

2025 SENATE APPROPRIATIONS

SB 2022

DEPARTMENT 188 - COMMISSION ON LEGAL COUNSEL FOR INDIGENTS 2025-27 BASE-LEVEL BUDGET

Base Budget - Summary

	<u>Base Level</u>
Commission on legal counsel for indigents	\$23,022,372
Total all funds	\$23,022,372
Less other funds	<u>2,023,067</u>
Total general fund	\$20,999,305
Full-time equivalent (FTE) positions	41.00

Selected Base Budget Information

	General Fund	Other Funds	Total
1. Includes funding for the Commission on Legal Counsel for Indigents, primarily relating to salaries and benefits for 41 FTE positions (\$9,432,916), temporary salaries (\$279,788), travel (\$290,998), rent (\$490,308), contracted legal services (\$11,625,054), and information technology costs (\$579,950)	\$20,999,305	\$2,023,067	\$23,022,372

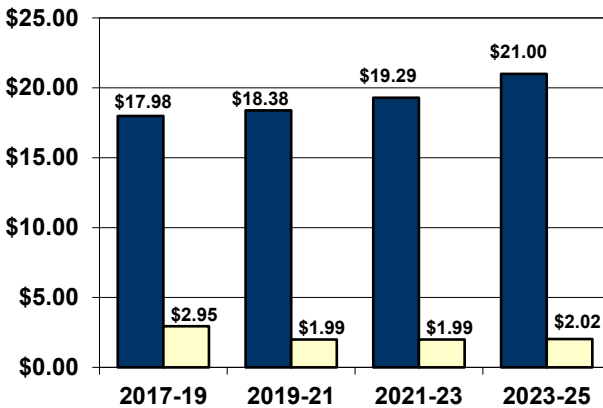
Continuing Appropriations

Indigent defense administration fund - North Dakota Century Code Sections 29-07-01.1 and 29-26-22 - Funding is from a \$35 nonrefundable fee for court-appointed defense services and from a \$100 court administration fee in all criminal cases except infractions. The first \$750,000 collected is used for indigent defense services, the next \$460,000 is used for court facilities, and additional amounts are deposited equally into the two funds. For the 2021-23 biennium, the fund had \$1,481,223 of revenues, \$1,506,163 of expenditures, and a June 30, 2023, fund balance of \$712,404.

Historical Appropriations Information

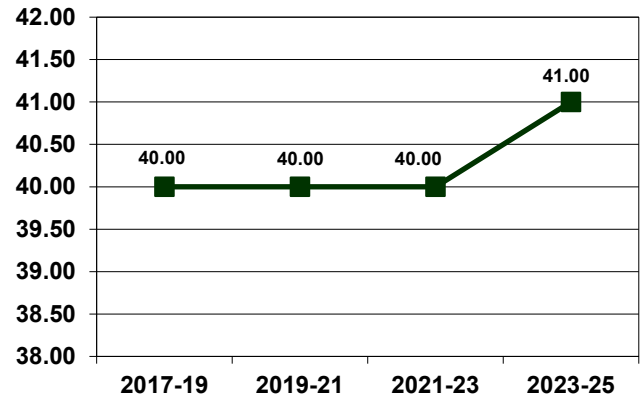
Agency Appropriations and FTE Positions

Agency Funding (Millions)



■ General Fund □ Other Funds

FTE Positions



Ongoing General Fund Appropriations

	2015-17	2017-19	2019-21	2021-23	2023-25
Ongoing general fund appropriations	\$16,982,909	\$17,983,876	\$18,384,627	\$19,294,363	\$20,999,305
Increase (decrease) from previous biennium	N/A	\$1,000,967	\$400,751	\$909,736	\$1,704,942
Percentage increase (decrease) from previous biennium	N/A	5.9%	2.2%	4.9%	8.8%
Cumulative percentage increase (decrease) from 2015-17 biennium	N/A	5.9%	8.3%	13.6%	23.6%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2017-19 Biennium

- Increased funding for operating expenses \$130,919
- Increased funding for professional fees due to increased caseloads to provide a total of \$10,227,500 for professional fees \$500,000

2019-21 Biennium

None \$0

2021-23 Biennium

- Added funding to provide legal counsel to juveniles \$325,000

2023-25 Biennium

- Added funding for 1 FTE investigator position \$137,781
- Added funding to reduce employee turnover \$150,000
- Added funding to increase the legal fee rate from \$75 per hour to \$80 per hour \$630,453

One-Time General Fund Appropriations

	2015-17	2017-19	2019-21	2021-23	2023-25
One-time general fund appropriations	\$122,275	\$0	\$0	\$0	\$0

Major One-Time General Fund Appropriations

2017-19 Biennium

None \$0

2019-21 Biennium

None \$0

2021-23 Biennium

None

\$0

2023-25 Biennium

None

\$0



Commission on Legal Counsel for Indigents
Department No. 188
2025 Senate Bill No. 2022

EXECUTIVE BUDGET RECOMMENDATION
2025-27 BIENNIUM

Budget Summary

	FTE Positions	General Fund	Other Funds	Total
Executive budget recommendation	43.00	\$24,815,568	\$2,054,262	\$26,869,830
Base level	41.00	20,999,305	2,023,067	23,022,372
Increase (decrease)	2.00	\$3,816,263	\$31,195	\$3,847,458
Percentage increase (decrease)	4.9%	18.2%	1.5%	16.7%

NOTE:

More detailed information on the executive budget recommendation is attached as Appendix A.

A copy of the draft appropriations bill reflecting the executive budget recommendation is attached as Appendix B.

Selected Highlights

- Salary increases of up to 4 percent effective July 1, 2025, and 3 percent effective July 1, 2026
- Health insurance increase of \$250 per month (15.2 percent), from \$1,643 to \$1,893, per employee
- Adds \$362,120 of ongoing funding from the general fund for 2 new FTE private investigator positions
- Adds \$805,000 of ongoing funding from the general fund for salary equity increases to implement a compensation strategy
- Adds \$1.5 million of ongoing funding from the general fund to increase the rate paid to contract attorneys

Deficiency Appropriations

There are no deficiency appropriations for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Agency Fees

As reported to the Legislative Management pursuant to North Dakota Century Code Section 54-35-27, this agency did not have any fees.

Major Related Legislation

Senate Bill No. 2057 - Court fees - Increases the court administration fee from \$100 to \$200, a portion of which is deposited in the indigent defense fund.

NOTE:

Please see the Fiscal Impact Report for additional information regarding bills under consideration which contain either a state revenue impact, an appropriation, or a state fiscal impact.



Commission on Legal Counsel for Indigents - Budget No. 188

Agency Worksheet - Senate Bill No. 2022

	Executive Budget			
	FTE Positions	General Fund	Other Funds	Total
2025-27 Biennium Base Level	41.00	\$20,999,305	\$2,023,067	\$23,022,372
2025-27 Ongoing Funding Changes				
Salary increase		\$461,575	\$13,170	\$474,745
Health insurance increase		252,222	6,005	258,227
Adds private investigator FTE positions	2.00	362,120		362,120
Adds funding to implement a new compensation strategy		805,000		805,000
Adds funding to increase the contract rate paid to attorneys		1,500,000		1,500,000
Adds funding to replace the 2023-25 new FTE pool		137,781		137,781
Adds funding to replace the 2023-25 vacant FTE pool		253,594	7,134	260,728
Adds funding for information technology rate increases		43,971	4,886	48,857
Total ongoing funding changes	2.00	\$3,816,263	\$31,195	\$3,847,458
One-Time Funding Items				
No one-time funding items				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$3,816,263	\$31,195	\$3,847,458
2025-27 Total Funding	43.00	\$24,815,568	\$2,054,262	\$26,869,830
<i>Federal funds included in other funds</i>			\$0	

Total ongoing changes - Percentage of base level

4.9%

18.2%

1.5%

16.7%

Total changes - Percentage of base level

4.9%

18.2%

1.5%

16.7%

Other Sections in Commission on Legal Counsel for Indigents - Budget No. 188

Section Description	Executive Budget
FTE positions	Section 2 would authorize the agency to increase or decrease FTE positions as needed, subject to the availability of funds.

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2022
(Governor's Recommendation)

Introduced by

Appropriations Committee

(At the request of the Governor)

A bill for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents and to provide an exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2025 and ending June 30, 2027, as follows:

	<u>Base Level</u>	Adjustments or <u>Enhancements</u>	<u>Appropriation</u>
Commission on Legal Counsel	<u>\$23,022,372</u>	<u>\$3,847,458</u>	<u>\$26,869,830</u>
Total All Funds	\$23,022,372	\$3,847,458	\$26,869,830
Less Estimated Income	<u>2,023,067</u>	<u>31,195</u>	<u>2,054,262</u>
Total General Fund	\$20,999,305	\$3,816,263	\$24,815,568
Full-time Equivalent Positions	41.00	2.00	43.00

SECTION 2. EXEMPTION – FULL-TIME EQUIVALENT POSITION ADJUSTMENTS. Notwithstanding any other provisions of law, the legal counsel for indigents may increase or decrease authorized full-time equivalent positions as needed, subject to the availability of funds, during the biennium beginning July 1, 2025, and ending June 30, 2027. The legal counsel for indigents shall report to the office of management and budget and legislative council any adjustments made pursuant to this section.



Commission on Legal Counsel for Indigents
Department No. 188
2025 Senate Bill No. 2022

REVISED EXECUTIVE BUDGET RECOMMENDATION
2025-27 BIENNIUM

Budget Summary

	FTE Positions	General Fund	Other Funds	Total
Burgum budget recommendation	43.00	\$24,815,568	\$2,054,262	\$26,869,830
Revisions - Increase (decrease)	0.00	415,748	(2,405)	413,343
Armstrong budget recommendation	43.00	\$25,231,316	\$2,051,857	\$27,283,173
Base level	41.00	20,999,305	2,023,067	23,022,372
Increase (decrease)	2.00	\$4,232,011	\$28,790	\$4,260,801
Percentage increase (decrease)	4.9%	20.2%	1.4%	18.5%

NOTE:

More detailed information on the executive budget recommendation is attached as appendix.

Selected Highlights

- ***Salary increases of up to 3 percent effective July 1, 2025, and 3 percent effective July 1, 2026***
- Health insurance increase of \$250 per month (15.2 percent), from \$1,643 to \$1,893, per employee
- Adds \$362,120 of ongoing funding from the general fund for 2 new FTE private investigator positions
- Adds \$805,000 of ongoing funding from the general fund for salary equity increases to implement a compensation strategy
- ***Adds \$2 million of ongoing funding from the general fund to increase the rate paid to contract attorneys***

Deficiency Appropriations

There are no deficiency appropriations for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Agency Fees

As reported to the Legislative Management, pursuant to North Dakota Century Code Section 54-35-27, this agency did not have any fees.

Major Related Legislation

House Bill No. 1310 - Defendant reimbursement - Removes authorization for the court to order the defendant to reimburse indigent defense costs as a condition of probation.

Senate Bill No. 2057 - Court fees - Increases the court administration fee from \$100 to \$200, a portion of which is deposited in the indigent defense fund.

Senate Bill No. 2226 - Legal counsel - Appropriates funding to provide legal counsel services for incarcerated individuals at initial appearances.

NOTE:

Please see the Fiscal Impact Report for additional information regarding bills under consideration which contain either a state revenue impact, an appropriation, or a state fiscal impact.



Commission on Legal Counsel for Indigents - Budget No. 188

Agency Worksheet - Senate Bill No. 2022

	Armstrong Executive Budget			
	FTE Positions	General Fund	Other Funds	Total
2025-27 Biennium Base Level	41.00	\$20,999,305	\$2,023,067	\$23,022,372
2025-27 Ongoing Funding Changes				
Salary increase		\$377,323	\$10,765	\$388,088
Health insurance increase		252,222	6,005	258,227
Adds private investigator FTE positions	2.00	362,120		362,120
Adds funding to implement a new compensation strategy		805,000		805,000
Adds funding to increase the contract rate paid to attorneys		2,000,000		2,000,000
Adds funding to replace the 2023-25 new FTE pool		137,781		137,781
Adds funding to replace the 2023-25 vacant FTE pool		253,594	7,134	260,728
Adds funding for information technology rate increases		43,971	4,886	48,857
Total ongoing funding changes	2.00	\$4,232,011	\$28,790	\$4,260,801
One-Time Funding Items				
No one-time funding items				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$4,232,011	\$28,790	\$4,260,801
2025-27 Total Funding	43.00	\$25,231,316	\$2,051,857	\$27,283,173
<i>Federal funds included in other funds</i>			\$0	

Total ongoing changes - Percentage of base level

4.9%

20.2%

1.4%

18.5%

Total changes - Percentage of base level

4.9%

20.2%

1.4%

18.5%

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2022
1/13/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents

9:30 a.m. Chairman Wanzek opened the hearing.

Members present: Chairman Wanzek, Vice-Chair Dwyer, Senator Burckhard, Senator Erbele, and Senator Sickler.

Discussion Topics:

- Agency overview
- Agency mission
- Distribution of state offices
- Cooperation with private law offices
- Case assignment management
- Federal case-load standards
- Management of Felony cases
- Juvenal cases
- Employee turnover rate
- Agency accomplishments and challenges
- Full Time Employee Vacancy rate
- Investigative services
- Budget requests
- Federal grants
- Salary parity
- Duties of investigators

9:31 a.m. Travis Finck, Director, Agency for Legal Counsel for Indigents, testified in favor and submitted testimony #28523, # 28522, #28524, #28525, and #28730.

10:16 a.m. Zachary Pellam, Chairman of the ND Commission of Legal Counsel for Indigents, testified in favor.

10:27 a.m. Tony Weiler, Executive Director, ND State Bar Association, testified in favor.

10:29 a.m. Jonathan Byers, Attorney, ND States Attorney Association, testified in favor.

10:32 a.m. Omid Kardoust, Attorney for the Western District of Counsel for Indigents, testified in favor.

10:41 a.m. Jonathan Vanderhoff, Investigator, ND Counsel for Indigents Agency Investigator, testified in favor.

Senate Appropriations Government Operations Division

SB 2022

1/13/25

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10:46 a.m. Chairman Wanzek adjourned the meeting.

Carol Thompson, Committee Clerk

One Page Itemized Listing of Requested Changes from Executive Budget Recommendation
Senate Appropriations – Government Operations Division
SB 2022
January 13, 2025

Current 2023-2025 biennium level	Requested level in 2025-2027 budget	Burgum Recommendation	Armstrong Recommendation	Commission Recommendation after executive budget
41 Full Time Employees	Increase 5 FTE \$905,300	Increase 2 FTE \$362,120	Not yet released	Increase 5 FTE to 46 FTE This is important to give us an investigator in each public defender office
Implement Step program to be competitive	\$805,000 for employee increases	\$805,000 for employee increases	Not yet released	No Change from Executive Recommendation
Pay increase for contract attorneys	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	Not yet released	Gov. Burgum proposed 1,500,000 this biennium and more next biennium for a gradual increase, we prefer the money now given our struggles to recruit against CJA We request the \$5,255,134

Governor Burgum in his Executive Budget recommended restoring vacant/new FTE funds in the amount of \$391,375 in General Funds and \$7,134 in Special Funds. We would agree with the governor's recommendation on this.

SB 2022
N.D. Comm. on Legal Counsel for Indigent
Senate Appropriations: Government Operations Division
Budget Presentation
January 13, 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: Mr. Eric Lundberg
 - 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

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 5 vacant positions, with 25% 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 68th 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 68th 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

2025-27 Agency Request							2025-27 Executive Recommendation				
Priority	Form Name	General Fund	Federal	Special	Total	FTE	General Fund	Federal	Special	Total	FTE
18800 – Commission on Legal Counsel for Indigents		7,608,474	-	-	7,608,474	5.00	3,337,648	-	-	3,337,648	2.00
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
41 Full Time Employees	46 Full Time Employees	43 Full Time employees	Not yet released
Implement Step program to be competitive	\$805,000 for employee increases	\$805,000 for employee increases	Not yet released
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	Not yet released
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	Not yet released

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 68th 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 18 full time employees of 41 FTE
 - This is 43.9% of our agency has turned over so far this biennium.
- Of the 18 FTE that left our employ so far this biennium, 10 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

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

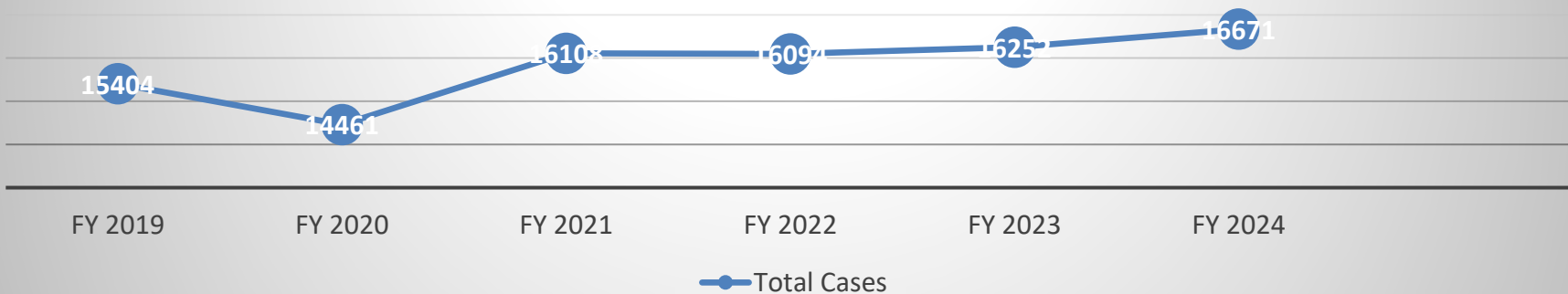
Need for Other Sections to be Added to the Bill

- 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

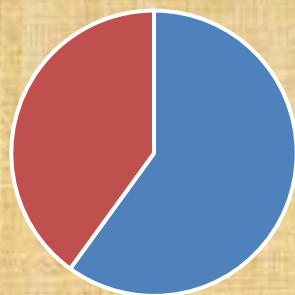
Other Bills Being Considered and Potential Budgetary Impact

- 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 2028 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
 - Re-Entry study looking at the elimination of fees.
 - If fees are eliminated, those dollars will need to be replaced with general funds

Total Cases by Fiscal Year

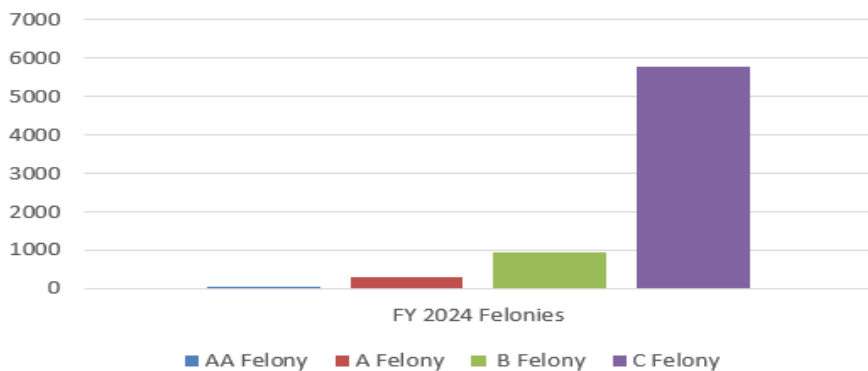


Felony v. Misdemeanor

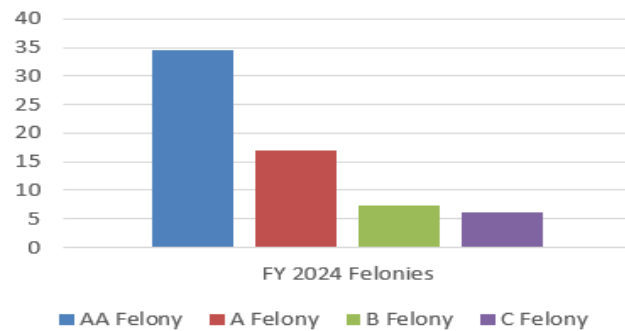


■ Felony ■ Misdemeanor

Types of Felonies

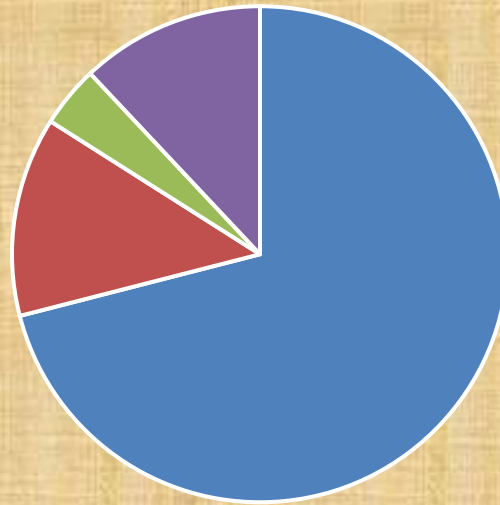


Average Number of Hours Spent



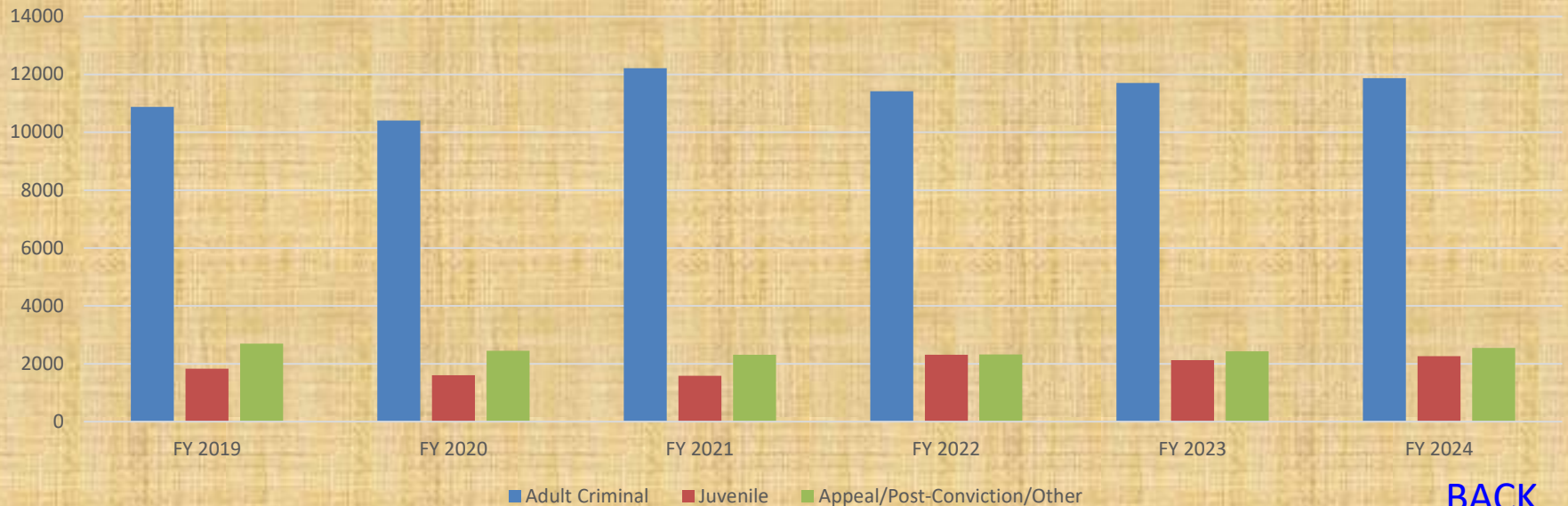
Case type percentages have remained fairly consistent over the years.

Case Types Current Fiscal Year



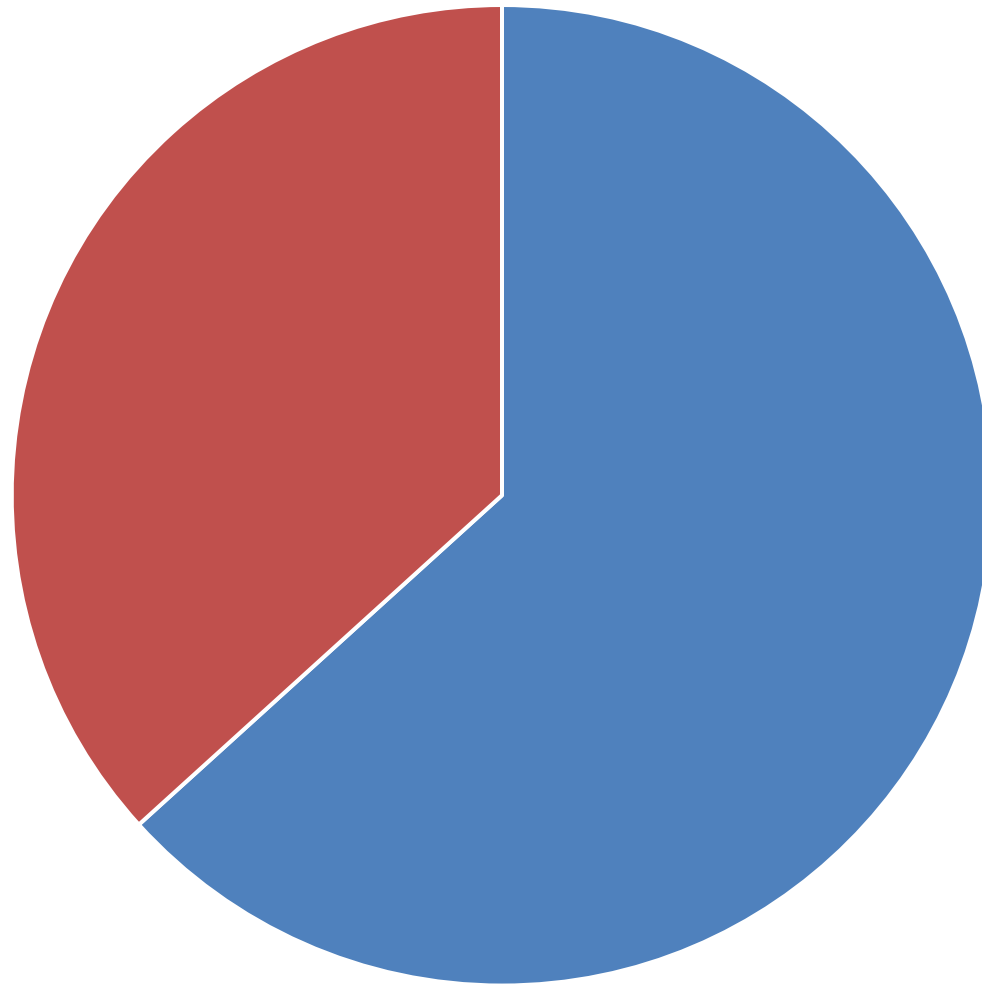
■ Adult Criminal ■ Juvenile ■ Appeal/Post Conviction/Other ■ Revocation

Case Types by Fiscal Year



[BACK](#)

Biennial Funding

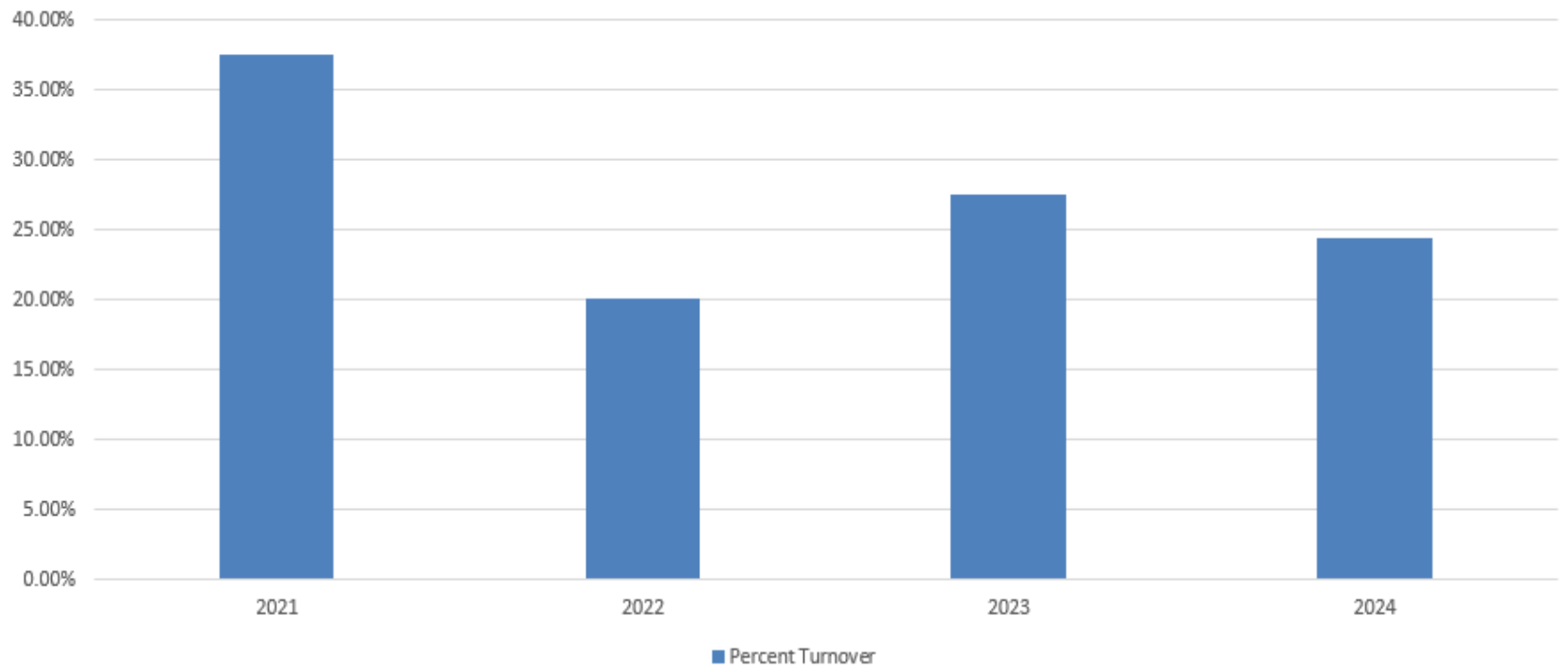


■ Prosecution in Six Largest Counties

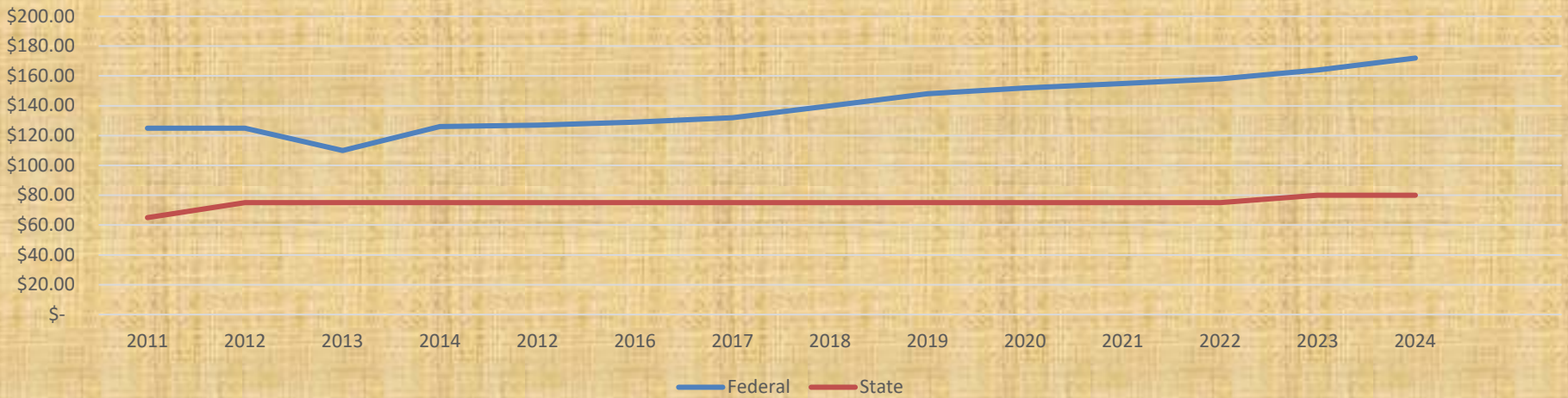
■ Public Defense in Entire State

[BACK](#)

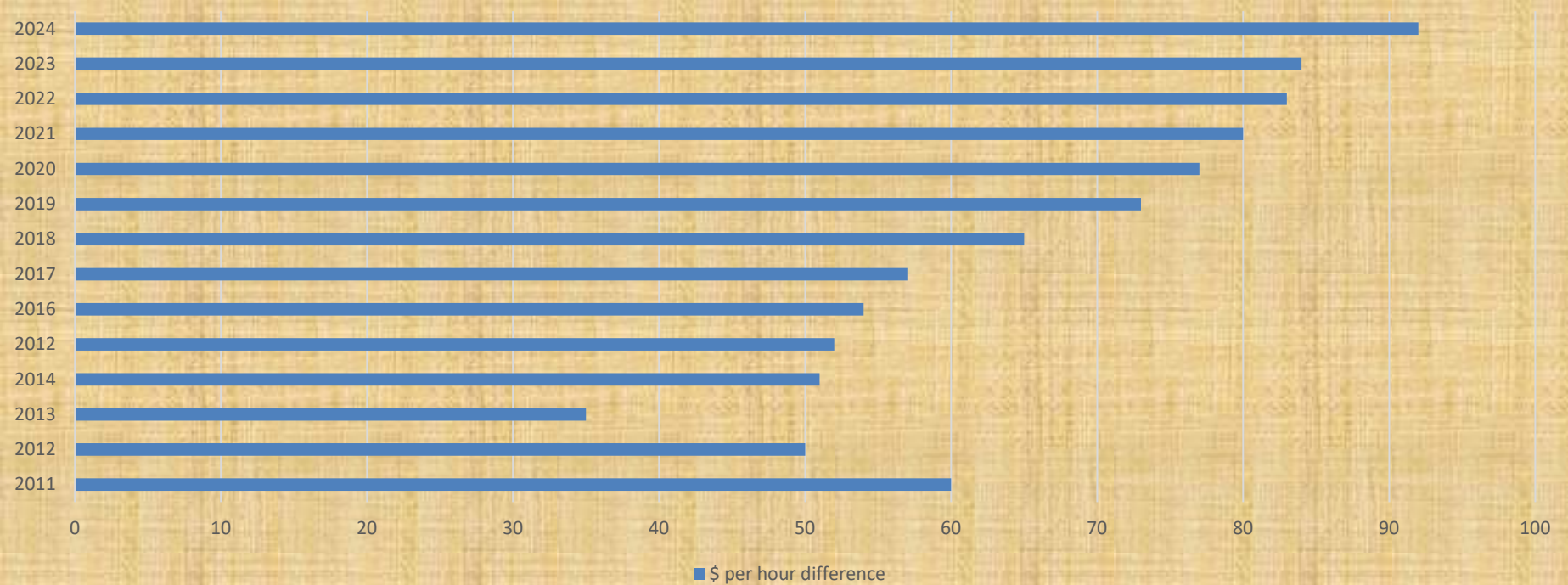
FTE Turnover Percentage per Calendar Year



Historical Contract Attorney Rates



Difference between Federal CJA and State Public Defense Hourly Rate



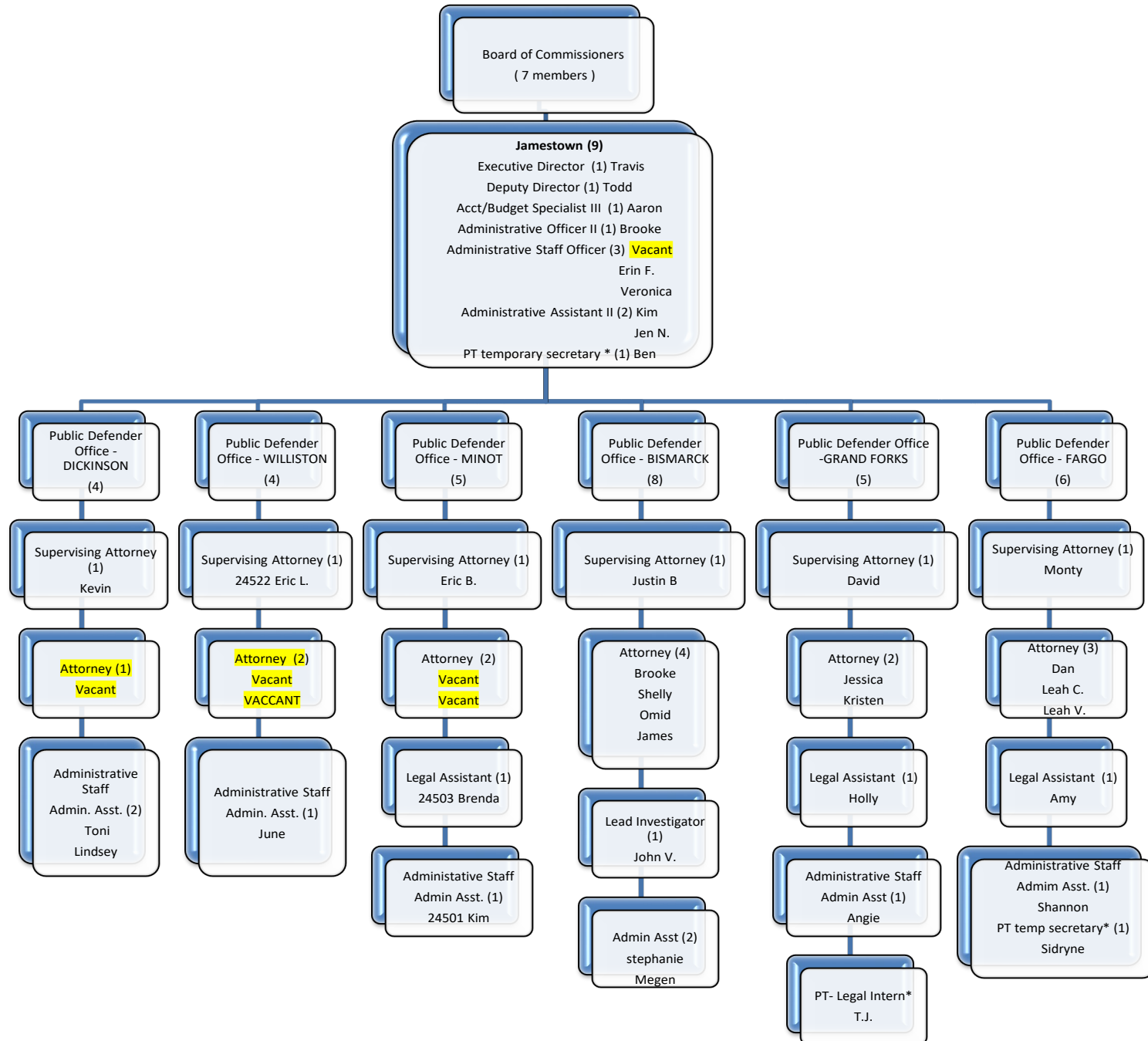
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Current Job Title		Current Class		Current Grade		Proposed Class and Job title			Proposed Grade		Court Grade	
Admin. Asst. I		Admin Svc III		103 (2951-4918)		Admin Svcs IV Admin Asst. - office			104 (3508-5847)		10 (4158-6106)	
Admin. Asst II		Admin 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

Organizational Chart

ND Commission on Legal Counsel for Indigents



SB 2022
Senate Appropriations
Government Operations Division
January 13, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

Good Morning. Chairman Wanzek, 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 situations, 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: Mr. Eric Lundberg
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.

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 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 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.

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
41 Full Time Employees	46 Full Time Employees	43 Full Time employees	Not yet released
Implement Step program to be competitive	\$805,000 for employee increases	\$805,000 for employee increases	Not yet released
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	Not yet released
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	Not yet released

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.

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 18 full time employees of 41 FTE. This is 43.9% 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 18 FTE that left our employ so far this biennium, 10 of those were attorneys. When attorneys leave our agency, we have to reassign all of their open cases. Due to increased case loads 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 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.

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 been released that could case 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. There was also a re-entry study in the interim legislative process that considered eliminating the \$35 application fee and the Court Administration/Indigent

Defense fee of \$100. If this were to be filed, we would be filing a fiscal note requesting the loss appropriations be replaced with general fund dollars.

XIV. ADDITIONAL INFORMATION.

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.

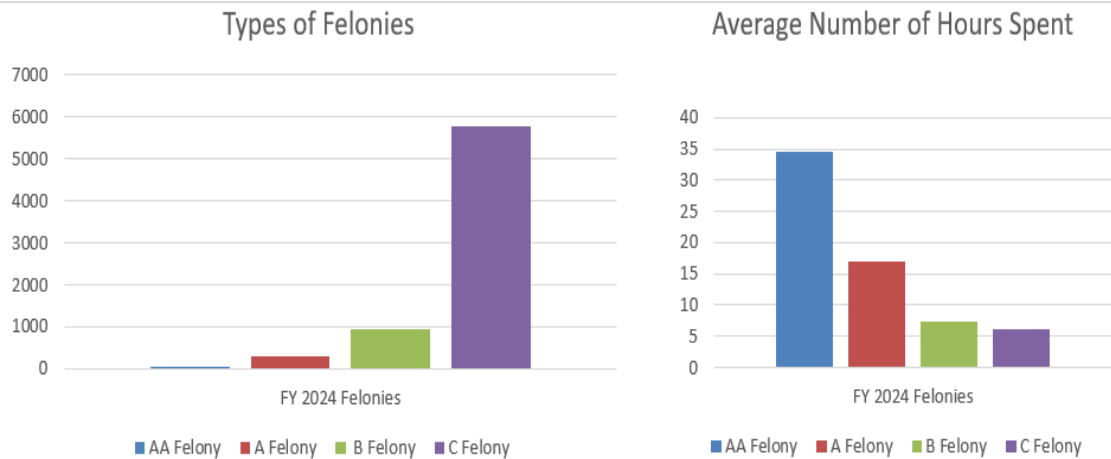
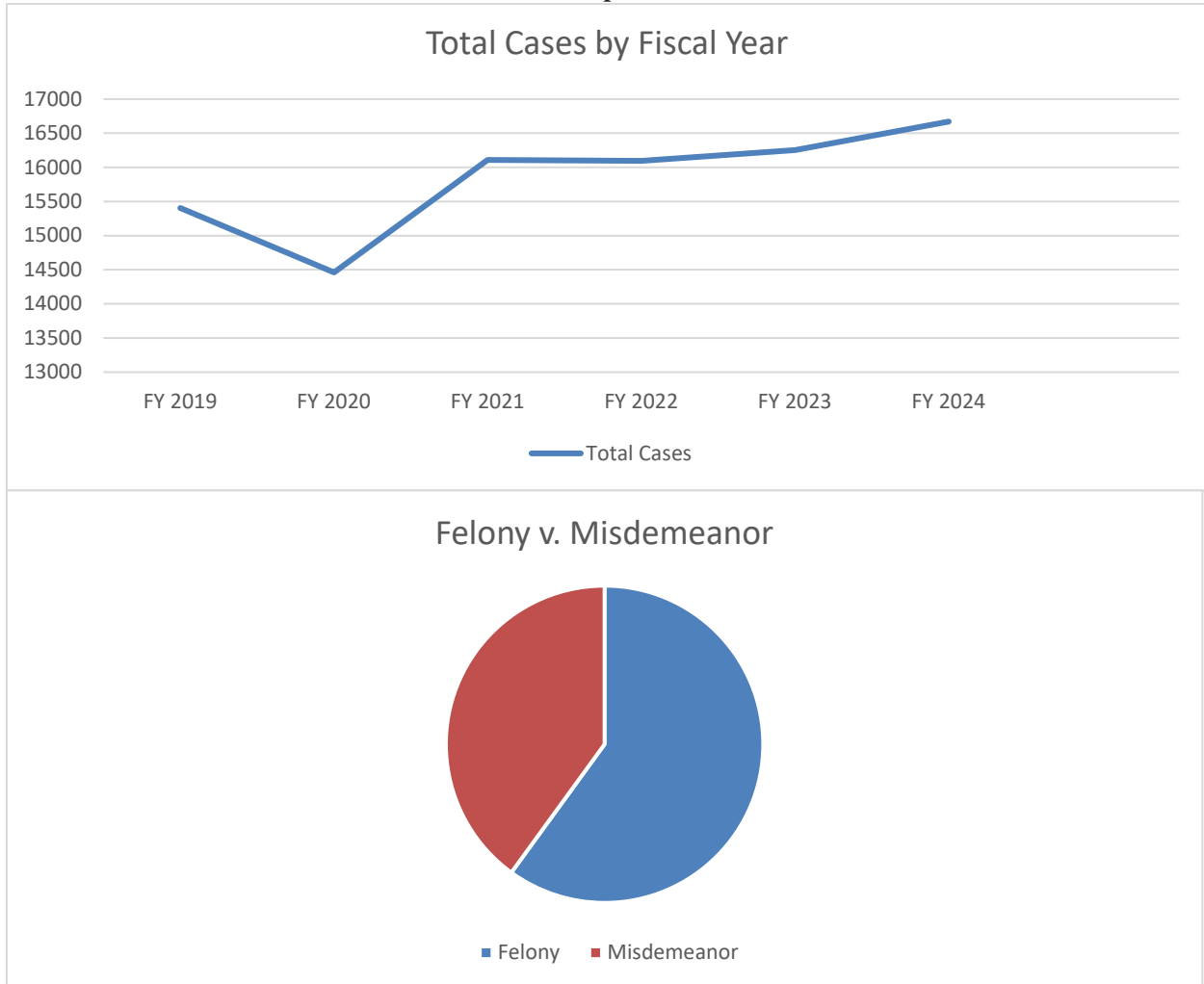
Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', written over a horizontal line.

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

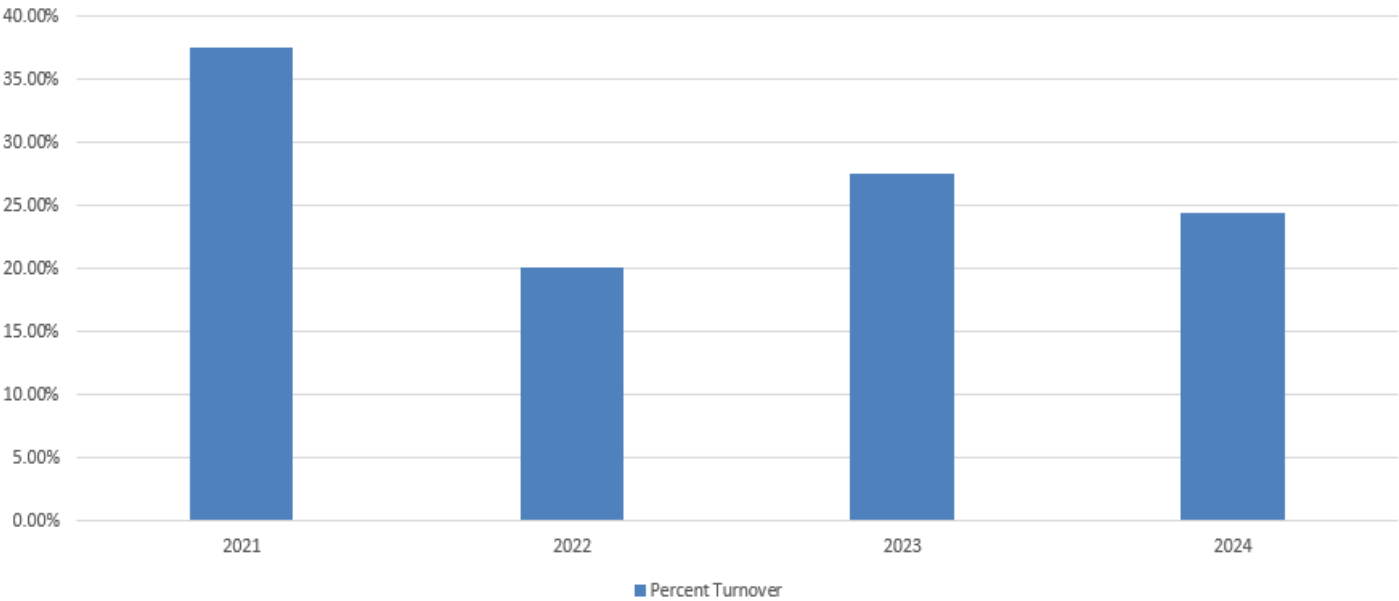
Government Operation Divisions
January 13, 2025
Testimony of Travis W. Finck, Executive Director,
NDCLCI

Graph 1

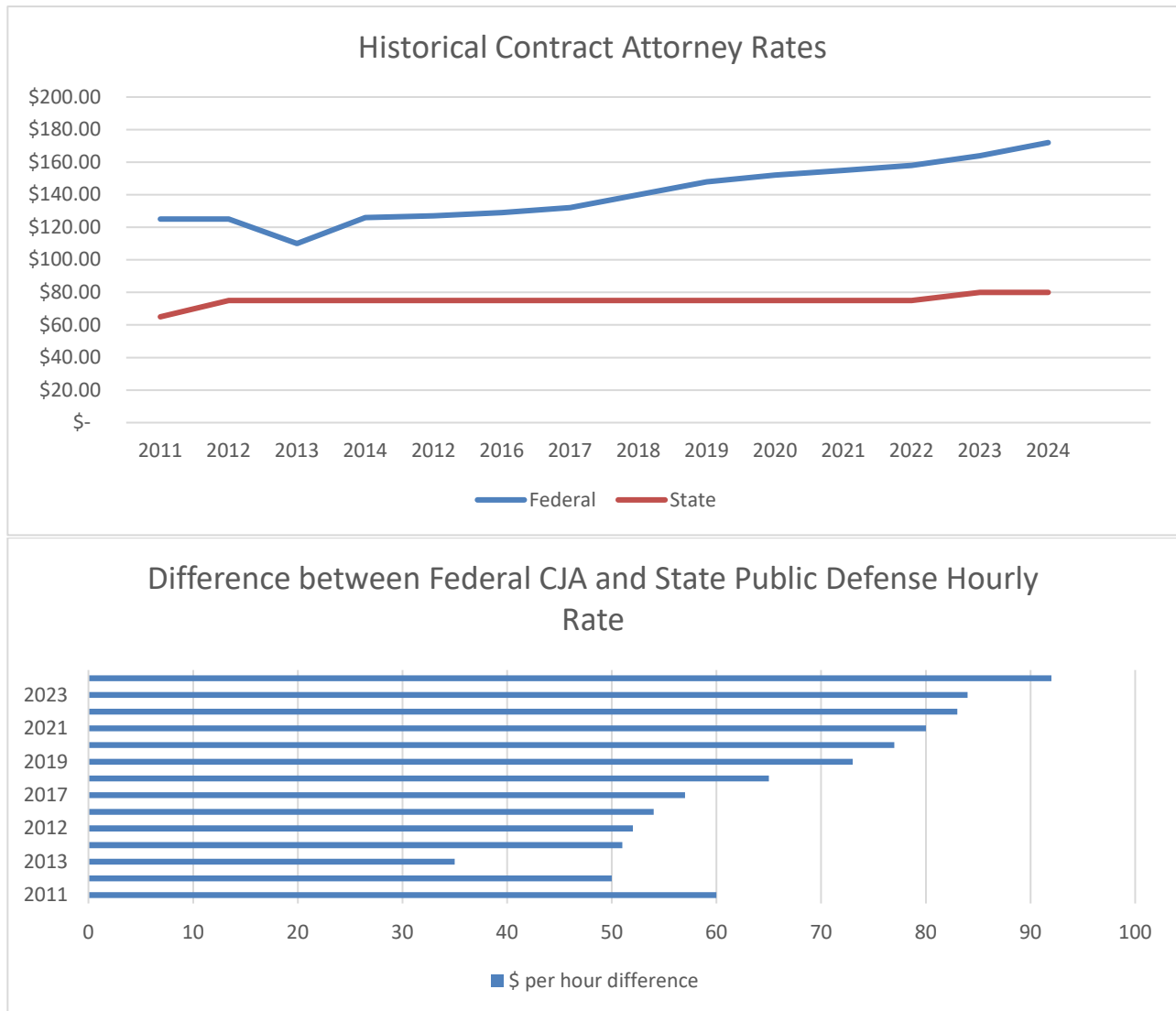


SB 2022
Senate Appropriations

Graph 2
FTE Turnover Percentage per Calendar Year



GRAPH 3



Government Operation Divisions
January 13, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

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	

STATE OF NORTH DAKOTA
RESOLUTION
NORTH DAKOTA JUDICIAL CONFERENCE

WHEREAS, the North Dakota Judicial Conference is established by statute for the purpose of soliciting, receiving, and evaluating suggestions relating to the improvement of the administration of justice; considering and making recommendations to the Supreme Court for changes in rules, procedures, or any matter pertaining to the judicial system; coordinating continuing judicial education efforts for judges and support staff; and establishing methods for reviewing proposed legislation, which may affect the operation of the judicial branch; and

WHEREAS, the Judicial Conference is charged with suggestions relating to the improvement of the administration of justice; and

WHEREAS, the North Dakota Commission on Legal Counsel for Indigents (CLCI) is a critical component to administration of justice in North Dakota Courts; and

WHEREAS, CLCI is charged with developing and monitoring a process for the delivery of state-funded legal counsel services for indigents; and

WHEREAS, the right to counsel is guaranteed in the U.S. and North Dakota Constitutions; the right to counsel attaches in criminal, juvenile and some civil cases; and

WHEREAS, significant challenges remain within the North Dakota indigent defense system despite significant progress made by CLCI; and

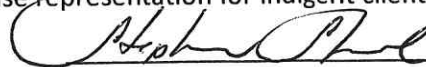
WHEREAS, there are vast discrepancies between pay and resources for prosecutors/other government attorneys and the CLCI; and

WHEREAS, the CLCI continues to struggle in recruiting and retaining qualified employees because of the discrepancies resulting in an average turnover exceeding 25% in the last four years¹; and

WHEREAS, the issue is even more acute in rural counties;

NOW THEREFORE, BE IT RESOLVED, the North Dakota Judicial Conference recommends the Legislature:

- 1) Fund public defense in North Dakota at levels allowing pay and resources comparable to prosecutors and other government agencies employing attorneys;
- 2) Appropriate monies to allow CLCI to employ on staff investigators;
- 3) Appropriate money to increase the hourly rate of contractor compensation; and
- 4) Allow the agency to pursue federal funds to help increase representation for indigent clients.



Hon. Stephannie Stiel
Chair, N.D. Judicial Conference

¹ FTE Turnover for calendar year 2021 was 37.5%, calendar year 2022 was 20%, calendar year 2023 was 27.5% and calendar year 2024 so far is at 24.4%.

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2022

1/20/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents

3:23 p.m. Chairman Wanzek opened the hearing.

Members present were Chairman Wanzek, Vice-Chair Dwyer, Senator Burckhard, Senator Erbele, and Senator Sickler.

Discussion Topics:

- Comparison of Governor Burgum and Governor Armstrong budgets
- Salary parity comparisons
- Classified / non-classified positions
- Contractor services / agency services
- Investigator positions
- Special funds collections

3:25 p.m. Senior Fiscal Analyst Adam Mathiak submitted testimony #44439.

3:28 p.m. Travis Fink, Director of the Agency for Legal Counsel for Indigents, provided neutral testimony #31102.

4:02 p.m. Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

Position	Start Date	Current date	Years of service	Current Wage	Proposed
Professional Svcs. IV - Supervising attorney	10/1/2018	1/15/2025	06	9066.69	9108
Professional Svcs. IV - Supervising attorney	3/16/2006	1/15/2025	18	11012.67	11909
Professional Svcs. IV - Supervising attorney	11/15/2008	1/15/2025	16	10535.38	11611
Professional Svcs. IV - Supervising attorney	3/15/2007	1/15/2025	17	10435.98	11611
Professional Svcs. IV - Supervising attorney	4/1/2006	1/15/2025	18	9895.45	10707
Professional Svcs. IV - Supervising attorney	12/4/2023	1/15/2025	01	9103.5	8730
		1/15/2025			
Professional Svcs. II - Attorney I	5/8/2023	1/15/2025	01	6519.08	8021
Professional Svcs. III - Attorney II	3/25/2024	1/15/2025	00	8047.49	8695
Professional Svcs. III - Attorney II	4/15/2024	1/15/2025	00	7068.6	8021
Professional Svcs. II - Attorney I	10/10/2022	1/15/2025	02	6845.9	8021
Professional Svcs. III - Attorney II	9/18/2023	1/15/2025	01	8205.29	9053
Professional Svcs. II - Attorney I	VACANT	1/15/2025	00	6125	8021
Professional Svcs. III - Attorney II	10/15/2021	1/15/2025	03	8205.29	8695
Professional Svcs. III - Attorney II	11/15/2021	1/15/2025	03	7214.16	8021
Professional Svcs. II - Attorney I	VACANT	1/15/2025	00	6250	8021
Professional Svcs. II - Attorney I	VACANT	1/15/2025	00	6250	8021
Professional Svcs. II - Attorney I	VACANT	1/15/2025		6450	8021
Professional Svcs. III - Attorney II	1/17/2014	1/15/2025	10	8423.28	9053
Professional Svcs. III - Attorney II	7/18/2019	1/15/2025	05	8404.4	9053
Professional Svcs. III - Attorney II	2/27/2012	1/15/2025	12	8907.96	9428
		1/15/2025			
Adm. Svcs. IV - Admin Asst. II	4/2/2024	1/15/2025	00	4284	4491
Adm. Svcs. IV - Admin Asst. II	11/4/2024	1/15/2025	00	3800	4491
Adm. Svcs. IV - Admin Asst. II	9/4/2015	1/15/2025	09	4584.32	5236
Adm. Svcs. IV - Admin Asst. II	8/17/2023	1/15/2025	01	4189.5	4491
Adm. Svcs. IV - Admin Asst. II	4/1/2007	1/15/2025	17	4932.72	6110
Adm. Svcs. IV - Admin Asst. II	7/5/2011	1/15/2025	13	4858.88	5652
Adm. Svcs. IV - Admin Asst. II	2/11/2020	1/15/2025	04	4351.36	4847
Adm. Svcs. IV - Admin Asst. II	7/1/2015	1/15/2025	00	4149.6	4491
Adm. Svcs. IV - Admin Asst. II	3/11/2024	1/15/2025	00	4200	4491
		1/15/2025			

Adm. Svcs. IV - Admin Asst. II	8/12/2015	1/15/2025	09	4858.88	5648
Adm. Svcs. IV - Admin Asst. II	3/28/2022	1/15/2025	02	4338.88	5032
		1/15/2025			
Admn. Svcs. V - Legal Asst. II	6/25/2007	1/15/2025	17	5508.36	6938
Admn. Svcs. V - Legal Asst. II	3/20/2012	1/15/2025	12	5270.82	6290
Admn. Svcs. V - Legal Asst. II	10/7/2013	1/15/2025	11	5049.2	6051
Admn. Svcs. V - Admin. Staff Officer I	7/29/2024	1/15/2025	00	4450	5391
Admn. Svcs. V - Admin. Staff Officer I	7/22/2024	1/15/2025	00	4450	5391
Admn. Svcs. V - Admin Officer II	12/15/2014	1/15/2025	10	5795.92	6051
Pro. Svcs. III - Lead Investigator	9/18/2023	1/15/2025	01	4849.84	5391
		1/15/2025			
Fiscal Svcs. V - Acct. Budget Spec.	11/2/2009	1/15/2025	15	8161.92	9681
		1/15/2025			
non classified	1/27/2014	1/15/2025	10	11188.02	12833.47
non classified - appointed	4/15/2009	1/15/2025	15	13113.36	14259.41
			Total for biennium wage only		-1028913.98

Difference		Exceptions to placement
-41.31		
-896.33		Reaches the top of the current omb scale
-1075.62		
-1175.02		
-811.55		
373.5		
Total for supervisors		
	-3626.33	
-1501.92		
-647.51		Increased step to 4 based on prior PD exp
-952.4		
-1175.1		
-847.71		increased to step 5 based upon experience
-1896		
-489.71		Increased step to 4 based on prior PD exp
-806.84		
-1771		
-1771		
-1571		
-629.72		
-648.6		Increased to step 5 based upon experience
-520.04		
Total for Attorneys	-15228.55	
-207		
-691		
-651.68		
-301.5		
-1177.28		
-793.12		
-495.64		
-341.4		
-291		

-789.12		
-693.12		
Total for Admin. Asst	-6431.86	
-1429.64		Reaches the top of the current omb scale
-1019.18		
-1001.8		Step 5 time in position
-941		
-941		
-255.08		
-541.16		
-1519.08		
Total for Other	-7647.94	
-1645.45		
-1146.05		
Total for Exec	-2791.5	
Total for ALL	-35726.18	
Total per m with tax	-42871.42	

1-20-25 3:25pm Hdam



Commission on Legal Counsel for Indigents - Budget No. 188
Agency Worksheet - Senate Bill No. 2022

	Burgum Budget				Armstrong Budget				Armstrong Budget Compared to Burgum Budget			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total	Increase (Decrease)			
									FTE Positions	General Fund	Other Funds	Total
2025-27 Biennium Base Level	41.00	\$20,999,305	\$2,023,067	\$23,022,372	41.00	\$20,999,305	\$2,023,067	\$23,022,372	0.00	\$0	\$0	\$0
2025-27 Ongoing Funding Changes												
Base payroll changes				\$0				\$0				\$0
Salary increase		\$461,575	\$13,170	474,745		\$377,323	\$10,765	388,088		(\$84,252)	(\$2,405)	(86,657)
Health insurance increase		252,222	6,005	258,227		252,222	6,005	258,227				0
Adds private investigator FTE positions	2.00	362,120		362,120	2.00	362,120		362,120				0
Adds funding to implement a new compensation strategy		805,000		805,000		805,000		805,000				0
Adds funding to increase the contract rate paid to attorneys		1,500,000		1,500,000		2,000,000		2,000,000		500,000		500,000
Adds funding to replace the 2023-25 new FTE pool		137,781		137,781		137,781		137,781				0
Adds funding to replace the 2023-25 vacant FTE		253,594	7,134	260,728		253,594	7,134	260,728				0
Adds funding for information technology rate increases		43,971	4,886	48,857		43,971	4,886	48,857				0
Total ongoing funding changes	2.00	\$3,816,263	\$31,195	\$3,847,458	2.00	\$4,232,011	\$28,790	\$4,260,801	0.00	\$415,748	(\$2,405)	\$413,343
One-Time Funding Items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$3,816,263	\$31,195	\$3,847,458	2.00	\$4,232,011	\$28,790	\$4,260,801	0.00	\$415,748	(\$2,405)	\$413,343
2025-27 Total Funding	43.00	\$24,815,568	\$2,054,262	\$26,869,830	43.00	\$25,231,316	\$2,051,857	\$27,283,173	0.00	\$415,748	(\$2,405)	\$413,343
Federal funds included in other funds			\$0				\$0				\$0	
Total ongoing changes - Percentage of base level	4.9%	18.2%	1.5%	16.7%	4.9%	20.2%	1.4%	18.5%	N/A	N/A	N/A	N/A
Total changes - Percentage of base level	4.9%	18.2%	1.5%	16.7%	4.9%	20.2%	1.4%	18.5%	N/A	N/A	N/A	N/A

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2022
1/22/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents

10:13 a.m. Chairman Wanzek opened the hearing.

Members present: Chairman Wanzek, Vice-Chair Dwyer, Senator Burckhard, Senator Erbele, and Senator Sickler.

Discussion Topics:

- Employee classification status
- Non-competitive Commission pay

10:14 p.m. Chairman Wanzek will schedule a meeting after Mr. Finck's advisory board meeting.

10:15 p.m. Chairman Wanzek closed the hearing.

Carol Thompson, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2022
1/28/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents

10:06 a.m. Chairman Wanzek opened the hearing.

Members present: Chairman Wanzek, Vice-Chair Dwyer, Senator Burckhard, Senator Erbele, and Senator Sickler.

Discussion Topics:

- New and Vacant Full Time Employee (FTE) Pool
- Employee retention and classification status
- Attorney funding
- Salary parity
- Case-load outsourcing

10:07 a.m. Brady Larson, Assistant Legislative Budget Analyst, supplied budget information and submitted testimony #32154 and #32565.

10:11 a.m. Travis Fink, Director of the ND Commission on Legal Counsel for Indigents, testified in favor.

10:39 a.m. Senator Dwyer moved to amend SB 2022, removing 805,000 from the Armstrong Budget, and adding in the Legislative policy change to declassify the attorneys in the Indigent Counsel testimony #32565.

Senator Burckhard seconded the motion.

Senators	Vote
Senator Terry M. Wanzek	Y
Senator Randy A. Burckhard	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Jonathan Sickler	Y

Motion passed 5-0-0

10:45 a.m. Senator Dwyer moved a Do Pass as amended for SB 2022.
Senator Burckhard seconded the motion.

Senators	Vote
Senator Terry M. Wanzek	Y
Senator Randy A. Burckhard	Y
Senator Michael Dwyer	Y

Senator Robert Erbele	Y
Senator Jonathan Sickler	Y

Motion passed 5-0-0

Senator Dwyer will carry the bill.

10:47 a.m. Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

8, 2025

Commission on Legal Counsel for Indigents - Budget No. 188
Agency Worksheet - Senate Bill No. 2022

	Armstrong Executive Budget				Senate Version			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2025-27 Biennium Base Level	41.00	\$20,999,305	\$2,023,067	\$23,022,372	41.00	\$20,999,305	\$2,023,067	\$23,022,372
2025-27 Ongoing Funding Changes								
Salary increase		\$377,323	\$10,765	\$388,088				0
Health insurance increase		252,222	6,005	258,227				0
Adds private investigator FTE positions	2.00	362,120		362,120				0
Adds funding to implement a new compensation strategy		805,000		805,000				0
Adds funding to increase the contract rate paid to attorneys		2,000,000		2,000,000				0
Adds funding to replace the 2023-25 new FTE pool		137,781		137,781				0
Adds funding to replace the 2023-25 vacant FTE pool		253,594	7,134	260,728				0
Adds funding for information technology rate increases		43,971	4,886	48,857				0
Total ongoing funding changes	2.00	\$4,232,011	\$28,790	\$4,260,801	0.00	\$0	\$0	\$0
One-Time Funding Items								
No one-time funding items				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$4,232,011	\$28,790	\$4,260,801	0.00	\$0	\$0	\$0
2025-27 Total Funding	43.00	\$25,231,316	\$2,051,857	\$27,283,173	41.00	\$20,999,305	\$2,023,067	\$23,022,372
Federal funds included in other funds			\$0				\$0	
Total ongoing changes - Percentage of base level	4.9%	20.2%	1.4%	18.5%	0.0%	0.0%	0.0%	0.0%
Total changes - Percentage of base level	4.9%	20.2%	1.4%	18.5%	0.0%	0.0%	0.0%	0.0%

Other Sections in Commission on Legal Counsel for Indigents - Budget No. 188

Section Description	Armstrong Executive Budget	Senate Version
FTE positions	Section 2 would authorize the agency to increase or decrease FTE positions as needed, subject to the availability of funds.	

25.0189.01001
Title.
Fiscal No. 1

Prepared by the Legislative Council
staff for Senate Appropriations -
Government Operations Division
Committee

January 28, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2022

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the commission on
2 legal counsel for indigents; and to create and enact a new subsection to section 54-44.3-20 of
3 the North Dakota Century Code, relating to categories of positions in the state service.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
6 as may be necessary, are appropriated out of any moneys in the general fund in the state
7 treasury, not otherwise appropriated, and from other funds derived from special funds and
8 federal funds, to the commission on legal counsel for indigents for the purpose of defraying the
9 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
10 2025, and ending June 30, 2027, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
13 Commission on legal counsel	\$23,022,372	\$0	\$23,022,372
14 —for indigents			
15 Total all funds	\$23,022,372	\$0	\$23,022,372
16 Less other funds	2,023,067	0	2,023,067
17 Total general fund	\$20,999,305	\$0	\$20,999,305
18 Full-time equivalent positions	41.00	0.00	41.00
19 <u>Commission on legal counsel</u>	<u>\$23,022,372</u>	<u>\$2,766,753</u>	<u>\$25,789,125</u>

Sixty-ninth
Legislative Assembly

1	<u>for indigents</u>			
2	<u>New and vacant FTE pool</u>	0	554,757	554,757
3	<u>Total all funds</u>	\$23,022,372	\$3,321,510	\$26,343,882
4	<u>Less other funds</u>	2,023,067	26,149	2,049,216
5	<u>Total general fund</u>	\$20,999,305	\$3,295,361	\$24,294,666
6	<u>Full-time equivalent positions</u>	41.00	2.00	43.00

7 **SECTION 2. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The
8 commission on legal counsel for indigents may not spend funds appropriated in the new and
9 vacant FTE pool line item in section 1 of this Act, but may request the office of management and
10 budget to transfer funds from the new and vacant FTE pool line item to the commission on legal
11 counsel for indigents line item in accordance with the guidelines and reporting provisions
12 included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

13 **SECTION 3.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is
14 created and enacted as follows:

15 Attorneys employed by the commission on legal counsel for indigents.

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2022 - Comm. on Legal Counsel for Indigents - Senate Action**

	Base Budget	Senate Changes	Senate Version
New and vacant FTE pool Comm. on Legal Counsel for Indigents	\$23,022,372	\$554,757 2,766,753	\$554,757 25,789,125
Total all funds	\$23,022,372	\$3,321,510	\$26,343,882
Less estimated income	2,023,067	26,149	2,049,216
General fund	\$20,999,305	\$3,295,361	\$24,294,666
FTE	41.00	2.00	43.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Investigator FTE Positions ²	Adds Funding to Replace 2023-25 New and Vacant FTE Pool ³	Transfers Funding for 2025-27 New and Vacant FTE Pool ⁴	Adds Funding to Increase the Contract Attorney Rate ⁵	Adds Funding for IT Rate Increases ⁶
New and vacant FTE pool Comm. on Legal Counsel for Indigents	\$646,315	\$362,120	\$398,509	\$554,757 (689,048)	\$2,000,000	\$48,857
Total all funds	\$646,315	\$362,120	\$398,509	(\$134,291)	\$2,000,000	\$48,857
Less estimated income	16,770	0	7,134	(2,641)	0	4,886
General fund	\$629,545	\$362,120	\$391,375	(\$131,650)	\$2,000,000	\$43,971
FTE	0.00	2.00	0.00	0.00	0.00	0.00

	Total Senate Changes
New and vacant FTE pool Comm. on Legal Counsel for Indigents	\$554,757 2,766,753
Total all funds	\$3,321,510
Less estimated income	26,149
General fund	\$3,295,361
FTE	2.00

¹ The following funding is added for 2025-27 biennium salary adjustments of 3 percent on July 1, 2025, and 3 percent on July 1, 2026, and increases in health insurance premiums from \$1,643 to \$1,893 per month:

	General Fund	Other Funds	Total
Salary increase	\$377,323	\$10,765	\$388,088
Health insurance increase	252,222	6,005	258,227
Total	\$629,545	\$16,770	\$646,315

² Funding of \$362,120 is added from the general fund for 2 new FTE investigator positions.

³ Funding is added to replace 2023-25 biennium new and vacant FTE pool funding as follows:

	General Fund	Other Funds	Total
Vacant FTE positions	\$253,594	\$7,134	\$260,728
New FTE positions	137,781	0	137,781
Total	\$391,375	\$7,134	\$398,509

⁴ Funding of \$689,048 for new FTE positions and estimated savings from vacant FTE positions is removed and funding of \$554,757 is added for a 2025-27 new and vacant FTE pool line item as follows:

	General Fund	Other Funds	Total
New FTE positions	(\$362,120)	\$0	(\$362,120)
Vacant FTE positions	(318,126)	(8,802)	(326,928)
Total	(\$680,246)	(\$8,802)	(\$689,048)
Funding pool line item	548,596	6,161	554,757
Net savings	(\$131,650)	(\$2,641)	(\$134,291)

⁵ Funding of \$2 million from the general fund is added to increase the contract rate paid to attorneys.

⁶ Funding of \$48,857, including \$43,971 from the general fund and \$4,886 from other funds, is added for IT rate increases.

This amendment also:

- Adds a section regarding the use of funding in the new and vacant FTE pool line item.
- Adds a new subsection to Section 54-44.3-20 to exempt attorneys employed by the Commission on Legal Counsel for Indigents from the employee classification system.

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2022
1/30/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

9:15 a.m. Vice-Chair Erbele opened the hearing.

Members Present: Vice-Chairman Erbele, and Senators Burckhard, Conley, Davison, Dever, Dwyer, Mathern, Schaible, Sickler, Sorvaag, Thomas, Wanzek.
Members Absent: Chairman Bekkedahl, Senators Magrum, Meyer, Cleary.

Discussion Topics:

- Service Improvements
- Committee Action

9:15 a.m. Senator Dwyer introduced the bill.

9:21 a.m. Senator Dwyer moved to adopt the amendment LC 25.0189.01001 and submitted testimony #33042.

9:22 a.m. Senator Burckhard seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	A
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	A
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	A
Senator Tim Mathern	Y
Senator Scott Meyer	A
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 12-0-4.

9:22 a.m. Senator Dwyer moved a Do Pass as Amended.

9:22 a.m. Senator Burckhard seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	A
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	A
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	A
Senator Tim Mathern	Y
Senator Scott Meyer	A
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 12-0-4.

Senator Dwyer will carry the bill.

9:23 a.m. Vice-Chair Erbele closed the hearing.

Elizabeth Reiten, Committee Clerk

25.0189.01001
Title.02000
Fiscal No. 1

Prepared by the Legislative Council
staff for Senate Appropriations -
Government Operations Division
Committee

January 28, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2022

Introduced by

Appropriations Committee

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2 legal counsel for indigents; and to create and enact a new subsection to section 54-44.3-20 of
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7 treasury, not otherwise appropriated, and from other funds derived from special funds and
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9 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
10 2025, and ending June 30, 2027, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
11			
12			
13 Commission on legal counsel	\$23,022,372	\$0	\$23,022,372
14 — for indigents			
15 Total all funds	\$23,022,372	\$0	\$23,022,372
16 Less other funds	2,023,067	0	2,023,067
17 Total general fund	\$20,999,305	\$0	\$20,999,305
18 Full-time equivalent positions	41.00	0.00	41.00
19 <u>Commission on legal counsel</u>	<u>\$23,022,372</u>	<u>\$2,766,753</u>	<u>\$25,789,125</u>

Sixty-ninth
Legislative Assembly

1 for indigents

2 New and vacant FTE pool 0 554,757 554,757

3 Total all funds \$23,022,372 \$3,321,510 \$26,343,882

4 Less other funds 2,023,067 26,149 2,049,216

5 Total general fund \$20,999,305 \$3,295,361 \$24,294,666

6 Full-time equivalent positions 41.00 2.00 43.00

7 **SECTION 2. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The
8 commission on legal counsel for indigents may not spend funds appropriated in the new and
9 vacant FTE pool line item in section 1 of this Act, but may request the office of management and
10 budget to transfer funds from the new and vacant FTE pool line item to the commission on legal
11 counsel for indigents line item in accordance with the guidelines and reporting provisions
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14 created and enacted as follows:

15 Attorneys employed by the commission on legal counsel for indigents.

RS
3 of 4

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2022 - Comm. on Legal Counsel for Indigents - Senate Action**

	Base Budget	Senate Changes	Senate Version
1120 - New and vacant FTE pool		\$554,757	\$554,757
7902 - Comm. on Legal Counsel for Indigents	\$23,022,372	2,766,753	25,789,125
Total all funds	\$23,022,372	\$3,321,510	\$26,343,882
Less estimated income	2,023,067	26,149	2,049,216
General fund	\$20,999,305	\$3,295,361	\$24,294,666
FTE	41.00	2.00	43.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Investigator FTE Positions ²	Adds Funding to Replace 2023-25 New and Vacant FTE Pool ³	Transfers Funding for 2025-27 New and Vacant FTE Pool ⁴	Adds Funding to Increase the Contract Attorney Rate ⁵	Adds Funding for IT Rate Increases ⁶
New and vacant FTE pool				\$554,757		
Comm. on Legal Counsel for Indigents	\$646,315	\$362,120	\$398,509	(689,048)	\$2,000,000	\$48,857
Total all funds	\$646,315	\$362,120	\$398,509	(\$134,291)	\$2,000,000	\$48,857
Less estimated income	16,770	0	7,134	(2,641)	0	4,886
General fund	\$629,545	\$362,120	\$391,375	(\$131,650)	\$2,000,000	\$43,971
FTE	0.00	2.00	0.00	0.00	0.00	0.00

	Total Senate Changes
New and vacant FTE pool	\$554,757
Comm. on Legal Counsel for Indigents	2,766,753
Total all funds	\$3,321,510
Less estimated income	26,149
General fund	\$3,295,361
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¹ The following funding is added for 2025-27 biennium salary adjustments of 3 percent on July 1, 2025, and 3 percent on July 1, 2026, and increases in health insurance premiums from \$1,643 to \$1,893 per month:

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³ Funding is added to replace 2023-25 biennium new and vacant FTE pool funding as follows:

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Vacant FTE positions	\$253,594	\$7,134	\$260,728
New FTE positions	137,781	0	137,781
Total	\$391,375	\$7,134	\$398,509

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	General Fund	Other Funds	Total
New FTE positions	(\$362,120)	\$0	(\$362,120)
Vacant FTE positions	<u>(318,126)</u>	<u>(8,802)</u>	<u>(326,928)</u>
Total	(\$680,246)	(\$8,802)	(\$689,048)
Funding pool line item	<u>548,596</u>	<u>6,161</u>	<u>554,757</u>
Net savings	(\$131,650)	(\$2,641)	(\$134,291)

⁵ Funding of \$2 million from the general fund is added to increase the contract rate paid to attorneys.

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This amendment also:

- Adds a section regarding the use of funding in the new and vacant FTE pool line item.
- Adds a new subsection to Section 54-44.3-20 to exempt attorneys employed by the Commission on Legal Counsel for Indigents from the employee classification system.

**REPORT OF STANDING COMMITTEE
SB 2022**

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS** ([25.0189.01001](#)) and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). SB 2022 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.0189.01001
Title.
Fiscal No. 1

Prepared by the Legislative Council
staff for Senate Appropriations -
Government Operations Division
Committee

January 28, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2022

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16 Less other funds	2,023,067	0	2,023,067
17 Total general fund	\$20,999,305	\$0	\$20,999,305
18 Full-time equivalent positions	41.00	0.00	41.00
19 <u>Commission on legal counsel</u>	<u>\$23,022,372</u>	<u>\$2,766,753</u>	<u>\$25,789,125</u>

Sixty-ninth
Legislative Assembly

1	<u>for indigents</u>			
2	<u>New and vacant FTE pool</u>	<u>0</u>	<u>554,757</u>	<u>554,757</u>
3	<u>Total all funds</u>	<u>\$23,022,372</u>	<u>\$3,321,510</u>	<u>\$26,343,882</u>
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5	<u>Total general fund</u>	<u>\$20,999,305</u>	<u>\$3,295,361</u>	<u>\$24,294,666</u>
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	Total Senate Changes
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Comm. on Legal Counsel for Indigents	2,766,753
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2025 HOUSE APPROPRIATIONS

SB 2022

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

SB 2022

3/7/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents; relating to categories of positions in the state service.

8:30 a.m. Chairman Monson called the meeting to order.

Members Present: Chairman Monson, Vice Chair Brandenburg, Representatives: Bosch, Fischer, Kempenich, Meier, Pyle.

Discussion Topics:

- North Dakota Commission on Legal Counsel for Indigents Statutory Responsibilities
- ND Legal Counsel Programs
- Vacant FTEs
- Fiscal Year Caseload and Breakdown
- Qualifications for Public Defenders
- Recruitment for Law Students
- Loan Repayment Program
- Criminal Justice Act
- Public vs Private Sector Comparison

8:31 a.m. Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor and submitted testimony #39315, #39316, and #39317.

9:47 a.m. Leah Viste, Attorney, Fargo Public Defenders Office, testified in favor.

10:03 a.m. Zach Pelham, Chairman, North Dakota Commission on Legal Counsel for Indigents, testified in favor.

Additional written testimony:

Alex Cronquist, Fiscal Analyst, Legislative Council, submitted neutral testimony #39520.

10:08 a.m. Chairman Monson closed the meeting.

Madaline Cooper, Committee Clerk

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 feel we needed 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.

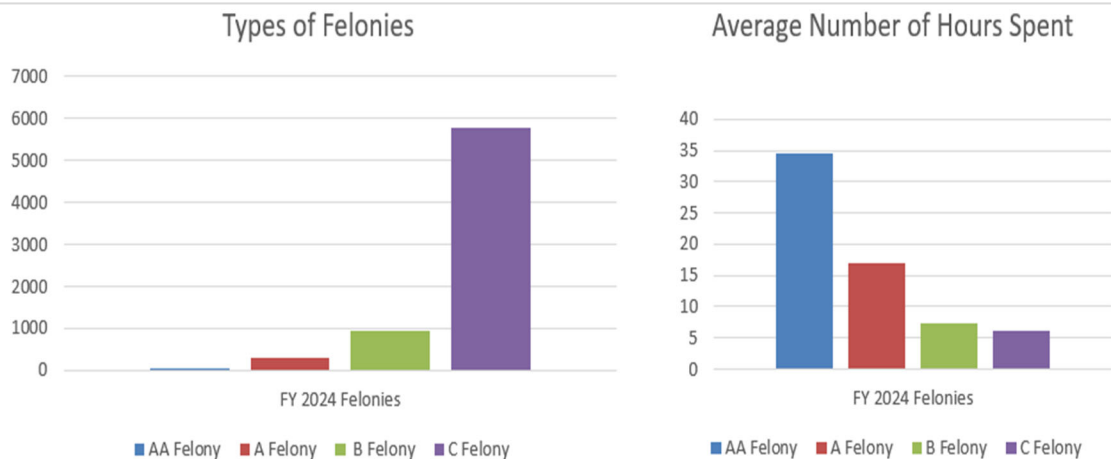
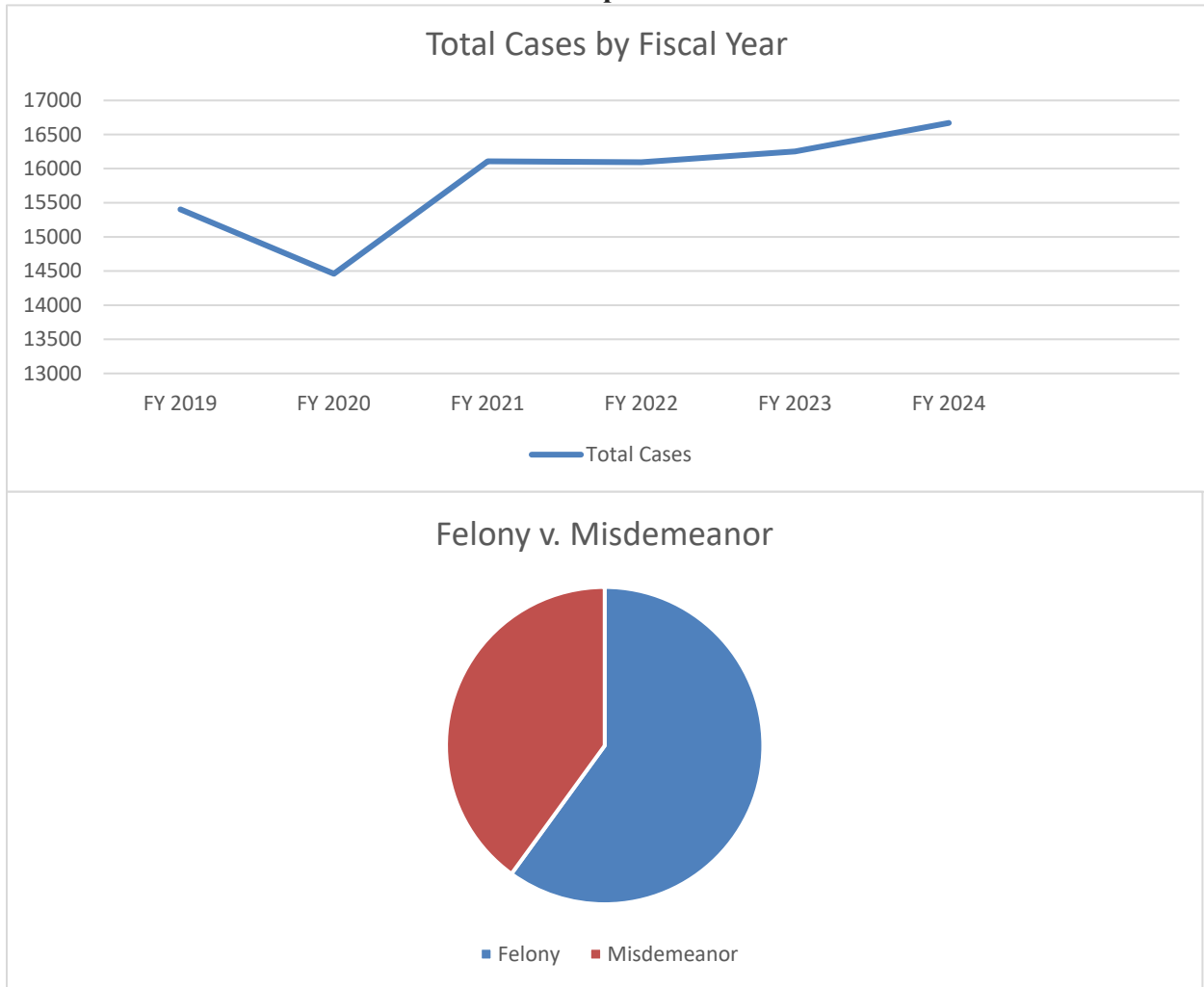
Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', is written over a horizontal line.

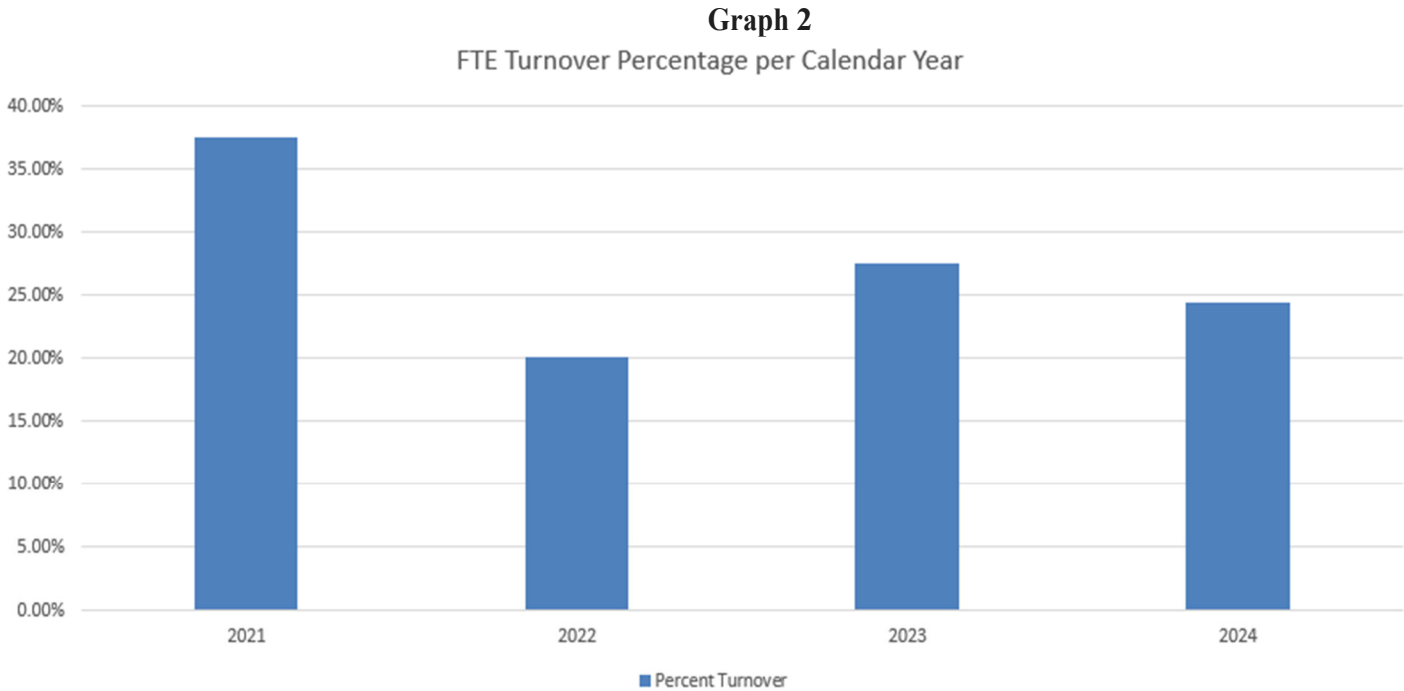
Travis W. Finck, Director
N.D. Comm. on Legal Counsel for Indigents

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

Graph 1

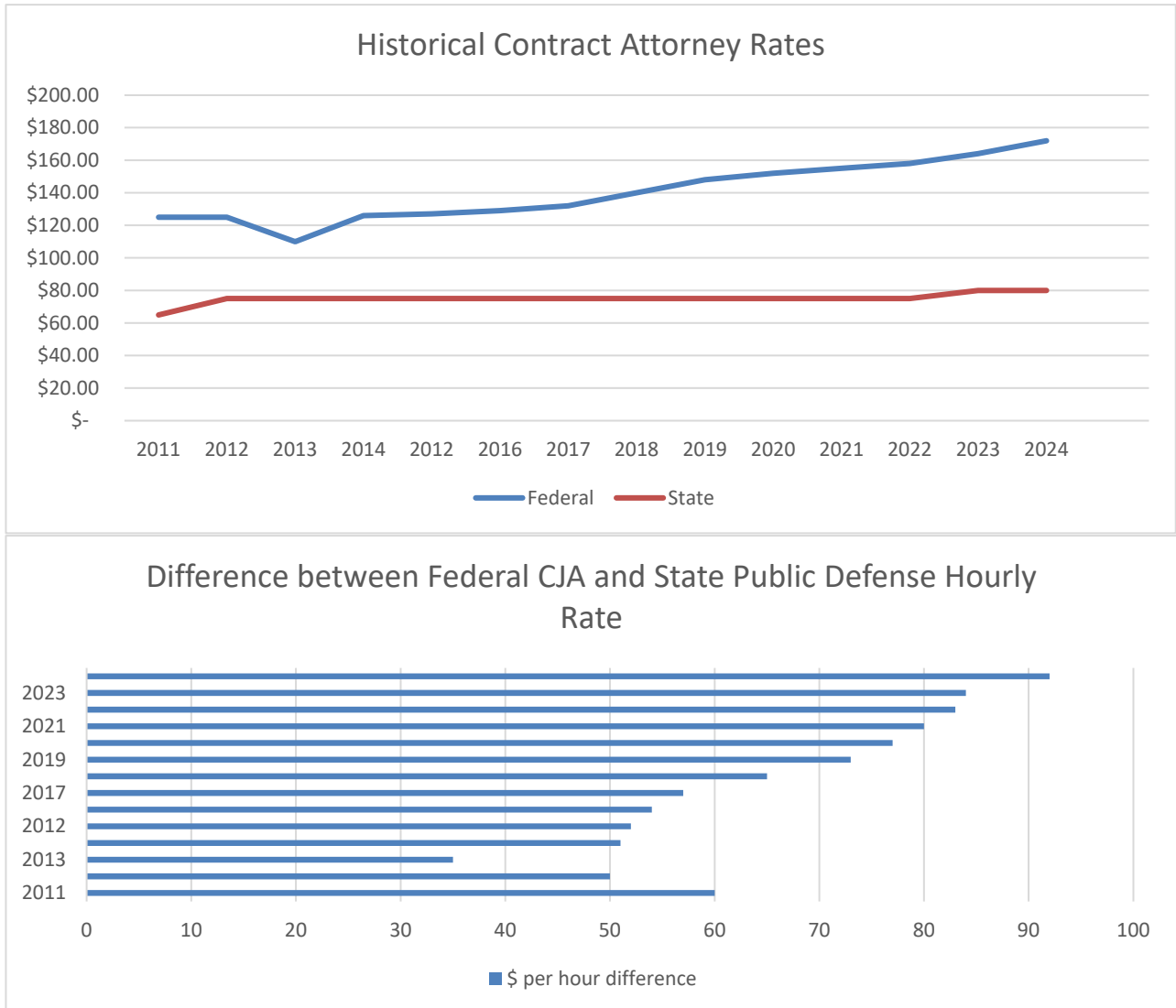


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SB 2022
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GRAPH 3



SB 2022
Senate Appropriations
Government Operation Divisions
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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	

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 68th 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 68th 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

2025-27 Agency Request							2025-27 Executive Recommendation				
Priority	Form Name	General Fund	Federal	Special	Total	FTE	General Fund	Federal	Special	Total	FTE
18800 – Commission on Legal Counsel for Indigents		7,608,474	-	-	7,608,474	5.00	3,337,648	-	-	3,337,648	2.00
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
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

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 68th 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

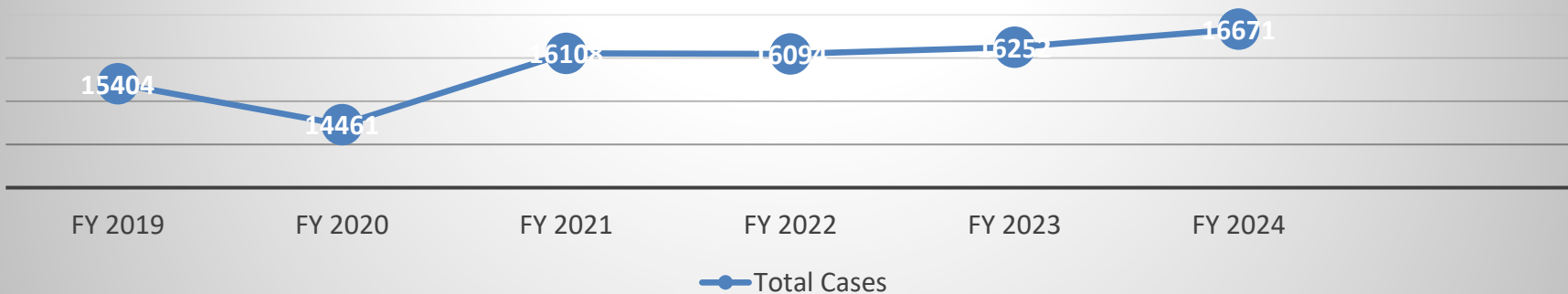
Need for Other Sections to be Added to the Bill

- 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

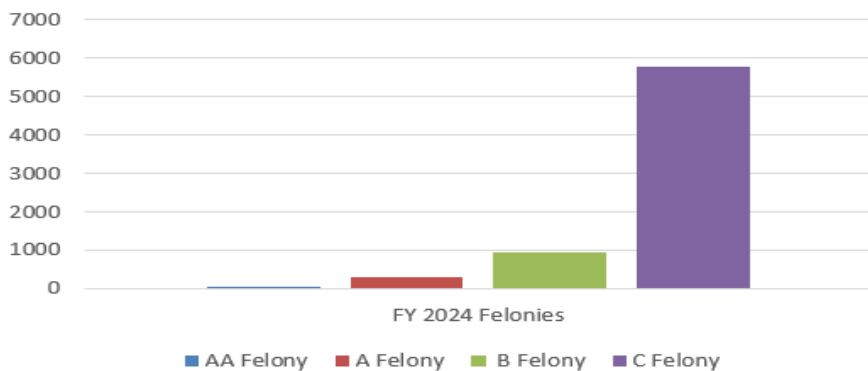


Felony v. Misdemeanor

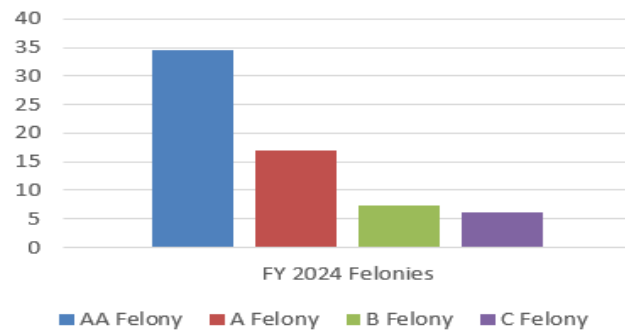


■ Felony ■ Misdemeanor

Types of Felonies

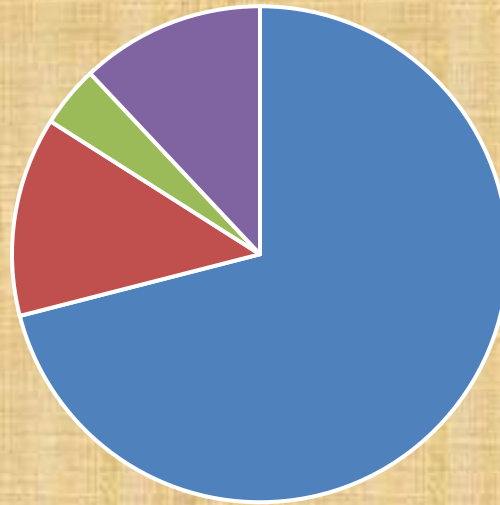


Average Number of Hours Spent



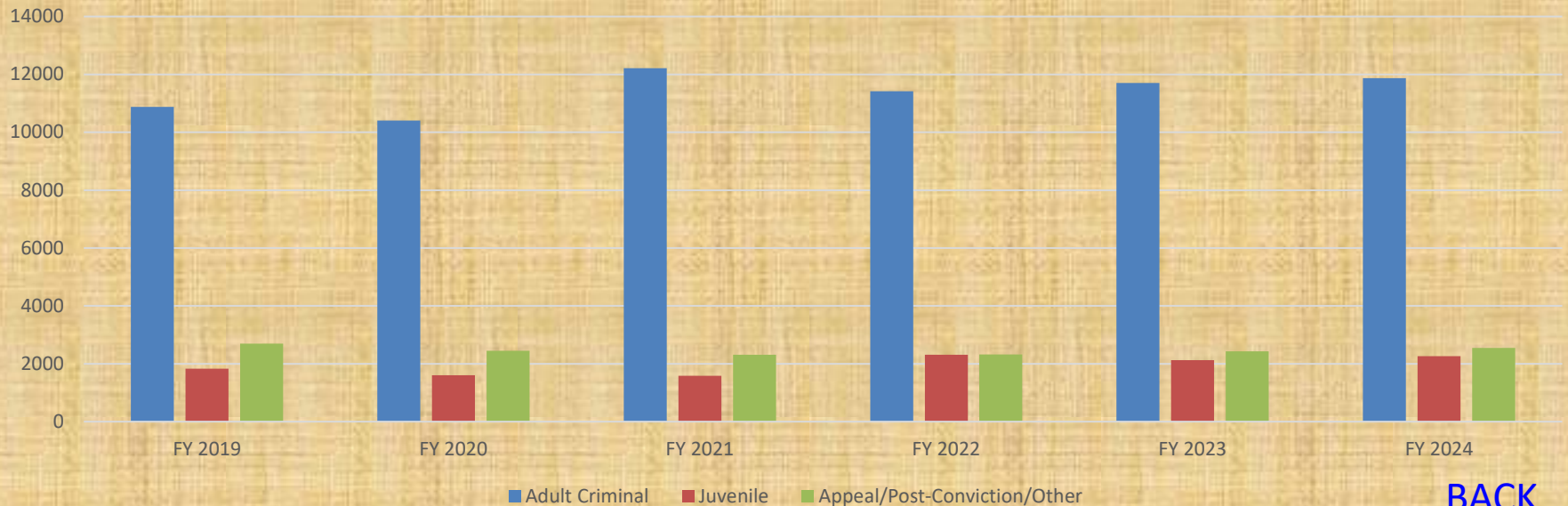
Case type percentages have remained fairly consistent over the years.

Case Types Current Fiscal Year



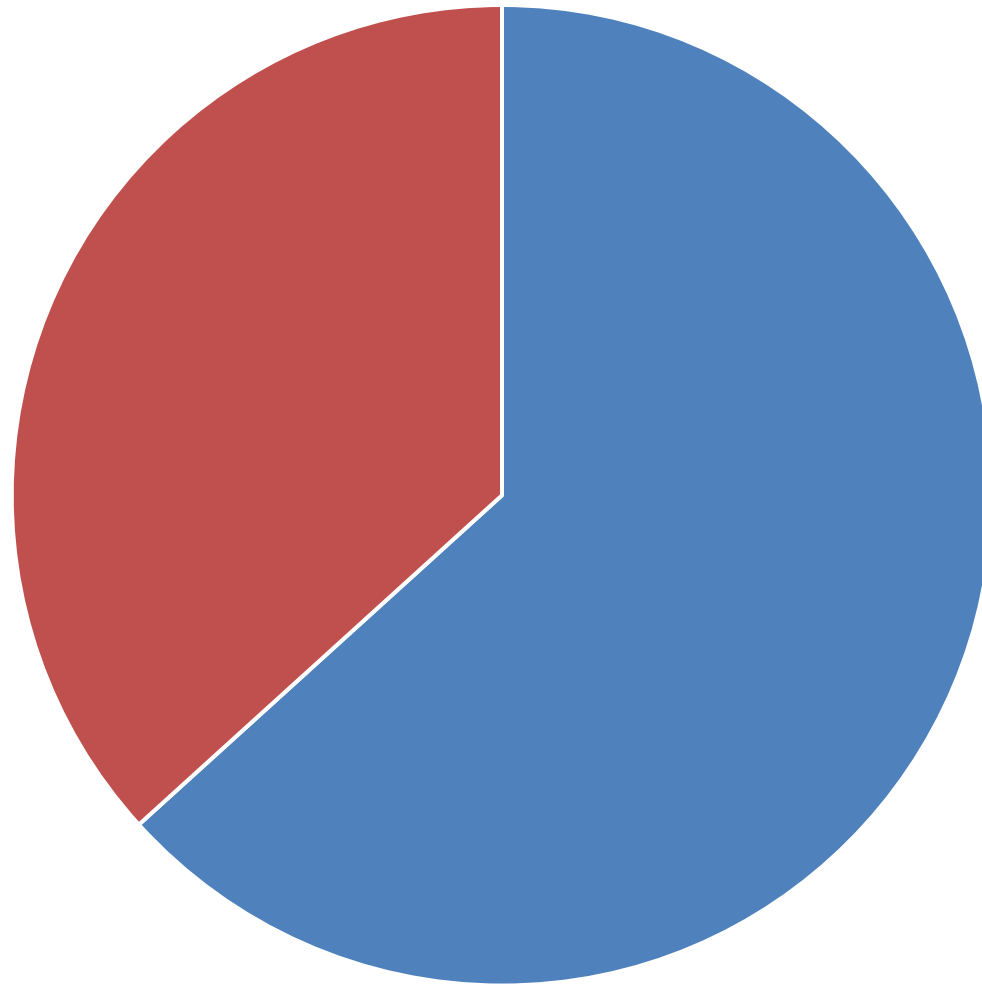
■ Adult Criminal ■ Juvenile ■ Appeal/Post Conviction/Other ■ Revocation

Case Types by Fiscal Year



[BACK](#)

Biennial Funding

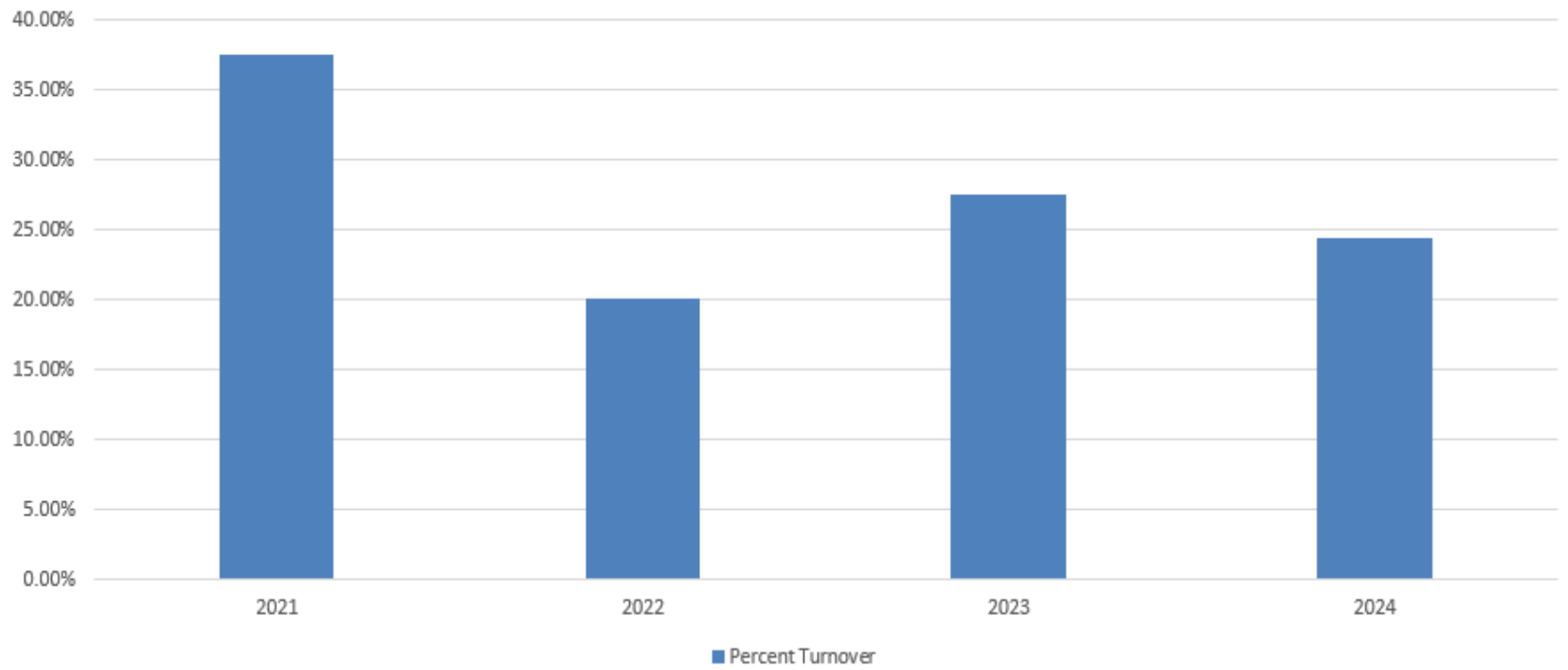


■ Prosecution in Six Largest Counties

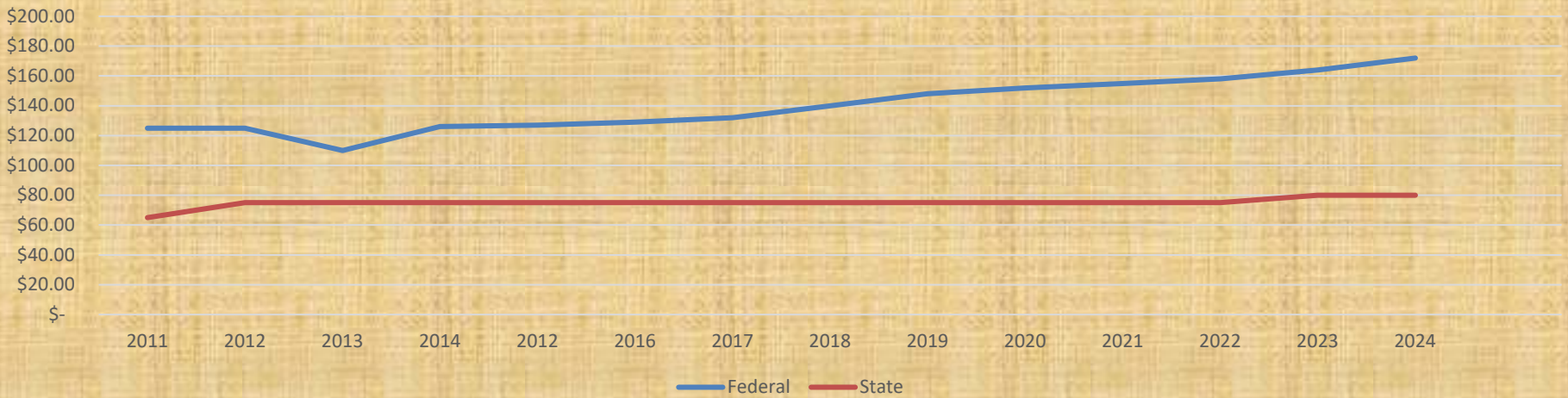
■ Public Defense in Entire State

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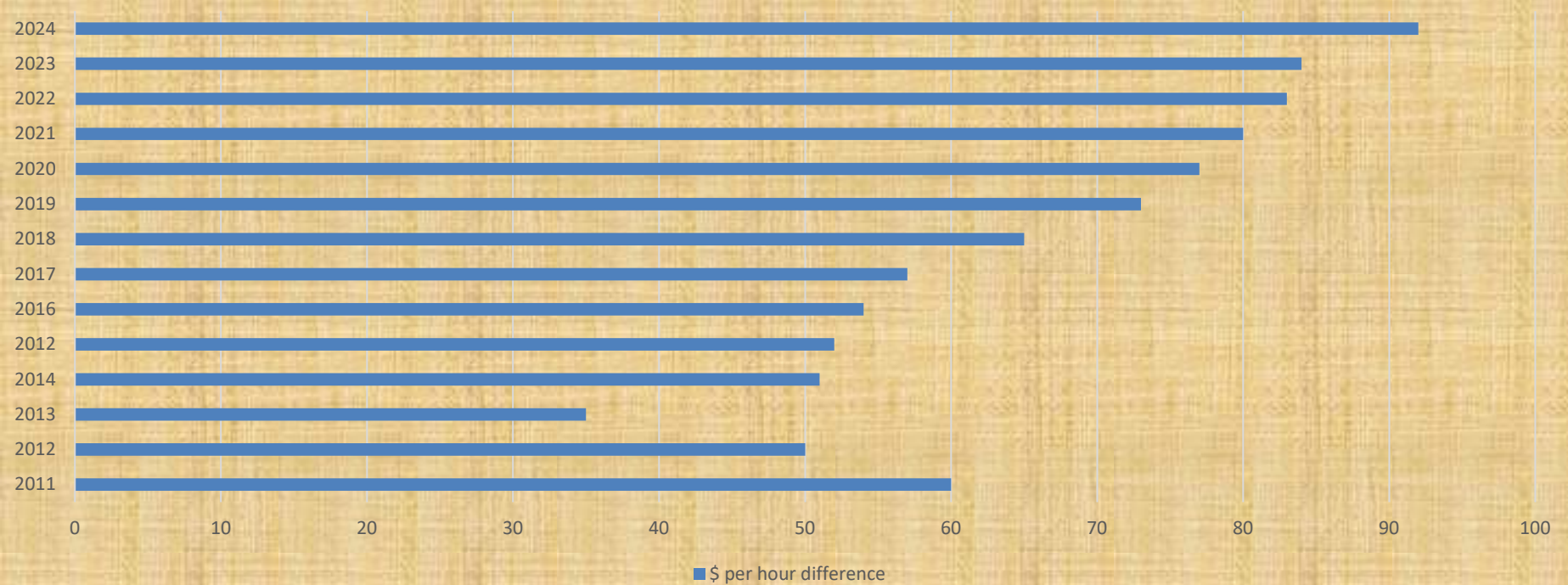
FTE Turnover Percentage per Calendar Year



Historical Contract Attorney Rates



Difference between Federal CJA and State Public Defense Hourly Rate



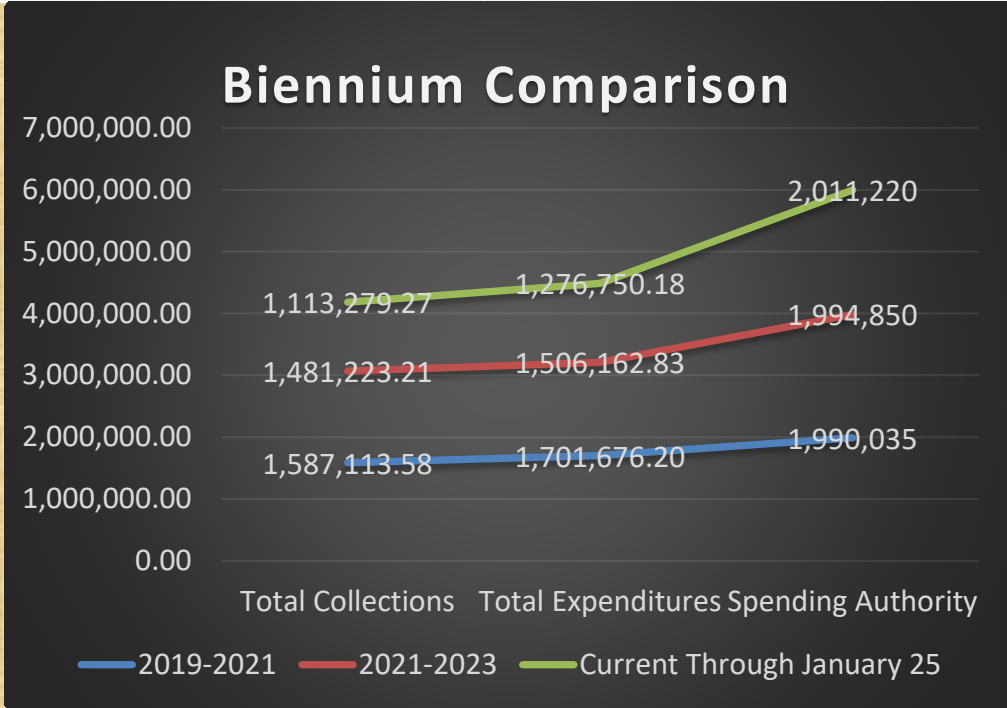
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Current Job Title		Current Class		Current Grade		Proposed Class and Job title			Proposed Grade		Court Grade	
Admin. Asst. I		Admin Svc III		103 (2951-4918)		Admin Svcs IV Admin Asst. - office			104 (3508-5847)		10 (4158-6106)	
Admin. Asst II		Admin 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
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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
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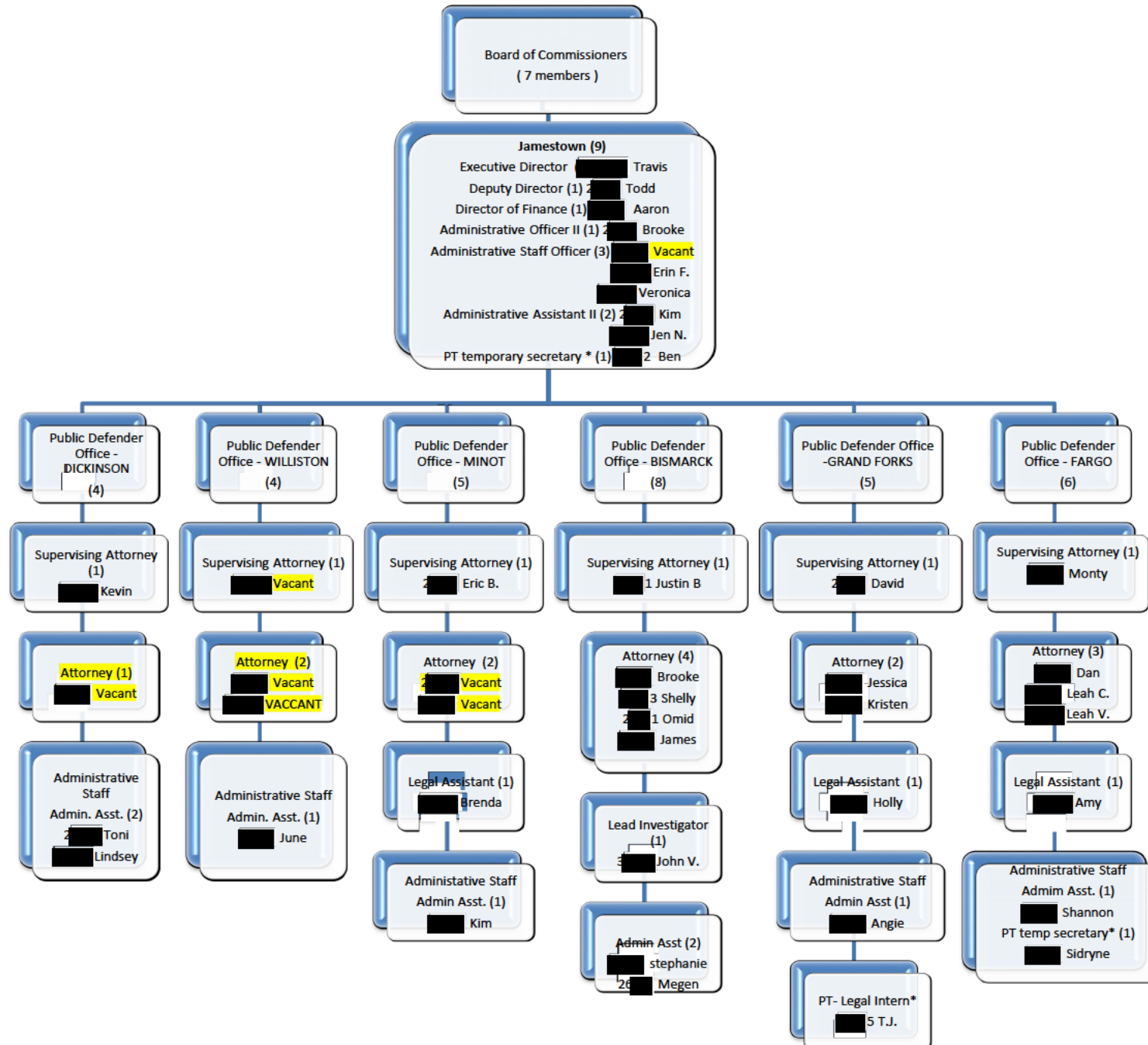
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Collections	1,587,113.58	1,481,223.21	1,113,279.27
Amount expended	1,701,676.20	1,506,162.83	1,276,750.18
Spending Authority	1,990,035	1,994,850	2,011,220

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



Organizational Chart

ND Commission on Legal Counsel for Indigents





Commission on Legal Counsel for Indigents - Budget No. 188
Agency Worksheet - Senate Bill No. 2022

	Armstrong Executive Budget				Senate Version				Senate Compared to Executive Budget			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total	Increase (Decrease)			
									FTE Positions	General Fund	Other Funds	Total
2025-27 Biennium Base Level	41.00	\$20,999,305	\$2,023,067	\$23,022,372	41.00	\$20,999,305	\$2,023,067	\$23,022,372	0.00	\$0	\$0	\$0
2025-27 Ongoing Funding Changes												
Salary increase		\$377,323	\$10,765	\$388,088		\$377,323	\$10,765	388,088				0
Health insurance increase		252,222	6,005	258,227		252,222	6,005	258,227				0
Adds private investigator FTE positions	2.00	362,120		362,120	2.00	362,120		362,120				0
Adds funding to implement a new compensation strategy		805,000		805,000				0		(\$805,000)		(805,000)
Adds funding to replace the 2023-25 new FTE pool		137,781		137,781		137,781		137,781				0
Adds funding to replace the 2023-25 vacant FTE pool		253,594	7,134	260,728		253,594	7,134	260,728				0
Transfers funding for 2025-27 new and vacant FTE pool				0		(131,650)	(2,641)	(134,291)		(131,650)	(\$2,641)	(134,291)
Adds funding to increase the contract rate paid to attorneys		2,000,000		2,000,000		2,000,000		2,000,000				0
Adds funding for information technology rate increases		43,971	4,886	48,857		43,971	4,886	48,857				0
Total ongoing funding changes	2.00	\$4,232,011	\$28,790	\$4,260,801	2.00	\$3,295,361	\$26,149	\$3,321,510	0.00	(\$936,650)	(\$2,641)	(\$939,291)
One-Time Funding Items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$4,232,011	\$28,790	\$4,260,801	2.00	\$3,295,361	\$26,149	\$3,321,510	0.00	(\$936,650)	(\$2,641)	(\$939,291)
2025-27 Total Funding	43.00	\$25,231,316	\$2,051,857	\$27,283,173	43.00	\$24,294,666	\$2,049,216	\$26,343,882	0.00	(\$936,650)	(\$2,641)	(\$939,291)
Federal funds included in other funds				\$0					\$0			
Total ongoing changes - Percentage of base level	4.9%	20.2%	1.4%	18.5%	4.9%	15.7%	1.3%	14.4%	N/A	N/A	N/A	N/A
Total changes - Percentage of base level	4.9%	20.2%	1.4%	18.5%	4.9%	15.7%	1.3%	14.4%	N/A	N/A	N/A	N/A

Other Sections in Commission on Legal Counsel for Indigents - Budget No. 188

Section Description	Armstrong Executive Budget	Senate Version
New and vacant FTE pool		Section 2 provides language regarding the use of funding in the new and vacant FTE pool line item.
Employee classification		Section 3 adds a new subsection to Section 54-44.3-20 to exempt attorneys employed by the Commission on Legal Counsel for Indigents from the employee classification system.



North Dakota Legislative Council

Prepared for the House Appropriations Committee
March 7, 2025

MAJOR RELATED LEGISLATION AFFECTING THE COMMISSION ON LEGAL COUNSEL FOR INDIGENTS AS OF CROSSOVER

This memorandum provides information on major related legislation affecting the Commission on Legal Counsel for Indigents as of Crossover:

House Bill No. 1417 - This bill eliminates fees for the reimbursement of indigent defense costs and expenses and provides for a Legislative Management study of court fines and fees. This bill also appropriates \$310,000 from the general fund to the Commission on Legal Counsel for Indigents to replace revenue from the elimination of indigent defense application fees.

Senate Bill No. 2057 - This bill increases the court administration fee from \$100 to \$200, a portion of which is deposited in the indigent defense fund.

Senate Bill No. 2226 - This bill appropriates \$615,734 from the general fund to the Commission on Legal Counsel for Indigents to provide legal counsel services for incarcerated individuals at initial appearances.

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

SB 2022

3/18/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents; relating to categories of positions in the state service.

8:32 a.m. Chairman Monson called the meeting to order.

Members Present: Chairman Monson, Vice Chair Brandenburg, Representatives: Bosch, Fisher, Kempenich, Meier, Pyle.

Discussion Topics:

- Application Fees for Legal Counsel
- Initial hearings requirements
- Other bills potential impacts
- Declassification of Attorney
- Salary breakdown for positions in Legal Counsel of Indigents
- Career Builders Loan Repayment

8:33 a.m. Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor.

8:51 a.m. Chairman Monson referenced previous long sheet #39520.

8:52 a.m. Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor and continued with previous testimony #39316.

9:18 a.m. Representative Fisher moved to amend the items that were discussed on the long sheet #39520 with adding \$310,000 for application fees and contract and compensation increased to \$2,500.000.

9:18 a.m. Representative Bosch seconded the motion

Representatives	Vote
Representative David Monson	Y
Representative Mike Brandenburg	AB
Representative Glenn Bosch	Y
Representative Jay Fisher	Y
Representative Keith Kempenich	Y
Representative Lisa Meier	AB
Representative Brandy L. Pyle	Y

Motion carried 5-0-2.

House Appropriations - Government Operations Division

SB 2022

03/18/2025

Page 2

9:25 a.m. Chairman Monson closed the meeting.

Madaline Cooper, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

SB 2022

3/24/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents; relating to categories of positions in the state service.

3:09 p.m. Chairman Monson opened the meeting.

Members Present: Chairman Monson, Vice Chair Brandenburg, Representatives: Bosch, Fisher, Kempenich, Meier, Pyle.

Discussion Topics:

- Application Fee with Legal Counsel
- Equity funding
- Employee Declassification System
- Legal Counsel name change

3:09 p.m. Travis Finck, Executive Director, Commission on Legal Counsel for Indigents, testified in favor.

3:30 p.m. Chairman Monson recessed the meeting.

3:43 p.m. Chairman Monson reconvened the meeting.

3:43 p.m. Representative Meier went over amendment LC# 25.0189.02001, #43686 and #43687.

3:48 p.m. Representative Meier moved to adopt LC# 25.0189.02001, #43686 and #43687.

3:48 p.m. Representative Bosch seconded the motion.

Representatives	Vote
Representative David Monson	Y
Representative Mike Brandenburg	Y
Representative Glenn Bosch	Y
Representative Jay Fisher	AB
Representative Keith Kempenich	Y
Representative Lisa Meier	Y
Representative Brandy L. Pyle	Y

Motion carried 6-0-1.

3:49 p.m. Representative Kempenich introduces amendment LC# 25.0189.02002, #43675.

3:58 p.m. Representative Kempenich moves to further amend to add a study about changing the name from Legal Counsel for Indigents to North Dakota Public Defenders Office.

3:59 p.m. Representative Bosch seconded the motion.

Representatives	Vote
Representative David Monson	Y
Representative Mike Brandenburg	Y
Representative Glenn Bosch	Y
Representative Jay Fisher	AB
Representative Keith Kempenich	Y
Representative Lisa Meier	Y
Representative Brandy L. Pyle	Y

Motion carried 6-0-1.

4:00 p.m. Representative Meier moved a Do Pass as further Amended.

4:01 p.m. Representative Pyle seconded the motion.

Representatives	Vote
Representative David Monson	Y
Representative Mike Brandenburg	Y
Representative Glenn Bosch	Y
Representative Jay Fisher	AB
Representative Keith Kempenich	Y
Representative Lisa Meier	Y
Representative Brandy L. Pyle	Y

Motion carried 6-0-1.

Representative Meier will carry the bill.

Additional written testimony:

Alex Cronquist, Fiscal Analyst, Legislative Council, submitted testimony #43685, #43686, and #43687

4:04 p.m. Chairman Monson adjourned the meeting.

Madaline Cooper, Committee Clerk

25.0189.02002
Title.

Prepared by the Legislative Council
staff for Representative Kempenich
March 21, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2022

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the commission on
2 legal counsel for indigents; ~~and to create and enact a new subsection to section 54-44.3-20 of~~
3 ~~the North Dakota Century Code, relating to categories of positions in the state service; and to~~
4 ~~amend and reenact section 54-61-03 of the North Dakota Century Code, relating to the creation~~
5 ~~of the public defenders office within the commission on legal counsel for indigents.~~

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
8 as may be necessary, are appropriated out of any moneys in the general fund in the state
9 treasury, not otherwise appropriated, and from other funds derived from special funds and
10 federal funds, to the commission on legal counsel for indigents for the purpose of defraying the
11 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
12 2025, and ending June 30, 2027, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
15 Commission on legal counsel	\$23,022,372	\$2,766,753	\$25,789,125
16 for indigents			
17 New and vacant FTE pool	<u>0</u>	<u>554,757</u>	<u>554,757</u>
18 Total all funds	\$23,022,372	\$3,321,510	\$26,343,882
19 Less other funds	<u>2,023,067</u>	<u>26,149</u>	<u>2,049,216</u>

1	Total general fund	\$20,999,305	\$3,295,361	\$24,294,666
2	Full-time equivalent positions	41.00	2.00	43.00

3 **SECTION 2. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The
4 commission on legal counsel for indigents may not spend funds appropriated in the new and
5 vacant FTE pool line item in section 1 of this Act, but may request the office of management and
6 budget to transfer funds from the new and vacant FTE pool line item to the commission on legal
7 counsel for indigents line item in accordance with the guidelines and reporting provisions
8 included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

9 **SECTION 3.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is
10 created and enacted as follows:

11 Attorneys employed by the commission on legal counsel for indigents.

12 **SECTION 4. AMENDMENT.** Section 54-61-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-61-03. ~~Commission director~~Public defenders office - Director - Responsibilities.**

- 15 1. The public defenders office is created under the commission on legal counsel for
16 indigents. The commission shall appoint a director who must be chosen on the basis
17 of training, experience, and other qualifications considered appropriate. The director
18 must be an attorney licensed and eligible to practice law in this state at the time of
19 appointment and at all times during service as director. The director may be removed
20 for cause by a majority vote of commission members.
- 21 2. The director shall:
- 22 a. Assist the commission in developing standards for the delivery of adequate
 - 23 indigent defense services;
 - 24 b. Administer and coordinate delivery of indigent defense services and supervise
 - 25 compliance with commission standards;
 - 26 c. Recommend the establishment of public defender offices when considered
 - 27 necessary and appropriate to the delivery of adequate indigent defense services;
 - 28 d. Conduct regular training programs for contract counsel and public defenders;
 - 29 e. Subject to policies and procedures established by the commission, hire the
 - 30 professional, technical, and support personnel, including attorneys to serve as

- 1 public defenders, considered reasonably necessary for the efficient delivery of
- 2 indigent defense services;
- 3 f. Prepare and submit to the commission a proposed biennial budget for the
- 4 provision of indigent defense services; an annual report containing pertinent data
- 5 on the operation, needs, and costs of the indigent defense contract system and
- 6 any established public defender offices; and any other information as the
- 7 commission may require;
- 8 g. Submit the annual report required under subdivision f to the legislative council;
- 9 and
- 10 h. Perform other duties as the commission may assign.



Commission on Legal Counsel for Indigents - Budget No. 188
Agency Worksheet - Senate Bill No. 2022

	Senate Version				House Version				House Compared to Senate Version			
	FTE Positions	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total	Increase (Decrease)			
									FTE Positions	General Fund	Other Funds	Total
2025-27 Biennium Base Level	41.00	\$20,999,305	\$2,023,067	\$23,022,372	41.00	\$20,999,305	\$2,023,067	\$23,022,372	0.00	\$0	\$0	\$0
2025-27 Ongoing Funding Changes												
Salary increase		\$377,323	\$10,765	388,088		\$377,323	\$10,765	388,088				0
Health insurance increase		252,222	6,005	258,227		252,222	6,005	258,227				0
Adds private investigator FTE positions	2.00	362,120		362,120	2.00	362,120		362,120				0
Adds funding to implement a new compensation strategy				0				0				0
Adds funding to replace the 2023-25 new FTE pool		137,781		137,781		137,781		137,781				0
Adds funding to replace the 2023-25 vacant FTE pool		253,594	7,134	260,728		253,594	7,134	260,728				0
Transfers funding for 2025-27 new and vacant FTE pool		(131,650)	(2,641)	(134,291)		(131,650)	(2,641)	(134,291)				0
Adds funding to increase the contract rate paid to attorneys		2,000,000		2,000,000		0		0		(\$2,000,000)		(2,000,000)
Adds funding to implement a new compensation strategy and to increase the contract rate paid to attorneys				0		2,500,000		2,500,000		2,500,000		2,500,000
Adds funding for information technology rate increases		43,971	4,886	48,857		43,971	4,886	48,857				0
Adds funding to replace special funds				0		310,000		310,000		310,000		310,000
Total ongoing funding changes	2.00	\$3,295,361	\$26,149	\$3,321,510	2.00	\$4,105,361	\$26,149	\$4,131,510	0.00	\$810,000	\$0	\$810,000
One-Time Funding Items												
No one-time funding items				\$0				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	2.00	\$3,295,361	\$26,149	\$3,321,510	2.00	\$4,105,361	\$26,149	\$4,131,510	0.00	\$810,000	\$0	\$810,000
2025-27 Total Funding	43.00	\$24,294,666	\$2,049,216	\$26,343,882	43.00	\$25,104,666	\$2,049,216	\$27,153,882	0.00	\$810,000	\$0	\$810,000
Federal funds included in other funds				\$0					\$0			
Total ongoing changes - Percentage of base level	4.9%	15.7%	1.3%	14.4%	4.9%	19.5%	1.3%	17.9%	N/A	N/A	N/A	N/A
Total changes - Percentage of base level	4.9%	15.7%	1.3%	14.4%	4.9%	19.5%	1.3%	17.9%	N/A	N/A	N/A	N/A

Other Sections in Commission on Legal Counsel for Indigents - Budget No. 188

Section Description	Senate Version	House Version
New and vacant FTE pool	Section 2 provides language regarding the use of funding in the new and vacant FTE pool line item.	Section 2 provides language regarding the use of funding in the new and vacant FTE pool line item.
Employee classification	Section 3 adds a new subsection to Section 54-44.3-20 to exempt attorneys employed by the Commission on Legal Counsel for Indigents from the employee classification system.	Section 3 adds a new subsection to Section 54-44.3-20 to exempt attorneys employed by the Commission on Legal Counsel for Indigents from the employee classification system.

25.0189.02001
Title.
Fiscal No. 1

Prepared by the Legislative Council
staff for House Appropriations -
Government Operations Division
Committee

March 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2022

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the commission on
2 legal counsel for indigents; and to create and enact a new subsection to section 54-44.3-20 of
3 the North Dakota Century Code, relating to categories of positions in the state service.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
6 as may be necessary, are appropriated out of any moneys in the general fund in the state
7 treasury, not otherwise appropriated, and from other funds derived from special funds and
8 federal funds, to the commission on legal counsel for indigents for the purpose of defraying the
9 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
10 2025, and ending June 30, 2027, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
13	Commission on legal counsel	\$23,022,372	\$2,766,753
14	—for indigents		\$25,789,125
15	<u>Commission on legal counsel</u>	<u>\$23,022,372</u>	<u>\$3,576,753</u>
16	<u>for indigents</u>		<u>\$26,599,125</u>
17	New and vacant FTE pool	<u>0</u>	<u>554,757</u>
18	Total all funds	\$23,022,372	\$3,321,510
19	<u>Total all funds</u>	<u>\$23,022,372</u>	<u>\$4,131,510</u>

1	Less other funds	<u>2,023,067</u>	<u>26,149</u>	<u>2,049,216</u>
2	Total general fund	\$20,999,305	\$3,295,361	\$24,294,666
3	<u>Total general fund</u>	<u>\$20,999,305</u>	<u>\$4,105,361</u>	<u>\$25,104,666</u>
4	Full-time equivalent positions	41.00	2.00	43.00

5 **SECTION 2. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The
6 commission on legal counsel for indigents may not spend funds appropriated in the new and
7 vacant FTE pool line item in section 1 of this Act, but may request the office of management and
8 budget to transfer funds from the new and vacant FTE pool line item to the commission on legal
9 counsel for indigents line item in accordance with the guidelines and reporting provisions
10 included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

11 **SECTION 3.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is
12 created and enacted as follows:

13 Attorneys employed by the commission on legal counsel for indigents.

Bill No. 2022

Fiscal No. 1

25.0189.02001s

03/18/2025

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2022 - Comm. on Legal Counsel for Indigents - House Action**

	Base Budget	Senate Version	House Changes	House Version
New and vacant FTE pool		\$554,757		\$554,757
Comm. on Legal Counsel for Indigents	\$23,022,372	25,789,125	\$810,000	26,599,125
Total all funds	\$23,022,372	\$26,343,882	\$810,000	\$27,153,882
Less estimated income	2,023,067	2,049,216	0	2,049,216
General fund	\$20,999,305	\$24,294,666	\$810,000	\$25,104,666
FTE	41.00	43.00	0.00	43.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of House Changes

	Adds Funding to Replace Special Funds ¹	Adjusts Funding for Contract Attorneys and Employee Compensation ²	Total House Changes
New and vacant FTE pool			
Comm. on Legal Counsel for Indigents	\$310,000	\$500,000	\$810,000
Total all funds	\$310,000	\$500,000	\$810,000
Less estimated income	0	0	0
General fund	\$310,000	\$500,000	\$810,000
FTE	0.00	0.00	0.00

¹ Funding of \$310,000 from the general fund is added to replace special funds revenue not anticipated to be collected.

² Funding of \$500,000 from the general fund is added to provide a total of \$2.5 million to increase the contract rate paid to attorneys and to implement a new employee compensation strategy.

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2022
3/31/2025

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents; relating to categories of positions in the state service.

9:22 a.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, Pyle, Richter, Sanford, Stemen, Wagner

Members absent: Vice Chairman Kempenich, Representatives: O'Brien, Swiontek

Discussion Topics:

- Committee Action

9:23 a.m. Representative Meier explained Amendment LC #25.0189.02003, #44447.

9:29 a.m. Representative Meier moved Amendment LC #25.0189.02003.

9:29 a.m. Representative Monson seconded the motion.

9:29 a.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	AB
Representative Bert Anderson	Y
Representative Mike Berg	Y
Representative Glenn Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	Y
Representative Karla Rose Hanson	Y
Representative Scott Louser	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	AB
Representative Brandy L. Pyle	Y
Representative David Richter	Y

Representative Mark Sanford	Y
Representative Gregory Stemen	Y
Representative Steve Swiontek	AB
Representative Scott Wagner	Y

9:29 a.m. Motion passed 20-0-3.

9:30 a.m. Representative Meier moved Do Pass as Amended.

9:30 a.m. Representative Monson seconded the motion.

9:31 a.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	AB
Representative Bert Anderson	Y
Representative Mike Berg	Y
Representative Glenn Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	Y
Representative Karla Rose Hanson	Y
Representative Scott Louser	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	AB
Representative Brandy L. Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Gregory Stemen	Y
Representative Steve Swiontek	AB
Representative Scott Wagner	Y

9:31 a.m. Motion passed 20-0-3.

9:31 a.m. Representative Meier will carry the bill.

9:31 a.m. Chairman Vigesaa closed the meeting.

Krystal Eberle, Committee Clerk

March 26, 2025

CO
3/31/25
lof3

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2022

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the commission on
2 legal counsel for indigents; ~~and~~ to create and enact a new subsection to section 54-44.3-20 of
3 the North Dakota Century Code, relating to categories of positions in the state service; and to
4 provide for a legislative management study.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
7 as may be necessary, are appropriated out of any moneys in the general fund in the state
8 treasury, not otherwise appropriated, and from other funds derived from special funds and
9 federal funds, to the commission on legal counsel for indigents for the purpose of defraying the
10 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
11 2025, and ending June 30, 2027, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
14 Commission on legal counsel	\$23,022,372	\$2,766,753	\$25,789,125
15 —for indigents			
16 <u>Commission on legal counsel</u>	<u>\$23,022,372</u>	<u>\$3,576,753</u>	<u>\$26,599,125</u>
17 <u>for indigents</u>			
18 New and vacant FTE pool	0	554,757	554,757
19 Total all funds	\$23,022,372	\$3,321,510	\$26,343,882

1	<u>Total all funds</u>	<u>\$23,022,372</u>	<u>\$4,131,510</u>	<u>\$27,153,882</u>
2	Less other funds	<u>2,023,067</u>	<u>26,149</u>	<u>2,049,216</u>
3	Total general fund	\$20,999,305	\$3,295,361	\$24,294,666
4	<u>Total general fund</u>	<u>\$20,999,305</u>	<u>\$4,105,361</u>	<u>\$25,104,666</u>
5	Full-time equivalent positions	41.00	2.00	43.00

6 **SECTION 2. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The

7 commission on legal counsel for indigents may not spend funds appropriated in the new and
8 vacant FTE pool line item in section 1 of this Act, but may request the office of management and
9 budget to transfer funds from the new and vacant FTE pool line item to the commission on legal
10 counsel for indigents line item in accordance with the guidelines and reporting provisions
11 included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

12 **SECTION 3.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is
13 created and enacted as follows:

14 Attorneys employed by the commission on legal counsel for indigents.

15 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COMMISSION ON LEGAL**
16 **COUNSEL FOR INDIGENTS - NORTH DAKOTA PUBLIC DEFENDERS OFFICE.** During the
17 2025-26 interim, the legislative management shall consider studying the potential impacts of
18 establishing the North Dakota public defenders office as an administrative agency under the
19 authority of the commission on legal counsel for indigents. The legislative management shall
20 report its findings and recommendations, together with any legislation required to implement the
21 recommendations, to the seventieth legislative assembly.

3 of 3

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2022 - Comm. on Legal Counsel for Indigents - House Action**

	Base Budget	Senate Version	House Changes	House Version
New and vacant FTE pool		\$554,757		\$554,757
Comm. on Legal Counsel for Indigents	\$23,022,372	25,789,125	\$810,000	26,599,125
Total all funds	\$23,022,372	\$26,343,882	\$810,000	\$27,153,882
Less estimated income	2,023,067	2,049,216	0	2,049,216
General fund	\$20,999,305	\$24,294,666	\$810,000	\$25,104,666
FTE	41.00	43.00	0.00	43.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of House Changes

	Adds Funding to Replace Special Funds ¹	Adjusts Funding for Contract Attorneys and Employee Compensation ²	Total House Changes
New and vacant FTE pool			
Comm. on Legal Counsel for Indigents	\$310,000	\$500,000	\$810,000
Total all funds	\$310,000	\$500,000	\$810,000
Less estimated income	0	0	0
General fund	\$310,000	\$500,000	\$810,000
FTE	0.00	0.00	0.00

¹ Funding of \$310,000 from the general fund is added to replace special funds revenue not anticipated to be collected.

² Funding of \$500,000 from the general fund is added to provide a total of \$2.5 million to increase the contract rate paid to attorneys and to implement a new employee compensation strategy.

This amendment also provides for a Legislative Management study of the potential impact of establishing the North Dakota Public Defenders Office as an administrative agency under the authority of the Commission on Legal Counsel for Indigents.

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2022**

Appropriations Committee (Rep. Vigesaa, Chairman) recommends **AMENDMENTS** ([25.0189.02003](#)) and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). Engrossed SB 2022 was placed on the Sixth order on the calendar.

25.0189.02003
Title.
Fiscal No. 2

Prepared by the Legislative Council
staff for House Appropriations -
Government Operations Division
Committee

March 26, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2022

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the commission on
2 legal counsel for indigents; ~~and to create and enact a new subsection to section 54-44.3-20 of~~
3 ~~the North Dakota Century Code, relating to categories of positions in the state service; and to~~
4 provide for a legislative management study.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
7 as may be necessary, are appropriated out of any moneys in the general fund in the state
8 treasury, not otherwise appropriated, and from other funds derived from special funds and
9 federal funds, to the commission on legal counsel for indigents for the purpose of defraying the
10 expenses of the commission on legal counsel for indigents, for the biennium beginning July 1,
11 2025, and ending June 30, 2027, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
14 Commission on legal counsel	\$23,022,372	\$2,766,753	\$25,789,125
15 —for indigents			
16 <u>Commission on legal counsel</u>	<u>\$23,022,372</u>	<u>\$3,576,753</u>	<u>\$26,599,125</u>
17 <u>for indigents</u>			
18 New and vacant FTE pool	0	554,757	554,757
19 Total all funds	\$23,022,372	\$3,321,510	\$26,343,882

Sixty-ninth
Legislative Assembly

1	<u>Total all funds</u>	<u>\$23,022,372</u>	<u>\$4,131,510</u>	<u>\$27,153,882</u>
2	Less other funds	<u>2,023,067</u>	<u>26,149</u>	<u>2,049,216</u>
3	Total general fund	\$20,999,305	\$3,295,361	\$24,294,666
4	<u>Total general fund</u>	<u>\$20,999,305</u>	<u>\$4,105,361</u>	<u>\$25,104,666</u>
5	Full-time equivalent positions	41.00	2.00	43.00

6 **SECTION 2. NEW AND VACANT FTE POOL - LIMITATION - TRANSFER REQUEST.** The
7 commission on legal counsel for indigents may not spend funds appropriated in the new and
8 vacant FTE pool line item in section 1 of this Act, but may request the office of management and
9 budget to transfer funds from the new and vacant FTE pool line item to the commission on legal
10 counsel for indigents line item in accordance with the guidelines and reporting provisions
11 included in House Bill No. 1015, as approved by the sixty-ninth legislative assembly.

12 **SECTION 3.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is
13 created and enacted as follows:

14 Attorneys employed by the commission on legal counsel for indigents.

15 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COMMISSION ON LEGAL**
16 **COUNSEL FOR INDIGENTS - NORTH DAKOTA PUBLIC DEFENDERS OFFICE.** During the
17 2025-26 interim, the legislative management shall consider studying the potential impacts of
18 establishing the North Dakota public defenders office as an administrative agency under the
19 authority of the commission on legal counsel for indigents. The legislative management shall
20 report its findings and recommendations, together with any legislation required to implement the
21 recommendations, to the seventieth legislative assembly.

STATEMENT OF PURPOSE OF AMENDMENT:**Senate Bill No. 2022 - Comm. on Legal Counsel for Indigents - House Action**

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General fund	\$20,999,305	\$24,294,666	\$810,000	\$25,104,666
FTE	41.00	43.00	0.00	43.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of House Changes

	Adds Funding to Replace Special Funds ¹	Adjusts Funding for Contract Attorneys and Employee Compensation ²	Total House Changes
New and vacant FTE pool Comm. on Legal Counsel for Indigents	\$310,000	\$500,000	\$810,000
Total all funds	\$310,000	\$500,000	\$810,000
Less estimated income	0	0	0
General fund	\$310,000	\$500,000	\$810,000
FTE	0.00	0.00	0.00

¹ Funding of \$310,000 from the general fund is added to replace special funds revenue not anticipated to be collected.

² Funding of \$500,000 from the general fund is added to provide a total of \$2.5 million to increase the contract rate paid to attorneys and to implement a new employee compensation strategy.

This amendment also provides for a Legislative Management study of the potential impact of establishing the North Dakota Public Defenders Office as an administrative agency under the authority of the Commission on Legal Counsel for Indigents.