

SB 2022  
N.D. Comm. on Legal Counsel for Indigent  
House Appropriations: Government Operations Division  
Budget Presentation  
March 7, 2025



## Purpose of Agency and North Dakota Century Code Implicated:

- The Commission operating statute is N.D.C.C. 54-61

The Statutory responsibilities of the Commission are found in NDCC 54-61-02

- The Commission is tasked with developing standards governing the delivery of indigent services. 54-61-02(1)(a)
- The Commission is tasked with implementing a process of contracting for legal services for indigents. 54-61-02 (1)(b)
- The Commission is tasked with establishing public defender offices in regions of the state as it considers necessary and appropriate. 54-61-02 (1)(c)
- The Commission is tasked with establishing a method for accurately tracking and monitoring caseloads of contract counsel and public defenders. 54-61-02 (1)(d)
- The Commission is tasked with approving and submitting a biennial budget to the Office of Management and Budget. 54-61-02 (1)(e)
  
- The Commission is further given statutory authority to do the following:
  - Enter into agreements with a County or City to provide services in which the County or city would have to provide. 54-61-02(2)
  - Adopt rules for the exercise of its authority. 54-61-02(3)
  - Request records from other agencies to verify indigence. 54-61-02(4)

## The Purpose of the Agency's Various Programs

- The Commission is the agency which provides the attorneys and related services to indigent persons when there is a constitutional, statutory, or rule-based right to counsel at public expense.
- 54-61-01 provides that the Commission was “established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to standards and policies of the commission governing eligibility for such services.”
- The North Dakota Commission on Legal Counsel for Indigents' mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at reasonable cost to the community.
- The Commission consists of 7 members: 1 member of the legislature from each house, 2 appointed by the Governor (one must be from a county of not more than 10 thousand), 2 appointed by the Chief Justice (one must be from a county with a population of not more than 10 thousand) and one member appointed by the Board of Governors, State Bar Assoc.
- The Commission has 7 total offices: 6 regional public defender offices and the administrative office in Jamestown.

## Delivery of Services

- The Commission is administered through the Administrative Office located in Jamestown
- We oversee 6 Regional public defender offices with a supervising attorney in each location:
  - 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
- We also contract with Private law firms to provide public defender services.
- 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

- Case assignments need to be limited to allow an attorney to provide a constitutionally effective defense
- Recently, new public defense workload standards were released, and we are nowhere near where we should be. We use 1973 NACC standards, and even with those antiquated standards 66% of our attorneys or contractors exceeded case limits last fiscal year.
- Fiscal year 2023 remained high with a slight increase over Fiscal Year 2022. Fiscal Year 2024 was our highest year ever with more of an increase than we predicted, outpacing the slight growth we had seen.
  - One Concerning trend we have noticed is we are providing representation on more felonies than misdemeanors.
  - Felony representation takes more time, and the more serious the felony, the more time the case assignment demands. See [Graph 1](#)

## **Report on financial audit findings and actions taken**

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

## **Accomplishments**

- Our Attorneys, Staff and Contractors handled a record number of case assignments and continue to do incredible work against all odds and for less pay than their counterparts
- Commission continues to work with Pre-Trial Services from the Dept. Of Corrections and Rehabilitation to expand that important program
- The Commission continues to be involved on committees and workgroups working to make the criminal and juvenile legal systems better in our great state.
- The Commission continues to give the state a presence on the national level.
- Continued work with other public defense leaders across the country to insure we are providing the best possible services within our limitations.

## **Challenges**

- The biggest challenges we face are the same we have been presenting to the Legislature since I have been in administration
- Continually our two biggest challenges are employee turnover due to lack of compensation and resource parity with other government entities and contractor rate of pay
- We are continually getting closer to constitutional failure due to not meeting the needs above

## **Challenges: Employee turnover due to lack of compensation and resources**

- The American Bar Association's 10 Principles of a Public Defense Delivery System provide 10 black letter rules for an efficient public defense 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 does not exist in North Dakota. 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. [Graph 2](#)
- With the limited resources, we are not able to pay the same as prosecutors and suffer unsustainable annual turnover. [Graph 3](#)
  - When our agency is fully staffed, we have 20 FTE attorneys. Right now I have 6 vacant positions, with 30% of our attorney positions being vacant. As I will show later, this doesn't save us any money.
  - The most frustrating part of this job is listening to employees in exit interviews talk about how they love their job but are leaving because they can make more money elsewhere, significantly more.

## **Challenges: Contractor Rate of Pay**

- Our statute requires us to use contractors on a minimum of 50% of case load. Because of our high turnover, this is currently closer to 73%. However, it is becoming harder to find persons willing to contract

## **Challenges: Contractor Rate of Pay**

- The 68<sup>th</sup> Legislative Assembly gave us funds to move from \$75/hour on contract to \$80.
- For Comparison, the Federal Criminal Justice Act paid contract attorney's \$172/hour in calendar year 2024. Thus, even though we got an increase, we fell further behind. [Graph 4](#)

## **Challenges: Investigative Services**

- The Commission is tasked with not only providing an attorney when there is a right to counsel, but providing the necessary services to the attorney to effectuate a constitutionally adequate defense.
- As such, the National Association of Public Defenders recommended in 2020 public defenders should have access to investigators and “inadequate investigation is the most frequent reason courts find ineffective assistance of counsel.”
- American Bar Association 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”
  - At this point we are only asking for the investigators and future plans will deal with social workers and mitigation specialists.
- Historically the Commission has relied on private sector investigators, however, the rate we can pay them does not lend itself to being able to procure services.
- Thus, we asked the 68<sup>th</sup> Legislative Assembly to start an investigator program in house asking for three FTE. We received 1 FTE, we did hire that FTE and I believe you will hear about the effectiveness of that program.

# Next Biennium Plan and Goals to Address Challenges

**State of North Dakota**  
**Decision Package Summary**  
**Biennium 2025-27**  
**Commission on Legal Counsel for Indigents**

Priority	Form Name	2025-27 Agency Request					2025-27 Executive Recommendation				
		General Fund	Federal	Special	Total	FTE	General Fund	Federal	Special	Total	FTE
<b>18800 - Commission on Legal Counsel for Indigents</b>		<b>7,608,474</b>	<b>-</b>	<b>-</b>	<b>7,608,474</b>	<b>5.00</b>	<b>3,337,648</b>	<b>-</b>	<b>-</b>	<b>3,337,648</b>	<b>2.00</b>
01	Restore cut to General Fund 7,165	643,040	-	-	643,040	-	643,040	-	-	643,040	-
02	FUND THE AGENCY TO IMPLEMENT THE COMMISSION'S COMPENSATION STRATEGY 7,166	805,000	-	-	805,000	-	805,000	-	-	805,000	-
03	3) SET A MOVING RATE OF THE FEDERAL GOVERNMENT CONTRACT RATE AND FUND ACCORDINGLY 7,168	5,255,134	-	-	5,255,134	-	1,500,000	-	-	1,500,000	-
04	Add Private Investigators 7,232	905,300	-	-	905,300	5.00	389,608	-	-	389,608	2.00

- We requested \$805,000 to implement a step program for payment of classified employees like those used by the Judicial Branch and County Governments
- To achieve this Goal, we developed a reclassification plan to go along with our budget asks. We have successfully worked on reclassifications with only one remaining. [Attachment 5.](#)
- We developed a plan to have a benchmark for contractor compensation where all future budgets will be set at a percentage of the Federal CJA rate. The Commission settled at 60% and we submitted a budget request ask to increase contractor compensation to \$103/hr.
- We addressed the staffing and investigative requirements by asking for 5 additional FTE, which would be investigators. This would place one investigator in each office.

# Agency Request/Recommendations Totals compared to current.

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
<b>Total funding levels</b> <b>\$21,137,085.88</b> 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

## Funding

- The Commission is funded through one line
  - The one line consists of the general fund and the Indigent defense administration fund (282)
  - Fund 282 is funded through the collection of statutory fees assessed in criminal cases:
    - 1) A \$35 indigent defense application fee pursuant to NDCC 29-07-01.1; and
    - 2) A portion of the \$100 court administration/indigent defense fee pursuant to NDCC 29-26-22(2). This fee is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two
  - The fee's are collected by the Judiciary and deposited with the State Treasurer.
  - The Court may also order Attorney Fee reimbursement which is deposited in the general fund
- The Spending Authority out of the special fund has outpaced the collections. Thus, there is concern we will not collect from fees the level of spending authority governor Burgum proposed.

## Expenses

- The Agency is a single line and must pay for all expenses out of the single line.
- 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.

## **New Positions Approved in 2023-2025 Biennium and Transfers from New FTE Pool**

- The 68<sup>th</sup> Legislative Assembly provided the Commission with one additional full-time employee
- 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 and anticipate spending all the appropriated amount.

## **Employee Turnover and The Number of Vacant Positions**

- 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 agency has turned over so far this biennium.
- Of the 19 FTE that left our employ so far this biennium, 11 of those were attorneys.
  - Forced to reassign all open cases
  - Usually have to get a contractor to cover those cases at additional compensation as our other offices are too short or overwhelmed to cover
- When administrative staff leaves, our attorneys often end up doing administrative tasks and can not take as many cases, so we end up paying for additional contracts
- Governor Burgum restored any monies from the New/Vacant FTE pool seemingly recognizing it doesn't work for our agency.

## **Funding in Each Program/Line**

- We are a one-time budget and do not have separate programs.

## **One Time Funding Requests**

- The Commission did not submit any one-time funding requests in this budget.

## **Fees Charged by the Agency, Appropriateness of the Fees, and Amounts Deposited**

- The Commission has three fees associated:
  - 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 the fees are done by the clerk of court. Collections from Fees 1 and 2 above are deposited in Fund 282 according to statutory scheme, Fee number three is deposited in the general fund
- Deposits are not keeping pace with spending authority and will need to be replaced with general fund dollars [See Graph 5](#)

## Fees Charged by the Agency, Appropriateness of the Fees, and Amounts Deposited

	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 has not yet taken a position on the fees and leaves it to the legislature for determination of appropriateness. However, 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.

## **Federal State Fiscal Relief Funds Remaining to Be Spent**

- We did not receive any federal funds

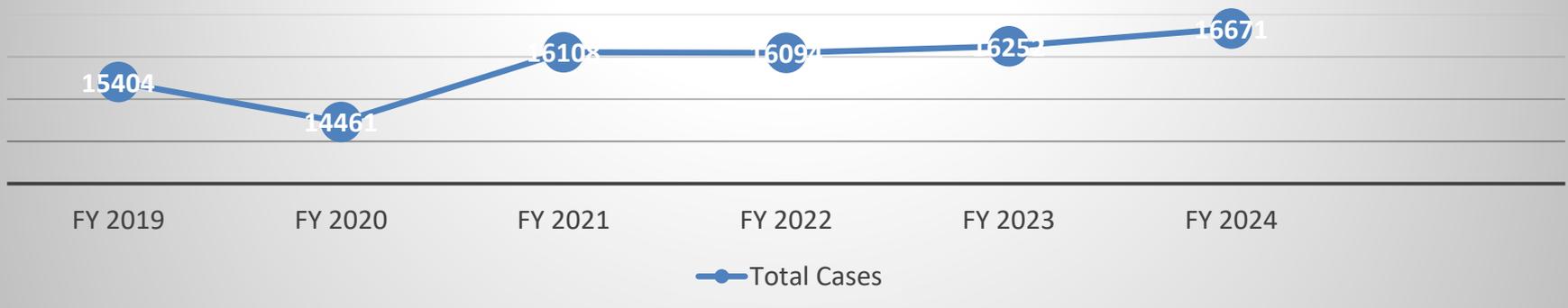
## **Need for Other Sections to be Added to the Bill**

- Ability to receive and spend federal and other grant funds
  - IV-E Funds for families in Juvenile Court
- Subgrantee of other Formula Grants the State already receives
  - Byrne Jag Grant

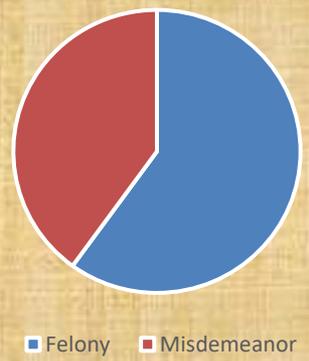
## **Other Bills Being Considered and Potential Budgetary Impact**

- Any bills dealing with penalty and punishment enhancements or decreases
  - Increased penalties we have found leads to more trials, costing more money and expenses
    - Senate Bill 2128 has mandatory service time is sentenced to prison, which will likely cause more cases to go to trial
- Change to the Collection of Fees mentioned above
  - Senate Bill 2057 increases the Court Administration/Indigent Defense Fee from \$100 - \$200
  - House Bill 1417 Re-Entry study looking at the elimination of fees.
    - Eliminates \$35 application fee, replaces with \$310,000 general fund appropriation
  - Senate Bill 2226 Counsel at First Appearances through presumption
    - Adds general fund appropriation of \$615,734

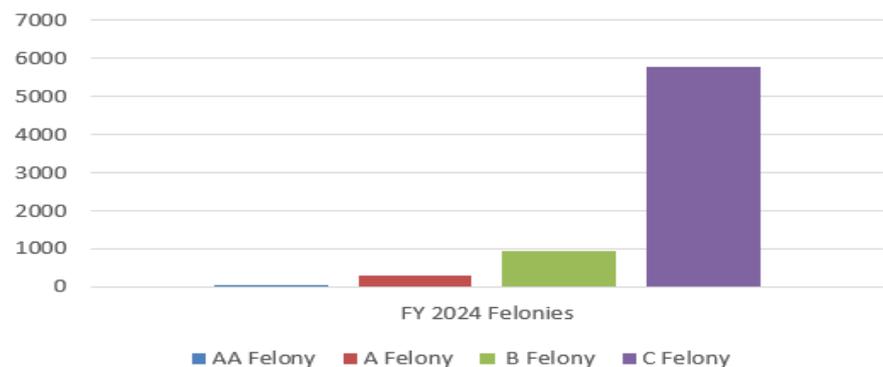
# Total Cases by Fiscal Year



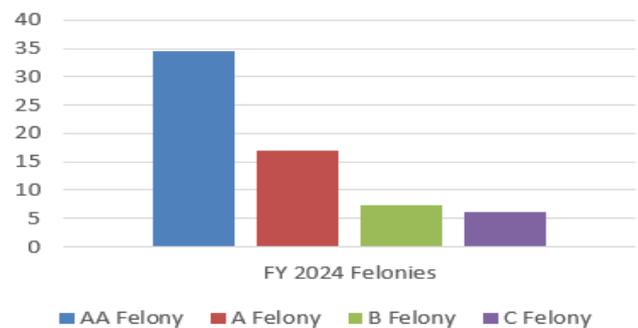
## Felony v. Misdemeanor



## Types of Felonies

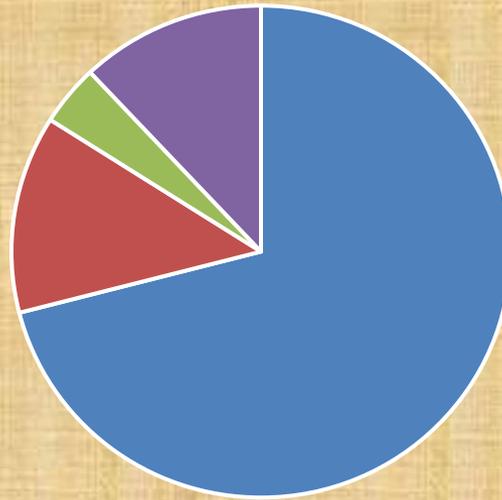


## Average Number of Hours Spent



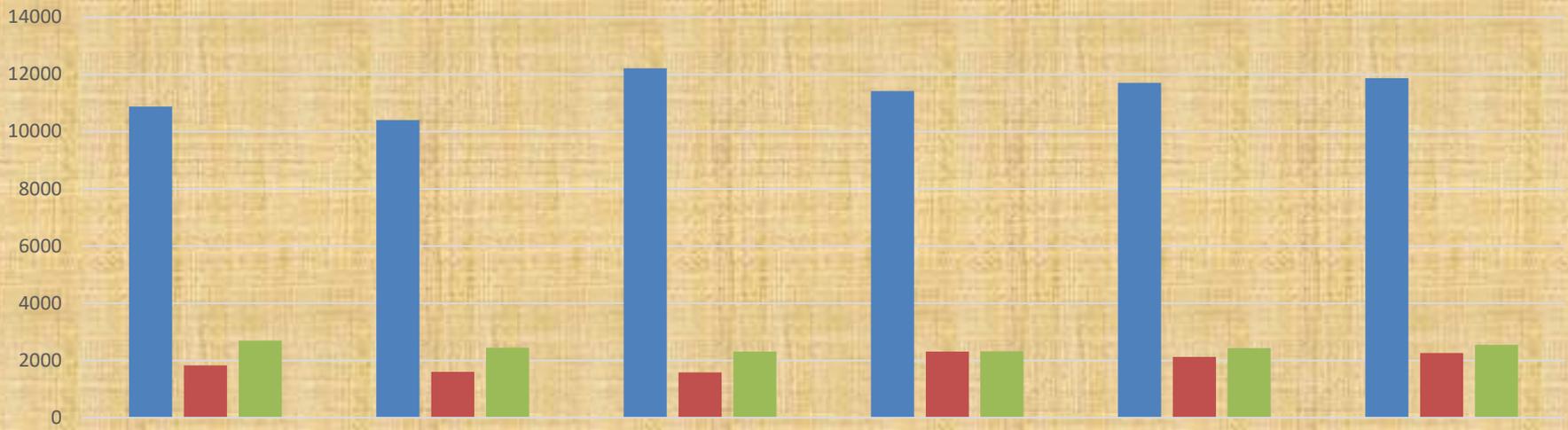
Case type percentages have remained fairly consistent over the years.

Case Types Current Fiscal Year



■ Adult Criminal ■ Juvenile ■ Appeal/Post Conviction/Other ■ Revocation

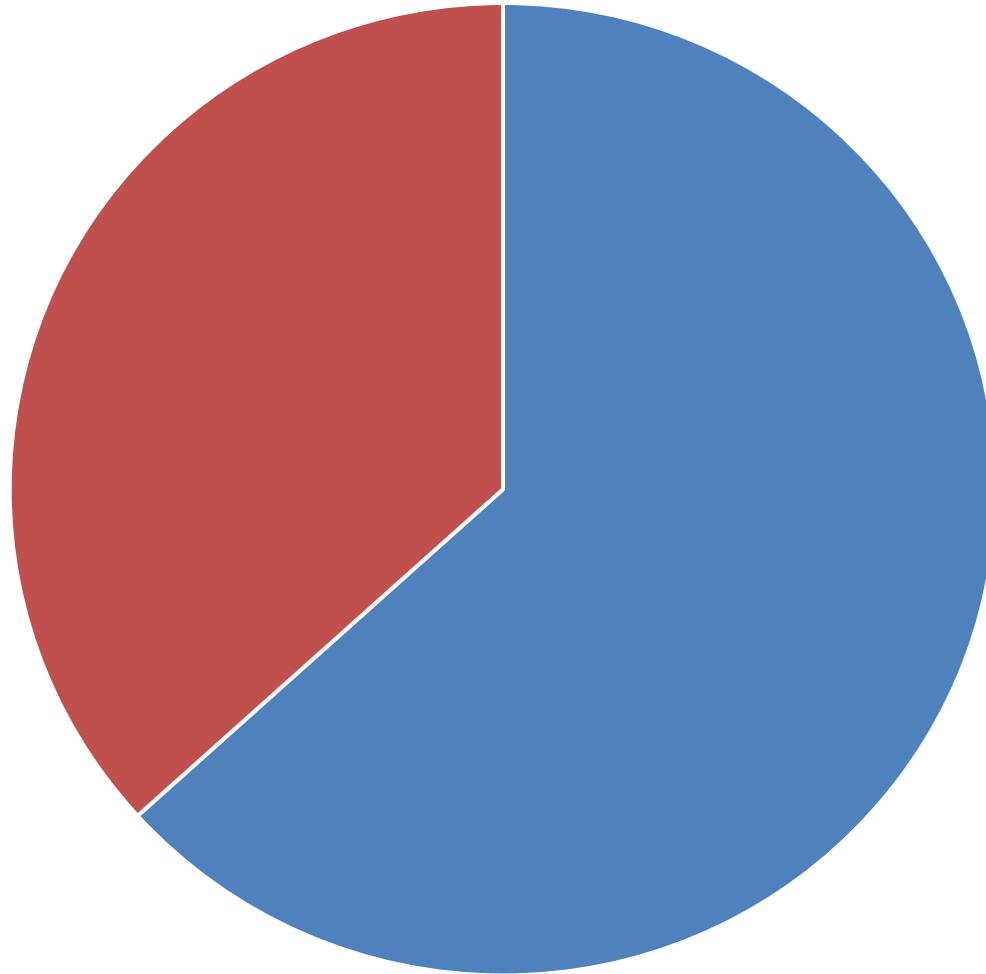
Case Types by Fiscal Year



■ Adult Criminal ■ Juvenile ■ Appeal/Post-Conviction/Other

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## Biennial Funding

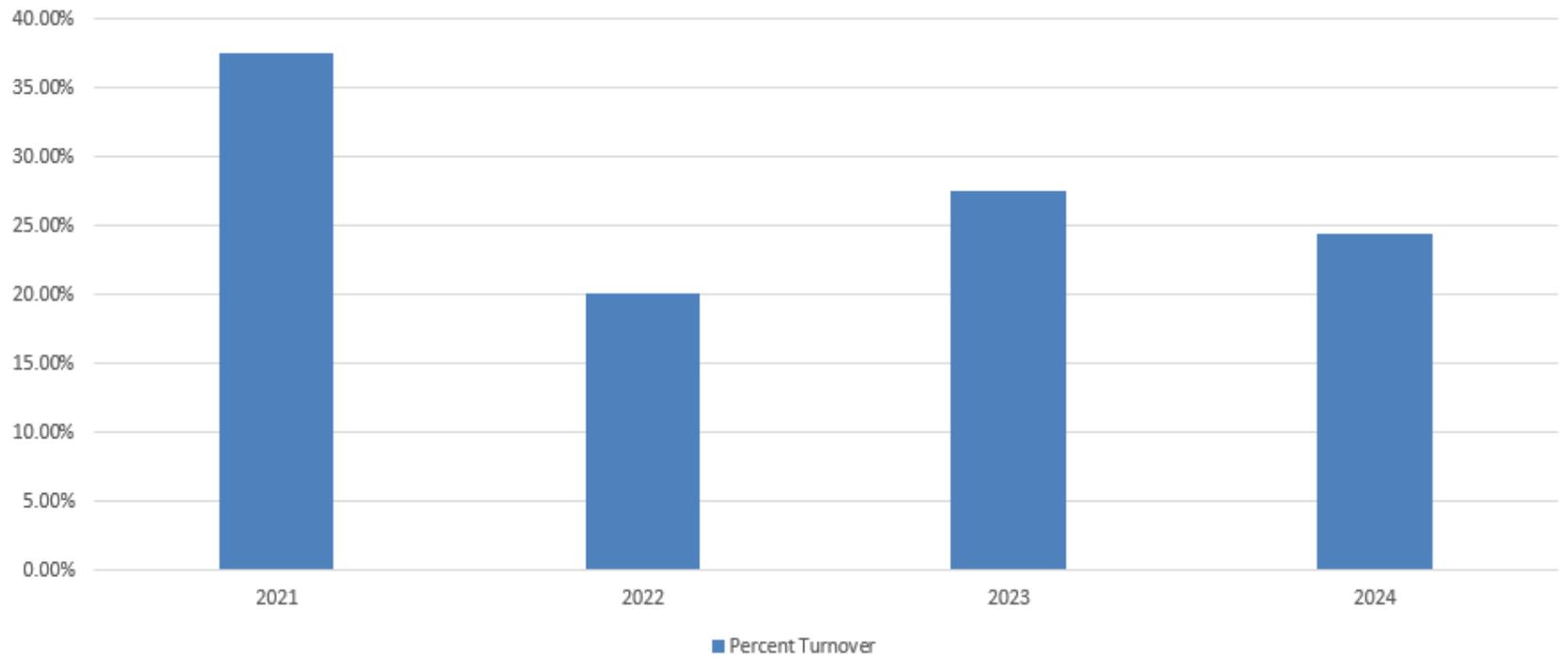


■ Prosecution in Six Largest Counties

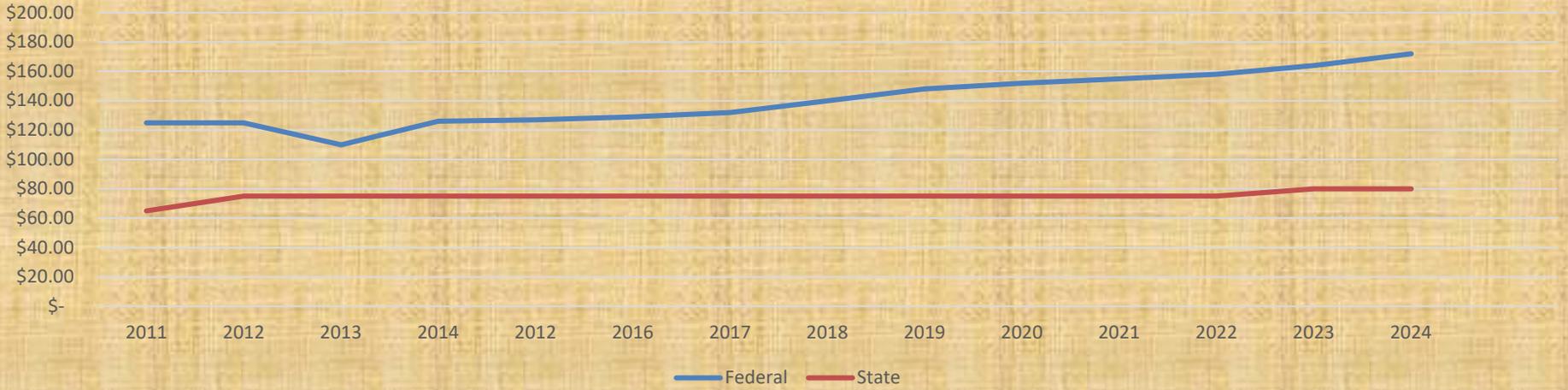
■ Public Defense in Entire State

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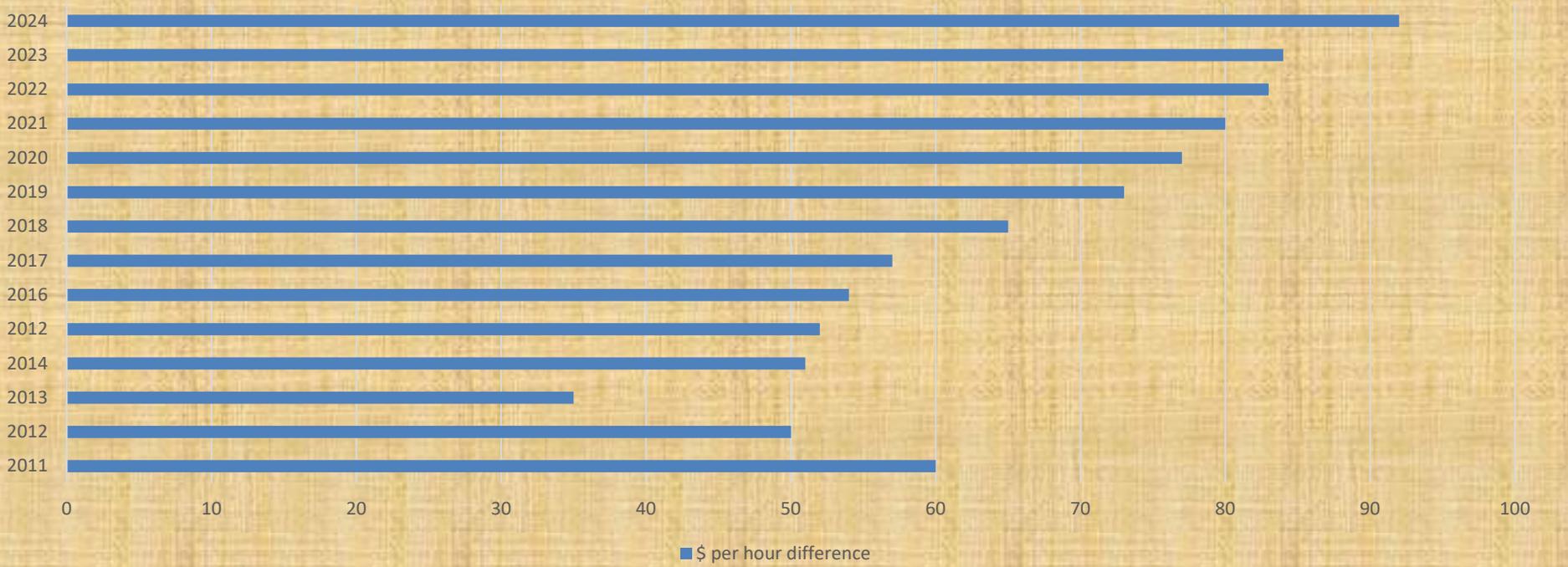
### FTE Turnover Percentage per Calendar Year



## Historical Contract Attorney Rates



## Difference between Federal CJA and State Public Defense Hourly Rate



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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. Offcr 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)	

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

	2019-2021 Biennium	2021-2023 Biennium	2023-2025 Biennium to date (End of January 2024)
<b>Collections</b>	1,587,113.58	1,481,223.21	1,113,279.27
<b>Amount expended</b>	1,701,676.20	1,506,162.83	1,276,750.18
<b>Spending Authority</b>	1,990,035	1,994,850	2,011,220

Collection Source	2019-2021 Biennium	2021-2023 Biennium	2023-2025 Biennium to date (End of January 2025)
\$35 Application Fee	308,053.17	312,277.91	230,391.98
\$100 Facility Improvement / Indigent Defense Fee	1,279,060.41	1,168,945.30	882,887.29

