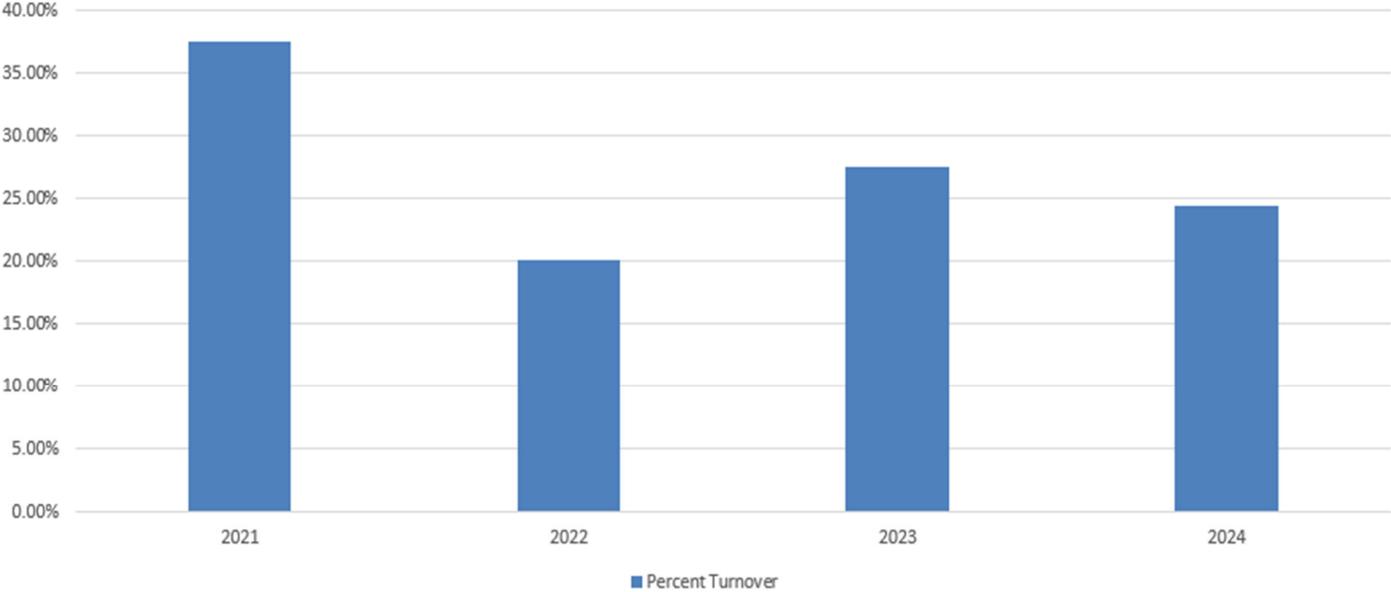
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Graph 1



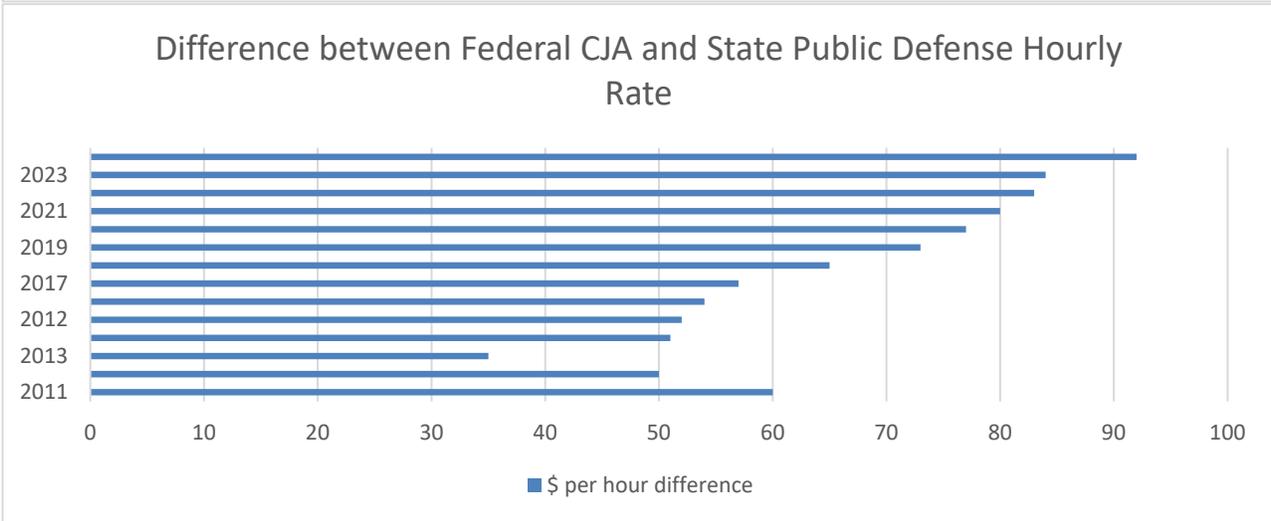
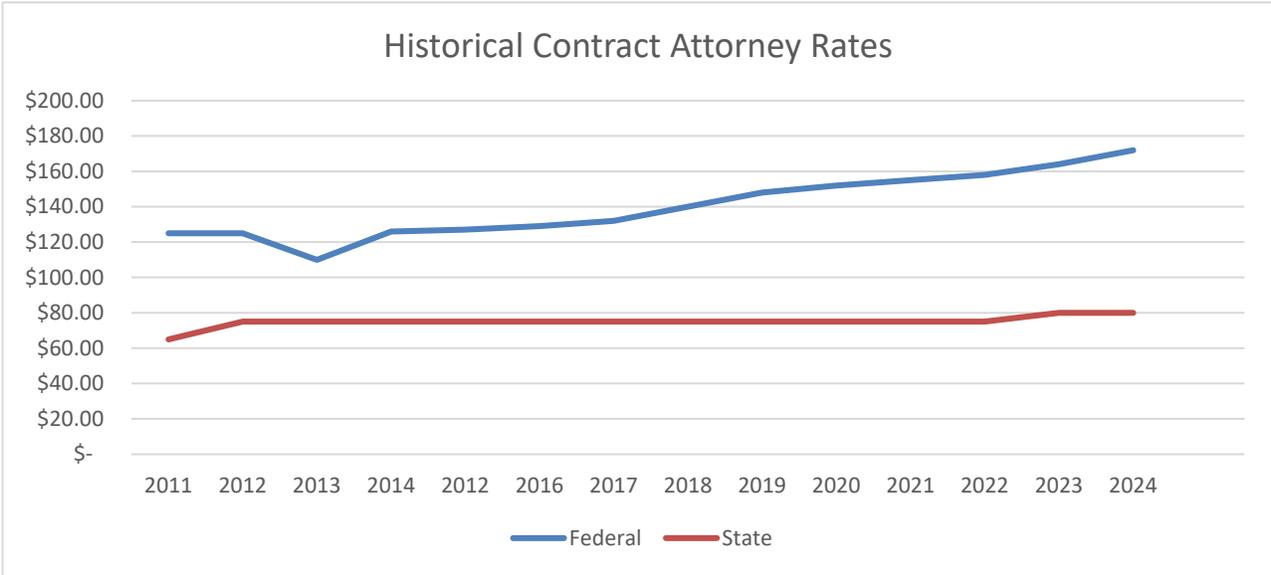
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Graph 2
FTE Turnover Percentage per Calendar Year



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GRAPH 3



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GRAPH 4

Current Job Title	Current Class	Current Grade	Proposed Class and Job title	Proposed Grade	Court Grade
Admin. Asst. I	Admin Svc III	103 (2951-4918)	Admin Svcs IV Admin Asst. - office	104 (3508-5847)	10 (4158-6106)
Admin. Asst II	Admin Svc IV	104 (3508-5847)	Adm Svcs IV Adm Asst – Office	104 (3508-5847)	10 (4158-6106)
Admin. Asst. II	Admin. Svc IV	104 (3508-5847)	Adm Svcs IV Adm Asst – Executive	104 (3508-5847)	11 (4480-6594)
Legal Asst. II	Admin. Svcs V	105 (4163-6938)	Admn. Svcs. V – Legal Assistant	105 (4163-6938)	12 (4803-7087)
Admin. Staff Officer I	Admin. Svcs V	105 (4163-6938)	Admin. Svcs. V Admin. Staff Officer	105 (4163-6938)	12 (4803-7087)
Admin. Offer II	Admin. Svcs V	105 (4163-6938)	Admin. Svcs. V Admin. Officer II	105 (4163-6938)	12 (4803-7087)
Investigator Lead	Protective Svcs. III	105 (4163-6938)	Protective Svcs. III.	105 (4163-6938)	12 (4803-7087)
Attorney I	Pro. Svcs II	106 (4971-8285)	Pro. Svcs III – Attorney	107 (5973-9955)	19 (7072-10,099)
Attorney II	Pro. Svcs III	107 (5973-9955)	Pro. Svcs III – Attorney	107 (5973-9955)	19 (7072-10,099)
ACCT SPEC. III	Fiscal Svcs V	106 (4971-8285)	Fiscal Svcs VI – Finance Director	107 (5973-9955)	19 (7072-10,099)
ATTORNEY III	Pro. Svcs. IV	108 (7146-11909)	Pro. Svcs. IV – Supervising Atty	108 (7146-11909)	21 (7743-11603)

**Compensation Strategy for Classified Positions
North Dakota Commission on Legal Counsel for Indigents**

The Commission understands compensation for employment is not a one-time discussion and every year employees become more valuable to the agency and its mission due to their increase in skill and knowledge. Knowing how and when you may receive salary increases is a key factor in planning your future. We believe consistently rewarding performance strengthens the employment relationship.

Utilizing a step system for classified positions allows the Commission to hire at entry level, train employees while they earn a fair wage, and continuously reward employees for longevity and satisfactory performance. This allows for a fair, unbiased and transparent compensation system. It further allows the Commission to compete with other public entities in recruiting and retaining candidates for employment.

Unless there is a market exception, all new hires start at step one. Employees who provide satisfactory performance are eligible to advance to the next step every odd year on the employee’s anniversary date in pay grade. In addition, if the Legislature provides funding for employee increase, the Commission will adjust the step system to maintain market competitiveness. When this happens, employees will receive the Legislative increase on July 1. Generally, it will take 19 years to reach the final step, step 11.

The example below shows how the compensation for a typical employee would change over the first 5 years of employment with the Commission.

Attorney
Employment Start Date of August 1, 2024
Pay Grade 107
(5973-9955)

Step	Date	Salary	Explanation									
1	8/1/2024	\$7,355/month	Hire step/Employment start date/Anniversary Date									
2	3/1/2025	\$7,658/month	1 st odd year step increase given on Completion of Probationary Period									
2	7/1/2025	\$7,658	Legislative 4% increase									
2	7/1/2026	\$7,964	(Legislative increase based upon 2025 session) 4% for example purposes only									
2	7/1/2027	\$8,283	(Legislative increase based upon 2025 session) 4% for example purposes only									
3	8/1/2027		2 nd odd year step increase given on anniversary date in pay grade									
3	7/1/2027		(Legislative increase based upon 2027 session)									
3	7/1/2028		(Legislative increased based upon 2027 session)									
4	8/1/2028		3 rd odd year step increase given on anniversary date in pay grade									
Position	1	2	3	4	5	6	7	8	9	10	11	
Attorney – Public Defender	7,355	7,658	7,973	8,304	8,642	8,999	9,378	9,762	10,166	10,558	11,027	
Supervising Attorney	7,743	8,062	8,394	9,103	9,467	9,856	10,266	10,687	11,130	11,592	12,067	
Admin Asst. – PD Office	4,324	4,491	4,670	4,847	5,038	5,236	5,441	5,652	5,878	6,110	6,350	
Admin Asst. – Exec. office	4,659	4,842	5,032	5,226	5,434	5,648	5,871	6,102	6,343	6,595	6,858	
Legal Asst. - paralegal	4,995	5,193	5,396	5,610	5,829	6,057	6,300	6,550	6,810	7,080	7,370	
Investigator -PD Office	4,659	4,842	5,032	5,226	5,434	5,648	5,871	6,102	6,343	6,595	6,858	
Investigator - Lead	4,995	5,193	5,396	5,610	5,829	6,057	6,300	6,550	6,810	7,080	7,370	
Admin Officer/ Admn Staff Officer	4,995	5,193	5,396	5,610	5,829	6,057	6,300	6,550	6,810	7,080	7,370	
Accounting Manager	7,015	7,299	7,596	7,907	8,240	8,575	8,929	9,299	9,681	10,084	10,503	