

NORTH DAKOTA COMMISSION ON LEGAL COUNSEL FOR INDIGENTS



Annual Report FY 2025

Dept. 188

Submitted by:

Travis W. Finck
Executive Director

LETTER FROM EXECUTIVE DIRECTOR

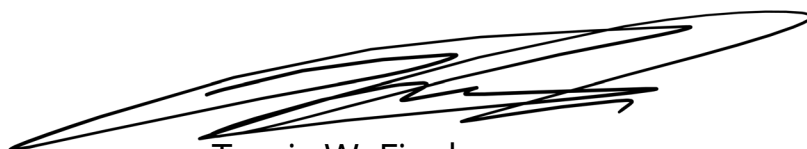
As you read through this annual report, the numbers will tell the story of an agency growing to meet demand. Behind every data point is a person facing the most difficult moment of their life. This year, our agency stood as a beacon of hope in 16,536 cases, navigating a legal system that is often complex and unforgiving.

This report is a testament to the extraordinary humanity and fierce advocacy of our staff and contract attorneys. Despite significant team changes and caseloads remaining high, our attorneys and staff have approached each client with empathy and an unwavering belief in their right to a fair defense. We regret the loss of talented colleagues whose career path has led them elsewhere but celebrate the new energy and passion that fresh voices bring to our mission.

Our work is only possible with the support of a community that believes in justice for everyone, regardless of their ability to pay. We invite you to see the real impact of your support within these pages, and we reaffirm our commitment to fighting for a just and equitable legal system. This report paints a picture of cautious optimism. We are moving in the right direction, and it is important not to fall back.

Dated this 21st day of November 2025.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', with a long, sweeping horizontal stroke extending to the left.

Travis W. Finck
Executive Director

Administration:

Travis W. Finck, Executive Director
Todd N. Ewell, Deputy Director
Aaron Petrowitz, Director of Finance
Brooke Nelson, Admin. Officer II
Veronica Wiesz, Admin. Staff Officer I
Erin Fossen, Admin. Staff Officer I
Kimberly Preabt, Admin. Assistant II
Jennifer Vetter, Admin. Assistant II
Benjamin Cleghorn, PT Temp. Assistant

Purpose:

This Annual Report is being filed pursuant to North Dakota Century Code § 54-61-03(2)(f) and NDCC § 54-61-03(2)(g).

MISSION STATEMENT:

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.

OPERATION OF THE AGENCY

The North Dakota Commission on Legal Counsel for Indigents (herein after the “Commission”) is governed by North Dakota Century Code § 54-61. North Dakota Century Code § 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 the standards and policies of the commission governing eligibility for such services.”

ELIGIBILITY FOR SERVICES

The Commission has established Guidelines to Determine Eligibility for Indigent Defense Services (herein after “Guidelines”). To receive services provided by the Commission, an individual must apply for services, be found “indigent”, and it must be a circumstance in which there is a right to counsel. Application for services is made on the Commission’s standard form. Pursuant to North Dakota Century Code, the Court, or its designee, reviews the application and determines eligibility. Upon determination the individual is entitled to counsel the Commission assigns counsel.

Under the Guidelines, indigency is determined by income resources, non-income resources, and exceptional factors. The financial guidelines used to assess “income resources” are set at 125% of the federal poverty level as defined by the Federal Department of Health and Human Services. The income of an applicant is considered in conjunction with household size.

Income Guidelines 2025

These guidelines for gross income levels indicate income levels at or below which eligibility for indigent defense services should be considered.

Household Size		1	2	3	4	5	6	7	8
Annual Gross Income		19,563	26,438	33,313	40,188	47,063	53,938	60,813	67,688
Monthly Gross Income		1,630	2,203	2,776	3,349	3,922	4,495	5,068	5,641
Weekly Gross Income		376	508	641	773	905	1,037	1,169	1,302

(Add \$6,875 to annual gross income for each additional member in households of more than eight.)

These income levels reflect 125% of the official poverty level threshold as defined by the Department of Health and Human Services.

Asset Guideline 2025

This guideline indicates the level at or below which eligibility for indigent defense services should be considered.

Absent exceptional circumstances, an applicant with equity in real and/or personal property in excess of \$20,000 will not be considered indigent.

The Guidelines establish “non-income resources” limits as well. “Absent exceptional circumstances, an applicant with equity in real and/or personal property in excess of \$20,000 will not be considered indigent.”

The Guidelines further provide if an applicant for services exceeds income or non-income thresholds, the Court, or its designee, may still determine an applicant to be indigent and therefore entitled to services based upon exceptional factors. Exceptional factors include such things as current income prospects, age or physical infirmity, liquidity of the assets, seriousness of the charges, etc.

There are some exceptions to the eligibility requirements:

- 1) All children are presumed to be indigent and eligible to receive appointed services in matters arising under the Juvenile Court Act. This includes delinquency actions unless a child appears with retained counsel or waives the right to counsel. A child is also presumed indigent and eligible for services in a Child in Need of Protection matter in which the child is of sufficient competent age to assist the attorney in representation.
- 2) The 2025 Legislative Assembly passed SB 2226, presuming all defendants’ indigence for purposes of establishing release conditions at initial appearance.
- 3) An individual who was provided with court-appointed counsel under our guidelines in the matter need not reapply for an

attorney on the direct appeal of that matter, unless financial conditions have changed.

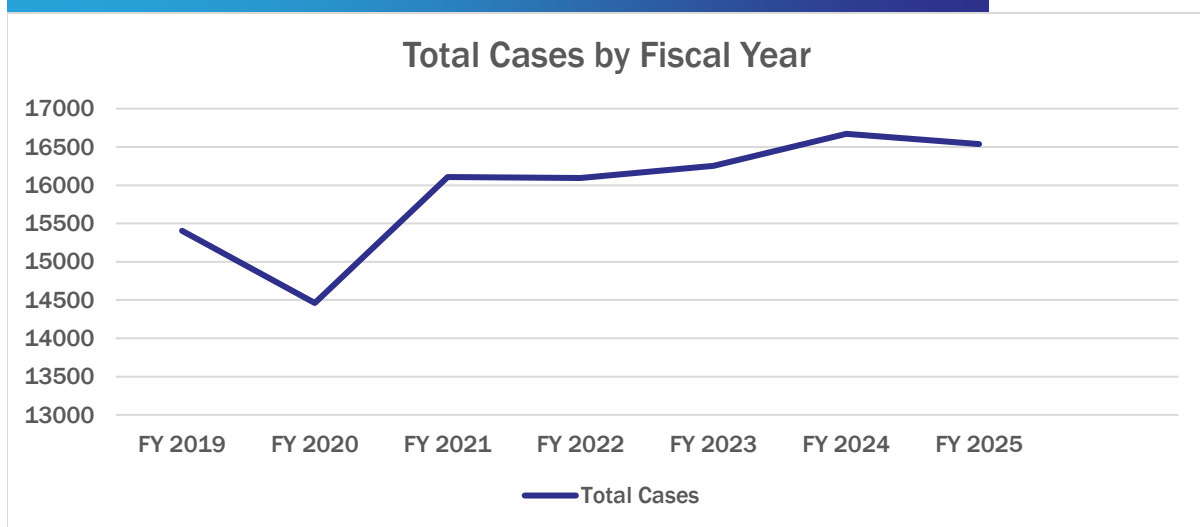
CASE TYPES IN WHICH NDCLCI PROVIDES SERVICES

Generally, the North Dakota Commission on Legal Counsel for Indigents would provide services if an applicant were found to be indigent and there is a constitutional, statutory, or rule-based right to counsel. 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. The Commission also provides counsel in juvenile delinquency cases, representation for parents and children alike in Child in Need of Protection cases, we represent parents and children of sufficient competent ability to assist counsel in guardianship matters, post-conviction matters brought pursuant to the Uniform Post-Conviction Procedure Act and appeals of those matters.

The Commission also provides counsel for initial appearances in criminal matters in which the court or a designee of the court has made the determination of indigence. This is accomplished through a partnership with Pre-Trial Services, a division of the North Dakota Department of Corrections and Rehabilitation. The Commission has worked with Department of Corrections Pre-Trial Services to establish policy and procedures in each location where pre-trial services are being provided. The Commission is also starting a program to provide counsel to all individuals charged with a crime at their initial appearances starting January 1, 2026, with an in-depth analysis of the program to be provided in the next annual report.

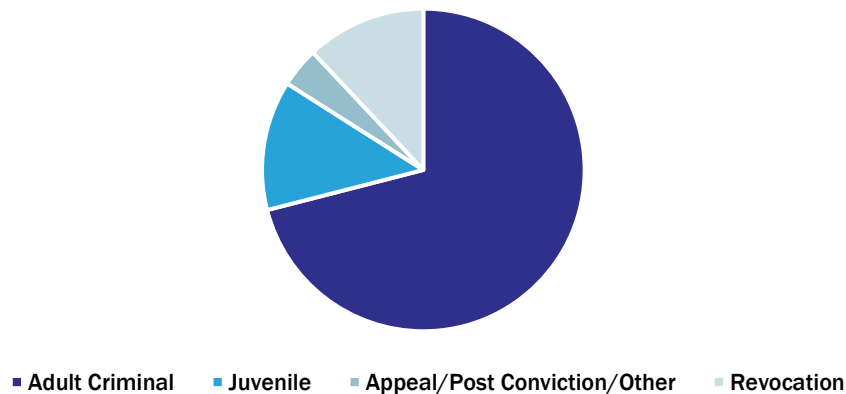
CASE TYPES BY THE NUMBERS

The Commission annual case load comes in with a slight decrease from FY '24, but still higher than any previous year. The Commission handled 16, 536 case assignments in FY '25.

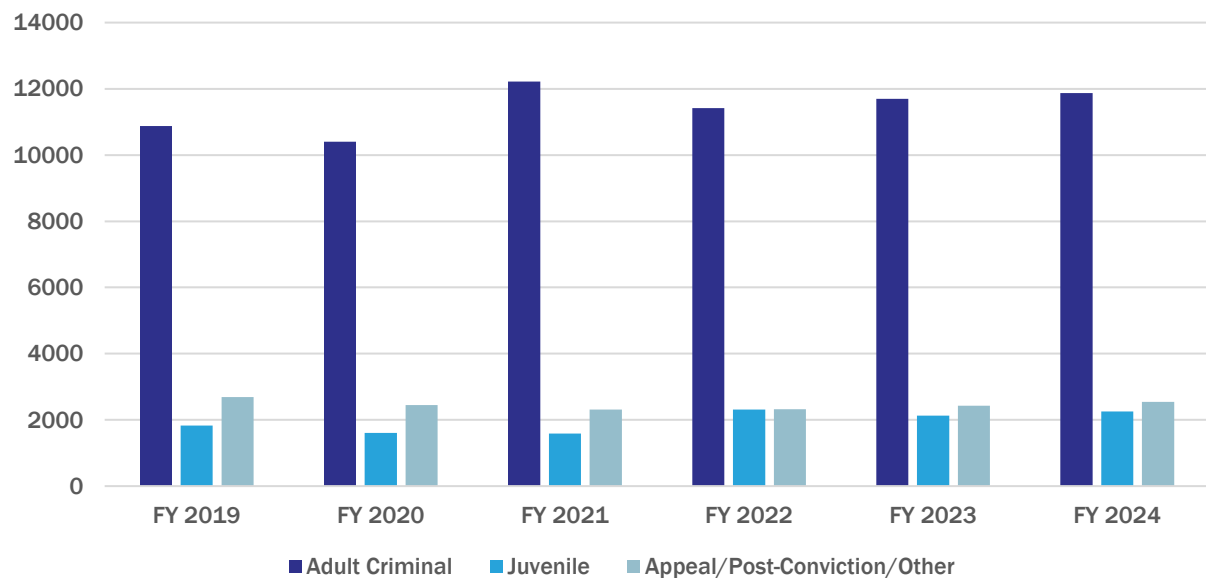


The Commission uses the term “case assignment” rather than a case so we can count matters consistently across the state, regardless of how a matter may be charged. The case assignment types, when broken down by category, show adult criminal cases continue to be most of the Commission’s case load. In the last fiscal year 71% of case assignments were new adult criminal cases, 12% were adult revocation of probation case assignments, 13% were juvenile cases (Delinquency, Child in Need of Protection, Guardianship) and 4 % were Appeal, Post-Conviction, or other.

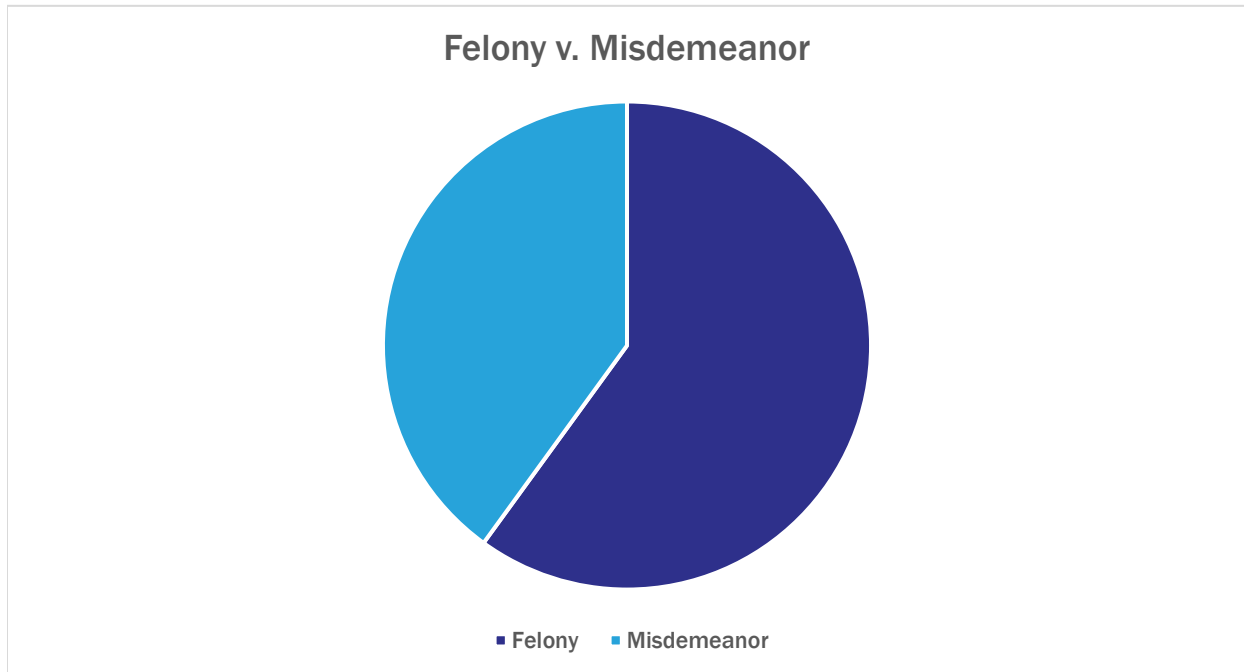
Case Types Current Fiscal Year



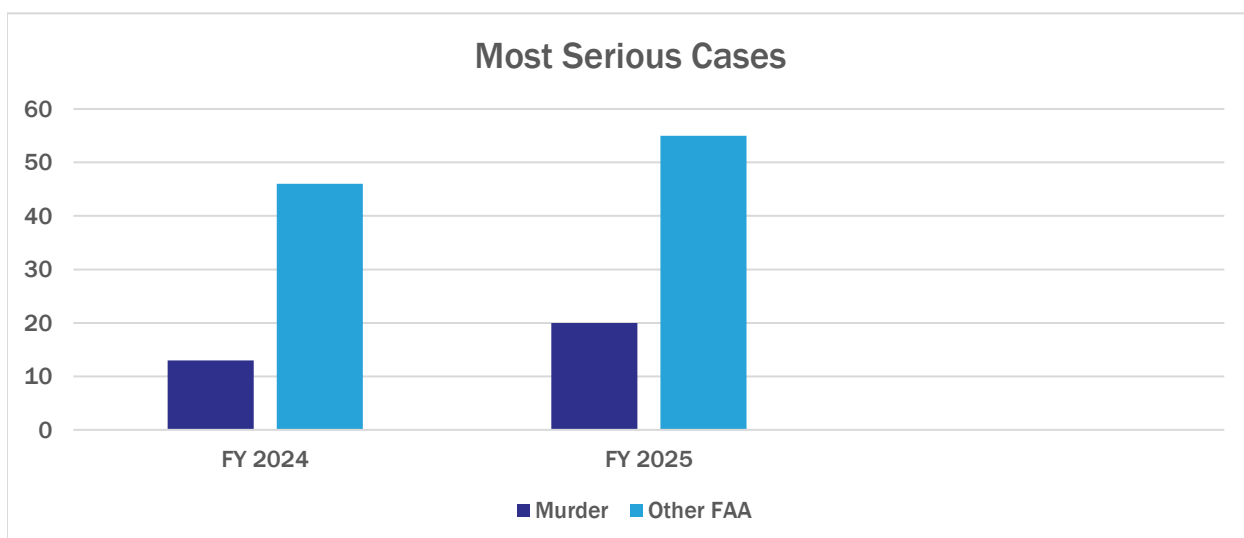
Case Types by Fiscal Year



Of note in the adult criminal case assignments, we are continuing to see a trend where we are handling more Felonies than Misdemeanors. Of the adult criminal cases, 59.5% were Felony compared to 40.5% Misdemeanor. This continues a trend where the gap between felony and misdemeanor case assignments continues to expand. Felonies take more time to complete the case given the increased consequences associated with a conviction. Increased consequences typically mean more discovery from the government, more court hearings, etc. As the number of felonies charged is increased, the amount of time spent on cases will also increase.



Another trend we are seeing is the number of serious felony level cases. In FY' 24 our attorneys were assigned in 13 case assignments alleging Murder. We also assigned attorneys in 46 double A felony cases where the possible penalty was life in prison. In FY' 25, we assigned counsel in 20 case assignments alleging a variation of murder charges and 55 other double A felonies. These types of cases are extremely time-consuming and difficult cases. They often require experts, investigations, and increased costs.



COMPLIANCE WITH ELIGIBILITY GUIDELINES

The Commission has always strived to be good stewards of taxpayer money. Our Guidelines provide a standard to review eligibility determinations to ensure compliance. There are abuses of the system, both intentional and unintentional, which the agency seeks to uncover through review. It continues to be the policy of the Commission to seek additional screening and review of applicants by the Court in questionable cases. While the Commission does write letters requesting review, eligibility is a determination of the court, therefore, we do provide services in some cases where an individual is not entitled. Admittedly, with the number of case assignments, it becomes more difficult to review applications. We are contemplating ways of automating parts of the process to expedite the assignment and free up staff time to verify indigency.

The Commission tries to prevent unintentional abuses by providing training to all agency employees on the guidelines. Additionally, the Director and Deputy Director have provided training to individual judges and clerks of court and answered any eligibility questions on an as needed basis. The Director meets with all new judges at orientation to cover the guidelines and the requirements for eligibility. We train all Pre-Trial Service employees as well as they have begun making eligibility determinations in the districts in which they operate.

DELIVERY OF SERVICES

The Commission is administered through the administrative office which is in Jamestown. The administrative office coordinates the delivery of indigent defense services, assigns counsel, contracts with private attorneys to provide services, staff the public defender offices, provides support services, and provides training to agency attorneys and staff amongst other duties. Indigent defense services are provided through full-time state public defenders in six offices across the state

and through law firms who contract for services as independent contractors.

PUBLIC DEFENDER OFFICES

The Commission's public defenders take case assignments in the geographical area in which their office is located, and conflict matters in nearby districts or across the state when needed. The public defender offices are led by a supervising attorney who reports to the Deputy Director. The Deputy Director then reports to the Director. All staff in the public defender offices report to the supervising attorney in that office. Our supervising 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

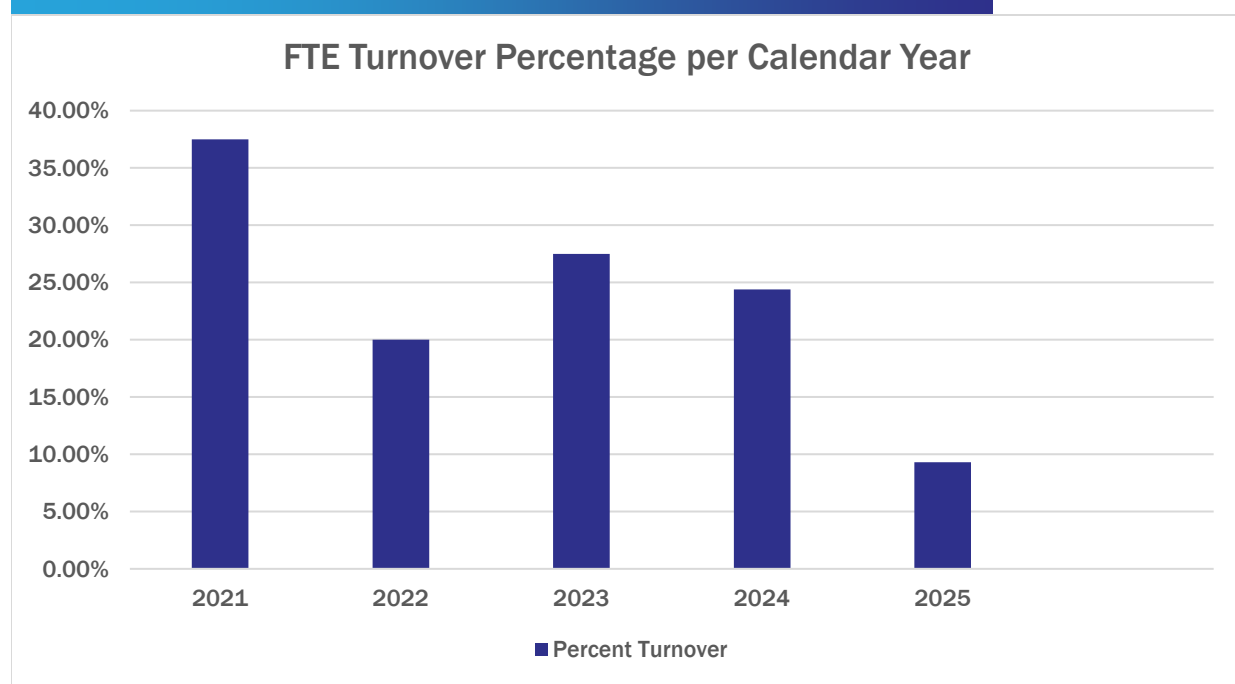
Grand Forks Public Defender Office: Mr. David Ogren

Minot Public Defender Office: Mr. Eric Baumann

TURNOVER IN STAFF POSITIONS

The legislative assembly in 2025 has allowed the Commission to develop and implement an employee compensation plan utilizing a step scale system. This shows promise in recruitment and retention efforts. However, the system was not in place in FY 2025 only becoming effective July 1, 2025.

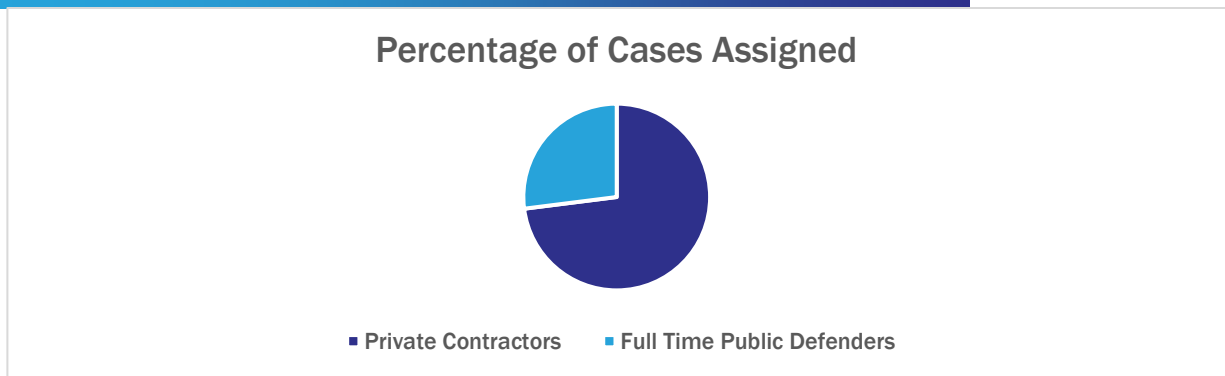
When reviewing turnover by calendar year, up to current date, which has encompassed the new employment scale, we have lost 4 full-time employees. This is showing positive improvement! We have also been able to fill some vacant positions with increased salaries and new payment schedule.



CONTRACTORS

The Commission contracts private law firms who provide indigent defense representation. This is achieved in the form of monthly contractors who agree to take a specified number of cases for a pre-determined amount of compensation and conflict contractors who take conflict cases on a case assignment by case assignment basis. The 69th Legislative Assembly provided funding and the Commission increased that rate for FY '26 to \$90 per hour. We are hopeful this increase will make contracting easier in the years to come.

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 2025, 74% of case assignments were handled by private contractors with 26% handled by full-time public defenders. This trend continues to go in the wrong direction. The hope is with the new wage scale; we will be able to be fully staffed. If we were to be fully staffed, this would tip the scales back to a more appreciable even split between contractor and public defender case assignments.



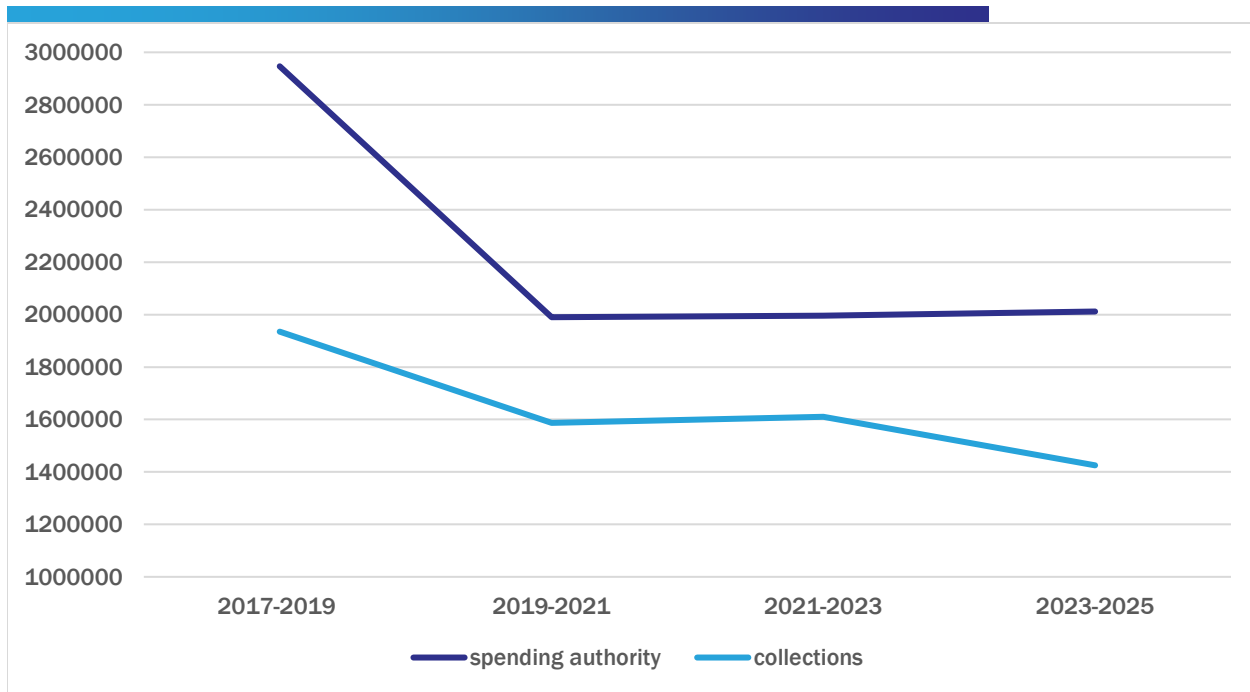
FINANCING THE AGENCY: Needs and Costs

The Commission is an executive branch agency which is financed by the general fund and fund 282, the “Indigent Defense Administration Fund”. Budgeting for the Commission in the 2023-2025 biennium in the original appropriation consists of \$20,608,898 from the general fund, and \$2,011,22 in spending authority from the Indigent Defense fund. Fund 282 is comprised of two statutorily created fees:

- 1) NDCC 29-07-01.1: Indigent Defense application fee of \$35; and
- 2) NDCC 29-26-22(2): Court administration fee of \$100 assessed to all defendants. The first \$750,000 is deposited in the fund, the next \$460,000, goes to Court facilities improvement, and then the remaining collections are split equally.

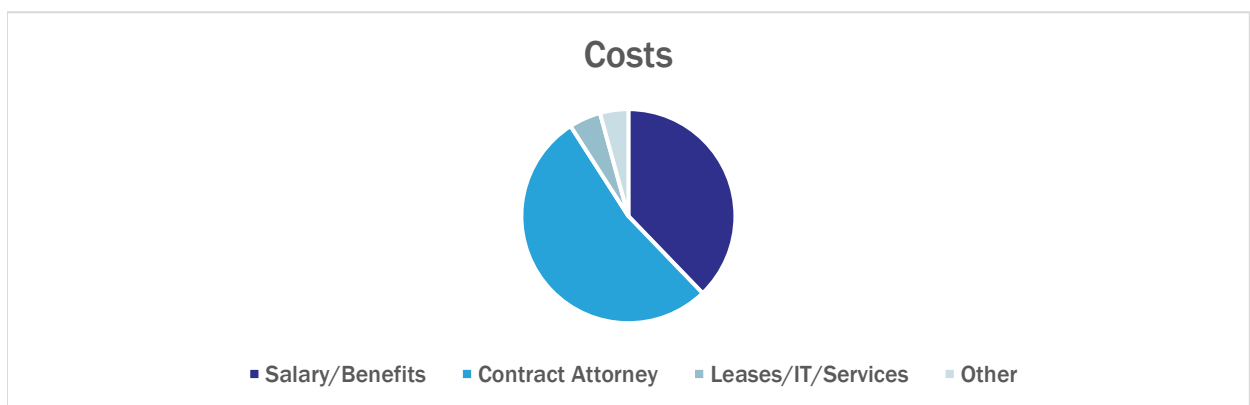
During FY '25 the collections in these funds did not wholly fund the amount of spending authority granted by the Legislature. The Commission had carried over funds in the special fund from previous biennia. If this had not been the case, the Commission would have been faced with a potential deficiency. It is obvious collections will be less than spending authority in this coming biennium and all previous carryover in the special fund will be depleted. This trend needs to be corrected.

The Legislature in FY 2026 eliminated the application fee and replaced it with general fund dollars. The graph below shows how the special fund allocation has become underfunded in previous biennium compared to the spending authority granted to meet budget needs.



The general fund allocation of \$20,608,898 was increased to \$21,303,483.88 with a reimbursement from the newly created vacant and new FTE pool. The money was reimbursed for the hiring of the new FTE investigator and vacant position that had been filled.

The majority, or approximately 96% of the Commissions costs last biennium were spent between salaries/benefits for employees, rent for office space, information technology costs, and contracts for professional services.



Other Fees Assessed to Indigent Defendants

The District Court also has the authority to order reimbursement of attorney fees pursuant to NDCC 29-07-01.1(2). Those funds are collected by the Court and placed in the general fund bearing no impact on our agency's appropriation. NDCC 29-07-01.1(4). This fee was abolished in the 2025 session and took effect August 1, 2025.

NEEDS and GOALS OF THE AGENCY

The Commission and the undersigned Director are extremely grateful for the partnerships within the North Dakota Legal System. FY 2025 concluded with hope for a brighter future for North Dakota. The legislature provided funding to expand our investigator program, to increase our contractor rate, to increase salaries by implementing a step-plan, and eliminating some user fees and replacing those with general fund dollars.

As we continue to look into the future, we will need to close the gap between spending authority in the special fund and collections. During the current budget in FY 2026 and 2027, the legislature authorized spending authority of \$2,049,216 from the special fund. However, with the elimination of the application fee and lagging collections of the court administration/indigent defense fee, we will vastly underfund the special fund. These fees need to be replaced by general fund dollars.

We will continue to try and provide high quality effective legal representation in those cases which we are assigned. This means continuing our journey towards holistic services. Holistic defense is a client-centered and interdisciplinary model of public defense that addresses the circumstances driving individuals into the criminal legal system and the consequences of that involvement by offering comprehensive legal representation, social work support, and advocacy for the client. Public defender systems provide this in the following ways:

- Attorneys develop understanding of each client's life from the beginning by undergoing training to understand clients' needs and goals.
- Investigators go into the community and get to know the people in our clients' lives, to not only assist in defense, but to best understand our clients.
- Mitigation specialists are trained to understand client stories and to present them to prosecutors and the court if necessary to assist clients.
- Immigration attorneys consult with our lawyers as to potential effects on non-citizen cases; and
- Social Workers meet with clients and assist in obtaining medical care, housing, government benefits and other services with the goal of keeping clients out of the system.

While the Commission currently employs attorneys and has three investigators on staff, we lack the other positions and try to source some of the work through contracts. The American Bar Association's 10 Principles of a Public Defense Delivery System, Principle 9 provides public defense providers "should adopt a client-centered approach to representation based around understanding a client's needs and working with them to achieve their goals. Public Defense providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals necessary to meet public defense needs."

Our legislature has spent significant time during the last Legislative Session and during this interim discussing the criminal legal system. The implementation of holistic defense in North Dakota's public defender system should be part of the discussion, and we would welcome the opportunity. In the meantime, we are working on smaller scale projects to implement holistic-like services within our state.

HIGHLIGHTS

Fiscal Year 2025 saw a year of progress for the Commission. Case numbers remained high, and we satisfactorily discharged our constitutional duties.

We partnered with Legislative Appropriators to implement a step plan for employee compensation making us competitive with our counterparts in the criminal legal system who are employed by counties. This has already shown promise in both recruitment and retention issues. Successful reform efforts were passed to eliminate a public defender application fee. North Dakota lawmakers worked with the Commission to implement legislation to guarantee the right to counsel to all accused at their initial appearances. The past year's success has been part of teamwork across North Dakota.

Most importantly, we continue to meet the challenges of the day. The Commission on Legal Counsel will always work to be better for our clients, making the state we call home proud. Our employees and independent contractors do amazing work, and it been and continues to be one of the greatest honors of my life to work alongside the talented men and women who are the Commission. It is on behalf of all those I humbly submit the fiscal year 2025 annual report.



Travis W. Finck
Executive Director

