2019 HOUSE APPROPRIATIONS

HB 1022

Appropriations Committee - Government Operations Division Medora Room, State Capitol

HB1022 1/14/2019 Recording Job# 30751

□ Subcommittee

	☐ Conference Committee
Committee Clerk: Sheri Lewis	

Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachments A and B

Chairman Vigesaa: Opened the hearing on HB1022.

Jean Delaney, Director, ND Commission on Legal Counsel for Indigents: See testimony attachment A.

Vice Chairman Brandenburg: You're going from \$17.9 million to \$19 million. The increase looks like \$1.93 million of general funds. You're looking at a \$13,000.00 to \$14,000.00 increase on fees. Is that just extra fees charged or increase in fees?

Aaron Petrowitz, Account Budget Specialist, ND Commission on Legal Counsel for Indigents: That increase is the governor's recommendation for the salary increase.

Vice Chairman Brandenburg: So the only increases you have are for salaries? You want to go to \$85.00 for the professional fees?

Aaron Petrowitz: Correct.

Vice Chairman Brandenburg: For DAPL you had \$1 million that we added in. You had 445 cases. Where are we at with that? Did you use it all? Is there some left?

Jean Delaney: For DAPL we used \$76,708.00 during the 2015-2017 biennium; and \$69,676.00 for this current biennium.

Vice Chairman Brandenburg: So if there is some continuing, you'd used probably \$200,000.00 out of that million. Did you just have authority to use that \$1 million? Did you use it at all or you just used it as you needed it?

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Aaron Petrowitz: Any expenses we had for DAPL we submitted a reimbursement to the department of emergency services. Anything that we didn't spend we did not receive. We're probably done with this.

Chairman Vigesaa: With the 90% budget, you had reduced FTE's; but the governor's recommendation restored those. Is that correct?

Jean Delaney: That's correct.

Chairman Vigesaa: Other than the salary benefit and retirement increase contribution. The only additional ask is really for raising the fees for professional services and for the Microsoft Office license. Is that correct.

Jean Delaney: What we would increase would be the Microsoft Office. We would also ask for the salary increases. We would also ask for contractor increases.

Aaron Petrowitz: The governor restored the 10% that was the reduction.

Travis Fink, Deputy Director, ND Commission on Legal Counsel for Indigents: See testimony attachment B.

Vice Chairman Brandenburg: I just want to thank you for your work.

Travis Fink: Our Bismarck public defender office had quite a haul.

Chairman Vigesaa: Of those people who are leaving are those people who have been with the agency a long time or are they people that come on board and realize quickly it isn't for them and move on?

Travis Fink: It's varied. We have some people who have been with us 3 to 5 years and have just gotten that opportunity. We had a lot of people that started looking for employment after last session when they knew that there wouldn't be any raises. Historically, we always have some turnover in attorneys because they get great experience.

Vice Chairman Brandenburg: They get offers from private companies?

Travis Fink: That's part of it. We lose more people to the prosecutor's office and federal public defender office. In the past the state always had a better benefit package than the counties; but now the counties have met that and exceeded us.

Chairman Vigesaa: The growth in your amount of cases. Are you seeing a rebound from the West again? Where would you say the increase is coming from primarily?

Travis Fink: As the oil prices went down, people really didn't leave; it was just more people were eligible for services. As it's come back up, we're pretty consistent in the West. It does seem like we're getting more out of the eastern side of the state.

Tony Wyler, Executive Director, ND Bar Association: Testified in support of HB1022.

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Chairman Vigesaa: Closed the hearing.

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 1/24/2019 Recording Job# 31389

☐ Subcommittee☐ Conference Committee

Committee Clerk Signature Sheri Lewis	

Explanation or reason for introduction of bill/resolution:

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

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Minutes:	

Chairman Vigesaa: Opened the meeting on HB1022.

Jean Delaney, Director, ND Commission on Legal Counsel for Indigents: Went through the green sheet.

Representative Bellew: Back in 2013-2015 you had 33 employees and the next biennium you were up seven and you're still at 40 FTE's. I'd like to hear an explanation of why you need to do seven extra employees. Out of your 40 employees how many are attorneys and how many are support staff?

Jean Delaney: We went up seven; two were to open an office in Watford City; an attorney position and an administrative assistant position and there were five temporary employees that were turned into FTE's.

Representative Bellew: Out of your current employees; how many attorneys, how many support staff, how many IT people?

Jean Delaney: We have 40 FTE's. Twenty of them are attorney positions, six of them are attorney III's; which are the supervising attorneys in the larger offices. Fourteen are attorney II positions. We also have one temporary attorney in the Minot adjunct office. We have twenty administrative in other slots. We have one administrative assistant III, nine administrative assistant II's, one accounting budget specialist III, we have one administrative officer I who does the HR and financial information in our office. We have six legal assistant II's, one director and one deputy director.

Representative Bellew: Can you give a list of that for the committee?

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Jean Delaney: I did forget that we have five temporary secretaries also.

Charles Fink, Deputy Director, ND Legal Counsel for Indigent Defense: Do you want it broken down by the office where they're located as well?

Representative Bellew: That would be nice.

Chairman Vigesaa: The Watford City office that's been added in the oil patch. Since it's slowed down, how has the activity in that office been? Has it maintained fairly much?

Jean Delaney: I don't have the exact numbers for the case assignments in McKenzie county.

Charles Fink: The numbers have stayed fairly steady. They don't really spike. The biggest driver of the case assignments in McKenzie county track pre-oil boom. They're up to three or four full-time employees now. We've struggled to find someone to staff that office.

Jean Delaney: Originally, the Williston office handled the case assignments in McKenzie county one or two days per month. That is not how it is anymore.

Representative Bellew: If they are in Watford City or Williston, those are the highest paying jobs in the state. What would make up the indigents there? I don't understand why there'd be the need for your staff to defend these people.

Representative Kempenich: A good example is that people show up that don't have a clue and get into trouble right away.

Jean Delaney: A lot of people are very young that are making those high salaries. They aren't known for saving their salaries. Most of what they made the previous month has been spent and when they get arrested they lose their job; they don't have any assets or any money.

Jean Delaney went through the green sheet.

Representative Beadle: Can you give us some examples of where you've had issues in trying to get attorneys to be able to fulfill this work and provide the legal counsel that's necessary in certain areas? Is that currently a significant barrier or are they just willing to accept it?

Jean Delaney: It's not the same level of finding contract attorneys as it is to find attorneys to be employees. It is significantly less than what people are expecting to be paid. The contract attorneys have a desire to do some community service work; so they look at this where they're providing a service. They're not necessarily expecting to get paid what they would as a private attorney on a private case. They do need to cover their overhead.

Representative Beadle: Because it's so much harder to get salaried employees, from a market perspective where do the salaries you offer compare to the private market and what

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they're able to get elsewhere? How much farther below the market are you in terms of being able to provide them additional salary? What has that done in terms of turnover and how long you're able to have retention?

Jean Delaney: Our attorney III's are paid on average \$1,200.00 a month less than comparable positions in the state's attorney's office. They would need an increase of 16% in order to bring them up to that same rate. An attorney II, who would be comparable to a junior assistant state's attorney, is paid \$1,000.00 per month less than a comparable position in the state's attorney's office; which would be an increase of 16.5%. They are paid significantly less than private attorneys and significantly less than employees in other governmental agencies in the state of North Dakota also. During 2018 we had a turn over rate of 37.5% in FTE's. We lost 15 employees; eight of those left for pay. That was the number one reason for leaving. Four were terminated for performance issues and there were three others that left for other reasons; such as health.

Representative Howe: At this \$80.00 have you had any conversations with firms that \$80.00 would be ok or is that still not enough?

Jean Delaney: I have had no conversations on whether the \$80.00 would be enough. Some people were excited to look at an increase to \$85.00 an hour.

Representative Howe: If we set aside money for a \$5.00 increase, is that \$5.00 going to be enticing enough to do that?

Jean Delaney: I would say no. I think \$10.00 would be more enticing. The federal public defender rate goes up for the contract attorneys much quicker; it was \$129.00 a couple years ago. It went up to \$140.00 now.

Jean Delaney continued with the green sheet.

Representative Bellew: When was the last time these fees were raised?

Jean Delaney: The only time the application fee was raised was during the 2013 session. It was raised from \$25.00 to \$35.00. I don't believe the court administration has ever been raised. That was implemented in 2003 and the application fee was established in 2001. The commission supports maintaining the fees at their current rate. The fees are paid by indigent persons. For some people it's almost impossible to come up with \$35.00 to apply for indigent defense services.

Jean Delaney continued with the green sheet.

Chairman Vigesaa: What year was it that the \$35.00 fee was raised?

Jean Delaney: In 2013.

Vice Chairman Brandenburg: How are we doing with the caseloads? How many days are they sitting there to get represented?

Jean Delaney: Under our standards and policies when a person applies for our services, a decision should be made within a day. Within a day they should be assigned an attorney and within a day that attorney should have contact with the client. That's the goal; it doesn't always happen.

Vice Chairman Brandenburg: Do you have a back log? How can you make it better?

Jean Delaney: I think the commission does a good job of getting attorneys to get the people represented. We have always tried to be good stewards of the money given to us.

Representative Kempenich: If you go to \$10.00 you're talking \$1.2 million. How do you come up with the \$75.00?

Jean Delaney: It used to be \$65.00 when it was under the supreme court. In 2012 it was raised to \$75.00 an hour.

Representative Kempenich: So it's just a flat fee. That doesn't include the 40 that you employee does it?

Jean Delaney: The \$75.00 is what we use if we need an outside attorney to take an hourly case. We have a monthly contract to agree to take all of the cases or a percentage of the cases in some geographical area. We also have hourly contracts where we need additional people to take cases.

Representative Kempenich: So it's based off whatever HR has for that slot?

Jean Delaney: They are classified employees. The attorney fees follow the definition of what the minimum qualifications are for an attorney III.

Representative Kempenich: On your other funds, you're down about \$1 million. Were these numbers that you have in other funds actual collections or something that you estimated and it didn't hit that's why you're looking at \$1.9 million in other funds?

Jean Delaney: For the 2017-2019 it says we had \$2.95 million special funds; that includes the \$1.027 million for the DAPL cases. We only used \$76,000.00 of that.

Representative Kempenich: Can you break that down for the people that make up these 40? Have you inquired with the states around us are doing?

Jean Delaney: We do have some data about what other states around us are paid. We did not do a separate salary survey with them.

Representative Kempenich: I'm assuming the employees you have must be fairly similar; it just depends on what level you're paying them at within that grade.

Jean Delaney: Within the state, yes.

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Jean Delaney continued with her explanation.

Representative Kempenich: Do you have numbers within your organization so we can compare and figure out where we need to go?

Vice Chairman Brandenburg: You have a training ground for lawyers.

Jean Delaney: If you look at the salary survey that was in my testimony from a couple of weeks ago, I'm confident if we could get our salaries up to where they're compared favorably with the state's attorney's office, that we would not be coming to you for several years.

Representative Kempenich: What was your original request to OMB when you started putting your budget together?

Jean Delaney: We put \$85.00.

Representative Kempenich: What is your experience level for your employees?

Jean Delaney: We have several attorney III's who are really experienced and are underpaid.

Jean Delaney continued with her explanation.

Vice Chairman Brandenburg: What was the turn back from the anticipated cost for DAPL?

Charles Finck: It wasn't necessarily a turn back because that was borrowing authority. Any bills that were related to DAPL we submitted to the department of emergency services and they facilitated the loan through the Bank of North Dakota.

Chairman Vigesaa: Do you do any projections of going into the future of what the caseload might be? Is it based purely on projected population growth of the state of North Dakota or do you have some other way to look out two to four years to see what the caseload might be?

Jean Delaney: We really can't look into the future. All we can do is look at what it's been in the past. Generally, it's increased since 2011.

Jean Delaney continued with her explanation.

Charles Finck: Testified in support of HB1022.

Chairman Vigesaa: Closed the meeting.

Appropriations Committee – Government Operations Division Medora Room, State Capitol

HB1022 1/24/2019 Recording Job# 31433

☐ Subcommittee
☐ Conference Committee

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Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachment A

Chairman Vigesaa: Opened the discussion on HB1022. (**Attachment A** was handed out but not discussed).

Ches Neff: Testified in support of HB1022.

Representative Kempenich: How did that work up there?

Ches Neff: He was a full time employee for the Indigent Defense Commission. He was headquartered in Watford City; although he did travel to Williston and Dickinson. He was not a contractor when I started in May 2014; there were only contractors that were covering Watford City. This past year we had over 2,000 criminal cases filed. At least half if not more apply for a public defender. We're budgeted for four attorneys in my office. They had one and are back to contractors in McKenzie county.

Vice Chairman Brandenburg: What's the right number that keeps them there?

Ches Neff: It is a difficult balance for this community. Our starting salary for 0 to one year of experience for an assistant state's attorney is about \$78,000.00 per year and a private attorney can make more.

Representative Kempenich: I think the ND Bar has a program also. Her attorney III's are more passionate about this and it's the attorney I and II's that get experience and move on.

Ches Neff: I think you are coming out of law school and want to be a litigator in the courtroom. This is probably the best place to be.

Chairman Vigesaa: It's going to be a stepping stone for most people.

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Ches Neff: The reason I'm no longer a state's attorney is it's easier for me to seek other employment.

Representative Kempenich: How many defense attorneys outside of that are in Watford City that do take those types of cases?

Ches Neff: Jeff Neering comes down from Williston, Kevin Chapman has an office there, Rick Sand and Dennis Johnson will also take cases. Full-time criminal defense there's about two offices in Watford City.

Chairman Vigesaa: Closed the discussion.

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 1/25/2019 31494

☐ Subcommittee☐ Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachment A

Chairman Vigesaa: Opened the work session on HB1022.

Chairman Vigesaa: See attachment A.

Representative Bellew: They want to increase the fee by \$5.00 per hour for contract attorneys. I don't have a problem with that if we can find other than general fund monies to pay for it. My thoughts were that they had some indigent defense administrative fund fees that haven't been raised for 16 or 17 years. If we can raise that by \$5.00 or \$10.00 to pay for that I wouldn't have a problem with that.

Chairman Vigesaa: That's the indigent defense administration fund.

Representative Bellew: Right now it says the first \$750,000.00 goes to indigent defense. If we could get that up to \$1.35 million and give them the \$5.00 raise, I wouldn't have a problem with that.

Chairman Vigesaa: Jean said that \$5.00 probably isn't going to help a lot. Our members that aren't here this morning were wondering if we should go higher than that to \$10.00; that would be \$1.2 million of general funds.

Levi Kinnitschtzke, Analyst, ND Legislative Council: It is established in century code. A portion of the fees that the judicial branch gets is statutorily theirs. There's a limit of a little over \$700,000.00 that is deposited into that fund each biennium for indigent defenses use.

Representative Bellew: Would we have to change century code to put more money into that so indigent defense would get it?

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Levi Kinnitschtzke: If the thought was to amend the fee, that is established in code so that would have to be amended.

Chairman Vigesaa: Also what the fund can be used for. It might be specifically listed for those two that they've listed here.

Representative Bellew: It says the first \$750,000.00 is used indigent defense services. The next \$460,000.00 is for court facilities and any amount over that is split 50/50.

Chairman Vigesaa: Hiring contract attorneys would fall under indigent defense. That's where the fees are coming from those that are being defended.

Representative Beadle: They also mentioned that it's the only constitutional right that we end up making someone pay for; because they have the right to the attorney but then we make them pay for the attorney.

Representative Bellew: I have to pay for an attorney; and I have the right to a defense.

Representative Beadle: I'm not disagreeing with the argument in looking at using that fund for any regards. That was one of the only comments they had made with regards to those fees.

Representative Howe: Your saying raise that \$35.00 fee and the \$100.00 fee to \$40.00 and \$105.00?

Representative Bellew: I would like to know what kind of income that would generate and use the extra money for the contract attorneys.

Chairman Vigesaa: Can you tell us what's currently in the fund and how much it raises on an annual or biennial basis? I had written down that it raised \$1.85 million this biennium.

Chairman Vigesaa continued with the worksheet.

Chairman Vigesaa: What you're saying is rather than have the taxpayer's pay it, have those that are using the system pay it.

Representative Bellew: (unintelligible response)

Larry Martin, Budget Analyst, ND Office of Management and Budget: The anticipated revenue is \$1.8 million per biennium.

Chairman Vigesaa: What would be the current balance in that account?

Levi Kinnitschtzke: The sections of code that discuss the indigent defense administrative fund. Those are sections 29-07-1.1 and sections 29-26-22. Based off previous discussions I've had with Jean and her staff, it's their belief that if the administrative fee is raised from the \$35.00 or \$100.00 court administration fee; the higher up the fee goes, their belief is more than likely judges will waive the fee because they feel that individuals are indigents and not

House Appropriations Committee – Government Operations Division HB1022 January 25, 2019 Page 3

capable of paying it. They feel they may receive less revenue because the fee may be waived.

Chairman Vigesaa: Is the \$100.00 court administration assessed to the defendant or is it iust the \$35.00?

Levi Kinnitschtzke: I believe it's the \$35.00.

Chairman Vigesaa: Who pays the \$100.00 court administration fee?

Levi Kinnitschtzke: I can check into it.

Chairman Vigesaa: That hasn't been changed since 2003; so that's 16 years ago that that was adjusted. You could leave the \$35.00 and go to \$110.00 on that. A \$10.00 increase over 16 years is not bad.

Representative Beadle: It would be interesting to see what percentage of the fees are waived currently. I was reading 29-07-1.1 they talk about if it's deemed a financial hardship, it can be waived. It would be interesting to see of the total number of cases how many of them are waived, reduced and how many didn't pay in full. When we're talking about the reimbursement for the contracted attorneys, they're being reimbursed on an hourly basis, these fees are charged on a per case basis. It would be worth taking a look to see what that ends up equating out to; what's the average amount of hours an attorney is putting on each case that they're contracted out for. If we add a \$5.00 fee per case and they're working three or four hours for that case, it's not going to add up.

Levi Kinnitschtzke: The \$100.00 court fee is assessed to indigent person as well. I believe the \$100.00 fee is waived fairly often.

Larry Martin: That fund is \$1 million right now.

Chairman Vigesaa: Are we able to look back to see if it's static or dwindling over time?

Representative Mock: It looks like they're looking at two licenses for the Microsoft Office 365; and yet we have the 40 FTE's. They are rolling all those Microsoft fees into a new line item. We're adding those license fees for everyone who doesn't already have them.

Larry Martin: Most agencies are currently paying for services. The Office 365 license covered most of their current services; they get a credit back for all of that. The difference is the \$1,508.00. I heard from Becky and the fund is pretty much static.

Representative Mock: Made a motion to move the Microsoft Office 365 over.

Representative Beadle: Seconded the motion.

Voice Vote made.

Motion Carried.

House Appropriations Committee – Government Operations Division HB1022 January 25, 2019 Page 4

Chairman Vigesaa continued with the worksheet.

Representative Howe: She said raising it to \$80.00 probably wouldn't help. Let's not spend the money if it's not going to help anyway. If we do raise it make it an amount that would actually help.

Chairman Vigesaa: Are there any other funds that this counsel has access to for their funding?

Levi Kinnitschke: No.

Chairman Vigesaa: The bigger issue for them was the salaries of the employees.

Levi Kinnitschke: Explained how the salary increases would be reflected on the worksheet.

Chairman Vigesaa: Under the executive budget recommendations salary increase was \$302,000.00 and it went all the way down to \$180,000.00 when we switched it to 2%/2%. Would that account for that much of a difference?

Levi Kinnitschke: Yes, that's about 60%.

Representative Bellew: If we do decide to do the fees, we need to amend the century code?

Levi Kinnitschke: That's correct.

Representative Bellew: In century code it says indigent defense gets the first \$750,000.00; can we amend that to say they get the first \$1.35 million?

Levi Kinnitschke: That's correct.

Chairman Vigesaa: That continuing appropriation, does that need to be moved over to the House version?

Levi Kinnitschke: If the committee did decide to amend any section of code, we would include that on this sheet. It would be an additional section in the bill.

Chairman Vigesaa continued with the worksheet.

Chairman Vigesaa: Closed the discussion.

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 1/30/2019 Recording Job# 31829

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Sheri Lewis

Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachments A and B

Chairman Vigesaa: Brought the committee to order.

Chairman Vigesaa: Discussed the worksheet. Attachment A.

Representative Bellew: I would be willing to give it to them but only in the other funds category; not general funds.

Representative Kempenich: There's a constitutional issue because there's nothing in the constitution that says you have to pay for a defense. I think we've tried that in the past and I don't think they collect what we think they do.

Representative Bellew: They've collected on average \$1.875 million. If we raise it by \$500,000.00 and we give them the first \$1.3 million that would take care of that.

Representative Kempenich: It's frustrating about this budget because it's all self-inflicted.

Chairman Vigesaa: I'm looking at the breakdown for expenses. Is your travel a fairly accurate number?

Aaron Petrowitz, Budget Specialist, ND Commission on Legal Counsel for Indigents: Our biggest would be the fees for professional services. The travel general stays pretty similar.

Chairman Vigesaa: You rent hasn't changed much.

Aaron Petrowitz: No. The landlord puts a 2% increase in every once in a while.

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Jean Delaney, Director, ND Commission on Legal Counsel for Indigents: The rent in Williston did go down, we moved into a smaller, cheaper place. We'll be closing the Watford City office and moving that attorney position to Fargo. It might result in some higher travel costs when attorneys have to travel from Williston and Dickinson to Watford City.

Representative Beadle: Can you give us the breakdown of where you have the different offices located and how many people are in the offices?

Jean Delaney: Referenced testimony from attachment A on January 14, 2019.

Representative Beadle: With regard to these different offices, do you have leases coming due? Do you have a rental schedule of what each of the offices is costing you for operation?

Jean Delaney continued with her list.

Chairman Vigesaa: If we raised the \$35.00 to \$40.00 and then the first \$1.35 million collected and the next \$460,000.00 collected for court facilities; the extra \$600,000.00 we would be adding to that first \$750,000.00 would be considered special funds. Is that how that would be considered?

Levi Kinnitschtzke, Analyst, ND Legislative Council: I believe you're on the right track. The total fixed amount in century code would be \$1,810.000.00 and then \$460,000.00 to the courts. Based off of current collections, the variable amount that allows for the two agencies to split the other revenue 50/50 would result in another \$1.1 million. The total increase would be around \$435,000.00.

Chairman Vigesaa: Were you thinking of the \$600,000.00 that's current in the budget from general funds or is this an additional \$600,000.00?

Representative Bellew: The \$600,000.00 that the governor recommended in general funds would be special funds.

Chairman Vigesaa: The request for the \$5.00 wouldn't necessarily be \$5.00 depending on collections.

Representative Bellew: Exactly. They estimate that they'll collect \$1.85 million this biennium.

Chairman Vigesaa: That \$1.85 million that's collected, that is used for other purposes as well. Correct?

Levi Kinnitschtzke: That's correct. It's for various operating expenses of the department. Would you be proposing raising both of the fees?

Representative Bellew: Just the \$35.00 to \$40.00.

Chairman Vigesaa: The \$600,000.00 would turn into \$400,000.00 if we went that direction.

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Levi Kinnitschtzke: It's my understanding that the \$35.00 fee that is the one that's waived more often; so that one may not generate as much revenue. The \$100.00 court fee is charged not just to indigents; that's charged to everyone. That's why the court shares in that.

Chairman Vigesaa: The \$100.00 hasn't been raised since 2003.

Representative Bellew: It's never been raised.

Chairman Vigesaa: If we raised that court fee to \$110.00 how much additional would that

raise?

Aaron Petrowitz: You could look at what was collected last biennium and add 10% to it. By the fee raising I'm not sure if it would get collected less.

Chairman Vigesaa: Do you have what was collected in court fees?

Aaron Petrowitz: It would have roughly been \$2.7 million.

Chairman Vigesaa: The court administration fee is recorded separately. You know how many dollars is just in that fund alone that you have collected?

Aaron Petrowitz: Yes.

Vice Chairman Brandenburg: By increasing the \$100.00 fee, you're saying that we can put some more into this; but not raising it from \$35.00 to \$40.00?

Levi Kinnitschtzke: Based off of my understanding of how those fees are collected that the \$35.00; if we increase that it may or may not generate additional revenue. The court administration fee may be a more viable option.

Chairman Vigesaa: Could you put something together?

Levi Kinnitschtzke: Instead of changing century code to change those limitations for each agency, you could increase the fee a further amount and rely on the 50/50 split. Then you would raise the total amount for each agency.

Levi Kinnitschtzke: Explained attachment B.

Chairman Vigesaa: That doesn't affect what the courts get?

Levi Kinnitschtzke: If we didn't change the statutory limit that's what the difference could

be.

Levi Kinnitschtzke continued with his explanation.

Chairman Vigesaa: Closed the meeting.

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 2/1/2019 Recording Job# 32104

☐ Subcommittee☐ Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachments A and B

Chairman Vigesaa: Opened the discussion on HB1022.

Chairman Vigesaa: See attachment A.

Chairman Vigesaa: There's a bill that raised the cap of funds that go into this fund for legal counsel for indigents from \$650,000.00 to \$750,000.00 per biennium.

Becky Keller, Analyst, ND Office of Management and Budget: It's HB1516.

Chris Kadrmas, Analyst, ND Legislative Council: See attachment B.

Representative Kempenich: This is all going up \$15.00 from what it currently is?

Chris Kadrmas: Yes.

Chairman Vigesaa: That fund that's referenced, is that the same fund that we're talking about in their agency bill?

Chris Kadrmas: That's correct.

Chairman Vigesaa: That minus \$330,000.00; is that affecting someone?

Chris Kadrmas continued with his explanation.

Representative Kempenich: Until this is passed, we can't assume.

Chris Kadrmas: HB1516 is in full House Appropriations.

House Appropriations Committee – Government Operations Division HB1022 February 1, 2019 Page 2

Chairman Vigesaa: Closed the discussion

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 2/4/2019 Recording Job# 32032

☐ Subcommittee☐ Conference Committee

Committee Clerk Signature Sheri Lew	vis
Explanation or reason for introduction	n of bill/resolution:
A BILL for an Act to provide an appropri on legal counsel for indigents.	iation for defraying the expenses of the commission
Minutes:	

Chairman Vigesaa: Opened the meeting on HB1022.

Roll call taken.

Levi Kinnitschtzke, Analyst, ND Legislative Council: In HB1516 the fee that's discussed in that bill is not the fee that's discussed in the budget bill.

Representative Bellew: Let's forget about it this half and do it in conference committee.

Representative Howe: That \$5.00 increase, they said it wouldn't help them anyway.

Chairman Vigesaa continued discussing the budget.

Chairman Vigesaa: Closed the meeting.

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 2/5/2019 Recording Job# 32159

□ Subcommittee	
☐ Conference Committee	е

Committee Clerk Signature Sheri Lewis	
---------------------------------------	--

Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachment A.

Chairman Vigesaa: Opened the meeting on HB1022.

Chairman Vigesaa: See attachment A.

Vice Chairman Brandenburg: I don't think they're looking for that anyway. They're looking to get more money for their attorneys so they can match up with the state's attorney.

Representative Mock: Made a motion to accept the amendment.

Representative Beadle: Seconded the motion.

Voice Vote made.

Motion Carried.

Vice Chairman Brandenburg: Made a motion for a "Do Pass as Amended".

Representative Howe: Seconded the motion.

Roll Call Vote: 7 Yeas 0 Nays 0 Absent

Motion Carried.

Chairman Vigesaa: Closed the discussion.

Appropriations Committee

Roughrider Room, State Capitol

HB 1022 2/13/2019 32706

☐ Subcommittee☐ Conference Committee

Committee Clerk: Risa Ber	rgquist	
Explanation or reason for ir	ntroduction of bill/resolution:	
Minutes:		

Chairman Delzer: Called the meeting to order for HB 1022

Representative Howe: (Amendment .01001) HB 1022 is the budget for legal counsel for indigents, pretty simple budget. If you look at the SPA you will see the 2 and 2 increase and then you will see the funding for office 365, those where our only changes. There were some questions about the DAPL fund and the department had said that most if not all the money has been paid. Last session we gave them borrowing authority of just over a million dollars, during the 2015/2017 biennium they used 76thousand and 69 thousand during the last biennium.

Chairman Delzer: Are they asking for that as a deficiency appropriation?

Representative Brandenburg: If I remember right, they were given a line of credit but only requested it when they used it.

Chairman Delzer: But it has to be paid back somewhere, I am wondering if they paid it back or if it's requested in the deficiency appropriation.

Alex Cronquist LC: The introduced SB 2024 doesn't have any funding in it.

Representative Howe: (Continuing) There are two funds with this bill, the general fund and the indigents defense administration fund.

Chairman Delzer: They receive a little bit of money from the court filing fees.

Representative Howe: There's a 35-dollar fee for court appoint defense services and then 100-dollar court administration fee for criminal cases.

Chairman Delzer: Questions by the committee?

House Appropriations Committee HB 1022 Feb. 13th 2019 Page 2

Representative Howe: Move to amend 19.0210.01001 to HB 1022

Representative Beadle: Second

Chairman Delzer: Any further discussion? Voice vote. Motion Carries

Representative Howe: Make a motion to Do Pass as Amended.

Representative Vigesaa: Second

Chairman Delzer: Any further discussion? We will take a roll call vote.

A Roll Call vote was taken. Yea: 21 Nay: 0 Absent: 0

Representative Howe will carry the bill.

Chairman Delzer: With that we will close this meeting.

19.0210.01001 Title.02000

Fiscal No. 1

Prepared by the Legislative Council staff for the House Appropriations - Government Operations Division Committee February 4, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1022

Page 1, replace lines 10 through 17 with:

" Commission on legal counsel	<u>Base Level</u> \$19,903,623	Adjustments or Enhancements \$370,453	Appropriation \$20,274,076
for indigents		-	
Total all funds Less estimated income	\$19,903,623 <u>1,919,747</u>	\$370,453 <u>9,834</u>	\$20,274,076 1,929,581
Total general fund	\$17,983,876	\$360,619	\$18,344,495
Full-time equivalent positions	40.00	0.00	40.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigents - House Action

Comm. on Legal Counsel for Indigents	Base	House	House
	Budget	Changes	Version
	\$19,903,623	\$370,453	\$20,274,076
Total all funds	\$19,903,623	\$370,453	\$20,274,076
Less estimated income	1,919,747	9,834	1,929,581
General fund	\$17,983,876	\$360,619	\$18,344,495
FTE	40.00	0.00	40.00

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

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Adds Funding for Microsoft Office 365 Licenses ²	Total House Changes
Comm. on Legal Counsel for Indigents		\$368,945	\$1,508	\$370,453
Total all funds Less estimated income General fund	\$0 1 (\$1)	\$368,945 9,833 \$359,112	\$1,508 0 \$1,508	\$370,453 9,834 \$360,619
FTE	0.00	0.00	0.00	0.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund(Other Funds	Total
Salary increase	\$180,931	\$5,371	\$186,302
Health insurance increase	178,181	4 <u>,4</u> 62	182,643
Total	\$359,112	\$9.833	\$368.945

³ Funding is added for Microsoft Office 365 licensing expenses.

Date: 1/25/2019 Voice Vote #1

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB1022

House Appropr	riations - Governme	ent Oper	ations I	Division	_ Comr	nittee
		☐ Sub	ocommi	ttee		
Amendment LC# or	Description:					
Recommendation: Other Actions:	△ Adopt Amendr□ Do Pass□ As Amended□ Place on Cons□ Reconsider	Do Not		☐ Without Committee Red☐ Rerefer to Appropriatio		lation
Motion Made By	Representative Mo	ock	Se	conded By Representative	e Beadle	
	entatives	Yes	No	Representatives	Yes	No
Chairman Viges		-	-	Representative Mock	+	
Representative 8			_		+	
Representative B			-		-	
Representative I					-	
Representative I					1000	
Representative	temperneri		-			
-					1	
Total (Yes)			No			
Total (Yes) Absent			No			

If the vote is on an amendment, briefly indicate intent:

To move the Microsoft Office 365 over to the House changes. Motion carried.

Date: 2/5/2019 Voice Vote #1

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB1022

House _Appropriations - Government Operations Division					Comr	mittee	
			☐ Sub	ocommi	tee		
Amendm	nent LC# or	Description: 19.02	210.010	01			
Other Ac		□ Adopt Amendn □ Do Pass □ □ As Amended □ Place on Cons □ Reconsider Representative Mo	Do Not	endar	□ Without Committee Re□ Rerefer to Appropriatio□□□Conded By Representative	ns	ation
-		entatives	Yes	No	Representatives	Yes	No
	nan Vigesa	aa Brandenburg		/	Representative Mock	-	
	sentative E			No		+	
	sentative E					1	-
	sentative F		7	v			
		Kempenich	4				
Total Absent	(Yes)			No			

If the vote is on an amendment, briefly indicate intent: To accept the amendment. Motion Carried

Date: 2/5/2019 Roll Call Vote 1

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB1022

House Appropriations - Government Operations Division				Comr	Committee	
		☐ Sub	ocommi	ttee		
Amendment LC# or	Description: 19.02	10.010	01			
Recommendation: Other Actions:	 □ Adopt Amendr ⋈ Do Pass ⋈ As Amended □ Place on Cons □ Reconsider 	Do Not		□ Without Committee Red□ Rerefer to Appropriatio□	ns	ation
Motion Made By	Vice Chairman Brandenburg		Se	conded By Representative	e Howe_	
Ponros	entatives	Yes	No	Representatives	Yes	No
Chairman Viges		X	NO	Representative Mock	X	NO
	44			1 toprocontative moon		-
	Brandenburg	Х				1 1
Vice Chairman B		X				
Vice Chairman B Representative B	Beadle					
Vice Chairman B	Beadle Bellew	Х				
Vice Chairman B Representative B Representative B	Beadle Bellew Howe	X				
Vice Chairman B Representative B Representative B Representative B	Beadle Bellew Howe	X X X				
Vice Chairman B Representative B Representative B Representative B	Beadle Bellew Howe	X X X				
Vice Chairman B Representative B Representative B Representative B	Beadle Bellew Howe	X X X				
Vice Chairman B Representative B Representative B Representative B	Beadle Bellew Howe	X X X				
Vice Chairman B Representative B Representative B Representative B Representative B	Beadle Bellew Howe	X X X	No			

If the vote is on an amendment, briefly indicate intent:

Date: 2/13/2019 Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. 1022

House App	oropriations				Comr	mittee
		☐ Sul	bcomr	nittee		
Amendment LO	C# or Description:	19.0	210	Da 0100 1		
Recommendat	Z / Gopt / anona	□ Do No		☐ Rerefer to Appropriations		lation
Other Actions:	☐ Reconsider					
Motion Made	By Representative	Howe		Seconded By Representa	ative B	eadle
Re	presentatives	Yes	No	Representatives	Yes	No
Chairman I	Delzer					
Representa	ative Kempenich					
	ative Anderson			Representative Schobinger		
	ative Beadle			Representative Vigesaa		
	ative Bellew					
Representa	ative Brandenburg					
Represent	tative Howe			Representative Boe		
Represent	tative Kreidt			Representative Holman		
Representa	ative Martinson			Representative Mock		
Represent	tative Meier					
Representa	ative Monson					
Represent	tative Nathe					
Represent	tative J. Nelson					
Representa	ative Sanford		-			
	ative Schatz					
	ative Schmidt					
Total (Ye	es)		^	No		
Absent						
Floor Assignr	ment					

Date: 2/13/2019 Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB 1022

			ocomr	nittoo		
		□ Sui	ocomi	nittee		
Amendment LC# or	Description:					
Recommendation:	☐ Adopt Amend ☑ Do Pass ☐ ☑ As Amended ☐ Place on Cons	Do No		☐ Rerefer to Appropriations		ation
Other Actions:	☐ Reconsider	seni Cai	endar			
Motion Made By	Representati	ve Howe		Seconded By Repre	<u>sentat</u>	ive V
Represe	entatives	Yes	No	Representatives	Yes	No
Chairman Delze	er	X				
Representative		X			-	
Representative	Anderson	X		Representative Schobinger	X	
Representative	Beadle	X		Representative Vigesaa	X	
Representative	Bellew	X				
Representative	Brandenburg	X				
Representative	Howe	X		Representative Boe	X	
Representative	: Kreidt	X		Representative Holman	X	
Representative	Martinson	X		Representative Mock	Х	
Representative	Meier	Х				
Representative	Monson	Х				
Representative		X				
Representative	J. Nelson	X				
Representative		X				
Representative		X				
Representative		X				
Гotal (Yes) _	21		N	lo <u>0</u>		
Absent 0 Floor Assignment	Representativ	/e Howe				

Motion Carries

Module ID: h_stcomrep_30_013
Carrier: Howe

Insert LC: 19.0210.01001 Title: 02000

REPORT OF STANDING COMMITTEE

HB 1022: Appropriations Committee (Rep. Delzer, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1022 was placed on the Sixth order on the calendar.

Page 1, replace lines 10 through 17 with:

Commission on legal counsel	<u>Base Level</u> \$19,903,623	Adjustments or Enhancements \$370,453	Appropriation \$20,274,076
for indigents Total all funds Less estimated income	\$19,903,623	\$370,453	\$20,274,076
	1,919,747	<u>9,834</u>	1,929,581
Total general fund Full-time equivalent positions	\$17,983,876	\$360,619	\$18,344,495
	40.00	0.00	40.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigents - House Action

	Base	House	House
	Budget	Changes	Version
Comm. on Legal Counsel for Indigents	\$19 903 623	\$370 453	\$20 274 076
Total all funds	\$19,903,623	\$370,453	\$20,274,076
Less estimated income	1 919,747	9 834	1 929 581
General fund	\$17,983,876	\$360,619	\$18,344,495
FTE	40.00	0 00	40.00

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

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Adds Funding for Microsoft Office 365 Licenses ²	Total House Changes
Comm. on Legal Counsel for Indigents		\$368 945	\$1 508	\$370 453
Total all funds Less estimated income General fund	\$0 1 (\$1)	\$368,945 9 833 \$359,112	\$1,508 0 \$1,508	\$370,453 9 834 \$360,619
FTE	0.00	0 00	0 00	0.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$180,931	\$5,371	\$186,302
Health insurance increase	178 181	4 462	182 643
Total	\$359 112	\$9.833	\$368 945

³ Funding is added for Microsoft Office 365 licensing expenses.

2019 SENATE APPROPRIATIONS

HB 1022

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee

Harvest Room, State Capitol

HB 1022 2/27/2019 JOB # 32931

☐ Subcommittee☐ Conference Committee

Committee Clerk: Alice Delzer	
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Explanation or reason for introduction of bill/resolution:

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

Minutes:

- 1.Testimony of H.Jean Delaney with Attachment #A & B.
- 2.Testimony of Todd Ewell
- 3. Testimony of Travis Finck
- 4. Testimony of Monty G. Mertz
- 5. Testimony of Eric P. Baumann
- 6. Testimony of Misty Lenee Nehring
- 7. Testimony of Kevin McCabe

Chairman Holmberg: Called the committee to order on HB 1022. Becky Deichert, OMB amd Levi Kinnischtzke, Legislative Council were also present. All committee members were present except Senator Bekkedahl.

Jean Delaney, Director of ND Commission on Legal Counsel for indigents: testified in favor of HB 1022 and provided Attachment # 1, which gives a detailed explanation of the responsibilities of the Commission and budget requests. Also Attachment # A – Case Assignments by Fiscal Year and Attachment # B – Salary Survey. (22.14) page 12 of testimony. The Commission respectfully requests he Committee authorize funding for these salary increases listed on page 12 of her testimony. (26.22)

Senator Mathern: What is the consequence when you build up a waiting list or you have fewer attorneys, is there a legal process where someone brings an action against the state for not properly providing these services?

Jean Delaney: A lawsuit is always a possibility if services are not provided.

Senator Mathern: I remember when you started it, we are back at that spot again. I suppose that is why we are here about this budget. That was confirmed.

Senator Hogue: I wonder if you have had any comparable turnover rates in the states attorney's offices.

Jean Delaney: I do not have that information.

Senate Appropriations Committee HB 1022 February 27, 2019 Page 2

Todd Ewell, Supervising Attorney, Bismarck-Mandan Public Defender Office submitted Attachment # 2, a request for funding for his co-workers and employees to have equal pay in line with our State's Attorney counterparts throughout North Dakota. (33.01)

Senator Mathern: What is the annual salary? Do you get paid an annual rate or by the hour?

Todd Ewell: I get paid an annual rate.

(33.45) Jean Delaney: The salary survey, the average supervising attorney, attorney 3s with the commission are paid \$7,464.00, the average attorney 3s, which is the line public offenders without the supervising duties are paid an average of \$6,108.00. The testimony that I skipped over does talk about each group of employees.

Senator Mathern: That's ok. That's all I need to know.

(34.46)Travis Finck, Deputy Director for the Commission on Legal Counsel for Indigents: submitted Attachment # 3, asking for consideration of our optional packages and thanking the committee for their support. The challenges are real and I would invite and encourage the committee to read those letters from our supervising attorneys. There is a cost when there is turnover. I would urge there is a human side to that cost. That human side is to the client. It's concerning when we have to have four, five different attorneys assigned to one case because an attorney leaves our office or because of turnover. In Williston, we have two open positions. We had an open position for about 41/2 months in Watford City that we had one qualified applicant for but really wasn't a good fit for the situation. We have attorneys that are having to travel from Bismarck to go to Williston. So if a clinet wants to meet with their attorney, that attorney is having to drive 31/2 to 4 hours just to meet with their client. I think we can do better than that. The employees that we do have are top notch. I can confidently stand in front of you and say we have some of the best if not the best employees in the state. Continually, they are asked to do more, and we're doing it with the same that we've been doing it. Our case numbers continue to go up, it's no secret. from all the other bills that you have seen this session, that there continues to be an increase in mental health issues in the state, and there continues to be an increase in opiod crisis. Those are our clients. We're the ones spending time with them at the jails. We are the ones that are meeting them when they are at their lowest point, when they've first been arrested. So, I do think we also serve a vital role in combatting both of those issues. I do think we do that well. Also, our employees are very involved in the communities and that is something we are proud of. We have employees that have taken on jobs or roles as teaching, we have many of our employees provide CLE's across the state and are very learned in their profession. They are very active in other civic organizations and that's something we are proud of. I ask you to consider our optional packages and say thank-you for all the support you have provided to us in the past and for the support you continue to support for us.

(38.46) Senator Dever: I am curious, where your attorneys are in their career when they come to work for you, do they come straight out of law school, one the reasons being it is just a stepping stone somewhere else in their career?

Senate Appropriations Committee HB 1022 February 27, 2019 Page 3

Travis Finck: We have a wide range of different years of service that people have worked for us, and that's all included within the salary survey as well. We do have some people that come to us, Keep in mind for attorney2 it does require at least 2 years of experience for the position. So right now, what we are seeing, is we're not even getting those applicants from right out of law school. because they can make more right away going into private practice. Where it used to be the salaries offered for attorneys fresh out of law school were competitive. We're not anymore. For example, we've had open positions in Fargo, and in the past Fargo is a metropolitan area in ND and we would get 14,15 applications. The last time I think we had 3. So that's what we are up against. We do have some people that come to us towards the tail ends of their career, as it becomes more of, "I've been able to set myself up, it's not about the money anymore. It's more about maybe the retirement, or it might be about the fact this is noble work, what we do." It's easy to take a job when someone is going to pay you a lot of money to do it. It's a little bit different when the work we face, and again we represent people who are at their worst. They've been charged with a crime and their world has come crashing down on them. They are not easy people to deal with. We've had people, I've been with the commission in some sort, pretty much my entire professional career. I've worked in a small firm in Grand Forks and when the Bismarck office opened, I moved to Bismarck. I worked there for two years and I became a supervisor and I was at the supervisor for a while, and I was one of those people that left for more money. I went to a private firm in town, and I worked there for a while, and then I opened my own office and was doing very well on my own, and I gave it up to come back, and why? My wife asks me that all the time. But here I am. The reason why is because I believe in it and I believe in our employees and I think it's important. And I think someday that will pay off, at least I hope. (41.35)

Megan Carmichael, a second year Law Student at UND testifying on behalf of Tony Weiler, State Bar Association: We have a history of supporting the commissions budget and the role that they play. I encourage a do pass on HB 1022.

V. Chairman Wanzek: We will close the hearing on HB 1022.

Letters were submitted from the following asking the committee to reinstate HB 1022 as originally proposed by the Director, Jean Delaney.

- # 4 Monty G. Mertz, Supervising Attorney, Fargo Public Defender Office
- # 5.- Eric P. Baumann, Supervising Attorney, Minot Public Defenders Office
- #6 Misty Lenee Nehring, Supervising Attorney, Williston Public Defender Office
- #7 Kevin McCabe, Supervising Attorney, Dickinson Public Defender Office

The hearing was closed on HB 1022.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee

Harvest Room, State Capitol

HB 1022 4/3/2019 JOB # 34482

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alice Delzer	
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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents. (Do Pass as Amended)

Minutes:

1.Proposed Amendment # 19.0210.02004

Chairman Holmberg: Opened the hearing on HB 1022. All committee members were present. Adam Mathiak, Legislative Council and Larry Martin, OMB were also present.

Senator Hogue: Submitted Attachment # 1, Proposed Amendment # 19.0210.02004 and explained the amendment.

Senator Hogue: moved the Amendment. 2nd by Senator Hogue.

Chairman Holmberg: Any discussion? All in favor of the Amendment say aye. It carried.

Senator Hogue: Moved a Do Pass as Amended on HB 1022. 2nd by Senator Mathern.

Chairman Holmberg: Call the roll on HB 1022.

A Roll Call vote was taken. Yea:14; Nay: 0; Absent: 0. Senator Hogue will carry the bill.

The hearing was closed on HB 1022.

April 3, 2019



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1022

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel for indigents	\$19,903,623	<u>\$471,039</u>	\$20,374,662
Total all funds	\$19,903,623	\$471,039	\$20,374,662
Less estimated income	<u>1,919,747</u>	<u> 10,288</u>	<u>1,930,035</u>
Total general fund	\$17,983,876	\$460,751	\$18,444,627"

Page 1, after line 22, insert:

"SECTION 3. SALARY EQUITY FUNDING. The appropriation in section 1 of this Act includes \$60,000 from the general fund that may be used only to provide salary equity funding for attorney positions located in Williams County."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigent - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Total all funds	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Less estimated income	1,919,747	1,929,581	454	1,930,035
General fund	\$17,983,876	\$18,344,495	\$100,132	\$18,444,627
FTE	40.00	40.00	0.00	40.00

Department 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Funding for Williams County Staff Salaries ²	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$40,586	\$60,000	\$100,586
Total all funds Less estimated income General fund	\$40,586 454 \$40,132	\$60,000 0 \$60,000	\$100,586 454 \$100,132
FTE	0.00	0.00	0.00

¹ Funding of \$40,586, of which \$40,132 is from the general fund and \$454 is from the indigent defense administration fund, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate is providing a total of \$226,888 for state employee salary increases, of which \$221,063 is from the general fund and \$5,825 is from the indigent defense administration fund. The House approved 2019-21 biennium salary increases of 2 percent per year and provided a total of \$186,302 for state employee salary increases, of which \$180,931 is from the general fund and \$5,371 is from the indigent defense administration fund.

² Funding of \$60,000 from the general fund is added to provide salary equity funding for attorney positions located in Williams County.



This amendment also adds a section identifying \$60,000 from the general fund included in Section 1 that may only be used to provide salary equity funding for attorney positions located in Williams County.

Date:	4-	3	-19	_
Roll Cal	l Vote	#: _	1	

	<u>oriations</u>				Com	mitte
		☐ Sub	ocomm	ittee		
		10	10	10 00 00 0		
nendment LC# or	Description:	17.	021	0.02004		
ther Actions:	Adopt Amended Do Pass As Amended Place on Cor Reconsider	□ Do Not	endar	☐ Without Committee ☐ Rerefer to Appropria	ations	
Sen	ators	Yes	No	Senators	Yes	No
Senator Holmber		163	NO	Senator Mathern	165	INO
Senator Krebsba	<u> </u>			Senator Grabinger		
Senator Wanzek		1		Senator Robinson		
Senator Erbele				Condition (Confident		1
		_				
	ı					
Senator Poolmar						
Senator Poolmar Senator Bekkeda						
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Senator Poolmar Senator Bekkeda Senator G. Lee Senator Dever	ahl					
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Date:	4-	3	•	<u>/</u>	7
Roll Call V	/ote #:			Q	

Senate Appropriations				Comr	nittee
□ Subcommittee					
Amendment LC# or Description:					
Recommendation: Adopt Amendment Do Pass Do Not Pass Rerefer to Appropriations Recommendation Recommendation Recommendation Recommendation Recommendation Recommendation Recommendation Recommendation Recommendation					
Motion Made By Hogue		Se	conded By <u>Math</u>	ern	_
Senators	Yes	No	Senators	Yes	No
Senator Holmberg	V		Senator Mathern		
Senator Krebsbach	V		Senator Grabinger		
Senator Wanzek	1		Senator Robinson	V	
Senator Erbele	V				
Senator Poolman	V				
Senator Bekkedahl	1				
Senator G. Lee '					
Senator Dever					
Senator Sorvaag	V				
Senator Oehlke					1
Senator Hogue					
Total (Yes) No O					
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If the vote is on an amendment, briefly indicate intent:

Module ID: s_stcomrep_59_008
Carrier: Hoque

Insert LC: 19.0210.02004 Title: 03000

REPORT OF STANDING COMMITTEE

HB 1022, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1022 was placed on the Sixth order on the calendar.

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel for indigents	\$19,903,623	<u>\$471,039</u>	\$20,374,662
Total all funds	\$19,903,623	\$471,039	\$20,374,662
Less estimated income	1,919,747	10,288	1,930,035
Total general fund	\$17,983,876	\$460,751	\$18,444,627"

Page 1, after line 22, insert:

"SECTION 3. SALARY EQUITY FUNDING. The appropriation in section 1 of this Act includes \$60,000 from the general fund that may be used only to provide salary equity funding for attorney positions located in Williams County."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigent - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$19,903 623	\$20,274,076	\$100,586	\$20,374,662
Total all funds Less estimated income	\$19,903,623 1,919,747	\$20,274,076 1,929,581	\$100,586 454	\$20,374,662 1,930,035
General fund	\$17,983,876	\$18,344,495	\$100,132	\$18,444,627
FTE	40.00	40.00	0.00	40.00

Department 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Funding for Williams County Staff Salaries ²	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$40,586	\$60,000	\$100,586
Total all funds Less estimated income General fund	\$40,586 454 \$40,132	\$60,000 0 \$60,000	\$100,586 454 \$100,132
FTE	0.00	0.00	0.00

¹ Funding of \$40,586, of which \$40,132 is from the general fund and \$454 is from the indigent defense administration fund, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate is providing a total of \$226,888 for state employee salary increases, of which \$221,063 is from the general fund and \$5,825 is from the indigent defense administration fund. The House approved 2019-21 biennium salary increases of 2 percent per year and provided a total of \$186,302 for state employee salary increases, of which \$180,931 is from the general fund and \$5,371 is from the indigent defense administration fund.

This amendment also adds a section identifying \$60,000 from the general fund included in

² Funding of \$60,000 from the general fund is added to provide salary equity funding for attorney positions located in Williams County.

Module ID: s_stcomrep_59_008
Carrier: Hogue

Insert LC: 19.0210.02004 Title: 03000

Section 1 that may only be used to provide salary equity funding for attorney positions located in Williams County.

2019 CONFERENCE COMMITTEE

HB 1022

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 4/15/2019 Recording Job# 34752

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Sheri Lewis

Explanation or reason for introduction of bill/resolution:

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

Minutes: Attachments A through C

Chairman Howe: Opened the conference committee on HB1022.

Roll Call taken.

Senator Hogue: Explained the Senate changes. See attachments A and B.

Chairman Howe: Do you know where that will put the attorneys in Williams county as comparatively speaking amongst other attorneys in the area of how far below they will be now? I imagine they will be a little more competitive?

Senator Hogue: I do not. We've done similar things in Williston.

Senator Mathern: The organization did have data like that regarding the salaries and it was from that data that Senator Hogue brought the amendment to the appropriations committee.

Representative Mock: The funding is from the general fund?

Chairman Howe: That's correct.

Representative Mock: Do we know what the balance of the indigent defense administration fund?

Chairman Howe: As of February 6 the indigent defense administration fund had \$685,834.00.

Representative Mock: Was the source of the funds discussed at all and potentially using that fund instead of the general fund?

House Appropriations Committee – Government Operations Division HB1022 April 15, 2019 Page 2

Senator Hogue: It was my amendment and I didn't look for a secondary source. To be honest, I don't think we gave any of that consideration.

Senator Mathern: We had indications of need throughout the state for dollars, and therefore there was pressure on those other funds that they would all be used. We're trying to keep that whole and bring in some new money.

Levi Kinnischtzke, Fiscal Analyst, ND Legislative Council: As of yesterday the indigent defense administration fund was \$775,861.00.

Chairman Howe: Is there anything prohibiting us from using that fund to two specific lawyers in a certain area of the state?

Levi Kinnischtzke: I'm not aware of anything that specifically wouldn't allow that particular use of funding. There is a statutory limit that is used for the agency to receive money through that revenue source.

Senator Oehlke: That \$700,000.00 that's sitting in that defense fund, how many months will that last? Is that going to take it to the end of this biennium or the next biennium?

Levi Kinnischtzke: As of right now, typically the current allocations of the indigent defense fund; at least from the revenue received from the \$100.00 court administration fee, typically the allocation is about \$750,000.00 per biennium for revenue.

Representative Beadle: On the OMB side we have the indigent defense administration fund listed on there, is that the same fund we're talking about? This one has revenues for the 2017-2019 biennium of \$2.75 million and expenses of \$2.8 million for an ending balance of \$975,000.00. Would this be a different fund or are we missing the forecasted ending balance in that fund?

Levi Kinnischtzke: That is a separate fund. That is a fund that the courts collect a fee on and that is deposited in the state treasury and OMB uses that funding to distribute to nonprofit organizations; typically for cases involving indigents regarding civil litigation, which this agency typically does not take up.

Senator Hogue: We've had the discussion about the turn back dollars and I know this agency got some money that it turned back relative to the DAPL defense dollars that they thought they were going to need and didn't need. That money goes back into the general fund; so we can't access that?

Levi Kinnischtzke: The agency did have some general fund turn back for the funding that was not utilized.

Chairman Howe: I don't have any trouble funding these positions; but I would prefer not it not to be general fund dollars.

Senator Hogue: There's no strong desire as to where the dollars come from.

House Appropriations Committee – Government Operations Division HB1022 April 15, 2019 Page 3

Travis Fink, Deputy Director, ND Commission on Legal Counsel for Indigents: As to the special fund, most of the funds that are appropriated in there will be spent this biennium. Those are funds that come from two different sources; it's the \$100.00 facility fee and the \$35.00 indigent defense application fee that comes into our agency. On average we spend between \$780,000.00 to \$800,000.00 per month when fully staffed. I think there will be some general fund turn back this session. As to the DAPL monies, that wasn't money that we were actually appropriated; it was borrowing authority that we were given and that was through the department of emergency services. Any money that we didn't need we never borrowed.

Representative Beadle: With regards to the \$60,000.00 adjustment for Williams County is that going to be sufficient to provide the coverage there? Are we running into other equity issues elsewhere in the state that might be upset that they're not getting a piece of that pie also?

Travis Fink: Anything is better than nothing. We have made one hire, but we've had to under fill that position. It's a position that that person has not taken the bar exam yet. Yes, it will cause equity issues.

Attachment C was handed out but not discussed.

Chairman Howe: Closed the conference committee.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division

Medora Room, State Capitol

HB1022 4/17/2019 Recording Job# 34803

☐ Subcommittee☒ Conference Committee

Committee Clerk: Sheri Lewis					
Explanation or reason for introduction of bill/resolution:					
A BILL for an Act to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.					
Minutes:					
Chairman Howe: Opened the conference committee on HB1022.					

Roll Call taken.

Chairman Howe: From the House perspective we feel that the indigent defense administration would be able to sustain the additional \$60,000.00 for this biennium.

Senator Hogue: I think from my perspective that would be an agreeable compromise.

Levi Kinnischtzke, Fiscal Analyst, ND Legislative Council: Based off the current balance in the fund, that appropriation would be able to sustain it.

Senator Mathern: I'm interested as to why that fund wasn't used. Do we restrict that agency from being creative like this to increase the salaries and take it out of that fund?

Levi Kinnischtzke: That fund is used quite often for daily operating expenses by the agency. The revenue for the administration defense fund is two different court fees; the legislative assembly will appropriate spending authority out of that fund; the actual revenue behind it will differ. That's why I believe the agency asked for a general fund appropriation; that would ensure that the revenue is 100% behind it.

Senator Mathern: Could they have done this without this action? Could they have taken that money out and paid some attorneys more dollars?

Levi Kinnischtzke: No, because their agency has classified employees; so there are strict parameters on what those attorney positions could be paid unless the legislative assembly provides other authorization. This would give human resources management services authorization to provide an equity increase specifically just for those positions.

House Appropriations Committee – Government Operations Division HB1022 April 17, 2019 Page 2

Representative Beadle: Made a motion to move the amendment for \$60,000.00 for Williams county staff salaries out of the indigent defense administration fund.

Senator Oehlke: Seconded the motion.

Voice Vote made.

Motion Carried.

Senator Oehlke: Made a motion for the "Senate to recede from Senate amendments and amend as follows".

Senator Mathern: Seconded the motion.

Roll Call Vote: 5 Yeas 0 Nays 1 Absent.

Motion Carried.

Chairman Howe: Closed the conference committee.

19.0210.02005 Title.04000 Fiscal No. 1

Prepared by the Legislative Council staff for the Conference Committee April 17, 2019 10f2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1022

That the Senate recede from its amendments as printed on pages 1523 and 1524 of the House Journal and pages 1286 and 1287 of the Senate Journal and that engrossed House Bill No. 1022 be amended as follows:

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel for indigents	<u>\$19,903,623</u>	<u>\$471,039</u>	\$20,374,662
Total all funds	\$19,903,623	\$471,039	\$20,374,662
Less estimated income	1,919,747	70,288	1,990,035
Total general fund	\$17,983,876	\$400,751	\$18,384,627"

Page 1, after line 22, insert:

"SECTION 3. SALARY EQUITY FUNDING. The estimated income line item in section 1 of this Act includes \$60,000 that may be used only to provide salary equity funding for attorney positions located in Williams County."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigent - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Comm. on Legal Counsel for Indigents	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662	\$20,374,662	
Total all funds Less estimated income General fund	\$19,903,623 1,919747 \$17,983,876	\$20,274,076 1,929,581 \$18,344,495	\$100,586 60 454 \$40,132	\$20,374,662 1,990,035 \$18,384,627	\$20,374,662 1,930,035 \$18,444,627	\$0 60,000 (\$60,000)
FTE	40.00	40.00	0.00	40.00	40.00	0.00

Department 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes

	Adds Funding	Adds Funding	Total
	for Salary and	for Williams	Conference
	Benefit	County Staff	Committee
	Increases ¹	Salaries ²	Changes
Comm. on Legal Counsel for Indigents	\$40,586	\$60,000	\$100,586
Total all funds	\$40,586	\$60,000	\$100,586
Less estimated income	454	60,000	60,454
General fund	\$40,132	\$0	\$40,132
FTE	0.00	0.00	0.00

¹ Funding of \$40,586, of which \$40,132 is from the general fund and \$454 is from the indigent defense administration fund, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. A total of \$226,888 is provided for state employee salary increases, of which \$221,063 is from the general fund and \$5,825 is from the indigent defense administration fund, the same as the Senate version. The House approved 2019-21

DP-8/15/19

biennium salary increases of 2 percent per year and provided a total of \$186,302 for state employee salary increases, of which \$180,931 is from the general fund and \$5,371 is from the indigent defense administration fund.

This amendment also adds a section identifying \$60,000 from the indigent defense administration fund included in Section 1 that may only be used to provide salary equity funding for attorney positions located in Williams County. The Senate provided \$60,000 from the general fund for this purpose.

² Funding of \$60,000 from the indigent defense administration fund is added to provide salary equity funding for attorney positions located in Williams County. The Senate provided \$60,000 from the general fund for this purpose.

Date: 4/17/2019 Voice Vote: #1

2019 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1022 as (re) engrossed

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Motion Made by:	Repres	senta	ative Bea	adle	s	Seconded by: Senator O	ehlke			
Representatives	5	4/15	4/17	Yes	No	Senators	4/15	4/17	Yes	No
Chairman Howe	- 3	X	Х			Senator Hogue	X	X	1	
Representative Beadle		Х	Χ.			Senator Oehlke	Х	Х		
Representative Mock		Х				Senator Mathern	Х	Х		
	- 2		. 1	W						
Total Rep. Vote		- 9	VI			Total Senate Vote			N.	
Vote Count	Ye	s: _		- 27		No:	Absent:			
House Carrier						Senate Carrier				
LC Number							of a	mendr	nent	
LC Number	_							of en	grossm	nent
Emergency clause	e added	d or	deleted							
Statement of purp					nt def	ense administration fund	d			

Motion Carried.

Date: 4/17/2019 Roll Call Vote: #1

2019 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1022 as (re) engrossed

	□ HOUSE □ HOUSE □ SENAT □ SENAT □ Other	acced acced E reced E reced to agre	e to Se e to Se de from de from	enate enate n Sen n Sen	Amendments Amendments and further ate amendments ate amendments ate amendments and an	nend a	s follo		new
			- -						
Motion Made by:	Senator O	ehlke		8	Seconded by: Senator Mat	hern			
Representatives	4/15	4/17	Yes	No	Senators	4/15	4/17	Yes	No
Chairman Howe	X	X	X		Senator Hogue	X	Х	X	
Representative Beadle	X	X	X		Senator Oehlke	X	X	X	
Representative Mock	Х				Senator Mathern	Х	Х	Х	
	- 5		1			-			
Total Rep. Vote		5 5			Total Senate Vote	7	0 7/1	3	į.
Vote Count	Yes: <u>.</u> 5				2 2	bsent:			
House Carrier	Represen	tative F	lowe		Senate Carrier Senator I	Hogue			
LC Number					02005				
LC Number		9-0	210)	04000)	of en	grossm	ent
Emergency clause	e added or	deleted	i						
Statement of purp Motion Carried.	ose of ame	endmen	it						

Module ID: h_cfcomrep_70_010

Insert LC: 19.0210.02005 House Carrier: Howe Senate Carrier: Hogue

REPORT OF CONFERENCE COMMITTEE

HB 1022, as engrossed: Your conference committee (Sens. Hogue, Oehlke, Mathern and Reps. Howe, Beadle, Mock) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1523-1524, adopt amendments as follows, and place HB 1022 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1523 and 1524 of the House Journal and pages 1286 and 1287 of the Senate Journal and that engrossed House Bill No. 1022 be amended as follows:

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel for indigents	<u>\$19,903,623</u>	<u>\$471,039</u>	\$20,374,662
Total all funds	\$19,903,623	\$471,039	\$20,374,662
Less estimated income	1,919,747	70,288	1,990,035
Total general fund	\$17,983,876	\$400,751	\$18,384,627"

Page 1, after line 22, insert:

"SECTION 3. SALARY EQUITY FUNDING. The estimated income line item in section 1 of this Act includes \$60,000 that may be used only to provide salary equity funding for attorney positions located in Williams County."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigent - Conference Committee Action

Comm. on Legal Counsel for Indigents	Base Budget \$19,903,623	House Version \$20,274,076	Conference Committee Changes \$100,586	Conference Committee Version \$20,374,662	Senate Version \$20,374,662	Comparison to Senate
Total all funds Less estimated income General fund	\$19,903,623 1,919,747 \$17,983,876	\$20,274,076 1,929,581 \$18,344,495	\$100,586 60,454 \$40,132	\$20,374,662 1,990,035 \$18,384,627	\$20,374,662 1,930,035 \$18,444,627	\$0 60,000 (\$60,000)
FTE	40.00	40.00	0.00	40.00	40.00	0.00

Department 188 - Commission on Legal Counsel for Indigent - Detail of Conference Committee Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Funding for Williams County Staff Salaries ²	Total Conference Committee Changes
Comm. on Legal Counsel for Indigents	\$40,586	\$60,000	\$100,586
Total all funds Less estimated income General fund	\$40,586 454 \$40,132	\$60,000 60,000 \$0	\$100,586 60,454 \$40,132
FTE	0.00	0.00	0.00

¹ Funding of \$40,586, of which \$40,132 is from the general fund and \$454 is from the indigent defense administration fund, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. A total of \$226,888 is provided for state employee salary increases, of which \$221,063 is from the general fund and \$5,825 is from the indigent defense administration fund, the same as the Senate version. The House

Module ID: h_cfcomrep_70_010

Insert LC: 19.0210.02005 House Carrier: Howe Senate Carrier: Hogue

approved 2019-21 biennium salary increases of 2 percent per year and provided a total of \$186,302 for state employee salary increases, of which \$180,931 is from the general fund and \$5,371 is from the indigent defense administration fund.

² Funding of \$60,000 from the indigent defense administration fund is added to provide salary equity funding for attorney positions located in Williams County. The Senate provided \$60,000 from the general fund for this purpose.

This amendment also adds a section identifying \$60,000 from the indigent defense administration fund included in Section 1 that may only be used to provide salary equity funding for attorney positions located in Williams County. The Senate provided \$60,000 from the general fund for this purpose.

Engrossed HB 1022 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1022

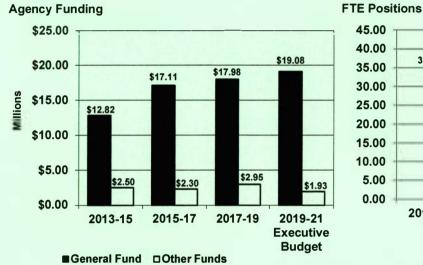
Department 188 - Commission on Legal Counsel for Indigents House Bill No. 1022

Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	40.00	\$19,077,599	\$1,933,660	\$21,011,259
2017-19 Legislative Appropriations	40.00	17,983,876	2,946,747	20,930,623
Increase (Decrease)	0.00	\$1,093,723	(\$1,013,087)	\$80,636

Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2019-21 Executive Budget	\$19,077,599	\$0	\$19,077,599
2017-19 Legislative Appropriations	17,983,876	0	17,983,876
Increase (Decrease)	\$1,093,723	\$0	\$1,093,723





Executive Budget Comparison to Base Level

	General Fund	General Fund Other Funds	
2019-21 Executive Budget	\$19,077,599	\$1,933,660	\$21,011,259
2019-21 Base Level	17,983,876	1,919,747	19,903,623
Increase (Decrease)	\$1,093,723	\$13,913	\$1,107,636

Attached as an appendix is a detailed comparison of the executive budget to the agency's base level appropriations.

Executive Budget Highlights

	General Fund	Other Funds	Total
 Provides funding for state employee salary and benefit increases, of which \$310,914 is for salary increases, \$154,680 is for health insurance increases, and \$40,534 is for retirement contribution increases 	\$492,216	\$13,912	\$506,128
 Adds funding for professional service fees to increase the hourly rate paid to contracted attorneys from \$75 per hour to \$80 per hour, providing a total of \$10,922,178 for professional service fees 	\$600,000	\$0	\$600,000
3. Adds funding for Microsoft Office 365 licensing expenses	\$1,508	\$0	\$1,508

Other Sections Recommended to be Added in the Executive Budget (As Detailed in the Attached Appendix)

There are no other sections for this agency.

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.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Significant Audit Findings

The operational audit for the Commission on Legal Counsel for Indigents conducted by the State Auditor's office for the period ending June 30, 2017, identified no significant audit findings.

Major Related Legislation

House Bill No. 1069 - Provides for any file, record, or information regarding representation of a party by the Commission on Legal Counsel for Indigents and considered subject to attorney-client privilege can be disclosed to the party being provided presentation and to the attorney providing representation.

House Bill No. 1070 - Requires witness fees, mileage, and other travel expenses incurred by fact witnesses subpoenaed by indigent defense attorneys for juvenile court proceedings be paid by the Commission on Legal Counsel for Indigents rather than the Attorney General.

Senate Bill No. 2074 - Adds the Commission on Legal Counsel for Indigents to the list of state agencies not required to destroy juvenile court records, files, and index references.

Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

		xecutive Budge	et Recommend	dation
	FTE Position	General Fund	Other Funds	Total
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623
2019-21 Ongoing Funding Changes				
Base payroll changes		(\$1)	\$1	\$0
Salary increase		302,368	8,546	310,914
Health insurance increase		150,428	4,252	154,680
Retirement contribution increase		39,420	1,114	40,534
Adds funding for professional service fees for contracted attorneys		600,000		600,000
Adds funding for Microsoft Office 365 licensing expenses		1,508		1,508
Total ongoing funding changes	0.00	\$1,093,723	\$13,913	\$1,107,636
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	0.00	\$1,093,723	\$13,913	\$1,107,636
2019-21 Total Funding	40.00	\$19,077,599	\$1,933,660	\$21,011,259

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

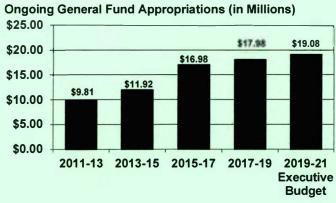
Executive Budget Recommendation

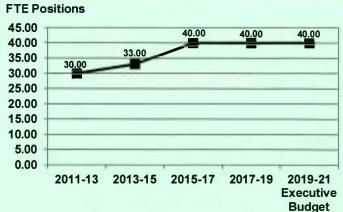
There are no other sections for this agency.

Department 188 - Commission on Legal Counsel for Indigents

Historical Appropriations Information

Ongoing General Fund Appropriations Since 2011-13





Ongoing General Fund Appropriations					
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Ongoing general fund appropriations	\$9,808,430	\$11,923,410	\$16,982,909	\$17,983,876	\$19,077,599
Increase (decrease) from previous biennium	N/A	\$2,114,980	\$5,059,499	\$1,000,967	\$1,093,723
Percentage increase (decrease) from previous biennium	N/A	21.6%	42.4%	5.9%	6.1%
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	21.6%	73.1%	83.4%	94.5%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2013-15 Biennium

2013-15 Biennium	
Added funding for 1 FTE attorney position	\$196,639
2. Added funding for 2 FTE legal assistant positions1 in Dickinson and 1 in Williston	\$235,486
3. Provided additional funding for contract attorneys	\$1,100,000
2015-17 Biennium	
 Added funding for 1 FTE attorney position and 1 FTE administrative position and related operating expenses to establish a Watford City office 	\$539,555
2. Added funding to convert 5 temporary employees to FTE positions	\$720,794
Added funding for increased costs of legal fees, contract fees, case-specific fees, and other costs related to increased caseloads	\$4,200,000
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 (Executive Budget Recommendation)	
 Adds funding for professional service fees to increase the hourly rate paid to contracted attorneys from \$75 per hour to \$80 per hour, providing a total of \$10,922,178 for professional service fees 	\$600,000

GOVERNOR'S RECOMMENDATION FOR THE COMMISSION ON LEGAL COUNSEL FOR INDIGENTS AS SUBMITTED BY THE OFFICE OF MANAGEMENT AND BUDGET

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, 2019, and ending June 30, 2021, as follows:

		Adjustments or	
	Base Level	Enhancements	Appropriation
Commission on legal counsel	\$19,903,623	\$1,107,636	\$21,011,259
Total all funds	\$19,903,623	\$1,107,636	\$21,011,259
Less estimated income	1,919,747	13,913	1,933,660
Total general fund	\$17,983,876	\$1,093,723	\$19,077,599
Full-time equivalent positions	40.00	0.00	40.00

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HB 1022 House Appropriations Committee - Government Operations Division January 14, 2019 Testimony of H. Jean Delaney, Executive Director, NDCLCI

Good afternoon. My name is Jean Delaney and I am the Director of the North Dakota Commission on Legal Counsel for Indigents.

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. Generally, there is a right to counsel at public expense for indigent persons who are charged with felonies and misdemeanors in North Dakota state district court, those who are applicants for postconviction relief under the Uniform Postconviction Procedure Act, and in some juvenile and miscellaneous matters. There is also a right to counsel at public expense for indigent persons in appeals from these matters to the North Dakota Supreme Court. There is no right to counsel provided by the Commission in most civil matters, municipal court matters, and in federal court.

The Commission is governed by North Dakota Century Code Chapter 54-61. Section 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 Commission has established Guidelines to Determine Eligibility for Indigent Defense Services. In order 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.

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 federal Department of Health and

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Human 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.

The Commission's "mission 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. To help ensure that services are provided only to eligible individuals, the Commission also provides training to those persons who make the eligibility determinations.

Delivery of Services

The Commission provides indigent defense services through its employees in its public defender offices located in Fargo, Grand Forks, Minot, Williston, Dickinson, and Bismarck, and through its monthly and conflict contractors. By statute, the Commission is required to, and does contract for services, at a minimum level of fifty percent of its biennial caseload. During fiscal year 2018, 68.9% of case assignments were handled by contract attorneys; 31.1% were handled by public defenders.

The Commission's monthly contractors each take some specified portion of cases in some specified geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The Commission currently has over 75 monthly contracts and more than 100 conflict contractors.

The Commission's public defender-employees take case assignments in the geographical area in which their office is located, conflict matters in nearby districts, and across the state when needed.

The system is administered through the agency's administrative office in Valley City. The administrative office coordinates the delivery of indigent services throughout the state, including contracting with attorneys to provide services, staffing the public defender offices, providing support services, and training attorneys and staff.

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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" rather than "case" 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 considered to be 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.

Since FY11 there have been some significant increases in the number of case assignments handled each year. I've attached a document showing the yearly assignments. Attachment A. Case assignment numbers appear to be finally leveling off. State-wide, the number of case assignments was a bit lower in FY2018 than in FY2017, but higher than any year before that. State-wide, services were provided in 15,394 assignments in FY2018, compared to 15,688 in FY17. This number for FY17 includes 434 DAPL assignments. If those are subtracted, the number of assignments would have been lower in FY17 than in FY18, but fairly close.

The Commission also tracks case assignments by judicial district. Three of the eight judicial districts saw an increase in case assignment numbers during FY18. During FY2018, attorneys in the East Central Judicial District handled 3,669 assignments, a small increase from the 3627 handled in FY17. The North Central Judicial District assignments increased from 1671 to 1691; and the Southeast increased from 1297 to 1354.

There were decreases in five of the districts. Assignments in the Northeast Judicial District decreased from 951 to 944. Assignments in the Southwest decreased from 606 to 590. The number of assignments in the Northeast Central Judicial District decreased from 1345 to 1315; however, other than in FY17, the FY18 number is higher

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than the previous year's. The South Central decreased from 4561 to 4337; however, other than in FY17, there were more assignments in FY18 than in previous years. (The FY17 assignment number for the SCJD also includes 434 DAPL assignments). The number of assignments in the Northwest Judicial District decreased from 1630 to 1494.

It is always difficult to forecast what the case assignment numbers will be in a future time period. The Commission has no real control over them. The Commission has no control over the number of crimes committed and investigated, the number of persons charged and the charges filed, and the number of persons who apply for services, and are found eligible. That being said, projecting the first four months of FY19 over the entire year, it is not unlikely that there will be case assignments in excess of 15,700 in FY19.

Funding of the Agency

Historically, the Commission has been funded from two sources: the general fund, and "fund 282" (the indigent defense administration fund). In addition, 2017 HB 1024 provides for borrowing authority of up to \$1,027,000 for DAPL expenses incurred after June 30, 2015 through June 30, 2019.

The indigent defense administration fund is funded through collection of two statutory fees paid by criminal defendants: the \$35 indigent defense application fee and the Commission's portion of a \$100 court administration fee (the indigent defense/facility improvement fee). Pursuant to statute, this fee is split 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 collection of these fees is not guaranteed. District Judges, who impose the fees, have the discretion to waive the fees in any particular case. Defendants do not always pay the fees that were imposed. Also, with the passage of Marsy's Law, the application fee and indigent defense/facility improvement fee are no longer the first priorities for collection among fines and fees ordered by the court to be paid. Traditionally, the application fee and the indigent defense facility improvement fee were collected from defendants as first and second priorities, before any other fees or fines;

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however, with the passage of Marsy's Law, the collection of restitution is now the first priority, and as a result, it was expected that there will be reduced collection of the application and indigent defense/facility improvement fees. Since fees may be collected significantly later than when imposed, the fiscal effect of Marsy's Law on these fees cannot be clearly ascertained. Over the past few biennia, an average of \$1,870,000 has been deposited into this fund each biennium. This current biennium, it looks as though collections may be similar or a little bit less.

The District Courts also have the authority to order reimbursement of attorney fees, however, any attorneys' fees that are recouped go into the general fund, not fund 282.

2017 HB 1024 provides for borrowing authority of up to \$1,027,000 for DAPL expenses incurred after June 30, 2015 through June 30, 2019. Last legislative session, it was expected that the DAPL case assignments would be much more expensive than they actually were. Although there were quite a few DAPL case assignments – there were a total of 445 DAPL assignments – it was expected that there would be more of them. A very high percentage of these assignments were expected to go to jury trial. Jury trials take more attorney time and costs more than cases disposed of by other reasons. Also, many of the assignments involved arrests under circumstances which required the assigning of separate counsel to each defendant. One of these events required over 80 separate attorneys. There weren't eighty indigent defense attorneys in the South Central Judicial District, so the Commission had to use attorneys from across the state and northwestern Minnesota to provide services. This was expected to and did require additional attorney travel time and mileage. However, many of the cases ended up being dismissed, while others, after the initial assignment, were handled by retained, or pro bono counsel - counsel not provided by or paid for by the Commission. \$76,758 of the borrowing authority was used for DAPL assignments in the 2015-17 biennium, and only \$69,676 has been used this biennium. Most, if not all, of the DAPL expenses have been paid.

The agency receives no federal funds or grants.

Funding for the Commission for the 2017-19 biennium consists of \$17,983,876 from the general fund and \$1,919,747 from fund 282, for a total of \$19,903,623, and the

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remaining borrowing authority of \$950,242 for costs of the DAPL case assignments.

Most of the Commission's budget goes directly to providing mandated indigent defense services, either through its public defender offices, our contract attorneys, and related services such as private investigators. The major components making up the "base level" appropriation amount for the Commission are salaries and benefits, professional fees and services, ITD expense, and rent. As of November 30, 2018, these components comprised 96.2% of the agency's expenditures for the biennium.

In order to meet the Governor's 90 percent (general fund) budget request guideline, the Commission identified a reduction of \$1,632,788 from Fees- Professional Services, and \$165,600 for the reduction of two FTEs. In order to meet the Governor's 95 percent (special fund) budget request guideline, the Commission identified a reduction of \$95,987 from Fees-Professional Services.

The Commission submitted optional packages seeking restoration of the general and special fund amounts, to restore the FTEs, for funding to bring agency employee salaries up to those of comparable positions ("equity" salary increases), and to increase contractor rate of pay.

As to the request for restoration of the general and special fund amounts, there are not any areas in the Commission's budget that could be cut sufficiently to meet the Governor's budget request guideline, other than Fees-Professional Services. However, the Commission would not be able to provide constitutionally mandated services to all indigent persons eligible for and in need of services with these reductions.

As to the request to restore the FTEs, cutting FTEs is unlikely to result in any significant savings. The cuts would need to be in staff, not attorneys. Attorneys are necessary to provide legal services; legal services cannot be provided by administrative staff, but an attorney can perform administrative duties if needed. However, it's not an efficient use of resources. Additionally, the agency is not overstaffed. In most offices, the Commission has temporary secretaries which are necessary to help the administrative staff with reception, e-filing, drafting documents, assigning case, and whatever else is needed in the office. Many of the agency's admin staff (FTEs and temporary) have to put in overtime on occasion.

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As to the optional packages to bring agency employee salaries up to those of comparable positions ("equity" salary increases) and to increase the contractor rate of pay, I will address these in more detail in a moment.

In his recommendation, Governor Burgum agreed with the Commission's requests to restore the general and special fund amounts, and the FTEs. He recommended a \$1,093,723 increase in appropriation from the general fund. This increase consists of \$1508 for the Microsoft 365 upgrade, \$492,216 for "legislative" employee compensation increases, and \$600,000 to increase the Commission's contractors' rate of pay by \$5/hour. Governor Burgum also recommended authorization to spend an additional \$13,913 from fund 282 for a "legislative" compensation increase for an agency employee whose salary is paid through fund 282.

As to the optional package regarding "equity" salary increases, the Commission has had a very high turnover rate. Based on exit interviews with exiting employees, and other conversations with agency employees, the high turnover rate is due in large part to lower salaries paid to Commission employees. I'd like to provide some examples. In early 2018, one of our attorneys from the western part of the state noted in his exit interview that he was leaving for a better paying position. He stated that his work for the Commission was almost a completely positive experience, both with the agency and his office, but that his salary was lower, then at the time of the exit interview, than it was two years before, because the oil patch add-on had been discontinued. He said he felt "disrespected" with the lower salary and no raises. When an Administrative Assistant II terminated his employment, he said he was happy and liked his job, liked his office; the reason he was leaving was pay. Another Administrative Assistant II told us that she "truly enjoyed the work" in the office, but was leaving for a job with higher pay, and she would have stayed, but for that.

The Commission has also had some difficulty filling positions due to salaries officered to new hires. When filling positions, the Commission has tried to maintain internal equity, and not offer significantly higher salaries to new employees over long term employees.

The Commission employs 40 FTEs. For calendar year 2018, the Commission's turnover rate among FTEs was 37.5%. Of the fifteen FTEs whose employment with the

Commission terminated in 2018, eight indicated pay as the main reason, or one of the main reasons for leaving employment. Four employees left due to failing to successfully complete probation or other performance issues. Three left for other reasons, such as health, obtaining a "dream job" or to be near family (although this attorney indicated the decision to move may have been different had the employee's position with the agency paid more).

High turnover is expensive; it is expensive to hire, train, and replace employees. Some of the costs of the termination of an employee include:

Recruitment/hiring costs. Openings must be advertised. Applicants must be rated and interviewed. References must be checked. When hired, there are the many new-hire forms for taxes, benefits, etc. The new employee must be given appropriate access to state programs and computer drives, and trained on them.

Overworked remaining staff. An attorney's open cases must be transferred to other attorneys, who already have full caseloads of their own. Remaining admin staff may have to work overtime to perform the duties of the exiting admin staff member.

Disruption of services. Some court hearings and trials must be continued to accommodate scheduling conflicts with new attorneys, and to provide time for the new attorney to prepare. Case preparation by terminated employee is lost and must be repeated by a newly assigned attorney. The time and effort spent by the exiting attorney in developing a relationship with the client is lost.

Contract costs. If remaining office attorneys cannot cover the terminating employee's open cases, or cases which would have been assigned to the terminating employee, had the employee not left, there may be additional costs to enter into short-term contracts to cover these assignments.

Lost knowledge. Organizational and CLE training provided to the employee is lost.

Loss of morale among remaining employees.

According to various sources, the cost of replacing an employee can range from 25% to more than 250% of that employee's annual salary. Taking the average salary for an Attorney II employed by the Commission (\$6,108 per month according to the agency's salary survey -- attached hereto as Attachment B), that would be a cost of

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\$18,324 to \$183,240 for every terminating Attorney II.

A salary survey was conducted in FY 2016, of agency positions and other similar positions in North Dakota, to examine how the agency's salaries compare. The survey showed that the Commission employees were significantly underpaid. Additional funding to increase salaries was requested, but not granted, last session. The Commission has again conducted a salary survey. In FY 2018, the Commission gathered information on education and experience from the agency's attorneys and staff. The Commission also gathered information from other agencies – the Commission received information from HRMS, county human resources departments and state's attorneys' offices in counties in which the Commission has public defender offices. The Commission also received information from the Attorney General's office and the Judiciary.

The survey showed, in many areas, that the Commission's employees are paid significantly less than those employees in comparable governmental positions, especially those in the state's attorney's offices.

Principle 8 of the American Bar Association's 10 Principles of a Public Defense Delivery System, provides that there should be parity between defense counsel and the prosecution with respect to workload, salaries and other resources, such as benefits, support staff, etc.

To increase public defender office employees' salaries to bring them on par with comparable positions and maintain internal equity, would require increases of an average of \$1200 per month for supervising attorneys (attorney IIIs) and the deputy director; \$1000 per month for public defenders (attorney IIs); and \$525 per month for the agency's legal assistants, administrative assistant IIs and III, administrative officer I, and the accounting budget specialist III. This would require \$943,346 for increases in salaries, taxes and benefits, for a biennium. The Commission did ask for these increases in an optional package submitted with its budget request. The Governor did not include these increases in his budget recommendation. The Commission respectfully requests that the Committee authorize funding for these salary increases.

As to contractor rate of pay, the Commission's conflict contractors are currently paid at the rate of \$75.00 per hour. Most monthly contractors' payments are calculated

to correspond to that same rate based on yearly average number of case assignments and average hours worked per assignment. This is far less than federal panel attorneys are paid (they are paid \$140/hour in non-capital cases – cases which do not involve the death penalty) and significantly less than attorneys in private practice are paid. While attorneys do not provide indigent defense services to get rich, they still must be able to cover their overhead. In some areas of the state it is extremely difficult to find attorneys who are willing and able to provide services at \$75/hour. In some cases, an associate attorney is willing, but the firm is not, asserting that the rate is too low. The contract rate has not increased since February 1, 2012. To increase the contract rate to \$85/hour would require \$1,200,000 for a biennium. The Commission did ask for this increase for the 19-21 biennium in an optional package submitted with its budget request. The Governor's recommendation includes an increase of \$600,000 from the general fund for a \$5 per hour increase in contractor rates. The Commission respectfully requests that the Committee consider an increase of \$10/hour, and authorize funding for such an increase.

The Commission had no formal recommendations in its recent financial audit.

I want to thank the Committee for its support in the past, and assure you that we have always tried to be good stewards of the funds entrusted to us, and will continue to be.

I am happy to answer any questions you may have.

Deputy Director Travis Finck is present. He was formerly the Supervising Attorney in our Bismarck-Mandan office. He would like to make a short statement in support of the bill.

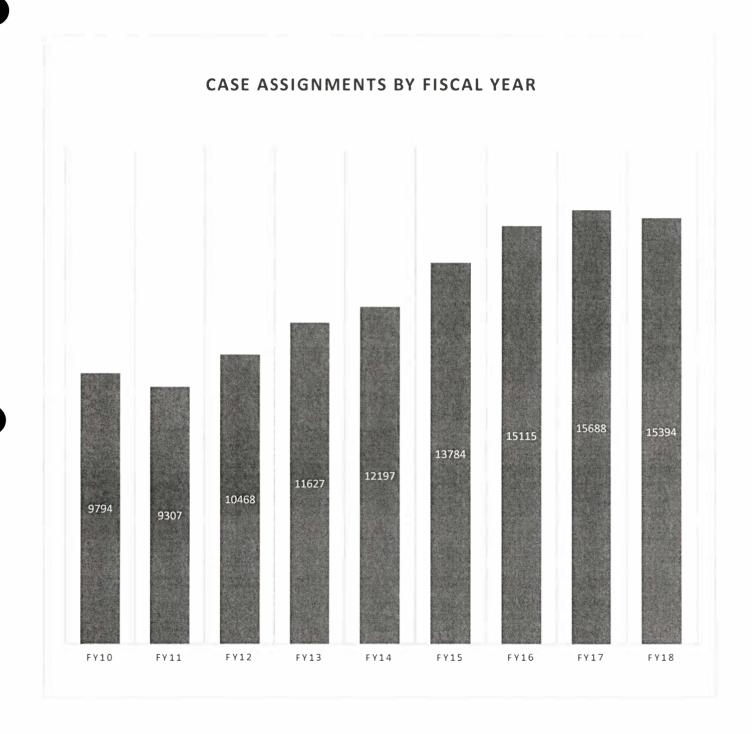
Submitted this 14th day of January, 2019

H. Jean Delaney, Director

ND Commission on Legal Counsel for Indigents

701-845-8632

jedelaney@nd.gov



L	4	A	В	С	D	E	F	G
	1	Position	Avg. Monthly Salary	more than 10 years with current employer	5.1 to 10 years with current employer	2 to 5 years with current employer		Notes
	2	Sr. Attorneys						Supervising duties or position requires 4 yrs of exp
	3	Commission Atty III (sup atty)	7464	7661	7278	7245	none	Atty III reqs 4 yrs exp; agency requires 4 yrs exp + 2 yrs supervisory exp; Grad Q; Salary Range 6442-8589-10736
	4	SA Elected w/o Morton	10222	10571	none	8130	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh
L	5	SA Elected	9779	10015	none	8130	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh, Morton
								Ward Deputy, GF ASA III, Stark ASA III, Burleigh Sr., McKenzie chief asst,
L	6	Sr. ASA	8634	8662	8664	8579	none	Morton ASA III, Cass Team Leaders
L	7	AG Division Directors	11123	11123	none	none	none	Avg of 18.8 yrs with employer
L	8 .	Judiciary - Director	10991	10991	none	none	none	37 years with employer
	9							
1	10 .	Jr. Attorneys						
	11	Commission Atty II	6108	none	6147	6137	6066	Atty II requires 2 yrs exp as atty; Grade O; salary range 5687-7583-9479
1	12	ASA w/ 2+ yr requirement	6997	7673	7367	6469		Burleigh ASA II, McKenzie ASA, Williams ASA
F	13	ASA w/ 1+ yr requirement	7190	8271	7855	6469	6157	Burleigh ASA II, McKenzie ASA, Williams ASA, Cass non-team leaders
	14	ASA average of all junior attys	6731	8271	7855	6222	5724	Burleigh ASA I and II, Ward ASA, McKenzie ASA, Williams ASA, Cass non-tean leaders, Stark ASA, Morton ASA, GF ASA I
1	15	Asst AG	7066	7896	6570	6702	6824	did not include intellectual property atty
1	16	Judiciary - Staff Atty	8318	8893	none		none	requires 2 yrs related exp; salary range 6746 - 10114
	17							, , , , ,
ŀ	18							
Ŀ	19	Legal Assistant						to conduct legal research; analyze codes, caselaw, independently draft legal docs
2	20	Commission Legal Asst II	3877	4014	3863	3872	3765	LA II requires BA in Paralegal or pre-law (or equiv); grade J; salary range 3586 4781-5976
La	21]	AG Paralegal	4923	4876	none	4357	5326	Requires BA in Paralegal + 2 yrs exp; grade K; salary range 3899-5196-6498
[2	22	AG Legal Asst I	3580			3580		LA I requires AA + 2yrs exp; grade H; salary range 2927-3903-4879

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_	A	В	С	D	E	F	G
1	Position	Avg. Monthly Salary	more than 10 years with current employer	5.1 to 10 years with current employer	2 to 5 years with current employer	_	Notes
_	Sr. Admin Staff	Salary	employer	employer	employer	employer	Notes
_	Commission Admin Asst III	3400	none	none	3400	none	requires AA+4 yrs exp; grade I; salary range 3231-4308-5385
26	Commission Admin Officer I	4000	none	none	4000	none	requires 3 years of high level admin support with lead worker/supervisory responsibilities; grade I; salary range 3231-4308-5385
27	SA Equiv.	4495	4921	3859	none	none	GF admin asst/office coordinator; Burleigh LA II; Williams Admin Asst III
28	AG Admin III	4948	4948	none	none	none	
29	Judiciary - Deputy Clerk III					4116*	requires HS + 3 yrs legal exp; has sup duties; salary range 4116 - 6171; * min salary for position
30							
31							
32	Jr. Admin Staff						
33	Commission Admin Asst II	3176	3335	3220	3229	3086	Requires AA+2 yrs exp; Grade H; salary range 2927-3903-4879
34	SA Equiv.	3745	4367	none	3685	3230	GF legal secretary; Stark office mgr; Burleigh LAI; McKenzie LAII
	All SA (not equiv of Admin II)	3707	4274	3577	3623	3327	
36	AG's Admin IIs	3605	3855	none	3356	none	
37	District or juvenile ct Admin asst	4237	4365	3996	3678	none	HS + 2 yrs secretarial exp in law; salary range 3533-5291
38	Executive Admin Asst	4681	4681	none	none	none	HS + 5 years secretarial exp in law; salary range 3824-5731
39	Judicial Asst	5148	5731	none	3982	none	AA +1 year sec or paralegal exp; salary range 3824-5731
40	Exec Judical Asst	5464	5464	none	none	none	AA +1 year exp in law office or court setting; salary range 4116-6171
41	Judiciary - Deputy Clerk II					3533*	requires HS + 2 yr exp in legal setting; salary range 3533 - 5291; * min salary for position



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House Bill 1022
House Appropriations-Government Operations Division

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
January 14,2019

Chairman Vigesaa, members of the House Appropriations-Government Operations Division, my name is Travis Finck, I am the Deputy Director of the Commission on Legal Counsel for Indigents, and on behalf of the employees and contractors that provide indigent defense services, I rise in support of House Bill 1022.

I hope my testimony may help to better understand the challenges we face as an agency and the fervor with which we greet those challenges every day. To provide background, I was appointed Deputy Director of the Commission on August 3, 2016. Prior to that, I was the supervising attorney in the Bismarck-Mandan Public Defender Office. I have also owned my own solo practice, wherein I contracted with the Commission. I have worked for a larger firm in Bismarck, and I worked in a small firm in Grand Forks where I also contracted with the Commission. In short, in some way, my entire professional life as an attorney has been devoted to indigent defense.

Today, the Commission continues to see challenges. The case assignment numbers continue at what will likely be record levels. The Mental Health and Drug crises have been pervasive and increasingly difficult. On top of that, our agency has suffered through historic turnover in the last calendar year. The turnover has become increasingly difficult to handle and we have continued to seek solutions. One thing that continues to be identified in exit interviews as a major factor, often the only factor, in an employee's decision to leave employment with the agency is pay. Our agency employees who we continue to ask more and more of continue to fall behind the wages paid in the offices of our counterparts. We asked for an increase for our employees last session which was understandably not

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provided given the then existing fiscal climate. The cases our attorneys and staff handle are difficult and

require hard work. We have continued to rely on the dedication of our employees to meet our mission.

However, that base has eroded with the historic turnover. We respectfully request the 66th Legislative

Assembly consider our optional packages intended to address all the challenges we face.

I would also like to briefly touch on some of the successes our agency has seen this last fiscal

year. We have provided counsel and/or related services in approximately 15,400 cases. We have

provided counsel in high profile cases. Our attorneys continue to achieve successful results in the

courtroom and in the community. Our attorneys have been active in relationships with the law school,

local public schools and our colleges and universities. Most importantly, our agency continues to meet

our mission.

As always, I would like to conclude by recognizing the dedication of our agency employees and

contract counsel. Daily our employees exude what I believe Benjamin Franklin was talking about when

he said: "If you would not be forgotten as soon as you are dead, either write something worth reading

or do something worth the writing."

Mr. Chairman, members of the committee, you have a difficult task at hand and I thank you for

your support in the past and ask for your continued support.

Submitted this14th day of January 2019.

Travis W. Finck, Deputy Director

N.D. Commission on Legal Counsel

(701) 845-8632, tfinck@nd.gov

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Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

	Executive Budget Recommendation					House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623	40.00	\$17,983,876	\$1,919,747	\$19,903,623	
2019-21 Ongoing Funding Changes									
Base payroll changes		(\$1)	\$1	\$0		(\$1)	\$1	\$0	
Salary increase		302,368	8,546	310,914		180,931	5,371	186,302	
Health insurance increase		150,428	4,252	154,680		178,181	4,462	182,643	
Retirement contribution increase		39,420	1,114	40,534				0	
Adds funding for professional service fees for contracted attorneys		600,000		600,000	1			0	
Adds funding for Microsoft Office 365 licensing expenses		1,508		1,508				0	
Total ongoing funding changes	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$359,111	\$9,834	\$368,945	
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	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$359,111	\$9,834	\$368,945	
2019-21 Total Funding	40.00	\$19,077,599	\$1,933,660	\$21,011,259	40.00	\$18,342,987	\$1,929,581	\$20,272,568	

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

Executive Budget Recommendation

House Version







Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

		Executive Budge	et Recommendat	ion	House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623	40.00	\$17,983,876	\$1,919,747	\$19,903,623
2019-21 Ongoing Funding Changes								
Base payroll changes		(\$1)	\$1	\$0		(\$1)	\$1	\$0
Salary increase		302,368	8,546	310,914		180,931	5,371	186,302
Health insurance increase		150,428	4,252	154,680		178,181	4,462	182,643
Retirement contribution increase		39,420	1,114	40,534				0
Adds funding for professional service fees for contracted attorneys		600,000		600,000				0
Adds funding for Microsoft Office 365 licensing expenses		1,508		1,508				0
Total ongoing funding changes	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$359,111	\$9,834	\$368,945
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	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$359,111	\$9,834	\$368,945
2019-21 Total Funding	40.00	\$19,077,599	\$1,933,660	\$21,011,259	40.00	\$18,342,987	\$1,929,581	\$20,272,568

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

Executive Budget Recommendation

House Version

Bannary 30, 2019

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Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

	Executive Budget Recommendation				House Version				House Changes to Executive Budget			
										rease (Decrease)	- Executive Budg	jet
	FTE	General	Other		FTE	General	Other		FTE	General	Other	
	Position	Fund	Funds	Total	Position	Fund	Funds	Total	Positions	Fund	Funds	Total
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623	40.00	\$17,983,876	\$1,919,747	\$19,903,623	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$1)	\$1	\$0		(\$1)	\$1	\$0				\$0
Salary increase		302,368	8,546	310,914		180,931	5,371	186,302		(121,437)	(3,175)	(124,612)
Health insurance increase		150,428	4,252	154,680		178,181	4,462	182,643		27,753	210	27,963
Retirement contribution increase		39,420	1,114	40,534				0		(39,420)	(1,114)	(40,534)
Adds funding for professional service fees for contracted attorneys	3	600,000		600,000				0		(600,000)		(600,000)
Adds funding for Microsoft Office 365 licensing expenses	-	1,508		1,508		1 508		1 508				0
Total ongoing funding changes	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$360,619	\$9,834	\$370,453	0.00	(\$733,104)	(\$4,079)	(\$737,183)
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	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$360,619	\$9,834	\$370,453	0.00	(\$733,104)	(\$4,079)	(\$737,183)
2019-21 Total Funding	40.00	\$19,077,599	\$1,933,660	\$21,011,259	40.00	\$18,344,495	\$1,929,581	\$20,274,076	0.00	(\$733,104)	(\$4,079)	(\$737,183)

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

Executive Budget Recommendation

House Version

January 30, 2019

4B1022

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	\$110	Fee		
	Current	Proposed		
188	750,000	1,680,000		
180	460,000	460 000		
Total fixed	1,210,000	2,140,000		
Variable _	1,760,000	830,000		
Split 188/180	880,000	415,000		
			Differ	ence
Total 188	1,630,000	2,095,000	135,000	600,000
Total 180	1,340,000	875,000	135,000	(330,000)
Grand total	2,970,000	2,970,000	270,000	270,000

	\$115 F	ee		
	Current	Proposed		
188	750,000	1,545,000		
180	460,000	460,000		
Total fixed	1,210,000	2,005,000		
Variable	1,895 000	1,100,000		
Split 188/180	947,500	550,000		
			Differ	rence
Total 188	1,697,500	2,095,000	202,500	600,000
Total 180	1 <u>,</u> 407,500	1,010,000	202,500	(195,000)
Grand total	3,105,000	3,105,000	405,000	405,000

	Current	Proposed		
188	750,000	1,275,000		
180	460,000	460,000		
Total fixed	1,210,000	1,735,000		
Variable	2,165,000	1,640 000		
Split 188/180	1,082,500	820,000		
			Diffe	rence
Total 188	1,832,500	2,095,000	337,500	600,000
Total 180	1,542,500	1,280,000	337,500	75,000
Grand total	3,375,000	3,375,000	675,000	675,000

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Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

		Executive Budge	et Recommenda	tion	House Version				House Changes to Executive Budget			
											- Executive Budg	jet
	FTE	General	Other		FTE	General	Other		FTE	General	Other	
	Position	Fund	Funds	Total	Position	Fund	Funds	Total	Positions	Fund	Funds	Total
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623	40.00	\$17,983,876	\$1,919,747	\$19,903,623	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$1)	\$1	\$0		(\$1)	\$1	\$0				\$0
Salary increase		302,368	8,546	310,914		180,931	5,371	186,302		(121,437)	(3,175)	(124,612)
Health insurance increase		150,428	4,252	154,680		178,181	4,462	182,643		27,753	210	27,963
Retirement contribution increase		39,420	1,114	40,534				0		(39,420)	(1,114)	(40,534)
Adds funding for professional service fees for contracted attorneys		600,000		600,000				0		(600,000)		(600,000)
Adds funding for Microsoft Office 365 licensing expenses		1,508		1,508		1,508		1,508				0
Total ongoing funding changes	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$360,619	\$9,834	\$370,453	0.00	(\$733,104)	(\$4,079)	(\$737,183)
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	0.00	\$1,093,723	\$13,913	\$1,107,636	0 00	\$360,619	\$9,834	\$370,453	0.00	(\$733,104)	(\$4,079)	(\$737,183)
2019-21 Total Funding	40.00	\$19,077,599	\$1,933,660	\$21,011,259	40.00	\$18,344,495	\$1,929,581	\$20,274,076	0.00	(\$733,104)	(\$4,079)	(\$737,183)
Other Sections for Commission on Legal Counsel for Indigents	- Budget No	. 188										
	gottio	Executive Budge	et Recommenda	tion		House	e Version					

There are no other sections for this agency.

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Court Administration Fee - Current Fee of \$100

	Current Allocations	Proposed Allocations	
188 - Indigent Defense	\$750,000	\$1,950,000	
180 - Judicial Branch	460,000	460,000	
Total fixed revenue per NDCC 29-26-22	\$1,210,000	\$2,410,000	
Variable revenue collected	1,490,000	290,000	
50% of variable revenue for each agency	\$745,000	\$145,000	
			Difference
Total 188 - Indigent Defense	\$1,495,000	\$2,095,000	\$600,000
Total 180 - Judicial Branch	1,205,000	605,000	(600,000)
Total revenue collected by both agencies	\$2,700,000	\$2,700,000	\$0

Court Administration Fee - Proposed Increase to a \$110 Fee

Court Administra	tion rope		3 U V 1 1 0 1 CC	
	Current	Proposed		
	Allocations	Allocations		
188 - Indigent Defense	\$750,000	\$1,680,000		
180 - Judicial Branch	460,000	460,000		
Total fixed revenue per NDCC 29-26-22	\$1,210,000	\$2,140,000		
Variable revenue collected	1,760,000	830,000		
50% of variable revenue for each agency	\$880,000	\$415,000		
			Diffe	rence
			\$110 Current	\$110 Proposed
			to \$100 Current	to \$100 Current
Total 188 - Indigent Defense	\$1,630,000	\$2,095,000	\$135,000	\$500,000
Total 180 - Judicial Branch	1,340,000	875,000	135,000	(330,000)
Total revenue collected by both agencies	\$2,970,000	\$2,970,000	\$270,000	\$270,000

Court Administration Fee - Proposed Increase to a \$125 Fee

	Current Allocations	Proposed Allocations				
188 - Indigent Defense	\$750,000	\$1,275,000				
180 - Judicial Branch	460,000	460,000				
Total fixed revenue per NDCC 29-26-22	\$1,210,000	\$1,735,000				
Variable revenue collected	2,165,000	1,640,000				
50% of variable revenue for each agency	\$1,082,500	\$820,000				
			Difference			
			\$125 Current to \$100 Current	\$125 Proposed to \$100 Current		
Total 188 - Indigent Defense	\$1,832,500	\$2,095,000	\$337,500	5800,000		
Total 180 - Judicial Branch	1,542,500	1,280,000	337,500	75,000		
Total revenue collected by both agencies	\$3,375,000	\$3,375,000	\$675,000	\$675,000		

^{*}Estimates assume no changes in case loads, ability to collect fees, and other changes such as the affect of Marsey's Law

Court Administra	tion Fee - Propo	sed Increase to	a \$115 Fee	
	Current	Proposed		
	Allocations	Allocations		
188 - Indigent Defense	\$750,000	\$1,545,000		
180 - Judicial Branch	460,000	460,000		
Total fixed revenue per NDCC 29-26-22	\$1,210,000	\$2,005,000		
Variable revenue collected	1,895,000	1,100,000		
50% of variable revenue for each agency	\$947,500	\$550,000		
			Diffe	rence
			\$115 Current	\$115 Proposed to \$100 Current
Total 188 - Indigent Defense	\$1.697.500	\$2,095,000	\$202,500	\$600,000
Total 180 - Judicial Branch	1,407,500	1,010,000	202,500	(195,000)
Total revenue collected by both agencies	\$3,105,000	\$3.105.000	\$405,000	\$405,000

Court Administration Fee - Proposed Increase to a \$150 Fee

	Current	Proposed		
	Allocations	Allocations		
188 - Indigent Defense	\$750,000	\$600,000		
180 - Judicial Branch	460,000	460,000		
Total fixed revenue per NDCC 29-26-22	\$1,210,000	\$1,060,000		
Variable revenue collected	2,840,000	2,990,000	37	
50% of variable revenue for each agency	\$1,420,000	\$1,495,000		
			Diffe	rence
			\$125 Current	\$110 Proposed
			to \$100 Current	to \$100 Current
Total 188 - Indigent Defense	\$2,170,000	\$2,095,000	\$675,000	\$600,000
Total 180 - Judicial Branch	1,880,000	1,955,000	675,000	750,000
Total revenue collected by both agencies	\$4,050,000	\$4,050,000	\$1,350,000	\$1,350,000

February 5,2019

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Fiscal No. 1

Prepared by the Legislative Council staff for the House Appropriations - Government Operations Division Committee February 4, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1022

Page 1, replace lines 10 through 17 with:

		Adjustments or	
	Base Level	Enhancements	Appropriation
Commission on legal counsel	<u>\$19,903,623</u>	<u>\$370,453</u>	<u>\$20,274,076</u>
for indigents			
Total all funds	\$19,903,623	\$370,453	\$20,274,076
Less estimated income	1,919,747	9,834	1,929,581
Total general fund	\$17,983,876	\$360,619	\$18,344,495
Full-time equivalent positions	40.00	0.00	40.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigents - House Action

	Base Budget	House Changes	House Version
Comm. on Legal Counsel for Indigents	\$19,903,623	\$370,453	\$20,274,076
Total all funds	\$19,903,623	\$370,453	\$20,274,076
Less estimated income	1,919,747	9,834	1,929,581
General fund	\$17,983,876	\$360,619	\$18,344,495
FTE	40.00	0.00	40.00

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

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Adds Funding for Microsoft Office 365 Licenses ³	Total House Changes
Comm. on Legal Counsel for Indigents		\$368,945	\$1,508	\$370,453
Total all funds Less estimated income General fund	\$0 1 (\$1)	\$368,945 9,833 \$359,112	\$1,508 0 \$1,508	\$370,453 9,834 \$360,619
FTE	0.00	0.00	0.00	0.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$180,931	\$5,371	\$186,302
Health insurance increase	<u>178,181</u>	4,462	182,643
Total	\$359,112	\$9,833	\$368,945

³ Funding is added for Microsoft Office 365 licensing expenses.

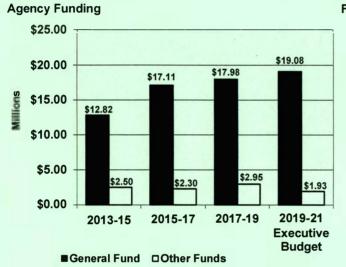
Department 188 - Commission on Legal Counsel for Indigents House Bill No. 1022

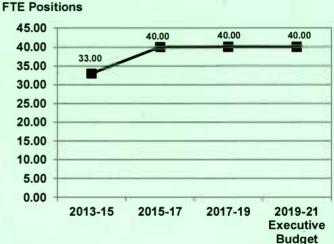
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	40.00	\$19,077,599	\$1,933,660	\$21,011,259
2017-19 Legislative Appropriations	40.00	17,983,876	2,946,747	20,930,623
Increase (Decrease)	0.00	\$1,093,723	(\$1,013,087)	\$80,636

Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2019-21 Executive Budget	\$19,077,599	\$0	\$19,077,599
2017-19 Legislative Appropriations	17,983,876	0	17,983,876
Increase (Decrease)	\$1,093,723	\$0	\$1,093,723





Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$19,077,599	\$1,933,660	\$21,011,259
2019-21 Base Level	17,983,876	1,919,747	19,903,623
Increase (Decrease)	\$1,093,723	\$13,913	\$1,107,636

Attached as an appendix is a detailed comparison of the executive budget to the agency's base level appropriations.

First House Action

Attached is a comparison worksheet detailing first house changes to base level funding and the executive budget.

Executive Budget Highlights (With First House Changes in Bold)

General Fund

1.	Provides funding for state employee salary and benefit increases,
	of which \$310,914 is for salary increases, \$154,680 is for health
	insurance increases, and \$40,534 is for retirement contribution
	increases. The House added funding for salary adjustments
	of 2 percent per year and increases in health insurance
	premiums from \$1,241 to \$1,427 per month. The House did
	not add funding for retirement contribution increases.

Adds funding for professional service fees to increase the hourly rate paid to contracted attorneys from \$75 per hour to \$80 per \$492,216 \$13,912 \$506,128

Other Funds

\$600,000 \$0 \$600,000

Total

hour, providing a total of \$10,922,178 for professional service fees. The House did not add funding for professional service fees.

3. Adds funding for Microsoft Office 365 licensing expenses

\$1,508

\$0

\$1,50

Other Sections in House Bill No. 1022

There are no other sections for this agency.

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.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Significant Audit Findings

The operational audit for the Commission on Legal Counsel for Indigents conducted by the State Auditor's office for the period ending June 30, 2017, identified no significant audit findings.

Major Related Legislation

House Bill No. 1069 - Provides for any file, record, or information regarding representation of a party by the Commission on Legal Counsel for Indigents and considered subject to attorney-client privilege can be disclosed to the party being provided presentation, to the attorney providing representation, and to the newly assigned counsel with consent of the represented party.

House Bill No. 1070 - Requires witness fees, mileage, and other travel expenses incurred by fact witnesses subpoenaed by indigent defense attorneys for juvenile court proceedings be paid by the Commission on Legal Counsel for Indigents rather than the Attorney General.

Senate Bill No. 2074 - Adds the Commission on Legal Counsel for Indigents to the list of state agencies not required to destroy juvenile court records, files, and index references.

Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

	Executive Budget Recommendation				House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623	40.00	\$17,983,876	\$1,919,747	\$19,903,623
2019-21 Ongoing Funding Changes								
Base payroll changes		(\$1)	\$1	\$0		(\$1)	\$1	\$0
Salary increase		302,368	8,546	310,914		180,931	5,371	186,302
Health insurance increase		150,428	4,252	154,680		178,181	4,462	182,643
Retirement contribution increase		39,420	1,114	40,534				0
Adds funding for professional service fees for contracted attorneys		600,000		600,000				0
Adds funding for Microsoft Office 365 licensing expenses		1,508		1,508		1,508		1,508
Total ongoing funding changes	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$360,619	\$9,834	\$370,453
One-time funding items				\$0				\$0
No one-time funding items	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
Total one-time funding changes	0.00	\$ 0	\$0	\$0	0.00	ΦU	\$0	\$0
Total Changes to Base Level Funding	0.00	\$1,093,723	\$13,913	\$1,107,636	0.00	\$360,619	\$9,834	\$370,453
2019-21 Total Funding	40.00	\$19,077,599	\$1,933,660	\$21,011,259	40.00	\$18,344,495	\$1,929,581	\$20,274,076

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

Executive Budget Recommendation

House Version

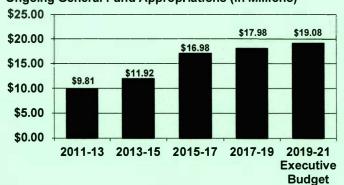
Budget

Department 188 - Commission on Legal Counsel for Indigents

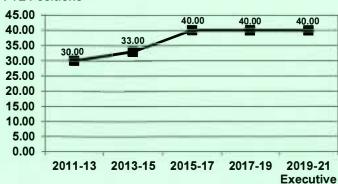
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2011-13









Ong	going General	Fund Appropr	riations		
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Ongoing general fund appropriations	\$9,808,430	\$11,923,410	\$16,982,909	\$17,983,876	\$19,077,599
Increase (decrease) from previous biennium	N/A	\$2,114,980	\$5,059,499	\$1,000,967	\$1,093,723
Percentage increase (decrease) from previous biennium	N/A	21.6%	42.4%	5.9%	6.1%
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	21.6%	73.1%	83.4%	94.5%

Major Increases (Decreases) in Ongoing General Fund Appropriations

2013-15 Biennium

1. Added funding for 1 FTE attorney position	\$196,639
2. Added funding for 2 FTE legal assistant positions1 in Dickinson and 1 in Williston	\$235,486
3. Provided additional funding for contract attorneys	\$1,100,000
2015-17 Biennium	
 Added funding for 1 FTE attorney position and 1 FTE administrative position and related operating expenses to establish a Watford City office 	\$539,555
2. Added funding to convert 5 temporary employees to FTE positions	\$720,794
 Added funding for increased costs of legal fees, contract fees, case-specific fees, and other costs related to increased caseloads 	\$4,200,000
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 (Executive Budget Recommendation)	

1. Adds funding for professional service fees to increase the hourly rate paid to contracted attorneys from \$75 per hour to \$80 per hour, providing a total of \$10,922,178 for professional service fees.

The House did not add funding for professional service fees.

\$600,000

GOVERNOR'S RECOMMENDATION FOR THE COMMISSION ON LEGAL COUNSEL FOR INDIGENTS AS SUBMITTED BY THE OFFICE OF MANAGEMENT AND BUDGET

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, 2019, and ending June 30, 2021, as follows:

		Adjustments or	
	Base Level	Enhancements	Appropriation
Commission on legal counsel	\$19,903,623	\$1,107,636	\$21,011,259
Total all funds	\$19,903,623	\$1,107,636	\$21,011,259
Less estimated income	1,919,747	13,913	1,933,660
Total general fund	\$17,983,876	\$1,093,723	\$19,077,599
Full-time equivalent positions	40.00	0.00	40.00

BB 1022 2-27-19 A1

HB 1022 Senate Appropriations Committee February 27, 2019 Testimony of H. Jean Delaney, Executive Director, NDCLCI

Good afternoon. My name is Jean Delaney and I am the Director of the North Dakota Commission on Legal Counsel for Indigents.

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. Generally, there is a right to counsel at public expense for indigent persons who are charged with felonies and misdemeanors in North Dakota state district court, those who are applicants for postconviction relief under the Uniform Postconviction Procedure Act, and in some juvenile and miscellaneous matters. There is also a right to counsel at public expense for indigent persons in appeals from these matters to the North Dakota Supreme Court. There is no right to counsel provided by the Commission in most civil matters, municipal court matters, and in federal court.

The Commission is governed by North Dakota Century Code Chapter 54-61. Section 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 Commission has established Guidelines to Determine Eligibility for Indigent Defense Services. In order 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.

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 federal Department of Health and

Human Services.

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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.

The Commission's "mission 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. To help ensure that services are provided only to eligible individuals, the Commission also provides training to those persons who make the eligibility determinations.

Delivery of Services

The Commission provides indigent defense services through its employees in its public defender offices located in Fargo, Grand Forks, Minot, Williston, Dickinson, and Bismarck, and through its monthly and conflict contractors. By statute, the Commission is required to, and does contract for services, at a minimum level of fifty percent of its biennial caseload. During fiscal year 2018, 68.9% of case assignments were handled by contract attorneys; 31.1% were handled by public defenders.

The Commission's monthly contractors each take some specified portion of cases in some specified geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The Commission currently has over 75 monthly contracts and more than 100 conflict contractors.

The Commission's public defender-employees take case assignments in the geographical area in which their office is located, conflict matters in nearby districts, and across the state when needed.

The system is administered through the agency's administrative office in Valley City. The administrative office coordinates the delivery of indigent services throughout the state, including contracting with attorneys to provide services, staffing the public defender offices, providing support services, and training attorneys and staff.

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" rather than "case" 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 considered to be 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.

Since FY11 there have been some significant increases in the number of case assignments handled by Commission attorneys. I've attached a document (Attachment A) showing the yearly assignments. State-wide, the number of case assignments was a bit lower in FY2018 than in FY2017, but higher than any year before that. State-wide, services were provided in 15,394 assignments in FY2018, compared to 15,688 in FY17. This number for FY17 includes 434 DAPL assignments. If those are subtracted, the number of assignments would have been lower in FY17 than in FY18, but fairly close.

The Commission also tracks case assignments by judicial district. Three of the eight judicial districts saw an increase in case assignment numbers during FY18. During FY2018, attorneys in the East Central Judicial District handled 3,669 assignments, a small increase from the 3627 handled in FY17. The North Central Judicial District assignments increased from 1671 to 1691; and the Southeast increased from 1297 to 1354.

There were decreases in five of the districts. Assignments in the Northeast Judicial District decreased from 951 to 944. Assignments in the Southwest decreased from 606 to 590. The number of assignments in the Northeast Central Judicial District decreased from 1345 to 1315; however, other than in FY17, the FY18 number is higher than the previous year's. The South Central decreased from 4561 to 4337; however,

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other than in FY17, there were more assignments in FY18 than in previous years. (The FY17 assignment number for the SCJD also includes 434 DAPL assignments). The number of assignments in the Northwest Judicial District decreased from 1630 to 1494.

It is always difficult to forecast what the case assignment numbers will be in a future time period. The Commission has no real control over them. The Commission has no control over the number of crimes committed and investigated, the number of persons charged and the charges filed, and the number of persons who apply for services, and are found eligible. That being said, projecting the first four months of FY19 over the entire year, it is not unlikely that there will be case assignments in excess of 15,700 in FY19.

Funding of the Agency

Historically, the Commission has been funded from two sources: the general fund, and "fund 282" (the indigent defense administration fund). In addition, 2017 HB 1024 provides for borrowing authority of up to \$1,027,000 for DAPL expenses incurred after June 30, 2015 through June 30, 2019.

The indigent defense administration fund is funded through collection of two statutory fees paid by criminal defendants: the \$35 indigent defense application fee and the Commission's portion of a \$100 court administration fee (the indigent defense/facility improvement fee). Pursuant to statute, this fee is split 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 collection of these fees is not guaranteed. District Judges, who impose the fees, have the discretion to waive the fees in any particular case. Defendants do not always pay the fees that were imposed. Also, with the passage of Marsy's Law, the application fee and indigent defense/facility improvement fee are no longer the first priorities for collection among fines and fees ordered by the court to be paid. Traditionally, the application fee and the indigent defense facility improvement fee were collected from defendants as first and second priorities, before any other fees or fines; however, with the passage of Marsy's Law, the collection of restitution is now the first

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priority, and as a result, it was expected that there will be reduced collection of the application and indigent defense/facility improvement fees. Since fees may be collected significantly later than when imposed, the fiscal effect of Marsy's Law on these fees cannot be clearly ascertained. Over the past few biennia, an average of \$1,870,000 has been deposited into this fund each biennium. This current biennium, it looks as though collections may be similar or a little bit less.

The District Courts also have the authority to order reimbursement of attorney fees, however, any attorneys' fees that are recouped go into the general fund, not fund 282.

2017 HB 1024 provided borrowing authority of up to \$1,027,000 for DAPL expenses only, which were incurred after June 30, 2015 but before June 30, 2019. Last legislative session, it was expected that the DAPL case assignments would be much more expensive than they actually were. Although there were quite a few DAPL case assignments – there were a total of 445 DAPL assignments – it was expected that there would be more of them. A very high percentage of these assignments were expected to go to jury trial. Jury trials take more attorney time and costs more than cases disposed of by other reasons. Also, many of the assignments involved arrests under circumstances which required the assigning of separate counsel to each defendant. One of these events required over 80 separate attorneys. There weren't eighty indigent defense attorneys in the South Central Judicial District, so the Commission had to use attorneys from across the state and northwestern Minnesota to provide services. This was expected to and did require additional attorney travel time and mileage. However, many of the cases ended up being dismissed, while others, after the initial assignment, were handled by retained, or pro bono counsel - counsel not provided by or paid for by the Commission. \$76,758 of the borrowing authority was used for DAPL assignments in the 2015-17 biennium, and only \$69,676 has been used this biennium. Most, if not all, of the DAPL expenses have been paid.

The agency receives no federal funds or grants.

Funding for the Commission for the 2017-19 biennium consists of \$17,983,876 from the general fund and \$1,919,747 from fund 282, for a total of \$19,903,623, and the remaining borrowing authority of \$950,242 for costs of the DAPL case assignments.

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Most of the Commission's budget goes directly to providing mandated indigent defense services, either through its public defender offices or our contract attorneys, and related services such as private investigators. The major components making up the "base level" appropriation amount for the Commission are salaries and benefits, professional fees and services, ITD expense, and rent. As of November 30, 2018, these components comprised 96.2% of the agency's expenditures for the biennium.

In order to meet the Governor's 90 percent (general fund) budget request guideline, the Commission identified a reduction of \$1,632,788 from Fees- Professional Services, and \$165,600 for the reduction of two FTEs. In order to meet the Governor's 95 percent (special fund) budget request guideline, the Commission identified a reduction of \$95,987 from Fees-Professional Services.

The Commission submitted optional packages seeking restoration of the general and special fund amounts, to restore the FTEs, for funding to bring agency employee salaries up to those of comparable positions (which I'm terming "equity salary increases"), and to increase contractor rate of pay.

As to the request for restoration of the general and special fund amounts, there are not any areas in the Commission's budget that could be cut sufficiently to meet the Governor's budget request guideline, other than Fees-Professional Services. However, the Commission would not be able to provide constitutionally mandated services to all indigent persons eligible for and in need of services with these reductions. An attorney cannot take an unlimited number of case assignments and still provide constitutionally adequate services.

As to the request to restore the FTEs, cutting FTEs is unlikely to result in any significant savings. The cuts would need to be in staff, not attorneys. Attorneys are necessary to provide legal services; legal services cannot be provided by administrative staff, but an attorney can perform administrative duties if needed. However, it's not an efficient use of resources. Additionally, the agency is not overstaffed. In most offices, the Commission has temporary secretaries which are necessary to help the administrative staff with reception, e-filing, drafting documents, assigning case, and whatever else is needed in the office. Many of the agency's admin staff (FTEs and temporary) have to put in overtime on occasion.

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As to the optional packages to bring agency employee salaries up to those of comparable positions ("equity" salary increases) and to increase the contractor rate of pay, I will address these in more detail in a moment.

In his recommendation, Governor Burgum agreed with the Commission's requests to restore the general and special fund amounts, and the FTEs. He also recommended a \$1,093,723 increase in appropriation from the general fund for ongoing funding changes which included funds for the Microsoft 365 upgrade, state employee fringe benefit and compensation increases, and \$600,000 to increase the Commission's contractors' rate of pay by \$5/hour. Governor Burgum also recommended authorization to spend an additional \$13,913 from fund 282 for the state employee fringe benefit and compensation increases for an agency employee whose salary is paid through fund 282.

The House version of HB 1022 includes ongoing funding increases of \$360,619 to the base level funding, for the Microsoft 365 upgrade and state employee fringe benefit and compensation increases, and \$9,834 from fund 282 for the state employee fringe benefit and compensation increases for the employee whose salary is paid through fund 282. There is no funding for equity salary increases, nor for increases in contractor compensation.

I respectfully request that this Committee provide general fund increases for equity salary increases and increases in contractor compensation.

As to the request for "equity salary increases," the Commission has had a very high turnover rate. Based on exit interviews with exiting employees, and other conversations with agency employees, the high turnover rate is due in large part to lower salaries paid to Commission employees. I'd like to provide some examples. In early 2018, one of our attorneys from the western part of the state noted in his exit interview that he was leaving for a better paying position. He stated that his work for the Commission was almost a completely positive experience, both with the agency and his office, but that his salary was lower, then at the time of the exit interview, than it was two years before, because the oil patch add-on had been discontinued. He said he felt "disrespected" with the lower salary and no raises. When an Administrative Assistant II terminated his employment, he said he was happy and liked his job, liked his office; the

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reason he was leaving was pay. Another Administrative Assistant II told us that she "truly enjoyed the work" in the office, but was leaving for a job with higher pay, and she would have stayed, but for that.

The Commission has also had some difficulty filling positions due to salaries offered to new hires. When filling positions, the Commission has tried to maintain internal equity, and not offer significantly higher salaries to new employees over long term employees.

The Commission employs 40 FTEs. For calendar year 2018, the Commission's turnover rate among FTEs was 37.5%. Of the fifteen FTEs whose employment with the Commission terminated in 2018, eight indicated pay as the main reason, or one of the main reasons for leaving employment. Four employees left due to failing to successfully complete probation or other performance issues. Three left for other reasons, such as health, obtaining a "dream job" or to be near family (although this attorney indicated the decision to move may have been different had the employee's position with the agency paid more).

High turnover is expensive; it is expensive to hire, train, and replace employees. Some of the costs of the termination of an employee include:

Recruitment/hiring costs. Openings must be advertised. Applicants must be rated and interviewed. References must be checked. When hired, there are the many new-hire forms for taxes, benefits, etc. The new employee must be given appropriate access to state programs and computer drives, and trained on them.

Overworked remaining staff. An attorney's open cases must be transferred to other attorneys, who already have full caseloads of their own. Remaining admin staff may have to work overtime to perform the duties of the exiting admin staff member.

Disruption of services. Some court hearings and trials must be continued to accommodate scheduling conflicts with new attorneys, and to provide time for the new attorney to prepare. Case preparation by terminated employee is lost and must be repeated by a newly assigned attorney. The time and effort spent by the exiting attorney in developing a relationship with the client is lost.

Contract costs. If remaining office attorneys cannot cover the terminating employee's open cases, or cases which would have been assigned to the terminating

employee, had the employee not left, there may be additional costs to enter into short-term contracts to cover these assignments.

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Lost knowledge. Organizational and CLE training provided to the employee is lost.

Loss of morale among remaining employees.

According to various sources, the cost of replacing an employee can range from 25% to more than 250% of that employee's annual salary. Taking the average salary for an Attorney II employed by the Commission (\$6,108 per month according to the agency's salary survey -- attached hereto as Attachment B), that would be a cost of \$18,324 to \$183,240 for every terminating Attorney II.

A salary survey was conducted in FY 2016, of agency positions and other similar positions in North Dakota, to examine how the agency's salaries compare. The survey showed that the Commission employees were significantly underpaid. Additional funding to increase salaries was requested, but not granted, last session. The Commission has again conducted a salary survey. In FY 2018, the Commission gathered information on education and experience from the agency's attorneys and staff. The Commission also gathered information from other agencies – the Commission received information from HRMS, county human resources departments and state's attorneys' offices in counties in which the Commission has public defender offices. The Commission also received information from the Attorney General's office and the Judiciary.

The survey showed, in many areas, that the Commission's employees are paid significantly less than those employees in comparable governmental positions, especially those in the state's attorney's offices.

All of our agency's FTE positions, with the exception of the director and deputy director, are classified positions under the state's employee classification system.

Under the state's classification system, each job title is assigned a pay grade, and each pay grade has a wide range of possible salaries. Most of the Commission's classified employees are paid near the very bottom of the ranges for their positions.

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Our supervising attorneys are classified as Attorney IIIs under the state's classification system. The minimum qualifications for the position are a JD "degree, license to practice law in North Dakota, and four years of work experience as an attorney that included administration or management experience or experience in the practice of law directly related to the agency programs or operations." Attorney IIIs are Pay Grade Q. The salary range for positions classified as Grade Q is \$6442 to \$10,736 per month, with \$7516 being the first quartile, and \$8589 being the "market policy point" or midpoint. Currently, the average salary for the Commission's Attorney IIIs is \$7,464.35 per month. This is not even to the first quartile. Only three of the Commission's supervising attorneys' salaries exceed the first quartile, and none exceed the midpoint.

Similar positions in other governmental agencies pay significantly more. Our salary survey from Fiscal Year 2018, shows that in those counties in which the agency had a public defender office, the counties' elected states attorneys earned significantly more than our supervising attorneys. The SAs earned an average of \$10,222/month (if Morton is included, the average is \$9779 per month), with a range of \$8130 to \$11,495 per month (\$6679 to \$11,495 if Morton is included). "Senior" assistant state's attorneys earned an average of \$8634/month with a range of \$7571 to \$9613 per month. The Attorney General's division directors earned an average of \$11,123 per month (although they averaged more than 18 years with the AG's office).

The Commission's other FTE attorney positions are classified under the state's classification system as Attorney IIs. The minimum qualifications for the positions are a JD "degree, license to practice law in North Dakota, and two years of work experience as an attorney." Attorney IIs are Pay Grade O. The salary range for positions classified as Grade O is \$5,687 per month to \$9479 per month, with \$6635 being the first quartile and \$7583 the midpoint. Currently, the average salary for the Commission's Attorney IIs is \$6,019.80/month (at the time of the salary survey, it was \$6108/month). This is significantly less than the first quartile. None of the Commission's Attorney IIs' salaries exceed the first quartile.

Positions similar to the Commission's Attorney IIs, in other governmental agencies, pay significantly more. The salary survey shows that the "junior" assistant state's attorneys in offices in cities in which the Commission has public defender offices,

with a minimum requirement of two years of experience, earned an average of \$6997 per month, with a range of \$5591 to \$7757 per month. Assistant attorney generals (omitting an attorney in a greatly specialized area who was paid a significantly higher wage) were calculated to have an average monthly salary of \$7066, with a range of \$5424 to \$9670. Judiciary staff attorneys averaged \$8318/month, with a range of \$7023 to \$10,114. Omitting the attorney making \$10,114 (as the attorney has significantly more years of experience than others), the judiciary staff attorneys averaged \$7959 per month, with a range of \$7023 to \$8601/month.

Our Legal Assistants/Paralegals are classified under the state's classification system as Legal Assistant IIs. These positions require a bachelor's degree in paralegal studies or the equivalent. They are Pay Grade J, with a salary range of \$3586 to \$5976 month. The first quartile is at \$4181, and midpoint is \$4781. Currently, the average salary for the Commission's Legal Assistant IIs is \$3853.31 (at the time of the salary survey it was \$3877). This is significantly less than the first quartile. None of the agency's Legal Assistant IIs' salaries exceed the first quartile.

There aren't many comparable positions to the Commission's Legal Assistant II positions. Paralegal positions in the Attorney General's office are classified under the state system as Pay Grade K, and in addition to the bachelor's degree in paralegal studies, require two years' experience – most of the Commission's legal assistants would meet this additional requirement. At the time of the salary survey, the Attorney General's paralegals average salary was \$4923 per month, with a range of \$4357 to \$5653/month.

Our offices' administrative assistants (with one exception) are classified under the state's classification system as Administrative Assistant IIs. This position requires an associates' degree in office support and two years' experience or the equivalent. Admin IIs are Pay Grade H, with a salary range of \$2927 to \$4879 per month. The first quartile is \$3415, and midpoint is \$3903. The average salary for the agency's Admin IIs is \$3,347.09, which is less than the first quartile. Only four of the agency's Admin IIs are paid more than the first quartile, with none exceeding the midpoint.

Positions similar to the Commission's Administrative Assistant IIs, in other governmental agencies, pay significantly higher wages. The salary survey shows that the state's attorneys' "junior" administrative assistant positions with similar minimum

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requirements, paid an average of \$3745 per month, with a range of \$3180 to 5318 per month. The Attorney General's Administrative Assistant IIs averaged \$3605, with a range of \$3100 to \$4081/month. If the two longest term admin staff are removed, the average is \$3536, with a range of \$3100 to \$3644. The judiciary's district or juvenile court admin staff (a position not requiring a degree) averaged \$4237, with a range of \$3678 to \$5291 per month. If the six longest term staff are removed, the average was \$4023, with a range of \$3678 to \$4324 per month.

Principle 8 of the American Bar Association's 10 Principles of a Public Defense Delivery System, provides that there should be parity between defense counsel and the prosecution with respect to workload, salaries and other resources, such as benefits, support staff, etc.

We calculated that to increase public defender office employees' salaries to bring them on par with comparable positions and maintain internal equity, would require increases of an average of \$1200 per month for supervising attorneys (attorney IIIs) and the deputy director; \$1000 per month for public defenders (attorney IIs); and \$525 per month for the agency's legal assistants, administrative assistant IIs and III, administrative officer I, and the accounting budget specialist III. This would require \$943,346 for increases in salaries, taxes and benefits, for a biennium. The Commission respectfully requests that the Committee authorize funding for these salary increases.

As to contractor rate of pay, the Commission's conflict contractors are currently paid at the rate of \$75.00 per hour. Most monthly contractors' payments are calculated to correspond to that same rate based on yearly average number of case assignments and average hours worked per assignment. This is far less than federal panel attorneys are paid (they are paid \$140/hour in non-capital cases – cases which do not involve the death penalty) and significantly less than attorneys in private practice are paid. Hourly rates paid by ND counties for indigent defense attorneys in mental health cases and in cases to civilly commit a person as a sexually dangerous individual range from \$90 to \$100. While attorneys do not provide indigent defense services to get rich, they still must be able to cover their overhead. In some areas of the state it is extremely difficult to find attorneys who are willing and able to provide services at \$75/hour. In some cases, an associate attorney is willing, but the firm is not, asserting that the rate is too low. The

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contract rate has not increased since February 1, 2012. To increase the contract rate to \$85/hour would require \$1,200,000 for a biennium. The Commission did ask for this increase for the 19-21 biennium in an optional package submitted with its budget request. The Governor's recommendation includes an increase of \$600,000 from the general fund for a \$5 per hour increase in contractor rates. The Commission respectfully requests that the Committee consider an increase of \$10/hour, and authorize funding for such an increase.

The Commission had no recommendations in its recent financial audit.

I want to thank the Committee for its support in the past, and assure you that we have always tried to be good stewards of the funds entrusted to us, and will continue to be.

Submitted with my written testimony is the written testimony of several of our agency's supervising attorneys.

I am happy to answer any questions you may have.

Deputy Director Travis Finck is present. He was formerly the Supervising Attorney in our Bismarck-Mandan office. He would like to make a short statement in support of the bill.

Submitted this 27th day of February, 2019

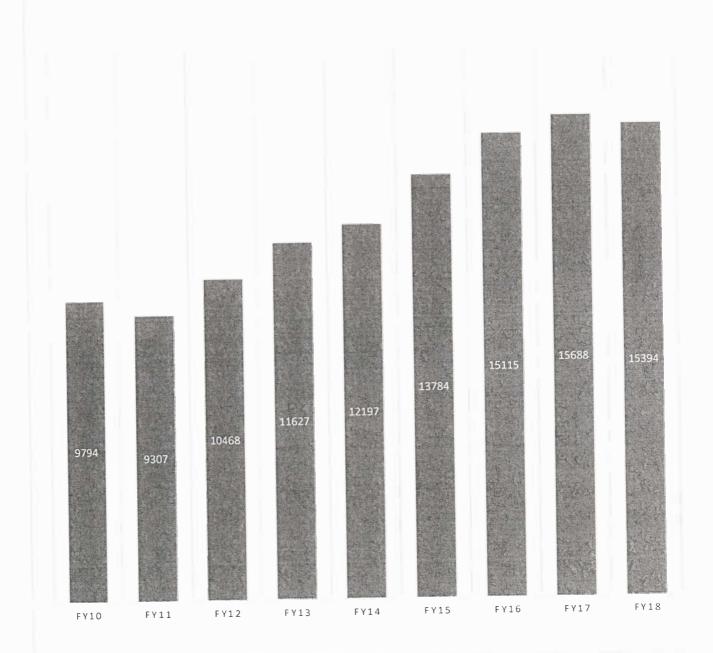
H. Jean Delaney, Director

ND Commission on Legal Counsel for Indigents 701-845-8632

jedelaney@nd.gov

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CASE ASSIGNMENTS BY FISCAL YEAR



Attachment A

	A	В	С	D		E	- 1	G
1	Position	Avg. Monthly Salary	more than 10 years with current employer	5.1 to 10 years wit current employe	th	2 to 5 years with current employer		Notes
2	Sr. Attorneys							Supervising duties or position requires 4 yrs of exp
3	Commission Atty III (sup atty)	7464	7661		7278	7245	none	Atty III reqs 4 yrs exp; agency requires 4 yrs exp + 2 yrs supervisory exp; Grade Q; Salary Range 6442-8589-10736
4	SA Elected w/o Morton	10222	10571	none		8130	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh
5	SA Elected	9779	10015	none		8130	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh, Morton
6	Sr. ASA	8634	8662		8664	8579	none	Ward Deputy, GF ASA III, Stark ASA III, Burleigh Sr., McKenzie chief asst, Morton ASA III, Cass Team Leaders
7	AG Division Directors	11123	11123	none		none	none	Avg of 18.8 yrs with employer
8	Judiciary - Director	10991	10991	none		none	none	37 years with employer
9								
10	Jr. Attorneys							
-	Commission Atty II	6108	none		6147	6137	606	Atty II requires 2 yrs exp as atty; Grade O; salary range 5687-7583-9479
	ASA w/ 2+ yr requirement	6997	7673		7367	6469		Burleigh ASA II, McKenzie ASA, Williams ASA
13	ASA w/ 1+ yr requirement	7190	8271		7855	6469	615	Burleigh ASA II, McKenzie ASA, Williams ASA, Cass non-team leaders
14	ASA average of all junior attys	6731	8271		7855	6222	572	Burleigh ASA I and II, Ward ASA, McKenzie ASA, Williams ASA, Cass non-team leaders, Stark ASA, Morton ASA, GF ASA I
15	Asst AG	7066	7896		6570	6702	682	did not include intellectual property atty
16	Judiciary - Staff Atty	8318	8893	none		7168	none	requires 2 yrs related exp; salary range 6746 - 10114
17								
18								
19	Legal Assistant							to conduct legal research; analyze codes, caselaw, independently draft legal docs
20	Commission Legal Asst II	3877	4014		3863	3872	376	LA II requires BA in Paralegal or pre-law (or equiv); grade J; salary range 3586 4781-5976
21	AG Paralegal	4923	4876	none		4357	532	Requires BA in Paralegal + 2 yrs exp; grade K; salary range 3899-5196-6498
22	AG Legal Asst I	3580				3580		LA I requires AA + 2yrs exp; grade H; salary range 2927-3903-4879

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	A	В	С	D		E	F	G
		Avg. Monthly	more than 10 years with current	5.1 to 10 years with current	2 to 5 years with current			
1	Position	Salary	employer	employe	er	employer	employer	<u>Notes</u>
_	Sr. Admin Staff		l l					
25	Commission Admin Asst III	3400	none	none		3400	none	requires AA+4 yrs exp; grade I; salary range 3231-4308-5385
26	Commission Admin Officer I	4000	none	none		4000	none	requires 3 years of high level admin support with lead worker/supervisory responsibilities; grade I; salary range 3231-4308-5385
27	SA Equiv.	4495	4921		3859	none	none	GF admin asst/office coordinator; Burleigh LA II; Williams Admin Asst III
8	AG Admin III	4948	4948	none		none	none	
30	Judiciary - Deputy Clerk III						4116*	requires HS + 3 yrs legal exp; has sup duties; salary range 4116 - 6171; * min salary for position
31	Jr. Admin Staff							
33	Commission Admin Asst II	3176	3335		3220	3229	3086	Requires AA+2 yrs exp; Grade H; salary range 2927-3903-4879
34	SA Equiv.	3745	4367	none		3685	3230	GF legal secretary; Stark office mgr; Burleigh LA I; McKenzie LA II
35	All SA (not equiv of Admin II)	3707	4274		3577	3623	3327	
36	AG's Admin IIs	3605	3855	none		3356	none	
	District or juvenile ct Admin asst	4237			3996	3678	none	HS + 2 yrs secretarial exp in law; salary range 3533-5291
_	Executive Admin Asst	4681		none		none	none	HS + 5 years secretarial exp in law; salary range 3824-5731
_	Judicial Asst	5148		none		3982	none	AA +1 year sec or paralegal exp; salary range 3824-5731
40	Exec Judical Asst	5464	5464	none		none	none	AA +1 year exp in law office or court setting; salary range 4116-6171
41	Judiciary - Deputy Clerk II						3533*	requires HS + 2 yr exp in legal setting; salary range 3533 - 5291; * min salary for position

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Senate Appropriations Committee

February 27, 2019

Testimony of Todd N. Ewell, Supervising Attorney, Bismarck-Mandan Public Defender Office

My name is Todd Ewell, and I am the Supervising Attorney of the Bismarck-Mandan Public Defender office. I am here today to request increased funding for the Full Time Employees of the North Dakota Commission on Legal Counsel for Indigents. I am here to advocate that my co-workers and employees have equal pay in line with our State's Attorney counterparts throughout North Dakota.

In his recent State of the Judiciary, Chief Justice VandeWalle stated:

The North Dakota Court System should be a well-balanced, dynamic and highly functioning system that is able to continuously improve and adjust to meet challenges in all economic conditions. We must operate to treat every individual, in every part of the state, with respect and to ensure that all of our cases move through the court system in a thoughtful and timely manner.

In order to treat every individual, in every part of the state, with respect and ensure justice for all, we must fund the criminal justice system in a proportionate manner.

By funding our public defender offices proportionately to State's Attorney offices, I would have the ability to interview a candidate for an attorney position in my office and not have to wonder if that person is also interviewing for a State's Attorney position.

The reality is that young lawyers today simply have more student loan debt than ever before. If a candidate can make \$900 more per month by literally crossing the street to the Burleigh County Courthouse and accepting the job with the State's Attorney office, then I have a problem.

By reviewing the attachments Director Delaney distributed, you will see that the problem is real. During this biennium the Bismarck office lost a paralegal and an attorney to comparable positions here in Bismarck. Both of those workers specifically cited pay as the primary reason for their departure.

HB 1022 2-27-19 #2

The turnover rate was even higher during the last biennium. Again, pay was cited as the primary reason for leaving.

Turnover is expensive. Not only does it take time and money to interview new employees. Once onboard, it can take months for a staff member to learn the skills needed to effectively meet the needs of our office.

When an attorney leaves, that expense is more than time and money. The departing attorney may have spent months building a relationship with a client and preparing for trial. In a felony case it is extremely rare that a new attorney can ethically try the matter on short notice. Not only does the new attorney need time to prepare, but likely already has a calendar full of hearing dates and obligations. Frequently these cases need to be continued to a later date, which regularly means frustrated clients spend additional time in jail awaiting trial.

These delays negatively impact the North Dakota Court System.

North Dakota should be proud of the fact we are one of the 28 jurisdictions in our country that have a state administered system for public defenders. This allows for more consistent, accountable representation of our state's poor population. By authorizing our request for additional funding, the Commission can reduce the rate of turnover within our agency, allowing us to more effectively represent the needs of our clients, and alleviate untimely delays in the North Dakota Court System.

Submitted this 27th day of February, 2019

Todd N. Ewell Supervising Attorney Bismarck-Mandan Public Defender Office 701-328-7190 tewell@nd.gov

HB 1022 2-2719 #3

Engrossed House Bill 1022 Senate Appropriations Testimony of Travis W. Finck Deputy Director N. D. Comm. On Legal Counsel for Indigents February 27, 2019

Chairman Holmberg, members of the Senate Appropriations Committee, my name is Travis

Finck, I am the Deputy Director of the Commission on Legal Counsel for Indigents, and on behalf of the employees and contractors that provide indigent defense services, I rise in support of House Bill 1022.

I hope my testimony may help to better understand the challenges we face as an agency and the fervor with which we greet those challenges every day. To provide background, I was appointed Deputy Director of the Commission on August 3, 2016. Prior to that, I was the supervising attorney in the Bismarck-Mandan Public Defender Office. I have also owned my own solo practice, wherein I contracted with the Commission. I have worked for a larger firm in Bismarck, and I worked in a small firm in Grand Forks where I also contracted with the Commission. In short, my entire professional life as an attorney has been devoted to indigent defense.

Today, the Commission continues to see challenges. The case numbers continue at near record levels. The mental health and opioid crises have been pervasive and increasingly difficult. On top of that, our agency has suffered through historic turnover in the last calendar year. The turnover has become increasingly difficult to handle, and we have continued to seek solutions. One thing that continues to be a factor in employee exit interviews is pay. Our agency employees, who continue to see rising and difficult caseloads, continue to fall behind the wages paid in the offices of our counterparts. We asked for an increase for our employees last session which was understandably not provided given the budge climate then currently existing. The cases our attorneys and staff handle are hard work. We have continued to rely on the dedication of our employees to meet our mission. However, that base has

AB 1022 2-27-19

eroded with the historic turnover. We respectfully request the 66th Legislative Assembly consider our optional packages intended to address all the challenges we face.

#3

I would also like to briefly touch on some of the successes our agency has seen this last biennium. We have provided counsel and/or related services in approximately 15,000 cases. We have provided counsel in high profile cases. Our attorneys continue to achieve success in results in the courtroom and in the community. Our attorneys have been active in relationships with the law school, local public schools, and our colleges and universities. Most importantly, our agency continues to meet our mission.

As always, I would like to conclude by recognizing the dedication of our agency employees and contract counsel. Daily our employees exude what I believe Benjamin Franklin was talking about when he said: "If you would not be forgotten as soon as you are dead, either write something worth reading or do something worth the writing."

Mr. Chairman, members of the committee, you have a difficult task at hand and I thank you for your support in the past and ask for your continued support.

Submitted this 27th day of February 2019.

Travis W. Finck, Deputy Director N.D. Commission on Legal Counsel

(701) 845-8632, tfinck@nd.gov



H

February 25, 2019

Senate Appropriations Committee

FARGO PUBLIC DEFENDER OFFICE

Monty G. Mertz, Supervising Attorney Marquis Bradshaw, Attorney Ashley Schell, Attorney Christine LaCoursiere, Administrative Assistant Amy Mihulka, Legal Assistant

RE: HB 1022 – Testimony of Monty G. Mertz, Supervising Attorney, Fargo Public Defender Office

Dear Chairman Holmberg and Committee Members:

I work for the North Dakota Commission on Legal Counsel for Indigents (The Commission). I have been the Supervising Attorney of the Fargo Public Defender Office since 2008. Prior to taking this job, I was in private practice for 23 years in Fargo. I had a District Court Public Defender Contract from 1999 to 2008. This year, on June 30th, I will have 20 years with a full caseload in District Court.

Prior to my current position, I represented clients in criminal cases in North Dakota, Minnesota, Federal District Court, and Courts Martial in the U.S. Army Judge Advocate General's Corps.

I have studied the testimony and documents submitted by my agency Director, H. Jean Delaney. My purpose is to add to and not duplicate her submissions.

I ask that you provide the funds to increase the salaries of the attorneys who provide Indigent Defense Services in North Dakota. These increases are critical to the mission of the Commission. Every one of the new attorneys I have supervised in the Fargo Office have struggled financially due to inadequate salaries. They all have large debt loads from student loans. Three of the new attorneys are married and their spouses also work.

The United States Constitution guarantees the right to representation in criminal cases. The public defenders in North Dakota handle over 90% of all felony cases. Most of our clients have nothing, and most of the ones who work make minimum wage and are one paycheck from being homeless.

912 - 3rd Avenue South, Fargo, ND 58103-1707

Phone: (701) 298-4640

Fax: (701) 239-7110

February 25, 2019 Page 2 of 3 HB102d 2-27-1 A4

The clients of public defenders often express the belief that they receive second-class representation because they don't have any money. Some say we aren't "real lawyers" or that we take the side of the government. These perceptions are reinforced by high turnover rates and inexperienced attorneys serving as Public Defenders.

The importance of Public Defenders in the criminal justice system cannot be over emphasized. Defense attorneys legitimize the system through safeguarding the rights of the accused which are granted by the state and federal constitutions, statutes, case law and court rules. Defense attorneys are the "watch dogs" in the system and literally the only line of defense between the accused and the resources of the government.

Over 90% of criminal cases are resolved without a trial of any kind. I believe and teach that the defense attorney's role is not to "get guilty people off," but to explain the law and go over the facts with the client to ensure they understand, and to ensure a fair process. Most cases are resolved through negotiation for a fair and just resolution. It is the defense attorney who brings the accused to court to plead guilty. Most people charged in criminal cases plead guilty.

I would wager that if you ask the district court judges how important defense lawyers are to the system, they would say the system would not function without competent defense attorneys. Judges would also say they truly dislike dealing with unrepresented people. They don't understand the process, procedures, and rules, and certainly not the law. Especially in more serious cases, having a self-represented defendant is unwieldy and unseemly, to say the least.

Public Defenders have a challenging clientele. Every client is dealing with a personal crisis and stress, simply by being charged with a crime. Most of their lives are out of control. Many suffer from mental illness, addiction, health issues, learning disabilities, and other deficits. They can be angry at themselves and at the world. They often view their Public Defender as part of the system, and therefore part of their problem. Add to this the perception by some that criminal defense lawyers can't be trusted.

Lawyers don't become Public Defenders to get rich. Most believe in having a role in making the system fair and trying to level the playing field. They care about the rule of law and the Bill of Rights, which help make our country great.

Public Defenders should be paid the same as their direct counterparts, the assistant state's attorneys. In the federal system, Federal Defenders are federal employees, and are paid using the same scale as United States Attorneys. Pay equity is crucial to attracting and retaining competent attorneys. Criminal law and procedure are complex, and learning the nuances takes time and experience. High turnover is inefficient and expensive and dangerous to the integrity of the system.

Thank you for the opportunity to provide my input.

February 25, 2019 Page 3 of 3

Fargo Public Defender Office

Respectfully,

Monty G. Mertz; ND Bar ID#03778

Supervising Attorney

ERIC P. BAUMANN
SUPERVISING ATTORNEY

BENJAMIN MIGDAL
ATTORNEY AT LAW

JAMES A. WIESE
ATTORNEY AT LAW

Minot Public Defenders' Office

11 First Avenue Southwest Minot, ND 58701 Tel: (701) 857-7750 • Fax: (701) 857-7756 e-file: minotpublicdefender@nd.gov

February 26, 2019

Brenda Hustad Legal Assistant

KIMBERLY ALEXANDER
ADMINISTRATIVE ASSISTANT

DAWN KELLUM
ADMINISTRATIVE ASSISTANT

Dear Committee Members,

My name is Eric P. Baumann, and I am the Supervising Attorney of the Minot Public Defenders' Office. I am writing in support of increasing the salaries of the employees working under the North Dakota Commission on Legal Counsel for Indigents.

Recruiting and retaining qualified and experienced attorneys and staff is a continuing challenge within our agency. Frequent turn over and vacant full-time positions are very costly to our agency given the costs associated with stop-gap measures, training new employees and new employees not being able to handle the kind of workload expected of more experienced employees. Creating salary structures which would lead more people to view jobs within our agency as long term rather than temporary will strengthen our agency and ultimately save the State of North Dakota money. Sometimes you have to spend money to save money.

Given the constitutional mandates that our agency is charged with upholding with each and every client throughout the entire State on a daily basis, the need for fully staffed, experienced offices is great. We do not have the same ability of some other agencies to temporarily delay or cut services. When there are issues with the services we provide, the cost is not borne merely of our clients, it is also borne of our agency and ultimately the taxpayers of this State. Our clients are constitutionally entitled to court appointed counsel in subsequent proceedings utilized to address alleged errors such as appeals or applications for post-conviction relief. Assignments to matters utilized to address alleged errors are often exponentially more costly and time consuming than other assignments. When the quality of services provided by our agency falls, the cost of providing our constitutionally mandated services rises dramatically.

What is more, increasing salaries within our agency is merited by the very nature of our jobs. We have tough jobs, and the quality of our work has an enormous impact on individual lives and the State as a whole.

Thank you for your consideration.

Sincerely,

Eric P. Baumann, ND Bar ID # 05690

ebaumann and.gov





WILLISTON PUBLIC DEFENDER'S OFFICE

HB1022

309 Washington Avenue Suite 404 | Williston, North Dakota 58801 Phone: 701-774-0510 | Fax: 701-774-0511

February 25, 2019

Re: HB 1022

Dear Senator Holmberg and Senate Appropriations Committee:

Thank you for allowing me the opportunity to provide written testimony in support of HB 1022 and for giving my testimony its weight in your determinations.

I would like to begin with a personal introduction. I am originally from Williston, North Dakota. My family, on both sides, can be traced to this community across three generations. My family believes strongly in community services which is reflected in our career choices. My grandmother was a nurse, my mother a licensed addiction counselor, my sister is a local law enforcement officer, and I am the Supervising Attorney at the Williston Public Defender Office.

My journey with the North Dakota Commission on Legal Counsel for Indigent Defense began in August 2012. I joined the office as a legal assistant after taking the July 2012 bar exam. Upon passing the bar and obtaining a license, I joined the office as an Attorney – I – under a temporary classification in October 2012. Prior to my promotion to an Attorney III position in October 2015, there were three Supervising Attorneys who came and left for various reasons. In addition, I have been involved with training ten other attorneys who have been employed by my agency and have worked within the Northwest Judicial District. The majority of which, upon leaving, informed me that they were leaving for better paying opportunities.

As for myself, I have received several better paying opportunities over the years. I have rejected them all as I believe in my work and find meaning within my role. The Williston Public Defender Office is exactly where I want to be and I can think of no better calling than to fight for those who cannot afford to fight for themselves. I, as the advocate, am the last line of defense against the full power of the government for the most unpopular, the most vulnerable, and the most judged of the population.

The choice to continue to pursue my passion for the work has come with a price. In 2012, it meant living with my parents for a year and a half because I could not afford to live on my own and pay my bills. It has meant putting in an extraordinary amount of hours in investing and training other attorneys how to do the work only to watch them leave for better paying opportunities. It has meant stress and anxiety as I have had to absorb other attorneys caseloads multiple times throughout the years in order to ensure justice for our clients.

Throughout these events, I have always risen to the occasion and done what is necessary to protect our clients and to ensure that they are insulated from the continuous transition of attorneys. Unfortunately, the 2018-2019 year is the hardest year yet. After a medical crisis that resulted in thousands of dollars in medical bills, I was forced to give up my apartment and to move back in with my parents. As a thirty-two year old professional, it is hard for me to feel successful in my accomplishments knowing that I cannot afford to live on my own and having to ask for financial assistance from my parents has brought a certain amount of hidden shame and I find myself in the



WILLISTON PUBLIC DEFENDER'S OFFICE

309 Washington Avenue Suite 404 | Williston, North Dakota 58801 Phone: 701-774-0510 | Fax: 701-774-0511

H1022 2-21-19 A6

predicament between weighing my love for the work against the necessity of being able to support myself. I am fortunate that I am only responsible for myself and that I do not currently have a family of my own to support.

I am proud to say that I have earned a reputation in my community of being one of the most experienced and successful trial attorneys in my community. I am known for my zealous representation and my passionate advocacy on behalf of my clients. As one of the most experienced and successful criminal defense attorneys in Williston, I find it frustrating that my current pay is not reflective of my experience in comparison to attorneys with less responsibility, less expertise, and less experience at my local State's Attorney's Office. In 2018, the State's Attorney's Office hired an attorney with no courtroom experience at a starting salary that is \$15,000 more than what mine is as a Supervising Attorney. As of last week, an Attorney II in my office resigned in order to join the same State's Attorney's office. This Attorney II has significantly less trial experience, knowledge, and expertise but will be making the same amount, if not more than the hire previously hired. In comparison, throughout my career at the Williston Public Defender Office, the local State's Attorney's office has hired seven attorneys. All of them with little to no trial experience and every single one of them at a minimum has made \$10,000 more per year than I do. Every single one of them has had less experience, less knowledge, less expertise, and less training than I do.

A difference in salary may seem minor to those on the outside. In reality, the salary difference has proven to be an overwhelming challenge in finding and retaining competent attorneys. Very few people are willing to stay in a job that pays them significantly less than what their experience dictates simply because they love the work. I am one of those rare people.

However, my desire to continue to do the work is becoming less and less. The stress, depression, and anxiety that comes from having to constantly carry the weight of those that have left for better paying opportunities is a heavy burden to bear.

I am currently the only full-time public defender employed within the Northwest Judicial District which covers the counties of Divide, McKenzie, and Williams. I have mentally resigned myself to the possibility that there might not be another attorney in my district for the next three or four months. I have also had to prepare for the possibility that any new attorney coming to my office will most likely have no experience and will need to be properly trained before they are ready to handle the volume of cases awaiting them. Finally, I have mentally prepared myself that even if I do find someone and that I train them in how to do the job that it is only temporary until that attorney decides to find a better paying opportunity.

Thank you for your time and consideration to this matter.

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Sincerely,

Misty Lenee Nehring Supervising Attorney

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HB 5022 2-27-19

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HOUSE BILL No. 1022 Senate Appropriations Committee – Government Operations Division February 27, 2019

Written Testimony of Kevln McCabe, Supervising Attorney, Dickinson Public Defender's Office

Greetings. My name is Kevin McCabe. I am the Supervising Attorney of the Dickinson Public Defender's Office. I have held this position since its inception in March, 2006.

The purpose of my testimony today is to encourage the Senate to reinstate HB 1022 as originally proposed by H. Jean Delaney, the Director of the North Dakota Commission on Legal Counsel for Indigents (the Commission). As I'm sure she has stated, the Commission is responsible for all regional public defender offices in North Dakota as well as the contractors hired to provide constitutionally mandated legal services to those persons accused of a crime who cannot afford to hire an attorney on their own.

I am writing specifically to offer my views as to why I believe it is important for this Senate Committee to restore HB 1022 back to its original proposal and authorize the "equity" salary increases Director Delaney requested. I strongly believe doing so will help with the two biggest problems that I have seen over the years, which are employee retention and recruitment.

I'll address employee retention first. As I have previously stated, I have been In my current position for almost thirteen years. Over that span of time, I have seen a lot of great people come and go for differing reasons, but in talking with former commission employees, the one main reason I've been told that they leave is for better salary. Often times the better salary is coming from either a State's Attorney's office or another state agency. Specific examples of these instances occurring just within my office include, an attorney leaving to work as a State's Attorney in a small eastern county of the state; a longtime administrative assistant going to work as a court reporter for a local judge; and finally, a highly skilled legal assistant going to work for the local college library. In all of these instances, I was told that they wanted to stay, but the money they were offered was just too good to pass up.

Employee retention Isn't a local problem, it is statewide. Over the years, I have received many calls from current commission employees asking if I will either write letters of reference

HB 1021 2.21-19 #7 P2

for them or if they can list me as a reference as they are seeking outside employment. More often than not, when I ask them why they are leaving, they tell me they love the work and the people they work with, but they are seeking higher pay. Another thing that I often hear from these people, and I also know from direct experience, is that the Job they are seeking is one that they were directly recruited for by the employer. In my experience, I have been offered many jobs in the past. I have also been heavily recruited by county commissioners to run for State's Attorney positions. This is telling me that we as commission employees have a good reputation in the legal community and potential employers know that approaching commission employees is a wise choice for them because they are potentially getting highly skilled employees at a good price, as it usually doesn't take much to provide a higher salary for the potential employee.

As for recruitment, it is becoming increasingly difficult to fill vacant positions. Often times the position is staying vacant way too long and services are being disrupted. Again, just within my office, I have witnessed open positions advertised but very few qualified people would apply for the position. In fact, with the last attorney position open within my office, we only had one qualified applicant to interview. That person was hired, but I know firsthand that he continues to seek other employment at a higher salary. As for our most recent legal assistant position, we received four qualified applicants, but before we could even schedule interviews, two had withdrawn their applications because they found higher paying employment elsewhere. The person we first offered the position to, could not afford local housing costs, so she withdrew her application also. Eventually we did fill the position, but I'm afraid we will soon be looking again given the circumstances of the person we hired. In a couple other Instances where we had openings for an extended period of time, I reached out to two former employees. In both instances, I was told that the salary offered was not adequate. Specifically, we had a long-time, part-time employee who we trained to do our work, but she left when a full time position opened at another state agency. Another time, we had an attorney intern for three summers who, when she became licensed, went to work for the State's Attorney's office but requested that I immediately let her know If a position became open within my office. When positions that they were trained for opened within my office I

HB 1022 2-27-19

contacted both of these former employees that we spent time and money training to see if they would be interested in coming back to work for the commission and in both instances, I was informed that although they loved working for our office in the past, they couldn't even consider switching positions as the advertised rate of pay that was being offered in the job opening was way too low compared to their current salary. This is something that I hear time and time again from people that I approach to fill vacancies within our entire agency, not just my office.

I see employee retention and recruitment as the biggest problems facing our agency.

Not being able to keep highly trained and skilled current employees and not being able to recruit highly trained and skilled replacement workers when a vacancy opens simply because of salary issues is not a wise choice for our state. It's not cost effective as i'm sure Director Delaney already mentioned. Cases need to get reassigned. Attorneys often have to travel to other districts. Court schedules get disrupted. Judges get annoyed because continuances are requested. Hiring and training costs money.

Public defenders provide a very valuable service to this state. Aside from the fact that the U.S. Constitution requires these services, I believe this State's goal should be to do whatever it can to make sure that it maintains a highly qualified public defender system and by providing the equitable pay that the commission is asking for sure would go a long way to ensure that goal.

Respectfully submitted this 27th day of February, 2019

Kevin McCabe, Supervising Attorney Dickinson Public Defender's Office

701.227.7460

kmccabe@nd.gov

4-3-19 HB1022

19.0210.02004 Title. Fiscal No. 2 Prepared by the Legislative Council staff for Senator Hogue

April 3, 2019



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1022

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel	<u>\$19,903,623</u>	\$ 471,039	<u>\$20,374,662</u>
for indigents			
Total all funds	\$19,903,623	\$471,039	\$20,374,662
Less estimated income	1,919,747	10,288	1,930,035
Total general fund	\$17,983,876	\$460,751	\$18,444,627"

Page 1, after line 22, insert:

"SECTION 3. SALARY EQUITY FUNDING. The appropriation in section 1 of this Act includes \$60,000 from the general fund that may be used only to provide salary equity funding for attorney positions located in Williams County."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Commission on Legal Counsel for Indigent - Senate Action

	Base	House	Senate	Senate
	Budget	Version	Changes	Version
Comm. on Legal Counsel for Indigents	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Total all funds	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Less estimated income	1,919,747	1,929,581	454	1,930,035
General fund	\$17,983,876	\$18,344,495	\$100,132	\$18,444,627
FTE	40.00	40.00	0.00	40.00

Department 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Funding for Williams County Staff Salaries ²	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$40,586	\$60,000	\$100,586
Total all funds Less estimated income General fund	\$40,586 454 \$40,132	\$60,000 0 \$60,000	\$100,586 454 \$100,132
FTE	0.00	0.00	0.00

¹ Funding of \$40,586, of which \$40,132 is from the general fund and \$454 is from the indigent defense administration fund, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate is providing a total of \$226,888 for state employee salary increases, of which \$221,063 is from the general fund and \$5,825 is from the indigent defense administration fund. The House approved 2019-21 biennium salary increases of 2 percent per year and provided a total of \$186,302 for state employee salary increases, of which \$180,931 is from the general fund and \$5,371 is from the indigent defense administration fund.

² Funding of \$60,000 from the general fund is added to provide salary equity funding for attorney positions located in Williams County.

This amendment also adds a section identifying \$60,000 from the general fund included in Section 1 that may only be used to provide salary equity funding for attorney positions located in Williams County.

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Page No. 2



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Commission on Legal Counsel for Indigents - Budget No. 188 House Bill No. 1022 Base Level Funding Changes

	House Version			Senate Version				Senate Changes to House Version				
									Increase (Decrease) - House Version			
	FTE	General	Other		FTE	General	Other		FTE	General	Other	
	Position	Fund	Funds	Total	Position	Fund	Funds	Total	Positions	Fund	Funds	Total
2019-21 Biennium Base Level	40.00	\$17,983,876	\$1,919,747	\$19,903,623	40.00	\$17,983,876	\$1,919,747	\$19,903,623	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes								l'				
Base payroll changes		(\$1)	\$1	\$0		(\$1)	\$1	\$0				\$0
Salary increase		180,931	5,371	186,302		221,063	5,825	226,888		40,132	454	40,586
Health insurance increase		178,181	4,462	182,643		178,181	4,462	182,643				0
Adds funding for Microsoft Office 365 licensing expenses		1,508		1,508		1,508		1,508				0
Adds funding for Williams County staff salaries				0		60 000		60,000		60.000		60,000
Total ongoing funding changes	0.00	\$360,619	\$9,834	\$370,453	0.00	\$460,751	\$10,288	\$471,039	0.00	\$100,132	\$454	\$100,586
One-time funding items								ļ.				
No one-time funding items				\$0	5- 550			\$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	0.00	\$360,619	\$9,834	\$370,453	0.00	\$460,751	\$10,288	\$471,039	0.00	\$100,132	\$454	\$100,586
2019-21 Total Funding	40.00	\$18,344,495	\$1,929,581	\$20,274,076	40.00	\$18,444,627	\$1,930,035	\$20,374,662	0.00	\$100,132	\$454	\$100,586

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

House Version

Senate Version

Section 3 identifies \$60,000 from the general fund in Section 1 that may be used only to provide salary equity funding for attorney positions located in Williams County.

Williams County staff salaries



STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1022 - Funding Summary

	Base Budget	House Version	Senate Changes	Senate Version
Commission on Legal Counsel for Indigent				
Comm. on Legal Counsel for Indigents	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Total all funds	\$19.903.623	\$20.274.076	\$100.586	\$20,374,662
Less estimated income	1,919,747	1,929,581	454	1,930,035
General fund	\$17,983,876	\$18,344,495	\$100,132	\$18,444,627
FTE	40.00	40.00	0.00	40.00
Bill total				
Total all funds	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Less estimated income	1,919,747	1,929,581	454	1,930,035
General fund	\$17,983,876	\$18,344,495	\$100,132	\$18,444,627
FTE	40.00	40.00	0.00	40.00

House Bill No. 1022 - Commission on Legal Counsel for Indigent - House Action

Comm. on Legal Counsel for Indigents	Base Budget \$19,903,623	House Changes \$370,453	House Version \$20,274,076
Total all funds Less estimated income General fund	\$19,903,623 1,919,747 \$17,983,876	\$370,453 9,834 \$360,619	\$20,274,076 1,929,581 \$18,344,495
FTE	40.00	0.00	40.00

Department 188 - Commission on Legal Counsel for Indigent - Detail of House Changes

Comm. on Legal Counsel for	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ² \$368.945	Adds Funding for Microsoft Office 365 Licenses ³ \$1,508	Total House Changes \$370,453
Indigents		4000,010	V1,000	\$67.6,160
Total all funds	\$0	\$368,945	\$1,508	\$370,453
Less estimated income	1	9,833	0	9,834
General fund	(\$1)	\$359,112	\$1,508	\$360,619
FTE	0.00	0.00	0.00	0.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$180,931	\$5,371	\$186,302
Health insurance increase	<u>178,181</u>	4,462	182,643
Total	\$359,112	\$9,833	\$368,945

³ Funding is added for Microsoft Office 365 licensing expenses.

House Bill No. 1022 - Commission on Legal Counsel for Indigent - Senate Action

	Base	House	Senate	Senate
	Budget	Version	Changes	Version
Comm. on Legal Counsel for Indigents	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Total all funds	\$19,903,623	\$20,274,076	\$100,586	\$20,374,662
Less estimated income	1,919,747	1,929,581	454	1,930,035
General fund	\$17,983,876	\$18,344,495	\$100,132	\$18,444,627
FTE	40.00	40.00	0.00	40.00

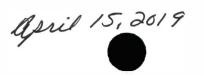
Department 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes

	Adds Funding for Salary and Benefit Increases ¹	Adds Funding for Williams County Staff Salaries ²	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$40,586	\$60,000	\$100,586
Total all funds Less estimated income General fund	\$40,586 454 \$40,132	\$60,000 0 \$60,000	\$100,586 454 \$100,132
FTE	0.00	0.00	0.00

¹ Funding of \$40,586, of which \$40,132 is from the general fund and \$454 is from the indigent defense administration fund, is added for 2019-21 biennium salary increases of 2 percent with a minimum monthly increase of \$120 and a maximum monthly increase of \$200 on July 1, 2019, and 2.5 percent on July 1, 2020. The Senate is providing a total of \$226,888 for state employee salary increases, of which \$221,063 is from the general fund and \$5,825 is from the indigent defense administration fund. The House approved 2019-21 biennium salary increases of 2 percent per year and provided a total of \$186,302 for state employee salary increases, of which \$180,931 is from the general fund and \$5,371 is from the indigent defense administration fund.

² Funding of \$60,000 from the general fund is added to provide salary equity funding for attorney positions located in Williams County.

This amendment also adds a section identifying \$60,000 from the general fund included in Section 1 that may only be used to provide salary equity funding for attorney positions located in Williams County.







	A	В	С	D	E	F	G
		Avg. Monthly	more than 10 years with current	5.1 to 10 years with current	2 to 5 years with current		
1	Position	<u>Salary</u>	<u>employer</u>	<u>employer</u>	employer	employer	Notes
2	Sr. Attorneys		0.0000		NEW ACTION OF THE	11734	Supervising duties or position requires 4 yrs of exp
3	Commission Atty III (sup atty)	7464	7661	7278	7245	none	Atty III reqs 4 yrs exp; agency requires 4 yrs exp + 2 yrs supervisory exp; Grade Q; Salary Range 6442-8589-10736
4	SA Elected w/o Morton	10222	10571	none	8130	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh
5	SA Elected	9779	10015	none	8130	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh, Morton
6	Sr. ASA	8634	8662	8664	8579	none	Ward Deputy, GF ASA III, Stark ASA III, Burleigh Sr., McKenzie chief asst, Morton ASA III, Cass Team Leaders
7	AG Division Directors	11123	11123	none	none	none	Avg of 18.8 yrs with employer
8	Judiciary - Director	10991	10991	none	none	none	37 years with employer
9							
10	Jr. Attorneys		T 8				
11	Commission Atty II	6108	none	6147	6137	6066	Atty II requires 2 yrs exp as atty; Grade O; salary range 5687-7583-9479
12	ASA w/ 2+ yr requirement	6997	7673	7367	6469	6913	Burleigh ASA II, McKenzie ASA, Williams ASA
13	ASA w/1+ yr requirement	7190	8271	7855	6469	6157	Burleigh ASA II, McKenzie ASA, Williams ASA, Cass non-team leaders
14	ASA average of all junior attys	6731	8271	7855	6222	5724	Burleigh ASA I and II, Ward ASA, McKenzie ASA, Williams ASA, Cass non-team leaders, Stark ASA, Morton ASA, GF ASA I
15	Asst AG	7066	7896	6570	6702	6824	did not include intellectual property atty
16	Judiciary - Staff Atty	8318	8893	none	7168	none	requires 2 yrs related exp; salary range 6746 - 10114
17							
18							
19	Legal Assistant						to conduct legal research; analyze codes, caselaw, independently draft legal docs
					1		LA II requires BA in Paralegal or pre-law (or equiv); grade J; salary range 3586-
20	Commission Legal Asst II	3877	4014	3863	3872	3765	4781-5976
	AG Paralegal	4923	4876	none	4357	5326	Requires BA in Paralegal + 2 yrs exp; grade K; salary range 3899-5196-6498
22	AG Legal Asst I	3580			3580		LA I requires AA + 2yrs exp; grade H; salary range 2927-3903-4879



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A	В	С	D	E		F	G
1 Position	Avg. Monthly Salary	more than 10 years with current employer	5.1 to 10 years with current employer		less ti years rent current er emple	with nt	Notes
24 Sr. Admin Staff		2-220-25	entra e	1/22/2			
25 Commission Admin Asst III	3400	none	none	3	400 none		requires AA+4 yrs exp; grade I; salary range 3231-4308-5385
26 Commission Admin Officer I	4000	none	none	4	000 none		requires 3 years of high level admin support with lead worker/supervisory responsibilities; grade I; salary range 3231-4308-5385
27 SA Equiv.	4495	4921	38	59 none	none		GF admin asst/office coordinator; Burleigh LA II; Williams Admin Asst III
AG Admin III	4948	4948	none	none	none		
Judiciary - Deputy Clerk III					4116*		requires HS + 3 yrs legal exp; has sup duties; salary range 4116 - 6171; * min salary for position
31	1						
Jr. Admin Staff							
Commission Admin Asst II	3176				3229		Requires AA+2 yrs exp; Grade H; salary range 2927-3903-4879
SA Equiv.	3745	4367	none		8685		GF legal secretary; Stark office mgr; Burleigh LA I; McKenzie LA II
All S A (not equiv of A dmin II)	3707	4274	35	77 3	8623	3327	
AG's Admin IIs	3605	3855	none	3	356 none		
District or juvenile ct Admin asst	4237	4365	39	96 3	678 none		HS + 2 yrs secretarial exp in law; salary range 3533-5291
88 Executive Admin Asst	4681	4681	none	none	none		HS + 5 years secretarial exp in law; salary range 3824-5731
Judicial Asst	5148	5731	none	3	982 none		AA+1 year sec or paralegal exp; salary range 3824-5731
Exec Judical Asst	5464	5464	none	none	none		AA +1 year expin law office or court setting; salary range 4116-6171
41 Judiciary - Deputy Clerk II					3533*	*	requires HS + 2 yr exp in legal setting; salary range 3533 - 5291; * min salary for position