
AGENCY OVERVIEW**Date:** 12/23/2014**188 Commission on Legal Counsel for Indigents****Time:** 11:57:45

Statutory Authority

North Dakota Century Code 54-61-01 to 54-61-04.

Agency Description

The North Dakota Commission on Legal Counsel for Indigents is an executive branch agency that consists of a statutorily-created board of seven persons appointed from various entities, to serve staggering terms. The agency is responsible for delivery of constitutionally-adequate services to criminal defendants and respondents in the state who financially qualify for indigent services in accordance with eligibility requirements. The Commission utilizes the eight judicial districts to regulate its program.

Agency Mission Statement

The North Dakota Commission on Legal Counsel for Indigents' mission is to provide high-quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at a reasonable cost to the community.

Agency Performance Measures

- Established and adopted minimum performance standards for both attorneys who handle criminal adult indigent cases and for attorneys who handle juvenile cases.
- The Commission conducts performance evaluations of the Executive Director, and the Executive Director evaluates the staff in accordance with adopted Commission standards.
 - Attorneys working for the agency in any capacity must follow the North Dakota Rules of Professional Conduct.
 - The Commission is subject to OMB requirements and biennial audits performed by the State Auditor's Office.

Major Accomplishments

1. Opened the administrative office in November 2005, and since then opened seven public defender offices in Grand Forks, Fargo, Bismarck, Minot (2), Williston and Dickinson. Hired full time employees, 17 of which are full time public defenders. Those 17 attorneys, plus approximately 60 private attorneys who contract with the agency, provide legal services to indigent clients in criminal and juvenile court in about 12,000 cases annually.
2. Established and adopted minimum performance standards for the attorneys that must be adhered to along with rules of professional responsibility. Provided free training to the attorneys and staff, and encouraged other avenues of training throughout the year paid for by the Commission.
3. Kept abreast of technology needs, and utilized a web-based case reporting system that attorneys can access without charge.
4. Addressed the needs in oil rich counties where the case loads are rapidly rising by adding several monthly contracts using private attorneys in Williston, Minot, Watford City, Dickinson and Bismarck, as well as sending attorneys from eastern North Dakota.
5. Responded to the changing environment in oil rich counties by providing employees salary incentives and housing allowances.

Future Critical Issues

It is imperative to continue to recruit and train attorneys who are willing to take on indigent cases at the rate of \$75 an hour. We particularly struggle with finding counsel in the oil-rich areas of North Dakota as attorneys can make far more working on oil related matters. The case loads in western North Dakota are increasing at rates we have never seen before. These cases must be covered by attorneys. We are sending attorneys from Bismarck and points east out to Williston, Watford City, Stanley and Dickinson, at a rapidly increasing financial strain to the agency. We are exploring financial concerns with OMB.

We constantly monitor the case loads of attorneys, and if the loads are too high, try to reduce them through various methods, including assigning out cases. However, currently in some areas the attorneys maintain high case loads and one logical, and more cost efficient, method to assist those attorneys is to provide more support staff, such as legal assistants or administrative assistants.

We strive to improve the quality of services provided to our indigent clients through training and education of counsel.

REQUEST SUMMARY

188 Commission on Legal Counsel for Indigents
Biennium: 2015-2017

Bill#: HB1022

Date: 12/23/2014

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Description	Expenditures 2011-2013 Biennium	Present Budget 2013-2015	Budget Request Change	Requested Budget 2015-2017 Biennium	Optional Budget Request
By Major Program					
Counsel for Indigents Operations	11,648,843	14,421,276	(489,973)	13,931,303	6,194,566
Total Major Program	11,648,843	14,421,276	(489,973)	13,931,303	6,194,566
By Line Item					
Accrued Leave Payments	0	116,872	(116,872)	0	0
Legal Counsel for Indigents	11,648,843	14,304,404	(373,101)	13,931,303	6,194,566
Total Line Items	11,648,843	14,421,276	(489,973)	13,931,303	6,194,566
By Funding Source					
General Fund	9,804,240	11,923,410	107,892	12,031,302	6,194,566
Federal Funds					
Special Funds	1,844,603	2,497,866	(597,865)	1,900,001	0
Total Funding Source	11,648,843	14,421,276	(489,973)	13,931,303	6,194,566
Total FTE	30.00	33.00	0.00	33.00	9.00

REQUEST DETAIL188 Commission on Legal Counsel for Indigents
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Description	Expenditures 2011-2013 Biennium	Present Budget 2013-2015	Budget Request Change	Requested Budget 2015-2017 Biennium	Optional Budget Request
Accrued Leave Payments					
Salaries - Permanent	0	116,872	(116,872)	0	0
Total	0	116,872	(116,872)	0	0
Accrued Leave Payments					
General Fund	0	116,872	(116,872)	0	0
Federal Funds	0	0	0	0	0
Special Funds	0	0	0	0	0
Total	0	116,872	(116,872)	0	0
Legal Counsel for Indigents					
Salaries - Permanent	3,510,205	3,900,000	280,139	4,180,139	967,200
Temporary Salaries	281,848	760,000	54,903	814,903	0
Overtime	2,620	25,000	(25,000)	0	0
Fringe Benefits	1,296,394	1,580,000	123,482	1,703,482	407,354
Travel	242,740	280,000	0	280,000	16,000
Supplies - IT Software	2,095	1,950	0	1,950	4,000
Supply/Material-Professional	62,905	80,000	0	80,000	4,000
Miscellaneous Supplies	4,437	6,400	0	6,400	3,000
Office Supplies	40,617	55,000	0	55,000	8,000
Postage	33,717	37,000	0	37,000	3,000
Printing	8,097	11,018	0	11,018	1,000
IT Equip Under \$5,000	36,509	35,000	0	35,000	15,000
Other Equip Under \$5,000	9,726	7,600	0	7,600	10,000
Office Equip & Furn Supplies	21,928	43,000	0	43,000	28,000
Utilities	0	500	0	500	0
Insurance	2,265	2,500	0	2,500	50
Rentals/Leases - Bldg/Land	367,872	600,000	0	600,000	168,000
Repairs	4,016	2,000	0	2,000	2,000
IT - Data Processing	113,786	120,000	0	120,000	1,500
IT - Communications	69,011	80,000	0	80,000	6,000
IT Contractual Srvcs and Rprs	23,350	17,500	0	17,500	3,000
Professional Development	32,052	50,580	0	50,580	2,400
Operating Fees and Services	119,864	128,500	0	128,500	6,400
Fees - Professional Services	5,362,789	6,480,856	(806,625)	5,674,231	4,394,662
Other Expenses	0	0	0	0	144,000
Total	11,648,843	14,304,404	(373,101)	13,931,303	6,194,566
Legal Counsel for Indigents					
General Fund	9,804,240	11,806,538	224,764	12,031,302	6,194,566

REQUEST DETAIL

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 Biennium: 2015-2017

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Description	Expenditures 2011-2013 Biennium	Present Budget 2013-2015	Budget Request Change	Requested Budget 2015-2017 Biennium	Optional Budget Request
Federal Funds	0	0	0	0	0
Special Funds	1,844,603	2,497,866	(597,865)	1,900,001	0
Total	11,648,843	14,304,404	(373,101)	13,931,303	6,194,566

Funding Sources

General Fund	9,804,240	11,923,410	107,892	12,031,302	6,194,566
Federal Funds	0	0	0	0	0
Special Funds	1,844,603	2,497,866	(597,865)	1,900,001	0
Total Funding Sources	11,648,843	14,421,276	(489,973)	13,931,303	6,194,566

CHANGE PACKAGE SUMMARY

188 Commission on Legal Counsel for Indigents
Biennium: 2015-2017

Bill#: HB1022

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Description	Priority	FTE	General Fund	Federal Funds	Special Funds	Total Funds
Base Budget Changes						
Ongoing Budget Changes						
A-A 5 Base Budget Reduction		0.00	(194,662)	0	0	(194,662)
A-A 7 Base Budget Reduction		0.00	0	0	(611,963)	(611,963)
Base Payroll Change		0.00	302,554	0	14,098	316,652
Total Ongoing Budget Changes		0.00	107,892	0	(597,865)	(489,973)
Total Base Budget Changes		0.00	107,892	0	(597,865)	(489,973)
Optional Budget Changes						
Ongoing Optional Changes						
A-C 6 Funding to Restore Budget	1	0.00	194,662	0	0	194,662
A-C 1 Change 5 Temp Employees to FTE	2	5.00	720,794	0	0	720,794
A-C 2 Increase to General Fund approp to defray expens	3	0.00	4,200,000	0	0	4,200,000
A-C 4 Create Watford City Office	4	2.00	539,555	0	0	539,555
A-C 3 Create Dickinson Conflict Office	5	2.00	539,555	0	0	539,555
Total Ongoing Optional Changes		9.00	6,194,566	0	0	6,194,566
Total Optional Budget Changes		9.00	6,194,566	0	0	6,194,566

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Change Group: A	Change Type: A	Change No: 5	Priority:
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Base Budget Reduction

Budget reductions to meet hold even budget.

Change Group: A	Change Type: A	Change No: 7	Priority:
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Base Budget Reduction

Base budget reduction from the Fund 282. We anticipate that by the end of the 13-15 biennium the balance in fund 282 will be down to almost nothing, due to the rising costs associated with our increased caseload. Looking at past bienniums we usually receive about 1,900,000, so we can not rely on funding from 282 for more than that amount.

Change Group: A	Change Type: C	Change No: 1	Priority: 2
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Change 5 Temp Employees to FTE

Our agency is requesting that five current positions in our agency be converted to full time employee status. We have hired, as full time temporary employees, an attorney in the Williston Public Defender office, an attorney in the Bismarck Public Defender office, an administrative assistant in the Bismarck Public Defender office, an administrative assistant in the adjunct Minot Public Defender office, and an administrative assistant in the Valley City administrative office

All the above referenced positions have been filled to support the offices and agency with the rapid rise in cases. We were given an FTE (attorney) in a small Minot Public Defender office in the 2011-2013 biennium, but no support person, and this attorney travels to Williston a great deal. The attorney needs a support person to run the office, prepare documents, and work electronically with the attorney. In comparing case numbers for the time period of May 1st, 2011-April 30th, 2012, to May 1st, 2013-April 30th, 2014, Ward County has experienced a 97% increase in felony cases; there were 304 felonies in the 2011-2012 period, and 599 in the 2013-2014. The total caseload, which includes felonies, misdemeanors, appeals, and juvenile cases, increased 34% during that time period.

In the Williston Public Defender office, we have an attorney on board in a full time temporary capacity. We now have three full time public defenders, including this temporary attorney. Even with three, we cannot manage the case load in Williston without the help of a Minot public defender as well as several private attorneys taking cases either on a monthly contract or on an individual case basis. We have people coming from as far as Grand Forks, ND to take cases in the Williston and Watford City area. In Williams County, for the time period of May 1st, 2011-April 30th, 2012, there were 207 felonies. From May 1st, 2013-April 30th, 2014, there were 431 felonies. Felonies rose 108% in that time period. The total caseload, which involve felonies, misdemeanors, appeals, and juvenile cases, increased 29% during that time period.

In the Bismarck Public Defender office, we are currently utilizing a full time temporary administrative assistant, as well as a full time temporary attorney. Both positions are vital to the operation of the Bismarck Public Defender office. We now have four full time attorneys in the office and two administrative assistants, and that is inclusive of the full time temporary positions.

In the South Central Judicial District, the case numbers have steadily risen, and we have had to add many new independent contractors. The Bismarck Public Defender's office has to assign out all of the case assignments and the extra support is mandatory. In Burleigh County, for the time period of May 1st, 2011-April 30th, 2012, there were 669 felonies. From May 1st, 2013-April 30th, 2014, there were 922 felonies, an increase of 38%. The total caseload, which involve felonies, misdemeanors, appeals, and juvenile cases, increased 10% in the Judicial District. An interesting fact is what is going on in the rural counties in the South Central District, such as McLean County. For that same time period, felonies increased 81%. More cases equate to more lawyer services, and more travel.

In the Valley City administrative office, we have added a full time temporary administrative assistant. She currently answers the phone, handles efilng and works with the case management system. For the administration of this agency, we have an Executive Director, a Deputy Director, one full time administrative officer, and a financial officer. Our full time administrative officer is kept totally occupied with employee payroll duties, bills, and contractor issues involving over 60 private attorneys.

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Both support staff handle client questions when Ms. Huseby or Ms. Delaney are on the road. The addition of another full time administrative assistant is crucial. Robin Huseby, the Executive Director, and Jean Delaney, the Deputy Director, both assess that the office in Valley City is at least 30% busier than it was before the oil boom got into full swing. The emergency issues in Williston, Watford City, Dickinson, and Minot consume a disproportionate amount of time by administration. We need more help in the Valley City office.

Change Group: A	Change Type: C	Change No: 2	Priority: 3
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Increase to General Fund approp to defray expenses

For the 2011-2013 budget, we were appropriated \$11,923,410 in general fund dollars. We have a continuing appropriation fund, as well, which is comprised of defendant fees collected by the district court clerks. This latter fund is split between us and the court improvement fund per statute. We had authority to spend \$2,497,866 from that fund.

We have gone to the commission, our legislative analyst, and our OMB analyst, and explained that we will no doubt be running out of money prior to the end of this biennium. We believe that we will be basically wiping out our continuing appropriation fund, and will need more money to sustain us. The rising costs to the agency are legal fees, contract fees, case specific fees, and all other costs associated with the rising case load.

In the western counties, the case load has risen in a dramatic and shocking way. In Mckenzie County, since 2011, felonies have risen 298% and misdemeanors have risen 155%. Other counties experiencing rapidly rising case loads are ones in the South Central Judicial District, such as Burleigh, Mercer and McLean, and western counties such as Stark, Ward, and Williams.

The present dynamic of providing legal counsel out west is particularly complicated by the fact that attorneys that practice in the particular areas, such as in Dickinson and Williston, are not taking on indigent cases. They report being completely booked with oil related work. Hence we are having to hire attorneys from afar to take on some of the cases. We presently have attorneys flying in from other states to handle matters; one comes in from Utah and one comes in from California. We also are transporting attorneys from eastern North Dakota to handle western cases. We have an attorney from Grand Forks who has handled several cases in Williston. For a felony, which involves typically two or more in person hearings, that adds on an extra \$1,000.00 to each case due to travel alone. This scenario is taking place every week in Williston, Watford City and Dickinson.

Most of our agency expenditures are for professional legal services and support of our public defender offices. We have had to add contractors throughout the state, and are always recruiting more contractors and more attorneys willing to take on indigent matters. We have increased our contractor pool by approximately 40% in the past 4 years. We will have to add more as we find them.

We are uncertain of what the next two years will bring in terms of case loads, but we are considering the fact that more law enforcement agents are being stationed in the west, population is rising, two Judges have been added, (it may be that more Judges will be added), and we have not seen the caseload curve going down.

We are asking for a \$4,200,000 increase in our general fund appropriation to help defray expenses associated with professional legal services, including contracted legal services. We are estimating that at the end of the 2013-15 biennium, there will be little or no money left in Fund 282, which is our continuing appropriation special fund. We collect approximately \$1,900,000 a biennium from this fund. We had a reserve in that fund, and we are expecting to drain it to nothing by spending approximately \$3,500,000 this biennium. Next biennium we will not have the luxury of spending that much out of the fund (we will only have the amount collected for the biennium) and hence will have to rely more heavily on general fund dollars.

Change Group: A	Change Type: C	Change No: 3	Priority: 5
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Create Dickinson Conflict Office

We have a public defender office in Dickinson, ND. There are two full time attorneys, an administrative assistant, and a legal assistant. They handle not only the crimes in Stark County, but surrounding counties in the Southwest Judicial District such as Slope, Hettinger, Golden Valley, and Dunn. In Dickinson it has been

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exceedingly difficult to find attorneys willing to take on indigent defense cases. The private bar reports being swamped with oil related work, family law and private criminal defense matters. The caseload in the Southwest Judicial District is rising rapidly. From 2011 to 2014, Felony assignments are up 59% and misdemeanors are up 19%. When the public defenders have conflicts, we need to have back up counsel. We currently have a Bismarck attorney on contract to go to Dickinson periodically but we need to beef up the availability of counsel, particularly for cases that get scheduled quickly, such as juvenile matters, bond hearings, extradition matters, and other emergency type matters.

The Dickinson public defenders used to provide back up for Watford City cases and Williston conflicts. With their current caseload, those days are long gone.

We are asking for two full time employee positions to open an adjunct public defender office in the Dickinson area; one attorney and one administrative assistant. The attorney would be handling Dickinson conflicts and assisting with Watford City cases and Williston conflicts, if possible.

Change Group: A	Change Type: C	Change No: 4	Priority: 4
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Create Watford City Office

Prior to 2010, the indigent cases in and around McKenzie County were handled by the Williston Public Defender office. Court would be held twice a month, and a Williston Judge would hear the cases. Since case numbers have sky-rocketed, two Judges have been added in the Northwest Judicial District, one now chambered in Watford City. We are currently using attorneys from Minot and Dickinson to assist with cases in Watford City but the case load is becoming too voluminous for the present contingent of attorneys providing services. From May 1st, 2011-April 30th, 2012, there were 41 felonies and 65 misdemeanor assignments. From May 1st, 2013-April 30th, 2014, there were 163 felonies and 166 misdemeanor assignments. The felony rate, which is now equal to misdemeanors, reflects the rapid growth of serious crime. These are not simple cases to handle for the attorney. Many of the clients are itinerants. Many cases require medical or other expert type of evidence. In the time span mentioned, in McKenzie County felonies have risen 298% and misdemeanors have risen 155%.

Recognizing the emergency situation in Watford City, our commission recently authorized us to open a Watford City Public Defender office utilizing full time temporary employees. We are asking for two full time employees; an attorney and an administrative assistant. This office will create some stability for indigent defense in McKenzie County. The new school, the new courthouse, and all the booming infrastructure only spells continued population growth in Watford City.

Change Group: A	Change Type: C	Change No: 6	Priority: 1
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Funding to Restore Budget

Restore base budget reductions that were made to meet hold even budget.

Change Group: R	Change Type: A	Change No: 1	Priority:
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Change temps to FTE

conversion of five temporary employees to full-time equivalent positions due to continued increases in workload across the state.

Change Group: R	Change Type: A	Change No: 2	Priority:
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General fund increase

Increase in general fund appropriation to replace funds from the indigent defense fund which has been depleted.

Change Group: R	Change Type: A	Change No: 3	Priority:
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Dickinson conflict office

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two full time employee positions to open an adjunct public defender office in the Dickinson area; one attorney and one administrative assistant. The attorney would be handling Dickinson conflicts and assisting with Watford City cases and Williston conflicts, if possible.

Change Group: R	Change Type: A	Change No: 4	Priority:
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Watford City office

two full time employees - an attorney and an administrative assistant to open a public defender office in the Watford City area due to increased caseloads.

Change Group: R	Change Type: A	Change No: 5	Priority:
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Restore funding

Restore base budget reductions that were made to meet hold even budget.

Change Group: R	Change Type: A	Change No: 100	Priority:
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Executive compensation adjustment package

This budget change provides funding for recommended 2015-17 compensation adjustments.