

**2017 SENATE APPROPRIATIONS**

**SB 2022**

# 2017 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

SB 2022/SB 2082  
1/13/2017  
Job # 26877

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

To provide an appropriation for defraying the expenses of the Commission on Legal Counsel for Indigents.

## **Minutes:**

Testimony Attached # 1 - 3

**Legislative Council: Levi Kinnischtzke**  
**OMB: Becky Deichert**

**Chairman Holmberg** called the committee to order on SB 2022/SB 2082.

**Jean Delaney, Director, North Dakota Commission on Legal Counsel for Indigents:**  
Directors Report – Testimony Attached # 1

**(23:15) Chairman Holmberg:** There will be a sub-committee on this and it will be Senator Sorvaag, Senator Hogue, and Senator Mathern.

**(23:50) Travis Finck, Deputy Director, ND Commission on Legal Counsel for Indigents:**  
Testified in favor of SB 2022. Testimony Attached # 2.

**(31:06) Senator Dever:** How much flexibility does a judge have in determining whether or not someone qualifies for indigent defense? And with that, if they are denied and they represent themselves, does that create a point for appeal?

**Travis Finck:** The court determines eligibility in each case. In order to determine eligibility, they have to go through and fill out an application. As part of last year's budget we were ordered to report to the legislature and that report has been prepared on steps that we have taken to make sure that only people who are qualified for our services get our services. We had a taskforce that existed prior to that and as chairman of that taskforce I can tell you that we doubled down on our efforts and one of the things that we did is to redo our application to try to get more information. Essentially, the court makes a determination and basically refer to our guidelines, and those guidelines are to go within 125% of the federal poverty guidelines or \$20,000 in assets. We review where those should be on a yearly basis. If someone is denied counsel, they have the right to appeal. If they are still denied counsel

after appeal, I cannot answer if that would be an appellate issue. I have not seen that. The court has been pretty adamant that if you are indigent you get an attorney. Our agency has written letters to the court asking them to reconsider the eligibility of that person to make sure they are within the guidelines

**Senator Dever:** Recently a judge in Bismarck told a defendant that you can get a job and pay for their own attorney.

**Travis Finck:** I am aware of that situation and we can discuss it.

**Chairman Holmberg:** (Information given to the committee due to having to step out of the committee for the remainder of the hearing.)

**(36:10) Chase Lingle, law student, University of North Dakota School of Law:**  
Testified in favor of SB 2022. Testimony Attached # 3.

**Senator Krebsbach:** There was no further testimony. Closed the hearing on SB 2022.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

SB 2022

1/31/2017

Job # 27663

Subcommittee

Conference Committee

Committee Clerk Signature

*Sandy Baumgartner for Rose Janning*

## Explanation or reason for introduction of bill/resolution:

To provide an appropriation for defraying the expenses of the Commission on Legal Counsel for Indigents.

**Minutes:**

Testimony Attached # 1 - 3

**Legislative Council: Levi Kinnischtzke**

**OMB: Becky Deichert**

**Chairman Sorvaag** called the sub-committee to order on SB 2022. Senators Hogue and Grabinger were present.

**Levi Kinnischtzke** handed out Base Level Funding Changes – Testimony Attached # 1.

**Chairman Sorvaag:** Nothing has changed. Update us on highlights of bill. Changes on 1% salary and insurance.

## **Jean Delaney, Director, Commission on Legal Counsel for Indigents**

We are required to provide an attorney and have little control over case numbers. When they apply for counsel, we must provide counsel. We cut out everything we could. I think we did a good job of cutting budget. The 2016 numbers are the highest and have higher attorney requirement. The severity levels continue to increase. Higher severity and higher penalties means more attorney time for them because of the concern of the client and the investigation. There are many more expenses in those types of cases. The DAPL cases will be expensive. I provided you with a letter that I had drafted to Repr. Delzer for the deficiency appropriations bill explaining how much DAPL will cost. It is anticipated to cost this agency this biennium and the next. We also wanted to address the Marcy's Law and what it would cost for an entire biennium. I have provided you with calculations from our office on what DAPL and Marsy's Law will cost this agency for biennium. Explanation of testimony given.

NDCLCI Testimony from 1/25/17 Letter to Rep. Delzer – Testimony Attached # 2.

NDCLCI – expenses for DAPL and Marsy's Law – Testimony Attached # 3.

**Senator Grabinger:** I have a question. Having a set task force that would handle all of the DAPL cases is that a consideration? You assign the attorney's and that's all they work on because most of them are congregated in one or two areas.

**Jean Delaney:** Most of them are being handled by contracted attorneys and the public defenders in the South Central Judicial District. That is the district that includes Morton and Burleigh County. There were areas where there were great numbers of people arrested and charged with the same thing from the same event, that each requires to have their own attorney provided to them. Those are the cases where we have attorneys coming from Williston, Minot and Grand Forks, East Grand Forks and Holli, Minnesota to take those case because each of those defendants is required to have their own attorney.

**Senator Grabinger:** They have a right to their own attorney. Since if you had a group that only worked on was the DAPL people because they are so similar and located in the same area, would we be more efficient?

**Jean Delaney:** That is a tough question. Many of them would still have to be outsourced to other districts. I don't know if it would save money if you were paying people an hourly rate to take the cases.

**Senator Grabinger:** I am trying to think out of the box and come up with a way and still get those people representation, at the same time do it cost effectively with a group of people.

**Jean Delaney:** Most of them are in this district who are taking these cases. They are taking a higher percentage of the DAPL cases.

**Travis Finck,** Deputy Director; To answer that question, the devil really lays in the details. Prior to that when DAPL cases started, we made contact with the Office of Disciplinary Council of the state of ND to try and fair it out and see if we could assign one attorney to multiple cases from these offenses. The problem lies that in ND we have a conflict of interest rule that would prohibit that. Our public defenders, each office treats it essentially as a small firm. So on one particular date there were 130 arrests. Each person qualified to have their own attorney. On another date some were charged with engaging in a riot. Other examples followed. It may make sense on the cost side. We just can't do it under the rules of professional conduct, which we are bound.

**Senator Hogue:** Walk us thru the process when the defendant applies to attain services. I know there is an application form and I know they have to pay a \$35 application fee.

**Jean Delaney:** They are told about their right to an attorney. They are given the form, fill it out and give it to the clerk. Most of the ones I review, the \$35 fee is due upon judgment. The court under the statute makes the determination of eligibility to the commission standards and policies. We have guidelines to determine eligibility for indigent defense services. Sometimes in some districts it's the judges to make the eligibility and others it is delegated to a clerk in the clerk's office by following the guidelines. Explanation of guidelines followed. However, the court can look at exceptional circumstances. Anticipated complexity of case is also considered. We were directed in HB1022 last budget to report to legislature about the effectiveness of procedures and policies determining the only person who are indigent receive our services. We did delegate this job to our task force. They looked at our standards policies. They surveyed the clerk's offices, spot checked applications, and generally check if they are truly indigent. It came up with suggestions, recommendations, and findings that were

adopted by the commission. These findings included to make sure that the clerk's office and courts office to provide training. We also provided training to state's attorneys too, so they can bring it to the courts attention if they think someone is not eligible.

**Senator Hogue:** Earlier you described that there are certain people who are eligible based on statue, rule, and constitution. What are the eligible classes?

**Jean Delaney:** These are in the guidelines also. There is a list of persons entitled to attorneys. A person is entitled to an attorney provided by the commission if charged with a felony in district court. If you are charged with a misdemeanor in district court and unless the court has made a determination that jail is not a possible penalty or probation revocation, we don't provide for a misdemeanor if they are city cases. More explanation followed.

**Senator Hogue:** This is for the juvenile, not for the parent.

**Jean Delaney:** In unruly and delinquency cases we provide to the juvenile through all proceedings in the petition. For the parents, we do not provide in the judicatory phase. In determination of parental rights, we do provide to the indigent parents. The child is only indigent if the parent is indigent.

**Chairman Sorvaag:** In Marsy's Law, is that million built in?

**Jean Delaney:** It was not built in. At the time we proposed our budget to the governor, it was prior to DAPL cases and Marsy's Law taking effect. We had asked for 5 optional packages. The first was to bring our base up to the point it was at the beginning of this biennium, the \$18.18 million. The 2<sup>nd</sup> optional package was for an additional \$500,000 to cover the increasing case load. We had also asked for an additional sum package 3 to provide salary increases to our agencies of employees. The attorneys are paid significantly less than comparable positions in the States Attorney Offices. We compared regularly paid. They are underpaid. They should be paid more than they are paid. Our 4<sup>th</sup> package was to change 2 temporary employees in our Minot's office to FTEs. We are advertising for an attorney in the Minot office.

**Chairman Sorvaag:** The 646 for Marsy's Law, I presume that's an estimate?

**Jean Delaney:** Yes, it's going to cost more money. There will be more attorney time and more hearings. There will be less funds coming into our special fund. The amount is a guess.

**Senator Hogue:** I want to key in on the 646. Is that assuming that the victim in certain cases will intercept your application fee or is that just for the expenditure of more time to coordinate with the victim? The victim can intercept any restitution that is made. I guess I would look at your application if it's not restitution, but there is some kind of different language in the provision and I am wondering. You mentioned that you are going to get less into your special funds and what I am trying to figure out is that because you think the application fee will be taken by the victim or is it some other fee you get that will be taken?

**Jean Delaney:** We get 2 fees that go into our special fund. We get the \$35 application fee and then there is a \$100 facility improvement fee which currently the first \$750,000 goes to

the commission and then the next \$460 goes to the courts for the court facility improvements. Up until Marsy's Law, the application fee was the first fee that was collected from the defendant and was paid. The \$100 facility indigent defense improvement fee was the second. The third was the victim witness fee and the next collected was restitution. We always got the first bite. Restitution now moves into priority 1, and the application fee moves into priority 2. You could argue to pay before judgement. The \$100 facility improvement fee moves into 3<sup>rd</sup> and so on.

**Senator Hogue:** You're taking position that restitution will come ahead of the application fee and the \$100?

**Jean Delaney:** Yes, that is my understanding.

**Senator Grabinger:** With Marsy's Law, the \$269,000 that you will be shorted, I know that in Jamestown for example, we are hiring a person to help with Marsy's law victim advocate. The counties are looking at putting an additional staff to ramp up Marsy's Law. They are taking steps within our state's attorney's office and our city's attorney's office to do these. Isn't that going to lessen the need for what you are doing here?

**Jean Delaney:** Our request as to Marsy's Law talks about extra hearings that will need to be held and extra time with defense attorney. The fact that there will be more preliminary hearings because the victim has right to not participate in a deposition. So the defense attorney will need to use the discovery tool. It's anticipated, then the state will tell the victim that the deposition plan for you rather than to appear in public in a jury trial. There will be increases in other areas.

**Senator Grabinger:** You are saying that the cities and counties won't offset the need for what you do.

**Senator Hogue:** I will go back to DAPL. When the Supreme Court authorized out of state attorneys to represent some of the defendants, are they representing indigent defendants and if they are, how are they being compensated?

**Jean Delaney:** I am aware of less than handful of cases in which there has been a substitution of council where they had originally an indigent defense attorney and then an attorney is being provided, I assume under that process. Although, when I am rethinking it, an attorney in at least 2 of the cases has a ND license. He is probably being compensated through one of the Go Fund Me methods, but would not be covered under the Supreme Court order. I don't know how other attorneys are being funded.

**Senator Hogue:** There are no attorneys that are looking to your agency for reimbursement?

**Jean Delaney:** As far as I know, we have contracted with many attorneys since this event. We have not contracted with any unlicensed ND attorneys to provide services

**Senator Hogue:** I know you have to contract from time to time. I was wondering about the caseload for DAPL defendants, and new lawyers that have been licensed to serve.

**Jean Delaney:** I knew that we contracted for the October 27<sup>th</sup> event where we needed over 80 attorneys. We don't normally have that many contracted with us. I would like to stress that we take very seriously your entrustment of funds to us. Those funds are needed. Please grant 1<sup>st</sup> and 2<sup>nd</sup> optional packages for the increase in caseloads.

**Travis Finck,** Deputy Director, North Dakota Commission on Legal Counsel for Indigents Just to follow up on a couple of questions, going back to making sure people who receive help are indigent. That HB 1235 gave us help to make sure that the people are indigents. That has been passed as amended. That gives us access to WSI records, records at the Dept. of Transportation, things like to allow to verify the information on applications The could be done on a spot check manner. Additionally, people who are newly licensed and contracted with any of them due to the Supreme Court order, is that the nature of the question?

**Senator Hogue:** Court made a rule to handle the influx of defendants to allow out of state attorneys to accommodate case volume. Are they now coming forward and asking to being reimbursed by the agency?

Travis Finck: The order specifically states and under the pro-hawk process, without requiring that fee and waving the necessary appearance of the local attorney that would pro-hawk the out of state attorney in. My reading of the order was they cannot be paid for services they provide. We have not been contacted to provide the services. All the services we had we contracted with attorneys for that hourly rate that we provide

**Senator Hogue:** Jean said some of these folks may have Go Fund Me account.

**Travis Finck:** I understand there are some who are better than I on internet researching. I believe the BCI folks have looked into that and have persued some of that. Something to check out would be banking interests, but we don't have access. I would imagine there would be federal prohibitions on those kinds of actions.

**Chairman Sorvaag:** HB 1235 was mentioned. It gives you access to what?

**Travis Finck:** It provides access to WSI records. It provides documents for child access for fee associated and be exempted from the fee. It provides records for vital statistics and current state tax records.

**Senator Hogue:** How long has application fee been \$35 dollars. Has there been a thought that it should be increased?

**Jean Delaney:** I think it has 2 biennium.

**Aaron Petrocish:** Financial Officer; It used to be \$25 and we upped it to \$35.

**Jean Delaney:** I think it was upped by the Judiciary in statue.

|

**Levi Kinnischtzke:** It was thru the 2013 session.

**Chairman Sorvaag:** That amount is set by the state.



**Jean Delaney:** It was set by the legislature.

**Travis Finck:** I want to echo what Jean said about our best interests. We are good stewards of whatever money we are given.

**Senator Grabinger:** My big concern of Marsy's Law is that we can't collect fees before the restitution. I wonder how many people knew that we can't do that? Those fees have to come from the state and we have to pay for it. It would take 2/3s to change that.

**Chairman Sorvaag:** It's a constitutional measure. That would be collected before any government money is collected. We will meet again about that.

**Jean Delaney:** We'll be here.

**Becky Deichert:** How do we handle this with the deficiency? They changed the funding and made a borrowing authority, but strictly for DAPL. But they will be short for Marsy's Law too.

**Chairman Sorvaag:** That is with the deficiency budget. We'll start over when we get there. I think why they gave the borrowing for the DAPL was they presume to get a partial restitution.

**Senator Hogue:** The state is a victim under Marsy's Law.

**Chairman Sorvaag:** Under that we will adjourn.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

SB 2022 sub-committee  
2/8/2017  
Job # 28064

Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Leibel for Rose Lanning*

## Explanation or reason for introduction of bill/resolution:

To provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

**Minutes:**

Attachment 0

**Legislative Council:** Levi Kinnischtzke  
**OMB:** Becky Deichert

**Chairman Sorvaag:** Called the sub-committee to order on SB 2022. We had talked something about raising the application fee, did you have an opinion or concerns?

**Jean Delaney, Executive Director, Commission on Legal Counsel for Indigents:** We did have some concerns in increasing it. We looked at it and 4 years ago went up from twenty-five to thirty-five so it would be a hundred percent increase in four years and these are indigent persons who are applying for counsel. Some of the other concerns we had about it is if the fee is higher, the judges may waive some or all of it more frequently because they are indigent persons and might not be able to pay it.

**Chairman Sorvaag:** What percentage is waved now?

**Aaron Petrowitz, Financial Officer, Commission on Legal Counsel for Indigents:** The courts collect the fees and they make the deposits to the treasury.

**Jean Delaney:** If the fee is paid beforehand we collect the fee and if the person is found not guilty or the case is dismissed the fee isn't collected. It is better to have the fee collected at the beginning of the case whenever possible. I looked up some data and according to the November 2016, US Department of Justice Bureau of Justice Statistics, state administered indigents defense systems findings, nationwide there are twelve states and the district of Columbia that have an application fee and most of them are less than what ours is.

**Chairman Sorvaag:** So 38 states have nothing?

**Jean Delaney:** Yes, at least according to this document. The other concern is Marsy's Law and we are no longer the number one priority for collection.

**Senator Sorvaag:** I think we understand that is a little bit of an unknown until we get through a biennium.

**Jean Delaney:** Something like sixty percent of the cases are not cases with victims so Marsy's Law would not apply to those cases.

**Senator Hogue:** I went back and read Marsy's Law and let's say there's a victim where one of your attorney's is representing the defendant but there is a victim, if the court does not order any restitution there is no priority to be established so you would still get your application fee.

**Jean Delaney:** Yes, if there is no restitution ordered and the application fee was paid, we'd get that fee assuming they paid it.

**Senator Hogue:** Is that something the court could consider on a case where the economic harm to the victim was slight and they didn't necessarily want that court fee to be lost so they wouldn't order restitution. Is that something they could do under Marsy's law?

**Jean Delaney:** I think if the person has put in for restitution and restitution is shown by the state's I think under Marsy's law restitution has to be imposed. I don't think a court can impose fines or fees or restitution if there is not possibility that the defended can pay it. The fees range from \$10 to \$212 but most of them are \$40 and under. I want to bring to the subcommittees attention the deficiency appropriation bill where they have inserted a new section three for borrowing authority for the commission to borrow from the Bank of North Dakota for DAPL cases there are some issues with that but it runs through from the effective day of the act through June 30, 2019 so it would cover part of what the budget would be for the upcoming biennium. There are a couple of things that concern me about it and one of them is the budget for the bill, the section is for the borrowing authority for the sum of \$859,000 which would not be enough. In our DAPL estimates we would need a deficiency of \$669,000 for this current biennium and \$356,000 for the upcoming biennium. That would be \$1.025M in total costs. It appears that in this deficiency appropriations bill it also includes the money that we would need for Marsy's Law. What is the most concerning to me is the period of legal cost. We have already incurred many expenses prior to the effective day of this act. We have as of today 365 case assignments that we provided attorneys in and we have incurred a lot of expense. We will need coverage for those expenses we have incurred.

**Senator Sorvaag:** We will have to wait until that comes to this side to get into that discussion. We're borrowing everything related to DAPL because we are going for restitution and that is why they are doing that in the hopes of getting federal restitution.

**Levi Kinnischtzke:** Briefly going over the spreadsheet. At this point, if the committee wishes items to go through for consideration would be listed on the left. (10:36-11:19)

**Senator Sorvaag:** Neither Governors gave any authorization for FTE's and the health insurance increase is going to move over and the five percent will be taken out as we are

doing with all health insurance budgets. Do you want to address the increase in operating expenses, is that a number you helped to come up with?

**Aaron Petrowitz:** That number is culmination of items reduced in the executive budget. It also includes the addback from the allotment from August 2016 reductions. (12:40-13:23)

**Senator Sorvaag:** The next line is the \$384,000 increase.

**Aaron Petrowitz:** The majority of our entire budget is either salaries or fees and professional services.

**Jean Delaney:** This budget starts with the base level of \$16,982,000. We started out this biennium at a base level of \$18M. So this is significantly less than we actually started with this current biennium.

**Senator Sorvaag:** This is after the governor asked for ten percent. That is why that number is lower.

**Levi Kinnischtzke:** Included in that number again is the allotment process so \$1.9M was reduced as part of the 10% recommendation from Governor Dalrymple. \$1M is added back in for the allotment process and there was also an additional \$1.3 M increase due to professional fees due to rising caseload.

**Becky Deichert:** The \$1.3M is what Governor Dalrymple budget put in. It didn't restore the full amount but that is what we came up with.

**Senator Sorvaag:** I presume we aren't going to give you anymore FTEs but we need to cover some of your case load. If we went with Burgum recommendation without the 64,000 out, we'd be at \$19M without the health insurance adjustment.

**Levi Kinnischtzke:** Without that amount it would actually be \$19,797,000.

**Senator Grabinger:** In your testimony, you gave us 5 options that you suggested and you would like numbers one and two. We're talking about the increase of funding for the operating expense of one hundred and thirty and the three hundred and eighty-four for professional, would that be what you are talking about with the \$500,000 increase?

**Jean Delaney:** It does look like it comes to a little over \$500,000. We had an extreme number of cases this year and we are up to 14,800 or more and we don't see it going away but to continuing to increase at this point.

**Senator Grabinger:** You gave us these 5 options. Would we actually be needing that second option with the \$500,000 request with these two funds?

**Aaron Petrowitz:** The difference would be the \$500,000 would be added on to a lower base budget. When we said the optional packages, number one was to bring the base budget for the general fund to the way it was and then go \$500,000.

**Senator Grabinger:** So you wanted those two in addition and I was taking it as option one and option two and so forth.

**Aaron Petrowitz:** The first option was to bring it back to the original base of the last biennium and then the second one was to get an additional \$500,000 in funding.

**Jean Delaney:** Another concern with that is of course Marsy's Law with the reduced collections the authority to spend from the special fund, there might not be that amount collected in the next biennium.

**Senator Sorvaag:** We have to decide but I think I need a little more time to think on this one.

**Senator Grabinger:** We're going to be putting ourselves in a bind.

**Senator Sorvaag:** We'll have one more meeting and get a handle on the budget.

**Jean Delaney:** When you have it, we'll have someone here.

**Senator Sorvaag:** We want to cover some ground and closed the hearing until later.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

SB 2022  
2/10/2017  
Job # 28226

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

To provide an appropriation for defraying the expenses of the Commission on Legal Counsel for Indigents.

## **Minutes:**

Testimony Attached # 1.

**Legislative Council: Alex Cronquist**  
**OMB: Becky Deichert**

**Chairman Holmberg** called the committee to order on SB 2022.

**Senator Sorvaag** handed out amendment 17.0530.01001 – Testimony Attached # 1.  
Discussion followed explaining the amendment.

**Senator Sorvaag: Moved a Do Pass on the amendment.**

**Senator Grabinger: Seconded the motion.**

**A Roll Call Vote was taken: 13 yeas, 0 nays, 1 absent.**

**Senator Sorvaag: Moved Do Pass as Amended.**

**Senator Erbele: Seconded the motion.**

**A Roll Call Vote was taken: 13 yeas, 0 nays, 1 absent.**

**Senator Hogue will carry the bill.**

UN  
 2/10/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2022

Page 1, replace lines 12 through 17 with:

"Commission on legal counsel for indigents	<u>\$18,889,823</u>	<u>\$1,022,783</u>	<u>\$19,912,606</u>
Total all funds	\$18,889,823	\$1,022,783	\$19,912,606
Less estimated income	<u>1,906,914</u>	<u>13,051</u>	<u>1,919,965</u>
Total general fund	\$16,982,909	\$1,009,732	\$17,992,641
Full-time equivalent positions	40.00	0.00	40.00"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - Senate Action

	Base Budget	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$18,889,823	\$1,022,783	\$19,912,606
Total all funds	\$18,889,823	\$1,022,783	\$19,912,606
Less estimated income	<u>1,906,914</u>	13,051	<u>1,919,965</u>
General fund	\$16,982,909	\$1,009,732	\$17,992,641
FTE	40.00	0.00	40.00

Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes

	Adds Funding for Base Payroll Changes <sup>1</sup>	Adds Funding for Health Insurance Increases <sup>2</sup>	Increases Funding for Operating Expenses <sup>3</sup>	Increases Funding for Professional Fees <sup>4</sup>	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$267,882	\$123,982	\$130,919	\$500,000	\$1,022,783
Total all funds	\$267,882	\$123,982	\$130,919	\$500,000	\$1,022,783
Less estimated income	<u>10,049</u>	<u>3,002</u>	<u>0</u>	<u>0</u>	<u>13,051</u>
General fund	\$257,833	\$120,980	\$130,919	\$500,000	\$1,009,732
FTE	0.00	0.00	0.00	0.00	0.00

<sup>1</sup> Funding is added for cost-to-continue 2015-17 biennium salaries and benefit increases and for other base payroll changes.

<sup>2</sup> Funding is added for increases in health insurance premiums from \$1,130 to \$1,249 per month.

<sup>3</sup> Funding is added for operating expenses.

<sup>4</sup> Funding is added for professional fees due to increased caseloads.

Date: 2-10-17  
 Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2022**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.0530.01001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Sorvaag    Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	A				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 13    No 0

Absent 1

Floor Assignment \_\_\_\_\_

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



Date: 2-10-17  
 Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2022**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By P Sowaag Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek					
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Hogue

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

**REPORT OF STANDING COMMITTEE**

**SB 2022: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2022 was placed on the Sixth order on the calendar.

Page 1, replace lines 12 through 17 with:

"Commission on legal counsel for indigents	<u>\$18,889,823</u>	<u>\$1,022,783</u>	<u>\$19,912,606</u>
Total all funds	\$18,889,823	\$1,022,783	\$19,912,606
Less estimated income	<u>1,906,914</u>	<u>13,051</u>	<u>1,919,965</u>
Total general fund	\$16,982,909	\$1,009,732	\$17,992,641
Full-time equivalent positions	40.00	0.00	40.00"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - Senate Action**

	Base Budget	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$18,889,823	\$1,022,783	\$19,912,606
Total all funds	\$18,889,823	\$1,022,783	\$19,912,606
Less estimated income	1,906,914	13,051	1,919,965
General fund	\$16,982,909	\$1,009,732	\$17,992,641
FTE	40.00	0.00	40.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes**

	Adds Funding for Base Payroll Changes <sup>1</sup>	Adds Funding for Health Insurance Increases <sup>2</sup>	Increases Funding for Operating Expenses <sup>3</sup>	Increases Funding for Professional Fees <sup>4</sup>	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$267,882	\$123,982	\$130,919	\$500,000	\$1,022,783
Total all funds	\$267,882	\$123,982	\$130,919	\$500,000	\$1,022,783
Less estimated income	10,049	3,002	0	0	13,051
General fund	\$257,833	\$120,980	\$130,919	\$500,000	\$1,009,732
FTE	0.00	0.00	0.00	0.00	0.00

<sup>1</sup> Funding is added for cost-to-continue 2015-17 biennium salaries and benefit increases and for other base payroll changes.

<sup>2</sup> Funding is added for increases in health insurance premiums from \$1,130 to \$1,249 per month.

<sup>3</sup> Funding is added for operating expenses.

<sup>4</sup> Funding is added for professional fees due to increased caseloads.

**2017 HOUSE APPROPRIATIONS**

**SB 2022**

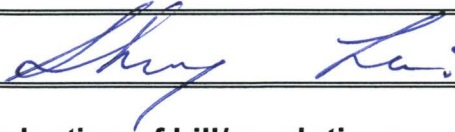
# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division  
Medora Room, State Capitol

SB2022  
3/7/2017  
Recording Job# 28767

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## 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:

See attachments A through G

**Chairman Brandenburg:** Opened the hearing on SB2022.

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

**Vice Chairman Boehning:** On the applicant fee and the court administration fee, how many of those fees have been waived?

**Jean Delaney:** I don't know how many have been waived. The court has the ability to waive any fee. It's unconstitutional to impose a fee if the defendant will never be able to pay it.

**Vice Chairman Boehning:** You don't have any of those numbers?

**Jean Delaney:** I don't.

**Representative Kempenich:** How does the court determine the ability to pay?

**Jean Delaney:** Many of these people are likely indigent. Anyone that wants counsel applies on our standard form.

**Representative Kempenich:** How do the courts get the information from other states to find out if they were employed? We're hearing anecdotally that they were getting paid something.

**Jean Delaney:** All we can go on is the way the application is submitted. Quite a few have applied for services and have been found ineligible due to their income or assets.

**Chairman Brandenburg:** You have \$460,750.00 in your appropriation. What is the right number? Are there two different funds; one with the Supreme Court and one with indigents? Is it the same one we're talking about?

**Jean Delaney:** We have estimated for the DAPL cases for this current biennium we will need \$669,000.00. For the next biennium, we anticipate \$356,000.00 for a total of \$1.025 million for the DAPL cases. For Marsy's Law we're asking a deficiency appropriation for this biennium in the amount \$188,000.00.

**Chairman Brandenburg:** These people want their day in court so they can make the headlines. Can't we declare a holiday and tell these people to go home? This fund was set up for people who really need legal services.

**Representative Delmore:** The reason the indigent defense was set up was to avoid a lawsuit. Constitutionally there is no rainy day.

Jean Delaney continued with her testimony.

**Vice Chairman Boehning:** How much money are they paying back to the general fund in order to pay their attorney fees?

**Aaron Petrov, Financial Officer, ND Commission on Legal Counsel for Indigents:** That money never comes to us. The courts collect those fees and then it goes back to the general fund. That's not something we track. A couple of years back we looked and for a biennium it was a little under \$400,000.00.

**Vice Chairman Boehning:** Maybe instead of going back to the general fund it should go back into the fund so next biennium we don't have to do a deficiency payment.

**Jean Delaney:** It is a smaller amount that is collected. Those attorney fees would be waived for those people who would be unable to pay them.

**Vice Chairman Boehning:** You're looking for \$180,000.00 for Marsy's Law which is an unknown.

**Jean Delaney:** That is a possibility. As the entity that provides the attorneys; sometimes the attorneys are uncomfortable to ask for that amount because they are representing the client.

**Vice Chairman Boehning:** It wouldn't be a conflict if it's going to the court. It would be paid to the court and the court would automatically put it back into your fund versus going through the general fund and then you have to get it appropriated again.

**Jean Delaney:** That's correct.

Jean Delaney continued with her testimony.

**Representative Delmore:** Each person is required a competent defense for their case. Are there legal ramifications if those are not provided that could cost us a lot more money?

**Jean Delaney:** Yes. If a person is not given competent representation, you then end up with the client filing for post-conviction relief and appeals. If they are incompetent or provided ineffective assistance, the supreme court or on a post-conviction relief, the district court will remand the matter back to the district court where there will be another trial.

**Representative Kempenich:** What's the conviction rate of clients you have?

**Jean Delaney:** I can't say that they're all innocent. Even a person who is innocent has a constitutional right to counsel.

**Representative Kempenich:** Like with Marsy's Law it usually takes place after the trial. Are you just using a general population to come up with numbers for costs on Marsy's Law?

**Jean Delaney:** Marsy's Law will cost the agency more; it's hard to quantify it at this time.

Jean Delaney continued with her testimony.

**Representative Kempenich:** On these A and AA felonies, what are the percentage of cases you represent?

**Jean Delaney:** We don't have the data for the number of AA felonies across the state; but, I am confident that we provide attorneys in a great percentage of these serious felony cases and even a higher number of appeals for serious felonies.

Jean Delaney continued with her testimony.

**Representative Delmore:** Can you walk us through the attachments that you have?

**Jean Delaney:** See testimony attachment B.

**Representative Kempenich:** How many times do we have to provide an appeal attorney?

**Jean Delaney:** There is a right to an appeal from any criminal matter under Rule 44. There is a right to only one appeal; unless on the appeal they remand it back, the person is retried and they're again and then they would appeal again. They would have an appeal on that remanded case. There is post-conviction relief which is a statute. That is not an appeal at the supreme court, it's a review at the district court level. If the client or party is unhappy with the result at that post-conviction relief proceeding, they can appeal from that.

**Representative Kempenich:** You have to keep providing an attorney for that?

**Jean Delaney:** Yes.

**Representative Kempenich:** There is no constitutional statute; so a person could change the statute if you wanted to.

**Jean Delaney:** That's correct there is no constitutional right to an attorney in a post-conviction matter or an appeal from a post-conviction matter. There is a right for the appeal.

Jean Delaney continued with her testimony see attachments C through F.

**Representative Kempenich:** How many people do you think will even show up? We have over \$12 million in unpaid fines where people don't pay.

**Jean Delaney:** There will be some that don't come.

**Representative Kempenich:** If they're indigent, how are they to travel if they're making 2,000 mile trips?

**Jean Delaney:** It could be that they're parents might not be indigent. It doesn't mean that they're parents wouldn't buy them a plane or bus ticket to come up to North Dakota.

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

**Representative Kempenich:** What is the percentage of cases for felonies that the commission on indigent defense handles across the state?

**Sally Holewa, State Court Administrator, ND Supreme Court:** It's going to be pretty high.

**Vice Chairman Boehning:** What qualifies you to be indigent and get these services? What does the form look like? Are you able to do a check?

**Sally Holewa:** The form is getting much smaller but it does ask for a lot of information. The checking piece is missing.

**Travis Fink:** There is legislation it's HB1235. We did form a task force. As part of that task force we did look at making sure that only those people who are indigent actually receive our services. HB1235 allows the commission access to records that would otherwise be confidential and waive some of the fees; such as being able to obtain driving records or vehicle ownership records, tax records, WSI records and the amount of unemployment. What qualifies is 125% of the federal poverty guidelines and we do those each year and they are on our website.

**Tony Wiler, Executive Director, ND Bar Association:** Testified in support of SB2022.

**Chairman Brandenburg:** Closed the hearing.

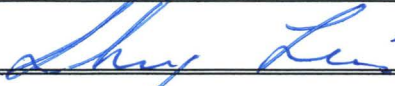
# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Government Operations Division  
Medora Room, State Capitol

SB2022  
3/14/2017  
Recording Job# 29143

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## 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 Brandenburg:** Opened the hearing on SB2022.

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

**Vice Chairman Boehning:** We talked about this money that's reported to the state treasurer. Does that money go back into your office or does that go into the general fund?

**Jean Delaney:** It would be back into the general fund.

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

**Representative Delmore:** There was also a problem at that time with judges appointing. Can you share part of the problem that came about with that?

**Travis Finck:** Prior to the formation of the commission, the state court was funded into the district court's budget to provide legal services for indigent persons. Depending on the county where you were at, it was bid out to contractors. It wasn't based on qualifications or on anything. The judges were making the determination of who would get that contract. That created a constitutional issue where the same judge who would be hearing a case was deciding what lawyer would defend the case.

Travis Finck continued with his testimony.

**Chairman Brandenburg:** The \$130,000.00, is that for contract work? What's the \$130,000.00 for?



**Aaron Petrowitz, Financial Officer, ND Commission on Legal Counsel for Indigents:** The \$130,000.00 and the \$384,000.00; those numbers go together. Those are for increases in caseloads. The \$384,000.00 is professional fees to pay contractors.

**Chairman Brandenburg:** There's an additional \$500,000.00.

**Aaron Petrowitz:** The \$130,000.00 is for the associated costs. The \$500,000.00 is to pay for the \$75.00/hour to the attorneys.

**Chairman Brandenburg:** So right now you've added \$1.22 million to go to \$19 million from \$18.8 million.

**Aaron Petrowitz:** Correct.

**Representative Kempenich:** That's utilization, that's not the DAPL issue correct?

**Aaron Petrowitz:** Correct.

**Travis Finck:** That \$1.3 million added in is after the allotments. As this budget went through the Senate, it's still a reduction from last biennium's general fund commitment.

Travis Finck continued with his testimony,

**Representative Kempenich:** Are these attorneys coming in to the state asking to be reimbursed?

**Travis Finck:** There are cases where we're representing persons who apply for a public defender and we appoint a public defender for those. We're not contracting with those individuals coming in on a pro bono basis; they don't receive compensation from us for the services provided.

**Representative Kempenich:** It makes for good media for these people out of state.

**Travis Finck:** We only contract with those people that sign a contract with us.

Travis Finck continued with his testimony.

**Representative Delmore:** Made a motion for a "Do Pass".

**Vice Chairman Boehning:** Seconded the motion.

**Roll Call Vote:** 6 Yeas 0 Nays 1 Absent

**Motion Carried.**

**Chairman Brandenburg:** Closed the hearing.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division  
Medora Room, State Capitol

SB2022  
3/21/2017  
Recording Job# 29493

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## 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 Brandenburg:** Opened the hearing on SB2022.

**Representative Delmore:** Made a motion to reconsider their actions.

**Vice Chairman Boehning:** Seconded the motion.

**Voice Vote made.**

**Motion Carried.**

**Representative Delmore:** Explained amendment 17.0530.02001.

**Representative Delmore:** Made a motion to move amendment 17.0530.02001.

**Representative Nathe:** Seconded the motion.

**Roll call vote:** 6 Yeas 0 Nays 1 Absent.

**Motion Carried.**

**Representative Delmore:** Made a motion for a "Do Pass as Amended.

**Representative Nathe:** Seconded the motion.

**Roll Call Vote:** 6 Yeas 0 Nays 1 Absent.

**Motion Carried.**

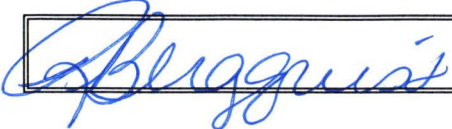
Chairman Brandenburg: Closed the hearing.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

SB 2022  
March 30, 2017  
29827

- Subcommittee  
 Conference Committee



## **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:**

**Representative Delmore:** This is your indigent defense budget. As we are guaranteed to bear arms we are also guaranteed our day in court. Indigent defense fund came about to prevent a law suit when judges were appointing people for indigent defense based on the lowest bid people could find. The number of cases have increased, in the senate there was a slight increase to try to cover some of the cost of contracts. Some of the trials are taking longer, the work has been more complicated. They have no federal funds or grants. If you look at the house changes the only thing that we put in there from the senate change was for the health insurance and it's still a slight reduction from what their moneys where in 2015.

**Representative Delmore: I move amendment 17.0513.02001**

**Representative Boehning: Second**

**Chairman Kempenich:** Further discussion? This has been a budget that for about 10 years now.

**Representative Brandenburg:** It's pretty simple and it's about as good as it's going to be. Whether you agree or not, it works and there's a place for it.

**Representative Kempenich:** When we first started this Montana was being sued at the time and South Dakota started at 12 million dollars, Montana is over 20 million now. We're getting there.

**Representative Delmore:** During the allotment they cut everything out of operating that they could find including money needed for technology. Everything that was not critical was taken out.

**Voice vote, all in favor, motion carries.**

**Representative Delmore: Do Pass as Amended**

**Representative Nathe: second**

**Representative Kempenich: Further discussion?**

**A Roll Call vote was taken. Yea: 18      Nay: 0      Absent: 3**

**Representative Delmore will carry the bill**

3/31/12 DI

17.0530.02001  
Title.03000

Prepared by the Legislative Council staff for  
House Appropriations - Government  
Operations Division Committee  
March 31, 2017

Fiscal No. 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2022

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel for indigents	<u>\$18,889,823</u>	<u>\$1,013,800</u>	<u>\$19,903,623</u>
Total all funds	\$18,889,823	\$1,013,800	\$19,903,623
Less estimated income	<u>1,906,914</u>	<u>12,833</u>	<u>1,919,747</u>
Total general fund	\$16,982,909	\$1,000,967	\$17,983,876"

Page 1, after line 17, insert:

**"SECTION 2. HEALTH INSURANCE INCREASE.** The salaries and wages line item in section 1 of this Act includes the sum of \$114,999, of which \$112,215 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2022 - Commission on Legal Counsel for Indigents - House Action**

	Base Budget	Senate Version	House Changes	House Version
Comm. on Legal Counsel for Indigents	\$18,889,823	\$19,912,606	(\$8,983)	\$19,903,623
Total all funds	\$18,889,823	\$19,912,606	(\$8,983)	\$19,903,623
Less estimated income	<u>1,906,914</u>	<u>1,919,965</u>	(218)	<u>1,919,747</u>
General fund	\$16,982,909	\$17,992,641	(\$8,765)	\$17,983,876
FTE	40.00	40.00	0.00	40.00

**Department No. 188 - Commission on Legal Counsel for Indigents - Detail of House Changes**

	Adjusts Funding for Health Insurance Increases <sup>1</sup>	Total House Changes
Comm. on Legal Counsel for Indigents	(\$8,983)	(\$8,983)
Total all funds	(\$8,983)	(\$8,983)
Less estimated income	<u>(218)</u>	<u>(218)</u>
General fund	(\$8,765)	(\$8,765)
FTE	0.00	0.00

<sup>1</sup> Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month.

This amendment also adds a new section to identify the amount of funding included in the bill for the increase in employee health insurance premiums.



**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB2022**

House Appropriations - Government Operations Division Committee

Subcommittee

Amendment LC# or Description: To reconsider their actions

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:     Reconsider     \_\_\_\_\_

Motion Made By Representative Delmore    Seconded By Vice Chairman Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Brandenburg			Representative Delmore		
Vice Chairman Boehning					
Representative Brabandt					
Representative Nathe					
Representative Kempenich					
Representative Vigesaa					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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



**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB2022**

House Appropriations - Government Operations Division Committee

Subcommittee

Amendment LC# or Description: 17.0530.02001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Delmore    Seconded By Representative Nathe

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Brandenburg	X		Representative Delmore	X	
Vice Chairman Boehning	X				
Representative Brabandt	X				
Representative Nathe	X				
Representative Kempenich					
Representative Vigesaa	X				

Total    (Yes) 6    No 0

Absent 1

Floor Assignment \_\_\_\_\_

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

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB2022**

House Appropriations - Government Operations Division Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Delmore    Seconded By Representative Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Brandenburg	X		Representative Delmore	X	
Vice Chairman Boehning	X				
Representative Brabandt	X				
Representative Nathe	X				
Representative Kempenich					
Representative Vigesaa	X				

Total    (Yes) 6    No 0

Absent 1

Floor Assignment Representative Delmore

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

Date: 3/30/2017  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2022**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.0530.02001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Delmore Seconded By Representative Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**MOTION CARRIES**

Date: 3/30/2017  
Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2022**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Representative Delmore Seconded By Representative Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	A				
Representative Kempenich	X		Representative Streyle	X	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading	A		Representative Boe	X	
Representative Kreidt	X		Representative Delmore	X	
Representative Martinson	X		Representative Holman	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	A				

Total (Yes) 18 No 0

Absent 3

Floor Assignment Representative Delmore

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

**MOTION CARRIES**

**REPORT OF STANDING COMMITTEE**

**SB 2022, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (18 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2022 was placed on the Sixth order on the calendar.

Page 1, replace lines 12 through 16 with:

"Commission on legal counsel for indigents	<u>\$18,889,823</u>	<u>\$1,013,800</u>	<u>\$19,903,623</u>
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Page 1, after line 17, insert:

**"SECTION 2. HEALTH INSURANCE INCREASE.** The salaries and wages line item in section 1 of this Act includes the sum of \$114,999, of which \$112,215 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month."

Renumber accordingly

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**Senate Bill No. 2022 - Commission on Legal Counsel for Indigents - House Action**

	Base Budget	Senate Version	House Changes	House Version
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General fund	\$16,982,909	\$17,992,641	(\$8,765)	\$17,983,876
FTE	40.00	40.00	0.00	40.00

**Department No. 188 - Commission on Legal Counsel for Indigents - Detail of House Changes**

	Adjusts Funding for Health Insurance Increases <sup>1</sup>	Total House Changes
Comm. on Legal Counsel for Indigents	(\$8,983)	(\$8,983)
Total all funds	(\$8,983)	(\$8,983)
Less estimated income	<u>(218)</u>	<u>(218)</u>
General fund	(\$8,765)	(\$8,765)
FTE	0.00	0.00

<sup>1</sup> Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month.

This amendment also adds a new section to identify the amount of funding included in the bill for the increase in employee health insurance premiums.

**2017 TESTIMONY**

**SB 2022**

**Department 188 - Commission on Legal Counsel for Indigents  
Senate Bill Nos. 2022 and 2082**

**Executive Budget Comparison to Prior Biennium Appropriations**

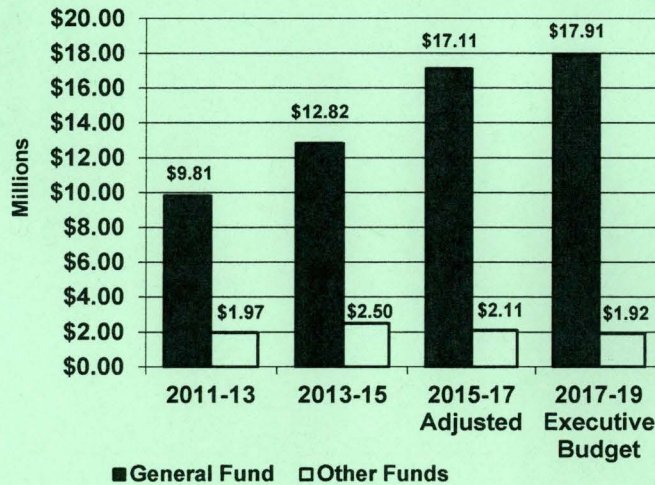
	FTE Positions	General Fund	Other Funds	Total
2017-19 Executive Budget	40.00	\$17,907,588	\$1,920,715	\$19,828,303
2015-17 Adjusted Legislative Appropriations <sup>1</sup>	40.00	17,105,184	2,106,914	19,212,098
Increase (Decrease)	0.00	\$802,404	(\$186,199)	\$616,205

<sup>1</sup>The 2015-17 biennium agency appropriation amounts reflect general fund budget reductions made in August 2016.

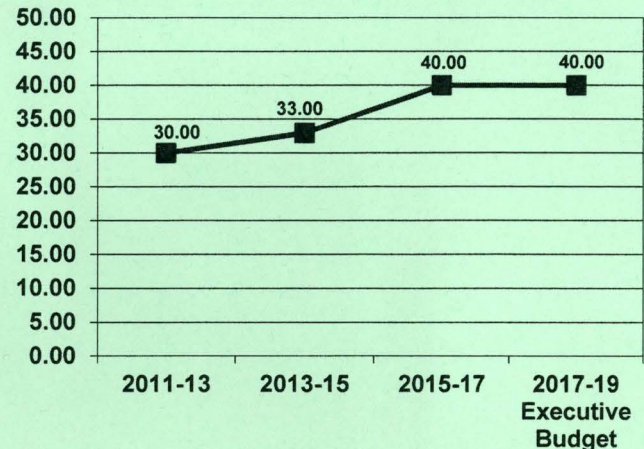
**Ongoing and One-Time General Fund Appropriations**

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2017-19 Executive Budget	\$17,907,588	\$0	\$17,907,588
2015-17 Adjusted Legislative Appropriations	16,982,909	122,275	17,105,184
Increase (Decrease)	\$924,679	(\$122,275)	\$802,404

**Agency Funding**



**FTE Positions**



**Executive Budget Comparison to Base Level**

	General Fund	Other Funds	Total
2017-19 Executive Budget	\$17,907,588	\$1,920,715	\$19,828,303
2017-19 Base Level	16,982,909	1,906,914	18,889,823
Increase (Decrease)	\$924,679	\$13,801	\$938,480

**Executive Budget Highlights**

	General Fund	Other Funds	Total
1. Adds funding for state employee salary and benefit increases, of which \$30,989 is for salary increases and \$123,982 is for health insurance increases	\$151,219	\$3,752	\$154,971
2. Base payroll changes	\$257,833	\$10,049	\$267,882
3. Increases funding for operating expenses	\$130,919	\$0	\$130,919
4. Increases funding for professional fees due to increased caseloads to provide a total of \$10,112,208	\$384,708	\$0	\$384,708

**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**

**House Bill No. 1024** - Includes a deficiency appropriation of \$937,000 from the strategic investment and improvements fund for the estimated costs of providing counsel for cases filed against pipeline protesters (\$670,000) and estimated costs for the fiscal impact of the passage of Marsy's Law (\$267,000).

### **Significant Audit Findings**

There are no significant audit findings for this agency.

### **Major Related Legislation**

**Senate Bill No. 2121** - This bill provides changes to court fees for all criminal cases except infractions when there is a plea or finding of guilt. Of these fee amounts, 20 percent must be deposited in the indigent defense administration fund. This bill would affect the current continuing appropriation for the indigent defense administration fund.



**Commission on Legal Counsel for Indigents - Budget No. 188**  
**Senate Bill Nos. 2022 and 2082**  
**Base Level Funding Changes**

**Executive Budget Recommendation**

	<b>FTE Position</b>	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>
<b>2017-19 Biennium Base Level</b>	40.00	\$16,982,909	\$1,906,914	\$18,889,823
<b>2017-19 Ongoing Funding Changes</b>				
Base payroll changes		\$257,833	\$10,049	\$267,882
Salary increase		30,239	750	30,989
Health insurance increase		120,980	3,002	123,982
Increases funding for operating expenses		130,919		130,919
Increases funding for professional fees due to increased caseloads		384,708		384,708
<b>Total ongoing funding changes</b>	0.00	\$924,679	\$13,801	\$938,480
<b>One-time funding items</b>				
No one-time funding items				\$0
<b>Total one-time funding changes</b>	0.00	\$0	\$0	\$0
<b>Total Changes to Base Level Funding</b>	0.00	\$924,679	\$13,801	\$938,480
<b>2017-19 Total Funding</b>	40.00	\$17,907,588	\$1,920,715	\$19,828,303

## Department 188 - Commission on Legal Counsel for Indigents

## Appropriations Comparisons to the Original and Adjusted Base Budgets

### General Fund Appropriations Adjustments (As a result of the August 2016 General Fund Budget Reductions)

	Ongoing	One-Time	Total
2015-17 original general fund appropriations	\$18,181,828	\$122,275	\$18,304,103
General fund reductions	(1,198,919)	0	(1,198,919)
Adjusted 2015-17 appropriations	\$16,982,909	\$122,275	\$17,105,184
Executive Budget changes	924,679	(122,275)	802,404
2017-19 Executive Budget	\$17,907,588	\$0	\$17,907,588

### Summary of August 2016 General Fund Budget Reductions

	Ongoing	One-Time	Total
Reduced operating expenses	(\$198,919)	\$0	(\$198,919)
Reduced operating expenses for professional fees	(1,000,000)		(1,000,000)
Total reductions	(\$1,198,919)	\$0	(\$1,198,919)
Percentage reduction to ongoing and one-time general fund appropriations	6.59%	0.00%	6.55%

### 2017-19 Executive Budget Changes to the Original and Adjusted Base Budgets

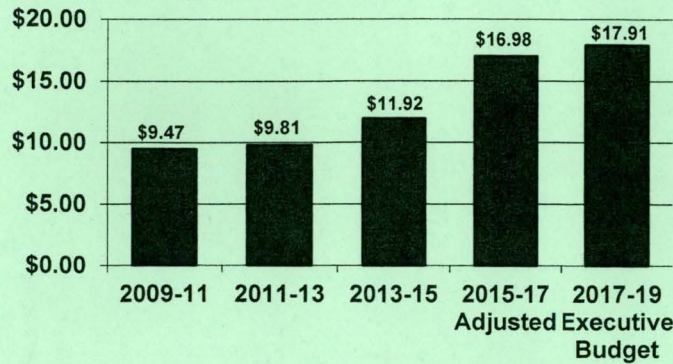
	Changes to Original Budget	Budget Reduction Adjustments	Changes to Adjusted Budget
Adds funding for recommended salary and benefit increases	\$151,219	\$0	\$151,219
Base payroll changes	257,833	0	257,833
Adjusts funding for operating expenses	(68,000)	198,919	130,919
Adjusts funding for professional fees due to increased caseloads	(615,292)	1,000,000	384,708
Total	(\$274,240)	\$1,198,919	\$924,679

Department 188 - Commission on Legal Counsel for Indigents

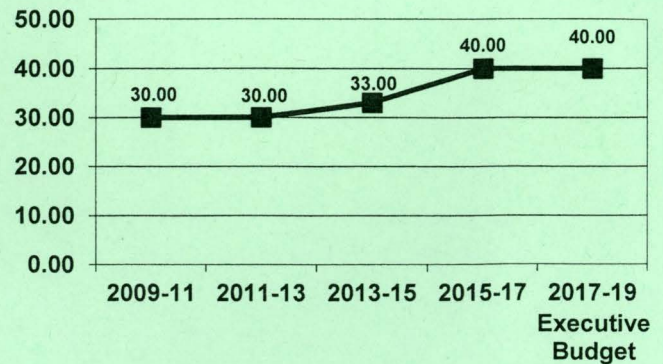
## Historical Appropriations Information

### Ongoing General Fund Appropriations Since 2009-11

Agency Funding (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2009-11	2011-13	2013-15	2015-17 Adjusted	2017-19 Executive Budget
Ongoing general fund appropriations	\$9,470,148	\$9,808,430	\$11,923,410	\$16,982,909	\$17,907,588
Increase (decrease) from previous biennium	N/A	338,282	2,114,980	5,059,499	924,679
Percentage increase (decrease) from previous biennium	N/A	3.6%	21.6%	42.4%	5.4%
Cumulative percentage increase (decrease) from 2009-11 biennium	N/A	3.6%	25.9%	79.3%	89.1%

### Major Increases (Decreases) in Ongoing General Fund Appropriations

**2011-13 Biennium**

1. No major changes identified

**2013-15 Biennium**

- |   |             |
|---|-------------|
| 1. Added funding for 1 attorney FTE position  | \$196,639   |
| 2. Added funding for 2 legal assistant FTE positions--one in Dickinson and one in Williston | \$235,486   |
| 3. Provided additional funding for contract attorneys                                       | \$1,100,000 |

**2015-17 Biennium**

- |  |             |
|--|-------------|
| 1. Added funding for 1 attorney FTE position and 1 administrative FTE 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   |
| 3. 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 (Executive Budget Recommendation)**

- |   |           |
|---|-----------|
| 1. Increases funding for operating expenses                           | \$130,919 |
| 2. Increases funding for professional fees due to increased caseloads | \$384,708 |

SB 2022/2082  
1-13-17  
#1

SB 2022/2082  
Senate Appropriations Committee  
January 13, 2017  
Testimony of H. Jean Delaney, Executive Director

Good morning. My name is Jean Delaney and I am the Director of the ND Commission on Legal Counsel for Indigents.

The Commission is an Executive Branch Agency, created by the Legislature in 2005. We are 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.

Application for services is 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 for services.

Indigent defense services are provided through state employees in the Commission's eight public defender offices across the state, and through its monthly contractors, of which there are approximately 70, and its conflict contractors, of which there are over 90. 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 conflict contractors are paid at the rate of \$75.00 per hour, and the 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 \$129/hour) and significantly less than attorneys in

private practice are paid. While attorneys do not provide indigent defense services to get rich, rather because they have a calling to do so, they still must be able to cover their overhead. It is unlikely that we could find many, if any, attorneys will to provide services for less. As it is, many times attorneys who would like to provide services are unable to do so at this rate.

By statute, the Commission is required to, and does contract for services, at a minimum level of fifty percent of its biennial caseload – we contracted for 68% in FY 2016.

Traditionally, the Commission has been funded from two sources: the general fund, and “fund 282” (our continuing appropriation - the indigent defense administration fund). The indigent defense administration fund is funded through fees paid by defendants: There is a \$35 application fee and a \$100 court administration fee (the indigent defense/facility improvement fee) that is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two. Unless waived by the court, these fees are imposed in misdemeanor and felony cases. We are concerned about reduced collections for fund 282, in this biennium and in the future and I will address this later in my testimony.

The Court may order a defendant to repay attorney fees; however, this money does not go into the indigent defense administration fund; it goes into the general fund.

The agency receives no federal funds or grants.

Ever since this agency was established, the Legislature has been extremely fair in providing appropriate funding. The Commission is very grateful that in the last session, the Legislature recognized the great impact the increases in case assignment numbers were having on the Commission’s costs and expenses in providing required services and the expected increases in costs and expenses for 2015-17, and significantly increased appropriations for the agency and authorized the addition of several FTEs. For the original 2015-17 budget, the Commission was appropriated \$18,304,103 from the general fund, which included a one-time appropriation of \$122,275 for transitioning to desktop support from ITD; and \$2,106,914 from other funds, which consisted of authority to spend \$1,906,914 from fund 282, and one time funding of \$200,000 from the strategic investment and improvements fund for contract fees for legal services relating to increased caseloads.

After the 4.05 and 2.5 allotments, this agency's special fund appropriations remained the same, but the general fund appropriation was reduced by \$1,198,919 to \$17,105,184. In order to meet the reduced appropriation, the Commission carefully assessed its spending. However, there were not many areas in which this agency could cut, and still provide constitutionally mandated services. When a contract was terminated, before advertising to fill it, we thoroughly reviewed whether the contract was still needed, whether it was needed in the same size or perhaps a smaller size, or in a different geographical area. Several contracts were not renewed, modified in size, and/or were moved from one district to another as needs changed in various judicial districts. A temporary attorney was hired in Minot to help reduce reliance on hourly contractors in that district. The Commission cut one part-time temporary secretary position in the Dickinson office. Most out of state training was cut, and this is an area in which we would normally get a big "bang for our buck" in that attorneys would go to national training, and bring back the training to present to our employees and contract attorneys at one of our agency trainings here in North Dakota. Copy machines were not replaced as they would have been pursuant to the replacement schedule, but they will need to be replaced at some point.

With these spending cuts, as late as September 2016, we did not anticipate needing a deficiency appropriation in 2015-17. This changed with the significant increases in the number of Dakota Access Pipeline cases that started in October and with the passage of Marsy's Law in November. A 2015-17 biennium deficiency appropriation of \$937,000 has been requested. This request is part of 2017 HB 1024, the statewide deficiency appropriation bill.

As of January 11, 2017, the Commission has provided counsel in 327 DAPL case assignments. A good percentage of these cases are expected to go to jury trial, which will take more attorney time and cost more than cases disposed of by other reasons. Also, many of them involve arrests under circumstances which required the assigning of separate counsel to each defendant. One of these events has required over 80 separate attorneys. There aren't eighty indigent defense attorneys in the South Central Judicial District, so we've had to use attorneys from across the state and northwestern Minnesota. This will require additional attorney travel time, mileage, witness fees, and appellate costs. It is impossible at this time, to accurately predict how much this will cost, as only two have gone to jury trial, but we have estimated we will need an additional \$670,000 to cover the costs associated with these cases during the remainder of the biennium. Additional costs will be incurred on them during the 2017-19 biennium, for later

scheduled jury trials and appeals.

Marsy's Law went into effect in December 2016. There will be costs incurred by this agency due to its passage, such as for additional contested preliminary hearings, more jury trials, and other hearings. However, as with the DAPL cases, it is difficult to accurately predict at this time how much in additional costs will be incurred. We have estimated an additional cost of \$267,000 for the remainder of the 2015-17 biennium.

An additional concern with Marsy's Law is that it has changed the priority of the payment of fees collected from defendants. Before the passage of Marsy's Law, the indigent defense application fee was paid first in priority from funds collected from a defendant, and the indigent defense/facility improvement fee was second in priority for payment. The victim/witness fee was third, and restitution was fourth. After Marsy's Law, restitution is now paid first, and collection of money for other fines and fees will be delayed, and/or remain uncollected. Thus, fund 282 will likely see less collected, now and in the future.

The Senate Judiciary Committee has, at the request of the Supreme Court, introduced SB 2121, to consolidate the indigent defense/facility improvement fee with other fees. Under this bill, a percentage of each amount collected will go to various entities/funds. This will result in the amounts in this consolidated fee being given the same priority for distribution, thus, in effect lowering the priority of collection of the fee, so less will likely go to the Commission's indigent defense administration fund. Also, under the current version of the statute, the first \$750,000 collected goes into fund 282; this will no longer happen.

The Commission received a one-time general fund appropriation in 2015-17 in the amount of \$122,275 for the transitioning of desktop support services to ITD. This has been completed, and ITD now provides the computers and desktop support for this agency. The transition went well, and ITD has been very receptive to our agency's and employees' needs. We are pleased with the caliber of the computer support provided by ITD.

The Commission received one-time funding for contract service fees for the 2015-17 biennium from the strategic investment and improvements fund in the amount of \$200,000. We constantly have contract service fees; we had spent well beyond that amount within the first month of the biennium. The \$200,000 will be spent when it is transferred to the agency in February.

Attached to this testimony are the three documents requested by the Senate

Appropriations Committee: A listing of the proposed budget reductions identified by this agency to meet the Governor's 90 percent budget request guideline (Attachment A); a comparison of the optional adjustment requests made by this agency to those included in the executive recommendation (Attachment B); and an itemized listing of changes this agency is asking the committee to make to the executive recommendation (Attachment C).

Regarding the listing of the proposed budget reduction, this agency's budget goes to the provision of mandated, indigent defense services. We identified cutting legal services to reduce the budget by 10%; however, the Commission would not be able to provide required services to all indigent persons eligible for and in need of services with a 10% budget reduction.

The Commission submitted five optional packages with its budget request. The first was restoration of the 10% budget reduction of \$1,818,183 to provide required services. The second was for additional funding in the amount of \$500,000 to help with the rising caseloads. The third was for \$779,429 to increase salaries of agency employees to comparable levels with state's attorneys' offices. The fourth optional package was to convert a temporary attorney position in the Minot Adjunct office to an FTE; this would require \$220,198, but actually only an additional \$61,000 for benefits, since a person is currently employed in the temp position. The fifth, final optional package was to convert two temporary administrative assistant positions (one in our Williston office, and one in our Minot office) to FTEs. This would require a total of \$241,825, but actually the agency would need \$112,302 for benefits, since we already pay temp employees in these positions.

The executive budget recommendation is as follows: "The total General Fund reduction from the original 2015-17 legislative ongoing appropriation is \$547,734. This equals a three percent reduction. General Fund authority of \$1.3 million was added back into the budget after the 10 percent reduction to help cover the increased caseload."

The Commission is grateful that Governor Dalrymple recognized the need of this agency for additional funding, and did not recommend funding at 90 percent. The Commission respectfully requests that the committee increase the general fund amount to the original 2015-17 amount, less the one-time appropriation for desktop support services from ITD, this would be \$18,181,828, and provide the additional \$500,000 for increase in caseloads. The Commission recognizes the challenges in providing adequate funding to state agencies this session, but respectfully requests that the committee also consider the other optional packages submitted.



As to the Commission's need for the requests in optional packages 1 and 2, caseloads continue to increase state-wide. Documents showing the increases are attached as Attachments D and E.

In FY2016, the Commission provided legal counsel services in more case assignments than in any year prior – services were provided in more than 14,800 case assignments. This number represents an approximately 9% increase from FY2015, and a 42% increase from FY2012. Serious double A felonies and A felonies have been increasing at an even higher rate. There were 380 of these in FY2012, 689 in FY2015, and 779 in FY2016. This is an increase of 105% since 2012, and an increase of 13% since 2015. These serious felony cases, with their more significant penalties, are generally more costly. They generally take more attorney time. For example, a double A felony that goes to jury trial averages more than 100 hours of attorney time, while a B misdemeanor that goes to jury trial averages a bit over 18 hours. These serious felonies are more likely to have more extraordinary expenses, such as private investigators and experts, than case assignments with less serious charges. Also, with the passage of Marsy's Law, it is expected that crimes with victims will take more time. It is likely there will be more contested preliminary hearings and more jury trials in these cases, thus, more attorney time.

The Commission tracks assignments by judicial district. Many of the judicial districts saw significant increases in assignments during FY2016. Attorneys in the North Central Judicial District handled 1669 assignments. This is a 115% increase since FY2012, and a 22% increase since FY2015. During 2016, 51 of the assignments were double A felonies, a 410% increase since 2012, and a 76% increase since 2015. Class A felonies also increase significantly: 426% since 2012, and 33% since 2015.

During FY2016, attorneys in the South Central Judicial District handled 4158 case assignments. This is a 43% increase since FY2012, and a 27% increase since FY2015. During 2016, Attorneys in this district handled 33 double A felonies, a 32% increase since 2012; and 161 A felonies, a 68% increase since 2012, and a 39% increase since 2015.

During FY2016, attorneys in the East Central Judicial District handled 3115 case assignments. This is a 39% increase since FY2012, and a 13% increase since FY2015. During 2016, Attorneys in the ECJD provided services in 39 double A felonies, a 290% increase since 2012, and a 18% increase since FY2015; and in 132 A felonies, a 81% increase since 2012, and a 22% increase since 2015.

During FY2016, attorneys in the Southwest Judicial District handled 761 case assignments. This is a 35% increase since FY2012, and a 6% increase since FY2015. During 2016, Attorneys in the SWJD provided services in 44 A and double A felonies, a 175% increase since 2012, and a 13% increase since FY2015.

While total assignments in both the Northwest and Northeast Judicial Districts for FY2016 were less than in FY2015, the number of assignments was higher than in any other fiscal year, and double A felony assignments were higher in both districts in FY2016 than in 2015. The total number of assignments in the Southeast and Northeast Central Judicial Districts remained about the same in FY2016 as in 2015.

The increases in case assignment numbers state-wide are expected to continue – they've increased each of the past five years - and so we anticipate caseloads in FY2017 being even higher than in FY16. Projecting the first three months of FY2017 over the entire year, we could easily see case assignments in excess of 15,000. However, data for these three months only includes a few pipeline protester case assignments; there were only 35 pipeline protester case assignments during this time period. With the addition of the DAPL assignments, there will likely be significantly more than 15,000 assignments in FY17.

Increases in case assignment numbers means a need for increased numbers of attorneys. An attorney can only take so many assignments and still provide competent, effective representation.

As to the optional package regarding salary increases, it was one of the Commission's goals for FY16 to reassess the agency's employees' salaries. The agency has had a high turnover rate; reported to be due in large part to the lower salaries paid to its employees, and has had some difficulty filling positions due to salaries that the Commission offers 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. A salary survey was conducted of North Dakota positions similar to positions in the Commission. A copy of the survey is attached as Attachment F. The Commission gathered information on education and experience from this agency's attorneys and staff. The Commission also gathered information from other agencies – the Commission received information from 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 our agency 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, would require an average increase of \$1000 per month for supervising attorneys (attorney IIIs), public defenders (attorney IIs), the deputy director and the administrative assistant III; \$200 per month for legal assistants; and \$400 per month for administrative assistant IIs. This would require \$779,429 for increases in salaries, taxes and benefits, for a biennium. The Commission respectfully requests that the Committee consider this request, along with the requests for three FTEs.

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 money 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 13<sup>th</sup> day of January, 2017



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H. Jean Delaney, Director  
ND Commission on Legal Counsel for Indigents  
701-845-8632 [jedelaney@nd.gov](mailto:jedelaney@nd.gov)

SB 2022/2082  
Senate Appropriations Committee  
January 13, 2017  
Testimony of H. Jean Delaney, Executive Director  
ATTACHMENT A

Listing of proposed budget reductions identified by NDCLCI to meet the Governor's 90 percent budget request guideline:

2015-17 General Fund Appropriation	18,304,103
Remove One Time Funding Desktop Support	122,275
Base Budget for 90% calculation	18,181,828
10% reduction	1,818,183

Proposed budget reductions

Legal	-1,760,183
Travel	-50,000
Professional Supply/Material	-5,000
Office Supplies	-8,000
Office Equipment/Furniture	-3,000
Printing	-2,000

SB 2022/2082  
Senate Appropriations Committee  
January 13, 2017  
Testimony of H. Jean Delaney, Executive Director  
ATTACHMENT B

Comparison of the optional adjustment requests made by the NDCLCI to those included in the executive recommendation:

Optional Packages	General Fund Request	Gov Rec
Restore 10% General Fund Reduction	1,818,183	
Additional Funding to help with Rising Caseload	500,000	1,300,000
Funding to bring salaries up to equivalent positions	779,429	
Convert 1 Temp Attorney to FTE if package was approved we could reduce temp salaries by 159,000 so change would actually only cost 61,000	220,198	
Convert 2 Temp Admin to FTE if package was approved we could reduce temp salaries by 129,523, so change would actually only cost 112,302	241,825	

SB 2022/2082  
Senate Appropriations Committee  
January 13, 2017  
Testimony of H. Jean Delaney, Executive Director  
ATTACHMENT C

An itemized listing of any changes the NDCLCI is asking the committee to make to the executive recommendation (we are not asking for these in addition to the executive recommendation, rather in lieu of):

1. Increase the general fund amount to the original 2015-17 amount, less the one-time appropriation for desktop support services from ITD, this would be \$18,181,828, to enable the Commission to provide mandated services;
2. Provide additional \$500,000 for increase in caseloads;
3. The Commission recognizes the challenges in providing adequate funding to state agencies this session, but respectfully requests that the committee consider the other optional packages submitted:
  - a. Increase salaries of agency employees to comparable levels with state's attorneys' offices, this would require \$779,429;
  - b. Convert temporary attorney position in the Minot Adjunct office to an FTE; this would require \$220,198, but actually only an additional \$61,000 for benefits, since a person is currently employed in the temp position; and
  - c. Convert two temporary administrative assistant positions (one in our Williston office, and one in our Minot office) to FTEs. This would require a total of \$241,825, but actually the agency would need \$112,302 for benefits, since we already pay temp employees in these positions.

# Attachment D

12

Count of Assignment No		Month/Year Assigned2							Differ from	Differ from
Case Type2	HighestL	FY12	FY13	FY14	FY15	FY16	Grand Total	FY12-FY16	FY15-FY16	
Appeal		72	78	79	85	90	404	25.0%	5.9%	
Other		1345	1480	1346	1742	2054	7967	52.7%	17.9%	
Criminal	FA	305	340	418	521	582	2166	90.8%	11.7%	
	FAA	75	128	148	168	197	716	162.7%	17.3%	
	FB	408	504	543	542	579	2576	41.9%	6.8%	
	FC	2970	3638	4366	5059	5329	21362	79.4%	5.3%	
	MA	2135	2222	2155	2112	2170	10794	1.6%	2.7%	
	MB	1454	1519	1406	1445	1649	7473	13.4%	14.1%	
Juvenile		1643	1631	1656	1896	2109	8935	28.4%	11.2%	
Post-Conviction		61	82	71	83	84	381	37.7%	1.2%	
<b>Grand Total</b>		<b>10468</b>	<b>11622</b>	<b>12188</b>	<b>13653</b>	<b>14843</b>	<b>62774</b>	<b>41.8%</b>	<b>8.7%</b>	

Count of Assignment No		Month/Year Assigned2						FY12-FY16	FY15-FY16
Judicial D	Case Typ HighestL	FY12	FY13	FY14	FY15	FY16	Grand To	Differ	Differ
EC	Appeal	9	14	12	18	12	65		
	Other	233	244	292	359	390	1518		
	Crimin: FA	73	60	76	108	132	449	80.8%	22.2%
	FAA	10	26	31	33	39	139	290.0%	18.2%
	FB	94	93	137	119	123	566		
	FC	649	788	869	954	1056	4316		
	MA	485	535	511	456	452	2439		
	MB	286	289	280	328	320	1503		
	Juvenile	403	416	389	380	577	2165		
	Post-Conviction	7	12	11	12	14	56		
<b>EC Total</b>		<b>2249</b>	<b>2477</b>	<b>2608</b>	<b>2767</b>	<b>3115</b>	<b>13216</b>	<b>38.5%</b>	<b>12.6%</b>
NC	Appeal	8	6	3	5	12	34		
	Other	75	81	75	130	197	558		
	Crimin: FA	19	32	46	75	100	272	426.3%	33.3%
	FAA	10	20	25	29	51	135	410.0%	75.9%
	FB	45	76	69	74	71	335		
	FC	258	383	522	626	674	2463		
	MA	164	121	157	148	239	829		
	MB	70	64	57	64	88	343		
	Juvenile	127	119	138	212	227	823		
	Post-Conviction	2	6	7	7	10	32		
<b>NC Total</b>		<b>778</b>	<b>908</b>	<b>1099</b>	<b>1370</b>	<b>1669</b>	<b>5824</b>	<b>114.5%</b>	<b>21.8%</b>
NE	Appeal	3	5	8	4	6	26		
	Other	146	127	76	100	100	549		
	Crimin: FA	18	20	36	78	50	202	177.8%	-35.9%
	FAA	7	4	4	7	8	30	14.3%	14.3%
	FB	40	57	31	61	27	216		
	FC	258	234	260	429	390	1571		
	MA	192	166	172	225	197	952		
	MB	122	139	104	136	123	624		
	Juvenile	165	239	189	238	193	1024		
	Post-Conviction	5	7	9	10	12	43		
<b>NE Total</b>		<b>956</b>	<b>998</b>	<b>889</b>	<b>1288</b>	<b>1106</b>	<b>5237</b>	<b>15.7%</b>	<b>-14.1%</b>
NEC	Appeal	9	8	13	10	14	54		
	Other	154	166	150	208	235	913		
	Crimin: FA	48	21	29	21	26	145	-45.8%	23.8%
	FAA	6	6	6	12	4	34	-33.3%	-66.7%
	FB	42	39	48	36	54	219		
	FC	375	373	380	409	385	1922		
	MA	231	230	172	175	172	980		
	MB	126	116	89	105	128	564		
	Juvenile	176	183	252	301	247	1159		



NEC	Post-Conviction	9	7	5	12	10	43		
<b>NEC Total</b>		<b>1176</b>	<b>1149</b>	<b>1144</b>	<b>1289</b>	<b>1275</b>	<b>6033</b>	8.4%	-1.1%
<b>NW</b>	<b>Appeal</b>	7	3	4	7	11	32		
	<b>Other</b>	74	51	33	102	94	354		
	<b>Crimin: FA</b>	18	31	58	55	51	213	183.3%	-7.3%
	<b>FAA</b>	5	20	20	30	38	113	660.0%	26.7%
	<b>FB</b>	30	54	83	82	87	336		
	<b>FC</b>	239	394	600	824	670	2727		
	<b>MA</b>	196	188	241	252	206	1083		
	<b>MB</b>	154	227	300	278	280	1239		
	<b>Juvenile</b>	160	135	180	168	171	814		
	<b>Post-Conviction</b>	5	1	2	11	7	26		
<b>NW Total</b>		<b>888</b>	<b>1104</b>	<b>1521</b>	<b>1809</b>	<b>1615</b>	<b>6937</b>	81.9%	-10.7%
<b>SC</b>	<b>Appeal</b>	25	31	29	24	27	136		
	<b>Other</b>	502	633	556	627	855	3173		
	<b>Crimin: FA</b>	96	126	96	116	161	595	67.7%	38.8%
	<b>FAA</b>	25	42	48	32	33	180	32.0%	3.1%
	<b>FB</b>	96	128	97	97	144	562		
	<b>FC</b>	802	971	1147	1217	1503	5640		
	<b>MA</b>	509	614	579	514	548	2764		
	<b>MB</b>	405	365	323	263	366	1722		
	<b>Juvenile</b>	425	369	317	360	498	1969		
	<b>Post-Conviction</b>	20	34	22	24	23	123		
<b>SC Total</b>		<b>2905</b>	<b>3313</b>	<b>3214</b>	<b>3274</b>	<b>4158</b>	<b>16864</b>	43.1%	27.0%
<b>SE</b>	<b>Appeal</b>	10	8	7	13	7	45		
	<b>Other</b>	75	110	79	110	102	476		
	<b>Crimin: FA</b>	21	37	41	42	27	168	28.6%	-35.7%
	<b>FAA</b>	8	6	8	12	15	49	87.5%	25.0%
	<b>FB</b>	39	43	59	46	52	239		
	<b>FC</b>	251	328	365	405	401	1750		
	<b>MA</b>	244	225	193	186	187	1035		
	<b>MB</b>	199	214	171	187	219	990		
	<b>Juvenile</b>	99	89	122	134	127	571		
	<b>Post-Conviction</b>	7	13	10	5	7	42		
<b>SE Total</b>		<b>953</b>	<b>1073</b>	<b>1055</b>	<b>1140</b>	<b>1144</b>	<b>5365</b>	20.0%	0.4%
<b>SW</b>	<b>Appeal</b>	1	3	3	4	1	12		
	<b>Other</b>	86	68	85	106	81	426		
	<b>Crimin: FA</b>	12	13	36	26	35	122	191.7%	34.6%
	<b>FAA</b>	4	4	6	13	9	36	125.0%	-30.8%
	<b>FB</b>	22	14	19	27	21	103		
	<b>FC</b>	138	167	223	195	250	973		
	<b>MA</b>	114	143	130	156	169	712		
	<b>MB</b>	92	105	82	84	125	488		
	<b>Juvenile</b>	88	81	69	103	69	410		
	<b>Post-Conviction</b>	6	2	5	2	1	16		
<b>SW Total</b>		<b>563</b>	<b>600</b>	<b>658</b>	<b>716</b>	<b>761</b>	<b>3298</b>	35.2%	6.3%
<b>Grand Total</b>		<b>10468</b>	<b>11622</b>	<b>12188</b>	<b>13653</b>	<b>14843</b>	<b>62774</b>	41.8%	8.7%

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	A	B	C	D	E	F	G	H
1	position	average monthly salary	average of 10 or less yrs with employer	more than 10	5.1 to 10	2 to 5	less than 2	notes
2								
3	<b>"Sr." Attorneys</b>							Supervising duties or position requires 4+ yrs of exp
4	Commission Atty III 4 yrs + 2 supervisory	7224	7224	none	7378	6825	7009	Salary ranges - atty III - 6254-8339-10424
5	SA Elected (w/o Morton)	10413	11652	10207	none	11652	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh
6	SA Elected	9934	11652	9689	none	11652	none	Ward, Williams, McKenzie, Stark, Cass, GF, Burleigh, Morton
7	Sr. ASA	8205	8226	8193	8344	7998	8280	Ward, GF ASA III, Stark, Burleigh, McKenzie, Morton Sr, Cass team leaders
8	AG Division Director	10720	none	10720	none	none	none	average of 16.4 years with employer
9	Judiciary - Director	10775	none	10775	none	none	none	
10								
11	<b>"Jr." Attorneys</b>							
12	Commission Atty II 2 yrs	6127	6127	none	6618	6101	5899	Atty II requires 2 yrs exp as atty; 5522-7362-9203
13	Commission Atty II w/out underfill	6187	6187	none	6618	6101	5949	
14	ASA w/2+ yr requirement	7171	7152	7310	8921	5600	7108	Burleigh ASA II, McKenzie ASA, Williams ASA
15	ASA w/1+ yr requirement	7861	7649	8549	8327	5600	7108	Burleigh ASA II, McKenzie ASA, Williams ASA, Cass non-team leaders
16	ASA all	6737	6313	7753	8046	5758	5759	Burleigh ASA I and II, Ward ASA, McKenzie ASA, Williams ASA, Cass non-team leaders, Stark ASA, Morton ASA, GF ASA I (unsure of min yrs)
17	Asst AG	6747	5869	7895	6191	5408	5385	but not intellectual property atty
18	Judiciary - staff attorney	8447	7330	9005	7330	none	none	min salary is 6613
19								
20	Judicial law clerk - S.Ct	5614						all paid same
21	Judicial law clerk - Dist. Ct.	5409						all paid same
22								
23								
24	<b>Legal Asst.</b>							legal research; analyze codes, caselaw; independently draft legal doc
25	Commission LAll	3748		none	3898	3654	3730	Range 3482-4642-5803
26	SA offices	4395		4239	3811	5292	none	
27	all - SA and AG's paralegal	4608		4766	4059	none	none	
28								
29								
30	<b>Admin Staff</b>							
31	<b>"Sr" Admin</b>							
32	Commission Admin Asst III	3387		none	3480	none	3294	AA + 4 yrs exp; ranges 3137-4183-5229

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	A	B	C	D	E	F	G	H
33	SA equiv	4715		4981	none	4450	none	Legal secretary GF; Burleigh LAI
34	AG Admin III	4781		4781	none	none	none	
35	Judiciary - exec admin asst	4407		4407	none	none	none	5 yrs w/2 in court
36	Judiciary - dep clerk III						4035	3 years; supervises 5 employees, starts at 4035
37								
38	<b>"Jr" Admin</b>							
39	Commission Admin asst II	3102		none	3141	3121	3084	AA + 2 yrs exp; ranges 2842-3789-4736
40	SA Equiv	3345		3550	3496	none	3257	
41	All SA (not equiv of III)	3505		3797	3565	3686	3323	
42	AG's Admin lis	3538		3833	3538	none	3391	
43								
44	Judicial Admin Asst	4149		4429	3989	3643	3463	2 yrs exp
45	Judicial Dep Clerk II							1 yr exp, starts at 3463

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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 40 full time employees and more than 80 contractors that provide indigent defense services to those in need, I rise in support of the budget requests for the Commission.

I hope my testimony may help to better understand the challenges we face as an agency and the ferociousness with which we greet those challenges every day.

To provide background, I was just 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, which at that time was and still is the office with the highest case assignments in the state. 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.

As a new attorney working in Grand Forks, I was exposed to the agency in its infancy. At that time the agency was just beginning to settle in. I enjoyed indigent defense work and the ability to represent those who needed legal representation the most. When the Bismarck Public Defender Office opened, I joined before the boom in North Dakota. I watched in awe as case numbers grew at unprecedented rates. During this crisis, Robin Huseby (the first Director of the Agency) and Jean as Deputy Director, worked in coordination with this body to address the needs of the State and in my opinion achieved just that. I was able to see from outside of the administration of the agency the gracious support the legislature had provided us and the care in which the agency administration took in ensuring services were provided in a fiscally responsible way. Administration was successful in recruiting attorneys to take cases out west. Furthermore, new offices were established (Watford City and Minot Adjunct) with the blessing of the legislature. Most importantly, these challenges were met in

a matter as to not compromise the promises our forefathers laid out in the bill of rights, particularly Gideon's promise of providing competent attorneys for those who qualify for indigent defense services.

Today, we see those same challenges. The case numbers continue to increase. Not only have case numbers increased, but the severity level of cases continue to increase. As an attorney who has handled these cases, the severity level of cases matters. The increase in case assignments and increase in severity of those cases has also tasked the Court system. To the benefit of North Dakota's citizens, the Court System has always recognized and respected the importance of our agency in the justice system and we reciprocate that respect. Our agency has always held the Court in high regard and continue to do so. We thank the Chief for his unwavering support and all the employees of the Judicial System for their cooperation in achieving the mission of a fair and impartial judicial system.

Another challenge not previously seen in our time, is the response to the Dakota Access Pipeline cases. I wish to make part the record the immense gratitude our agency has for our public defender offices and our contract attorneys who have stepped up to address the cause. Additionally, the response by the members of the Bar in North Dakota has been nothing short of exemplary. When called upon, most attorneys have been willing to take a case even if the \$75/hr rate we pay doesn't cover overhead. Why?? It is the North Dakota way. When someone needs help, we step up, and I am humbled by the support we have received from the attorneys we have been in contact with.

Lastly, I would like to expressly recognize the dedication of the employees of the agency. It is with their dedication to the cause and the gracious support of the legislature, we have been able to carry out our mission of providing competent representation to those indigent persons with a Constitutional, Statutory or rule based right to counsel. We are steadfast in fulfilling Gideon's promise and will continue to be good stewards of the people's money.

In closing, this session is one of incredible importance in the states' history and we are very cognizant of the economic state we are in. However, dissimilar to a lot of state agencies, we do not see a downturn in work with a downturn in the economy. In fact, we, as best described by Chief Justice Vandewalle, see an inverse relationship. As the economy has gone down, we have seen an increase in case numbers in places like Bismarck and Minot. With the projected increase in case assignments, we need to be prepared to meet the challenges that are forthcoming. And we will. For as Albert Pike once put it: "What we have done for ourselves alone dies with us; what we have done for others and the world remains and is immortal." We, meaning the administration of the agency, the employees of the agency and the contractors who provide services, will rise to the occasion.

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 13<sup>th</sup> day of January, 2017



Travis W. Finck, Deputy Director  
N.D. Commission on Legal Counsel  
(701) 845-8632, tfinck@nd.gov

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#3

# State Bar Association of North Dakota

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(701) 255-1404 • 1-800-472-2685 • Fax (701) 224-1621  
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Tony J. Weiler • *Executive Director*



## Senate Appropriations Committee SB 2022 January 13, 2017

Chairman Holmberg and Members of the Senate Appropriations Committee, my name is Chase Lingle, and I am a third year law student at the University of North Dakota School of law. I am currently working as an extern with the State Bar Association of North Dakota (SBAND). SBAND Executive Director Tony Weiler could not be here today, as he is traveling for work, and asked me to testify on behalf of the association. I appear before you today in support of SB 2022.

The State Bar Association is the professional association of all licensed lawyers in the state of North Dakota. The Mission of SBAND is to promote justice and to serve the people of North Dakota. The Commission on Legal Counsel for Indigents also does just that. It upholds the American view that justice is for all, not just those who can afford it. The Commission provides a much needed voice to those who would otherwise be swept up in a system that is complex and often unforgiving. We urge a do pass recommendation, on the basis that were it not for the funding the commission receives, those less fortunate individuals in our community would go unrepresented.

Thank you.

)

**Commission on Legal Counsel for Indigents - Budget No. 188**  
**Senate Bill No. 2022**  
**Base Level Funding Changes**

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 1-31-17

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	Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)				Senate Version				Senate Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
<b>2017-19 Biennium Base Level</b>	40.00	\$16,982,909	\$1,906,914	\$18,889,823	40.00	\$16,982,909	\$1,906,914	\$18,889,823	0.00	\$0	\$0	\$0
<b>2017-19 Ongoing Funding Changes</b>												
Base payroll changes		\$257,833	\$10,049	\$267,882				\$0		(\$257,833)	(\$10,049)	(\$267,882)
<b>Salary increase - Performance</b>				<b>0</b>				0				0
Health insurance increase		120,980	3,002	123,982				0		(120,980)	(3,002)	(123,982)
<b>Employee portion of health insurance</b>		<b>(63,376)</b>	<b>(1,573)</b>	<b>(64,949)</b>				0		63,376	1,573	64,949
Increases funding for operating expenses		130,919		130,919				0		(130,919)		(130,919)
Increases funding for professional fees due to increased caseloads		384,708		384,708				0		(384,708)		(384,708)
Total ongoing funding changes	0.00	\$831,064	\$11,478	\$842,542	0.00	\$0	\$0	\$0	0.00	(\$831,064)	(\$11,478)	(\$842,542)
<b>One-time funding items</b>												
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
<b>Total Changes to Base Level Funding</b>	0.00	\$831,064	\$11,478	\$842,542	0.00	\$0	\$0	\$0	0.00	(\$831,064)	(\$11,478)	(\$842,542)
<b>2017-19 Total Funding</b>	40.00	\$17,813,973	\$1,918,392	\$19,732,365	40.00	\$16,982,909	\$1,906,914	\$18,889,823	0.00	(\$831,064)	(\$11,478)	(\$842,542)
										(4.7%)	(0.6%)	(4.3%)

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

Burgum Executive Budget Recommendation  
(Changes to Dalrymple Budget in Bold)

Senate Version

No other sections for this agency.

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**NDCLCI**

*North Dakota Commission on Legal Counsel for Indigents*

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H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

January 25, 2017

Representative Jeff Delzer  
Chair, House Appropriations Committee

Dear Representative Delzer:

As requested, we have carefully reviewed what we think we'll need as a deficiency appropriation for the 2015-17 biennium due to the DAPL cases and the passage of Marsy's Law. Based on that review, we request a deficiency appropriation of \$857,458.75.

The reason why that figure has not changed significantly even though cases are being consolidated and trial dates are being delayed is because (1) Counsel works on a case from assignment through disposition and any appeal. Most of that work is done outside of court hearings. Delays in trial dates actually increase our costs as will the Marsy's Law provision that allows a victim to refuse an interview or discovery request from the defense; (2) Each defendant is provided with his or her own attorney so consolidating cases for trial does not result in any savings in our agency's costs; (3) The number of case assignments vastly exceeds our ordinary capacity to meet demands. This has resulted in significantly higher costs to contract with attorneys on an hourly or monthly basis. Additionally the need to bring in both our regular employees and contract attorneys from across the state and northwestern Minnesota results in travel expenses that far exceed ordinary expenses; and (4) Anticipated declines in revenue due to the impact of the Marsy's Law requirement that restitution be collected before the indigent defense fees.

As of January 23, 2017, there have been 614 DAPL cases filed in the South Central Judicial District, in which there would be a right to counsel provided by the Commission, if the defendant is indigent and applies for counsel (there are also 39 city transfer cases; however, the city, not the Commission would provide counsel in those). As of January 23, the Commission has provided counsel in 341 case assignments. This would be approximately fifty percent of the filed cases. For our earlier calculations, we had assumed we will likely provide counsel in 490 assignments this biennium. This is a conservative number, as it is only 149 assignments more than our current number, and would be only 30 new assignments per month for the remainder of the biennium.

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Due to the large number of cases, and large number of persons arrested in single incidents, we've had to use attorneys from around the state, not just from the South Central Judicial District. The cases with out of district attorneys are more expensive, with costs for attorney travel time, mileage, and lodging.

In the Commission's original request, it appeared that most, if not all of the DAPL defendants are seeking jury trials. This still appears to be the case. A jury trial case assignment averages 31.07 hours of attorney time; case assignments closed for other reasons (bench trial, plea agreements, dismissal, etc.) average 5.5 hours. Attorney time is calculated at \$75/hour, which is the rate paid to our contractors. If half of these 490 assignments went to jury trial this biennium, and the other half were disposed of for some other reason during this current biennium, it would require approximately \$671,973.75 ( $490 / 2 = 245 \times 31.07 \times \$75/\text{hour} = \$570,911.25 + 490 / 2 = 245 \times 5.5 \times \$75 = \$101,062.50$ ;  $\$570,911.25 + \$101,062.5 = \$671,973.75$ ). There would also be additional costs, such as attorney travel time, mileage, and lodging; witness fees; other extraordinary expenses; and appellate costs that are not included in these calculations.

Approximately one hundred and one of the DAPL case assignments in which the Commission has provided an attorney are scheduled for jury trial before the end of the biennium. This would require approximately \$235,355 for attorney time ( $101 \times 31.07 \text{ hours} \times \$75.00/\text{hour}$ ). Twenty-four of the attorneys assigned to these cases are from other judicial districts. Therefore, there would also be additional cost for attorney travel time, mileage, and lodging for out of district attorneys in these matters. Assuming two trips for each out of district attorney to and from Mandan (one trip to meet with the client, the other for the jury trial) would add an additional \$30,000.

Approximately one hundred sixty-eight assignments had been set for jury trial, and are now awaiting new trial date pursuant to the Court's scheduling plan. We anticipate 75 of these will be tried before the end of the biennium, with the remainder next biennium. We anticipate an expense of \$174,768.75 for these 75 jury trials to be held this biennium ( $75 \times 31.07 \times \$75 = 174,768.75$ ). We also anticipate approximately \$20,000 for two trips to and from Mandan for the out of district attorneys.

For those 93 matters which are currently assigned, but which will be tried next biennium, even if the trial is scheduled after June 30, much of an attorney's work is done before the trial. The attorney must meet with and counsel the client, seek and review discovery, investigate the case, make appropriate motions, and prepare for trial. Therefore, even if a trial in one of these assigned cases were to be scheduled to be held after June 30, and thus, during the 2017-19 biennium, a great portion of the work/expense will likely be done in this biennium. Assuming 15 hours of work before trial, done during this biennium, will cost \$104,625 ( $93 \times 15 \times \$75 = \$104,625$ ). One trip to and from Mandan for the out of district attorneys would add approximately \$10,000.

This leaves 72 currently assigned case assignments to be disposed of by other reason. If completed during this biennium, this would require \$29,700 ( $72 \times 5.5 \times \$75 = \$29,700$ ), plus approximately \$6,700 for travel for out of district attorneys.

There will also be new assignments, made after January 23, 2017. Assuming 149 new assignments, and just two hours of attorney time during this biennium, will require \$22,350 ( $149 \times 2 \times \$75 = \$22,350$ )

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anticipated assignments – 341 currently assigned =  $149 \times 2 \times \$75 = \$22,350$ ).

There will also be appellate costs. An appeal averages 27.5 hours of attorney time. Assuming an appeal in one out of every fifteen case assignments that went to jury trial this biennium, there will be approximately 12 appeals ( $176 \times .066 = 11.7$ ), which will require \$24,750 for attorney time ( $12 \times 27.5 \times \$75$ ) and \$10,800 for transcripts, assuming one-day jury trials (it would cost approximately \$900 for transcripts from a one day jury trial).

Based on the foregoing, the DAPL assignments will require \$669,048.75 this biennium.

Marsy's Law went into effect in December 2016, and there will be many costs incurred by this agency due to it. As with the DAPL cases, it is difficult at this early date to accurately predict how much in additional costs will be incurred.

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law.

There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. We estimated that the number of additional contested preliminary hearings will be one-quarter of the felony case assignments that involve a victim, requiring one additional hour of attorney time per assignment for a total of \$106,600/biennium ( $6616$  felony assignments per year  $\times .43$  with victims  $\times .25 \times 2$  years  $\times \$75$ ); we estimated jury trial numbers would at a minimum increase by 18 for a total of \$69,000/biennium ( $31.07$  hours for jury trial versus  $5.5$  hour for other reason, at  $\$75/\text{hour} = \$1917.75$  more for a jury trial  $\times 18$  jury trials  $\times 2$ ); we assumed probation revocations would increase by 10% for an additional \$85,800/biennium ( $1679$  per year  $\times .1 = 168 \times 3.41$  average hours on a probation revocation  $\times \$75 \times 2$ ); and assumed Orders to Show Cause hearings would increase by 10% for approximately an additional \$7,800 per biennium ( $229$  OTSC per year  $\times .1 = 23 \times 2.31$  average hours in OTSC  $\times \$75/\text{hour} \times 2$ ). These total \$269,000 per biennium, which would be \$78,450 for the remainder of this fiscal year.

An additional concern with Marsy's Law is that it has changed the priority of the payment of fees collected from defendants. Due to this, we anticipate delayed and reduced collections in our special fund. Calculating that the fund will receive 20% less, this would be \$377,000 in a biennium; this would be \$109,960 for the remainder of this fiscal year.

Thus, we calculate needing additional funding in the amount of \$188,410 due to Marsy's Law.

Sincerely,

  
H. Jean Delaney



**NDCLCI**

***North Dakota Commission on Legal Counsel for Indigents***

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H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

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1-31-17  
#3 p.1

**Expenses for DAPL and Marsy's Law in 2017-19, estimated to be \$1,002,519.50**

Assuming 490 DAPL case assignments in 2015-17 (as of 1/23/17 there are 341):

101 are assigned and scheduled for jury trial before the end of the biennium.

168 are assigned and had been set for jury trial, and are now awaiting new trial dates pursuant to the Court's scheduling plan. Anticipate 75 of these will be tried by jury before the end of the 2015-17 biennium, with the remainder next biennium.

For the 93 currently assigned, but tried by jury next biennium (168 - 75 = 93):

Average jury trial requires 31.07 hours, had assumed 15 hours worked on each in 2015-17 which would leave 16.07 hours for 2017-19.  $93 \times 16.07 \text{ hours} \times \$75 = \$112,088$ , plus \$10,000 for attorney travel time, mileage, lodging for out of district attorneys.

For the 149 new assignments, made after January 23, 2017, in which attorneys worked 2 hours on each during 2015-17:

Assume one-half are tried by jury:  $75 \times 29.07 \text{ hours remaining} \times \$75 = \$163,519$

Assuming one-half are disposed of in other ways (average of 5.5 hours for assignments with other dispositions):  $74 \times 3.5 \text{ hours remaining} \times \$75 = \$19,425$

Travel time, mileage and lodging for out of district attorneys: \$20,000

Appellate costs: Assuming 1/15 jury trial case assignment is appealed:

$93 + 75 = 168 \times .066 = 11 \text{ appeals} \times 27.5 \text{ hours (average hours on appeal)} \times \$75 =$

$\$22,687.50 + \$8,800 \text{ for transcripts (one day jury trial approximate cost)} = \$31,487.50$

**2017-19 DAPL estimate: \$356,519.50**

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law. There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. At this time we estimate \$269,000 per biennium for these costs, plus reduced collection of fees for our special fund of \$377,000 in a biennium.

**2017-19 Marsy's Law estimate: \$646,000**

2-10-17 SB 2022

#1  
 P1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2022

Page 1, replace lines 12 through 17 with:

"Commission on legal counsel for indigents	<u>\$18,889,823</u>	<u>\$1,022,783</u>	<u>\$19,912,606</u>
Total all funds	\$18,889,823	\$1,022,783	\$19,912,606
Less estimated income	<u>1,906,914</u>	<u>13,051</u>	<u>1,919,965</u>
Total general fund	\$16,982,909	\$1,009,732	\$17,992,641
Full-time equivalent positions	40.00	0.00	40.00"

Re-number accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2022 - Commission on Legal Counsel for Indigent - Senate Action**

	Base Budget	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents	\$18,889,823	\$1,022,783	\$19,912,606
Total all funds	\$18,889,823	\$1,022,783	\$19,912,606
Less estimated income	<u>1,906,914</u>	<u>13,051</u>	<u>1,919,965</u>
General fund	\$16,982,909	\$1,009,732	\$17,992,641
FTE	40.00	0.00	40.00

**Department No. 188 - Commission on Legal Counsel for Indigent - Detail of Senate Changes**

	Adds Funding for Base Payroll Changes <sup>1</sup>	Adds Funding for Health Insurance Increases <sup>2</sup>	Increases Funding for Operating Expenses <sup>3</sup>	Increases Funding for Professional Fees <sup>4</sup>	Total Senate Changes
Comm. on Legal Counsel for Indigents	\$267,882	\$123,982	\$130,919	\$500,000	\$1,022,783
Total all funds	\$267,882	\$123,982	\$130,919	\$500,000	\$1,022,783
Less estimated income	<u>10,049</u>	<u>3,002</u>	<u>0</u>	<u>0</u>	<u>13,051</u>
General fund	\$257,833	\$120,980	\$130,919	\$500,000	\$1,009,732
FTE	0.00	0.00	0.00	0.00	0.00

<sup>1</sup> Funding is added for cost-to-continue 2015-17 biennium salaries and benefit increases and for other base payroll changes.

<sup>2</sup> Funding is added for increases in health insurance premiums from \$1,130 to \$1,249 per month.

<sup>3</sup> Funding is added for operating expenses.

<sup>4</sup> Funding is added for professional fees due to increased caseloads.

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

**Dalrymple Executive Budget Comparison to Prior Biennium Appropriations**

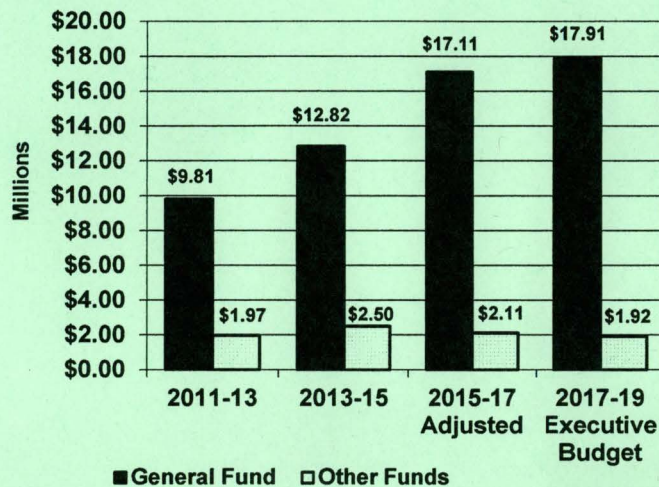
	FTE Positions	General Fund	Other Funds	Total
2017-19 Dalrymple Executive Budget	40.00	\$17,907,588	\$1,920,715	\$19,828,303
2015-17 Adjusted Legislative Appropriations <sup>1</sup>	40.00	17,105,184	2,106,914	19,212,098
Increase (Decrease)	0.00	\$802,404	(\$186,199)	\$616,205

<sup>1</sup>The 2015-17 biennium agency appropriation amounts reflect general fund budget reductions made in August 2016.

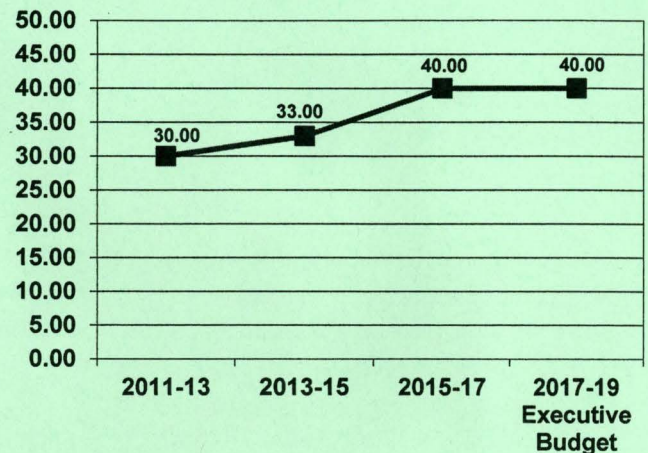
**Ongoing and One-Time General Fund Appropriations**

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2017-19 Dalrymple Executive Budget	\$17,907,588	\$0	\$17,907,588
2015-17 Adjusted Legislative Appropriations	16,982,909	122,275	17,105,184
Increase (Decrease)	\$924,679	(\$122,275)	\$802,404

**Agency Funding**



**FTE Positions**



**Dalrymple Executive Budget Comparison to Base Level**

	General Fund	Other Funds	Total
2017-19 Dalrymple Executive Budget	\$17,907,588	\$1,920,715	\$19,828,303
2017-19 Base Level	16,982,909	1,906,914	18,889,823
Increase (Decrease)	\$924,679	\$13,801	\$938,480

**First House Action**

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

**Dalrymple and Burgum Executive Budget Highlights  
(With First House Changes in Bold)**

	General Fund	Other Funds	Total
1. Adds funding for state employee salary and benefit increases, of which \$30,989 is for salary increases and \$123,982 is for health insurance increases. (The Burgum budget removed funding for salary increases and provided for employees to pay for a portion of health insurance.) <b>The Senate removed funding for the salary increases.</b>	\$151,219	\$3,752	\$154,971
2. Base payroll changes	\$257,833	\$10,049	\$267,882
3. Increases funding for operating expenses	\$130,919	\$0	\$130,919
4. Increases funding for professional fees due to increased caseloads to provide a total of \$10,112,208. <b>The Senate increased funding for professional fees by an additional \$115,292 to provide a total of \$10,227,500.</b>	\$384,708	\$0	\$384,708

### **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**

**House Bill No. 1024** - Includes a deficiency appropriation of \$859,000 of loan proceeds from the Bank of North Dakota for the estimated costs of providing counsel for cases filed against pipeline protesters.

### **Significant Audit Findings**

There are no significant audit findings for this agency.

### **Major Related Legislation**

**House Bill No. 1293** - This bill provides for a \$250 fine for trespass violations. In the majority of cases, this fee would replace other fines, including a \$100 court administration fee, which is allocated between the indigent defense administration fund and the court facilities improvement and maintenance fund.

**Senate Bill No. 2121** - This bill provides changes to court fees for all criminal cases except infractions when there is a plea or finding of guilt. Of these fee amounts, 20 percent must be deposited in the indigent defense administration fund. This bill would affect the current continuing appropriation for the indigent defense administration fund.

**Commission on Legal Counsel for Indigents - Budget No. 188**  
**Senate Bill No. 2022**  
**Base Level Funding Changes**

	<b>Burgum Executive Budget Recommendation (Changes to Dalrymple Budget in Bold)</b>				<b>Senate Version</b>			
	<b>FTE Position</b>	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>	<b>FTE Position</b>	<b>General Fund</b>	<b>Other Funds</b>	<b>Total</b>
<b>2017-19 Biennium Base Level</b>	40.00	\$16,982,909	\$1,906,914	\$18,889,823	40.00	\$16,982,909	\$1,906,914	\$18,889,823
<b>2017-19 Ongoing Funding Changes</b>								
Base payroll changes		\$257,833	\$10,049	\$267,882		\$257,833	\$10,049	\$267,882
<i>Salary increase - Performance</i>				0				0
Health insurance increase		120,980	3,002	123,982		120,980	3,002	123,982
<i>Employee portion of health insurance</i>		<b>(63,376)</b>	<b>(1,573)</b>	<b>(64,949)</b>				0
Increases funding for operating expenses		130,919		130,919		130,919		130,919
Increases funding for professional fees due to increased caseloads		384,708		384,708		500,000		500,000
Total ongoing funding changes	0.00	\$831,064	\$11,478	\$842,542	0.00	\$1,009,732	\$13,051	\$1,022,783
<b>One-time funding items</b>								
No one-time funding items				\$0				\$0
Total one-time funding changes	0.00	\$0	\$0	\$0	0.00	\$0	\$0	\$0
<b>Total Changes to Base Level Funding</b>	0.00	\$831,064	\$11,478	\$842,542	0.00	\$1,009,732	\$13,051	\$1,022,783
<b>2017-19 Total Funding</b>	40.00	\$17,813,973	\$1,918,392	\$19,732,365	40.00	\$17,992,641	\$1,919,965	\$19,912,606

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

**Burgum Executive Budget Recommendation  
(Changes to Dalrymple Budget in Bold)**  
 No other sections included in the executive budget recommendation.

**Senate Version**  
 No other sections included in the Senate version.



## Department 188 - Commission on Legal Counsel for Indigents

## Appropriations Comparisons to the Original and Adjusted Base Budgets

### General Fund Appropriations Adjustments (As a result of the August 2016 General Fund Budget Reductions)

	Ongoing	One-Time	Total
2015-17 original general fund appropriations	\$18,181,828	\$122,275	\$18,304,103
General fund reductions	(1,198,919)	0	(1,198,919)
Adjusted 2015-17 appropriations	\$16,982,909	\$122,275	\$17,105,184
Dalrymple Executive Budget changes	924,679	(122,275)	802,404
2017-19 Dalrymple Executive Budget	\$17,907,588	\$0	\$17,907,588

### Summary of August 2016 General Fund Budget Reductions

	Ongoing	One-Time	Total
Reduced operating expenses	(\$198,919)	\$0	(\$198,919)
Reduced operating expenses for professional fees	(1,000,000)		(1,000,000)
Total reductions	(\$1,198,919)	\$0	(\$1,198,919)
Percentage reduction to ongoing and one-time general fund appropriations	6.59%	0.00%	6.55%

### 2017-19 Dalrymple Executive Budget Changes to the Original and Adjusted Base Budgets

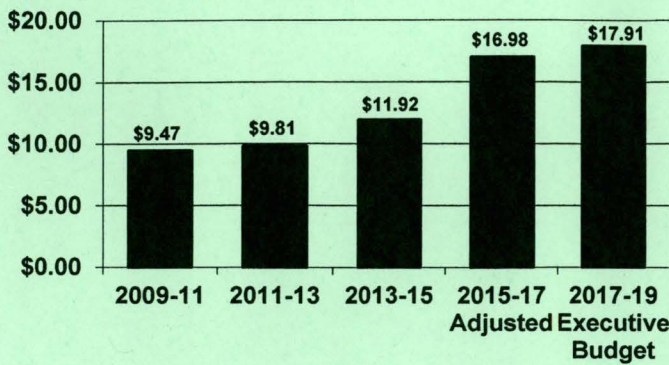
	Changes to Original Budget	Budget Reduction Adjustments	Changes to Adjusted Budget
Adds funding for recommended salary and benefit increases	\$151,219	\$0	\$151,219
Base payroll changes	257,833	0	257,833
Adjusts funding for operating expenses	(68,000)	198,919	130,919
Adjusts funding for professional fees due to increased caseloads	(615,292)	1,000,000	384,708
Total	(\$274,240)	\$1,198,919	\$924,679

Department 188 - Commission on Legal Counsel for Indigents

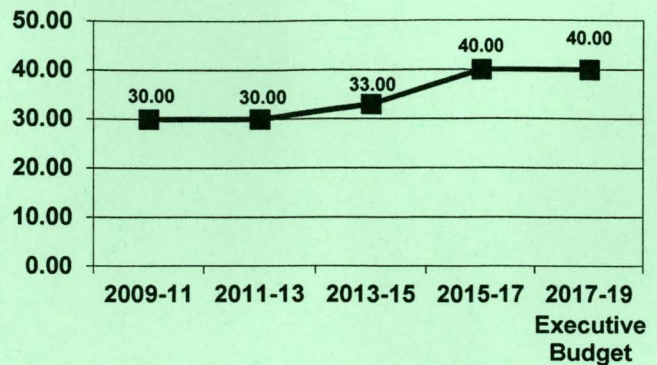
## Historical Appropriations Information

### Ongoing General Fund Appropriations Since 2009-11

Agency Funding (in Millions)



FTE Positions



Ongoing General Fund Appropriations					
	2009-11	2011-13	2013-15	2015-17 Adjusted	2017-19 Dalrymple Executive Budget
Ongoing general fund appropriations	\$9,470,148	\$9,808,430	\$11,923,410	\$16,982,909	\$17,907,588
Increase (decrease) from previous biennium	N/A	338,282	2,114,980	5,059,499	924,679
Percentage increase (decrease) from previous biennium	N/A	3.6%	21.6%	42.4%	5.4%
Cumulative percentage increase (decrease) from 2009-11 biennium	N/A	3.6%	25.9%	79.3%	89.1%

### Major Increases (Decreases) in Ongoing General Fund Appropriations

#### 2011-13 Biennium

1. No major changes identified

#### 2013-15 Biennium

- |   |             |
|---|-------------|
| 1. Added funding for 1 FTE attorney position  | \$196,639   |
| 2. Added funding for 2 FTE legal assistant positions--one in Dickinson and one in Williston | \$235,486   |
| 3. Provided additional funding for contract attorneys                                       | \$1,100,000 |

#### 2015-17 Biennium

- |  |             |
|--|-------------|
| 1. 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   |
| 3. 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 (Dalrymple and Burgum Executive Budget Recommendations)

- |   |           |
|---|-----------|
| 1. Increases funding for operating expenses   | \$130,919 |
| 2. Increases funding for professional fees due to increased caseloads. The Senate increased funding for professional fees by an additional \$115,292. | \$384,708 |

SB 2022  
House Appropriations Committee - Government Operations Division  
March 7, 2017  
Testimony of H. Jean Delaney, Executive Director, NDCLCI

Good morning. My name is Jean Delaney and I am the Director of the ND 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. 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. Application for services is 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 for services.

Indigent defense services are provided through state employees in the Commission's eight public defender offices across the state, and through its monthly contractors, of which there are approximately 70, and its conflict contractors, of which there are over 90. 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 conflict contractors are paid at the rate of \$75.00 per hour, and the 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 \$129/hour) and significantly less than attorneys in

private practice are paid. While attorneys do not provide indigent defense services to get rich, rather because they have a calling to do so, they still must be able to cover their overhead. It is unlikely that we could find many, if any, attorneys willing to provide services for less. As it is, many times attorneys who would like to provide services are unable to do so at this rate.

By statute, the Commission is required to, and does contract for services, at a minimum level of fifty percent of its biennial caseload – we contracted for 68% in FY 2016.

Most of our agency's budget goes directly to providing indigent defense services, either through our 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 January 31, 2017 these composed 95.7% of our expenditures for the biennium.

Traditionally, the Commission has been funded from two sources: the general fund, and "fund 282" (the indigent defense administration fund). The indigent defense administration fund is funded through fees paid by defendants: There is a \$35 application fee and a \$100 court administration fee (the indigent defense/facility improvement fee) that is split pursuant to statute between the indigent defense administration fund and the court facilities improvement and maintenance fund, with the first \$750,000 collected per biennium going to the indigent defense administration fund, the next \$460,000 going to the court facilities improvement and maintenance fund, and any additional collections are split equally between the two. Unless waived by the court, these fees are imposed in misdemeanor and felony cases. We are concerned about reduced collections for fund 282, in this biennium and in the future and I will address this later in my testimony.

The Court may order a defendant to repay attorney fees; however, this money does not go into the indigent defense administration fund; it goes into the general fund.

The agency receives no federal funds or grants.

Ever since this agency was established, the Legislature has been extremely fair in providing appropriate funding. The Commission is very grateful that in the last session, the Legislature recognized the great impact the increases in case assignment numbers were having on the Commission's costs and expenses in providing required services and the expected increases in costs and expenses for 2015-17, and significantly increased appropriations for the agency and authorized the addition of several FTEs. There were ongoing funding increases

approved by the 2013 and 2015 Legislative Assemblies to assist with the costs associated with rising caseloads. In 2013, the Legislature provided funding for three FTEs and provided \$1,100,000 in additional funding for contract attorneys. In 2015, the Legislature provided funding for two FTEs and operating expenses to open an office in Watford City, funding to convert five temporary full time employees to FTEs, and provided \$4,200,000 in additional funding for increased costs related to increased caseloads.

For the original 2015-17 budget, the Commission was appropriated \$18,304,103 from the general fund, which included a one-time appropriation of \$122,275 for transitioning to desktop support from ITD (which went well, and we are pleased with the caliber of ITD support); and \$2,106,914 from other funds, which consisted of authority to spend \$1,906,914 from fund 282, and one time funding of \$200,000 from the strategic investment and improvements fund for contract fees for legal services relating to increased caseloads.

After the 4.05 and 2.5 allotments, this agency's special fund appropriations remained the same, but the general fund appropriation was reduced by \$1,198,919 to \$17,105,184, of which \$122,275 was for the transition to desktop support, leaving \$16,982,909. In order to meet the reduced appropriation, the Commission carefully assessed its spending. However, there were not many areas in which this agency could cut, and still provide constitutionally mandated services. When a contract was terminated, before advertising to fill it, we thoroughly reviewed whether the contract was still needed, whether it was needed in the same size or perhaps a smaller size, or in a different geographical area. Several contracts were not renewed, modified in size, and/or were moved from one district to another as needs changed in various judicial districts. A temporary attorney was hired in Minot to help reduce reliance on hourly contractors in that district. The Commission cut one part-time temporary secretary position in the Dickinson office. Most out of state training was cut, and this is an area in which we would normally get a big "bang for our buck" in that attorneys would go to national training, and bring back the training to present to our employees and contract attorneys at one of our agency trainings here in North Dakota. Copy machines were not replaced as they would have been pursuant to the replacement schedule, but they will need to be replaced at some point.

With these spending cuts, and more, as late as September 2016, we did not anticipate needing a deficiency appropriation in 2015-17. This changed with the significant increases in the number of Dakota Access Pipeline cases that started in October and with the passage of

Marsy's Law in November. A deficiency appropriation was requested for the 2015-17 biennium for expenses related to DAPL and Marsy's Law. The most recent version of 2017 HB 1024, the state-wide deficiency appropriations bill, may or may not provide for coverage for DAPL expenses for the 2017-19 biennium.

As of March 2, 2017, the Commission has provided counsel in 407 DAPL case assignments. There will likely be quite a bit more, as many of the defendants who were recently charged have not yet applied for services or had their application processed.

A good percentage of these cases are expected to go to jury trial, which will take more attorney time and cost more than cases disposed of by other reasons. Also, many of them involve arrests under circumstances which required the assigning of separate counsel to each defendant. One of these events has required over 80 separate attorneys. There aren't eighty indigent defense attorneys in the South Central Judicial District, so we've had to use attorneys from across the state and northwestern Minnesota. This will require additional attorney travel time and mileage. There will be additional discovery costs, witness fees, and appellate costs. It is impossible at this time, to accurately predict how much this will cost, and which costs will be incurred during this biennium, and which in the next. The Commission's estimate of costs in this biennium is attached as Attachment A. The estimate of costs in 2017-19 is in Attachment B – we estimate that DAPL expenses in 2017-19 will be \$356,519.50.

Marsy's Law went into effect in December 2016. There will be costs incurred by this agency due to its passage, such as for additional contested preliminary hearings, more jury trials, and other hearings. However, as with the DAPL cases, it is difficult to accurately predict at this time how much in additional costs will be incurred. An additional concern with Marsy's Law is that it has changed the priority of the payment of fees collected from defendants. Before the passage of Marsy's Law, the indigent defense application fee was paid first in priority from funds collected from a defendant, and the indigent defense/facility improvement fee was second in priority for payment. The victim/witness fee was third, and restitution was fourth. After Marsy's Law, restitution is now paid first, and collection of money for other fines and fees will be delayed, and/or remain uncollected. Thus, fund 282 will likely see less collected, now and in the future. We estimate additional costs to the agency and reduction of collections in Fund 282 of \$188,410 for the remainder of the 2015-17 biennium, and \$646,000 for the 2017-19 biennium. The calculations are in Attachments A and B.

Another concern for the agency is that caseloads continue to increase state-wide. Documents showing the increases are attached as Attachments C and D.

In FY2016, the Commission provided legal counsel services in more case assignments than in any year prior – services were provided in more than 14,800 case assignments. This number represents an approximately 9% increase from FY2015, and a 42% increase from FY2012. Serious double A felonies and A felonies have been increasing at an even higher rate. There were 380 of these in FY2012, 689 in FY2015, and 779 in FY2016. This is an increase of 105% since 2012, and an increase of 13% since 2015. These serious felony cases, with their more significant penalties, are generally more costly. They generally take more attorney time. For example, a double A felony that goes to jury trial averages more than 100 hours of attorney time, while a B misdemeanor that goes to jury trial averages a bit over 18 hours. These serious felonies are more likely to have more extraordinary expenses, such as private investigators and experts, than case assignments with less serious charges. Also, with the passage of Marsy's Law, it is expected that crimes with victims will take more time. It is likely there will be more contested preliminary hearings and more jury trials in these cases, thus, more attorney time.

The Commission tracks assignments by judicial district. Many of the judicial districts saw significant increases in assignments during FY2016. Attorneys in the North Central Judicial District handled 1669 assignments. This is a 115% increase since FY2012, and a 22% increase since FY2015. During 2016, 51 of the assignments were double A felonies, a 410% increase since 2012, and a 76% increase since 2015. Class A felonies also increase significantly: 426% since 2012, and 33% since 2015.

During FY2016, attorneys in the South Central Judicial District handled 4158 case assignments. This is a 43% increase since FY2012, and a 27% increase since FY2015. During 2016, Attorneys in this district handled 33 double A felonies, a 32% increase since 2012; and 161 A felonies, a 68% increase since 2012, and a 39% increase since 2015.

During FY2016, attorneys in the East Central Judicial District handled 3115 case assignments. This is a 39% increase since FY2012, and a 13% increase since FY2015. During 2016, Attorneys in the ECJD provided services in 39 double A felonies, a 290% increase since 2012, and a 18% increase since FY2015; and in 132 A felonies, a 81% increase since 2012, and a 22% increase since 2015.

During FY2016, attorneys in the Southwest Judicial District handled 761 case

assignments. This is a 35% increase since FY2012, and a 6% increase since FY2015. During 2016, Attorneys in the SWJD provided services in 44 A and double A felonies, a 175% increase since 2012, and a 13% increase since FY2015.

While total assignments in both the Northwest and Northeast Judicial Districts for FY2016 were less than in FY2015, the number of assignments was higher than in any other fiscal year, and double A felony assignments were higher in both districts in FY2016 than in 2015. The total number of assignments in the Southeast and Northeast Central Judicial Districts remained about the same in FY2016 as in 2015.

The increases in case assignment numbers state-wide are expected to continue – they've increased each of the past five years - and so we anticipate caseloads in FY2017 being even higher than in FY16. Projecting the first seven months of FY2017 over the entire year, we expect to see case assignment numbers higher than in FY2016.

Increases in case assignment numbers means a need for increased numbers of attorneys. An attorney can only take so many assignments and still provide competent, effective representation.

Attached to this testimony is the listing of the proposed budget reductions identified by this agency to meet the Governor's 90 percent budget request guideline (Attachment E). As mentioned before, most of this agency's budget goes to the provision of mandated, indigent defense services. We identified cutting legal services to reduce the budget by 10%; however, the Commission would not be able to provide required services to all indigent persons eligible for and in need of services with a 10% budget reduction.

Both Governor Dalrymple and Governor Burgum identified in their executive budget recommendations a need for additional funding for this agency. The executive budget recommendation from Governor Dalrymple is as follows: "The total General Fund reduction from the original 2015-17 legislative ongoing appropriation is \$547,734. This equals a three percent reduction. General Fund authority of \$1.3 million was added back into the budget after the 10 percent reduction to help cover the increased caseload." Governor Burgum made no changes to this.

Regarding budget changes made by the Senate to the "base level," the Senate added \$257,833 for base payroll changes from IBARS, \$120,989 for health insurance increase, \$130,919 for increased operating fees associated with the rising case load, and \$500,000 to



increase funding for professional services (legal fees, etc.), for a total of \$17,992,641 from the general fund.

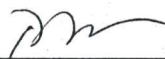
The Commission had no formal recommendations in its recent financial audit.

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 money 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 7<sup>th</sup> day of March, 2017



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H. Jean Delaney, Director  
ND Commission on Legal Counsel for Indigents  
701-845-8632  
[jedelaney@nd.gov](mailto:jedelaney@nd.gov)

March 7, 2017

SB2022

Attachment B



*North Dakota Commission on Legal Counsel for Indigents*

2517 West Main  
P.O. Box 149  
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701-845-8632  
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H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

January 25, 2017

Representative Jeff Delzer  
Chair, House Appropriations Committee

Dear Representative Delzer:

As requested, we have carefully reviewed what we think we'll need as a deficiency appropriation for the 2015-17 biennium due to the DAPL cases and the passage of Marsy's Law. Based on that review, we request a deficiency appropriation of \$857,458.75.

The reason why that figure has not changed significantly even though cases are being consolidated and trial dates are being delayed is because (1) Counsel works on a case from assignment through disposition and any appeal. Most of that work is done outside of court hearings. Delays in trial dates actually increase our costs as will the Marsy's Law provision that allows a victim to refuse an interview or discovery request from the defense; (2) Each defendant is provided with his or her own attorney so consolidating cases for trial does not result in any savings in our agency's costs; (3) The number of case assignments vastly exceeds our ordinary capacity to meet demands. This has resulted in significantly higher costs to contract with attorneys on an hourly or monthly basis. Additionally the need to bring in both our regular employees and contract attorneys from across the state and northwestern Minnesota results in travel expenses that far exceed ordinary expenses; and (4) Anticipated declines in revenue due to the impact of the Marsy's Law requirement that restitution be collected before the indigent defense fees.

As of January 23, 2017, there have been 614 DAPL cases filed in the South Central Judicial District, in which there would be a right to counsel provided by the Commission, if the defendant is indigent and applies for counsel (there are also 39 city transfer cases; however, the city, not the Commission would provide counsel in those). As of January 23, the Commission has provided counsel in 341 case assignments. This would be approximately fifty percent of the filed cases. For our earlier calculations, we had assumed we will likely provide counsel in 490 assignments this biennium. This is a conservative number, as it is only 149 assignments more than our current number, and would be only 30 new assignments per month for the remainder of the biennium.

Attachment A

Due to the large number of cases, and large number of persons arrested in single incidents, we've had to use attorneys from around the state, not just from the South Central Judicial District. The cases with out of district attorneys are more expensive, with costs for attorney travel time, mileage, and lodging.

In the Commission's original request, it appeared that most, if not all of the DAPL defendants are seeking jury trials. This still appears to be the case. A jury trial case assignment averages 31.07 hours of attorney time; case assignments closed for other reasons (bench trial, plea agreements, dismissal, etc.) average 5.5 hours. Attorney time is calculated at \$75/hour, which is the rate paid to our contractors. If half of these 490 assignments went to jury trial this biennium, and the other half were disposed of for some other reason during this current biennium, it would require approximately \$671,973.75 ( $490 / 2 = 245 \times 31.07 \times \$75/\text{hour} = \$570,911.25 + 490 / 2 = 245 \times 5.5 \times \$75 = \$101,062.50$ ;  $\$570,911.25 + \$101,062.5 = \$671,973.75$ ). There would also be additional costs, such as attorney travel time, mileage, and lodging; witness fees; other extraordinary expenses; and appellate costs that are not included in these calculations.

Approximately one hundred and one of the DAPL case assignments in which the Commission has provided an attorney are scheduled for jury trial before the end of the biennium. This would require approximately \$235,355 for attorney time ( $101 \times 31.07 \text{ hours} \times \$75.00/\text{hour}$ ). Twenty-four of the attorneys assigned to these cases are from other judicial districts. Therefore, there would also be additional cost for attorney travel time, mileage, and lodging for out of district attorneys in these matters. Assuming two trips for each out of district attorney to and from Mandan (one trip to meet with the client, the other for the jury trial) would add an additional \$30,000.

Approximately one hundred sixty-eight assignments had been set for jury trial, and are now awaiting new trial date pursuant to the Court's scheduling plan. We anticipate 75 of these will be tried before the end of the biennium, with the remainder next biennium. We anticipate an expense of \$174,768.75 for these 75 jury trials to be held this biennium ( $75 \times 31.07 \times \$75 = 174,768.75$ ). We also anticipate approximately \$20,000 for two trips to and from Mandan for the out of district attorneys.

For those 93 matters which are currently assigned, but which will be tried next biennium, even if the trial is scheduled after June 30, much of an attorney's work is done before the trial. The attorney must meet with and counsel the client, seek and review discovery, investigate the case, make appropriate motions, and prepare for trial. Therefore, even if a trial in one of these assigned cases were to be scheduled to be held after June 30, and thus, during the 2017-19 biennium, a great portion of the work/expense will likely be done in this biennium. Assuming 15 hours of work before trial, done during this biennium, will cost \$104,625 ( $93 \times 15 \times \$75 = \$104,625$ ). One trip to and from Mandan for the out of district attorneys would add approximately \$10,000.

This leaves 72 currently assigned case assignments to be disposed of by other reason. If completed during this biennium, this would require \$29,700 ( $72 \times 5.5 \times \$75 = \$29,700$ ), plus approximately \$6,700 for travel for out of district attorneys.

There will also be new assignments, made after January 23, 2017. Assuming 149 new assignments, and just two hours of attorney time during this biennium, will require \$22,350 ( $490$

anticipated assignments – 341 currently assigned =  $149 \times 2 \times \$75 = \$22,350$ ).

There will also be appellate costs. An appeal averages 27.5 hours of attorney time. Assuming an appeal in one out of every fifteen case assignments that went to jury trial this biennium, there will be approximately 12 appeals ( $176 \times .066 = 11.7$ ), which will require \$24,750 for attorney time ( $12 \times 27.5 \times \$75$ ) and \$10,800 for transcripts, assuming one-day jury trials (it would cost approximately \$900 for transcripts from a one day jury trial).

Based on the foregoing, the DAPL assignments will require \$669,048.75 this biennium.

Marsy's Law went into effect in December 2016, and there will be many costs incurred by this agency due to it. As with the DAPL cases, it is difficult at this early date to accurately predict how much in additional costs will be incurred.

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law.

There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. We estimated that the number of additional contested preliminary hearings will be one-quarter of the felony case assignments that involve a victim, requiring one additional hour of attorney time per assignment for a total of \$106,600/biennium ( $6616$  felony assignments per year  $\times .43$  with victims  $\times .25 \times 2$  years  $\times \$75$ ); we estimated jury trial numbers would at a minimum increase by 18 for a total of \$69,000/biennium ( $31.07$  hours for jury trial versus  $5.5$  hour for other reason, at  $\$75/\text{hour} = \$1917.75$  more for a jury trial  $\times 18$  jury trials  $\times 2$ ); we assumed probation revocations would increase by 10% for an additional \$85,800/biennium ( $1679$  per year  $\times .1 = 168 \times 3.41$  average hours on a probation revocation  $\times \$75 \times 2$ ); and assumed Orders to Show Cause hearings would increase by 10% for approximately an additional \$7,800 per biennium ( $229$  OTSC per year  $\times .1 = 23 \times 2.31$  average hours in OTSC  $\times \$75/\text{hour} \times 2$ ). These total \$269,000 per biennium, which would be \$78,450 for the remainder of this fiscal year.

An additional concern with Marsy's Law is that it has changed the priority of the payment of fees collected from defendants. Due to this, we anticipate delayed and reduced collections in our special fund. Calculating that the fund will receive 20% less, this would be \$377,000 in a biennium; this would be \$109,960 for the remainder of this fiscal year.

Thus, we calculate needing additional funding in the amount of \$188,410 due to Marsy's Law.

Sincerely,

  
H. Jean Delaney

March 7, 2017

SB2022

Attachment



**NDCLCI**

**North Dakota Commission on Legal Counsel for Indigents**

2517 West Main  
P.O. Box 149  
Valley City, ND 58072  
701-845-8632  
www.nd.gov/indigents

H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

**Expenses for DAPL and Marsy's Law in 2017-19, estimated to be \$1,002,519.50**

Assuming 490 DAPL case assignments in 2015-17 (as of 1/23/17 there are 341).

101 are assigned and scheduled for jury trial before the end of the biennium.  
168 are assigned and had been set for jury trial, and are now awaiting new trial dates pursuant to the Court's scheduling plan. Anticipate 75 of these will be tried by jury before the end of the 2015-17 biennium, with the remainder next biennium.

For the 93 currently assigned, but tried by jury next biennium (168 - 75 = 93):

Average jury trial requires 31.07 hours, had assumed 15 hours worked on each in 2015-17 which would leave 16.07 hours for 2017-19. 93 x 16.07 hours x \$75 = \$112,088, plus \$10,000 for attorney travel time, mileage, lodging for out of district attorneys.

For the 149 new assignments, made after January 23, 2017, in which attorneys worked 2 hours on each during 2015-17:

Assume one-half are tried by jury: 75 x 29.07 hours remaining x \$75 = \$163,519  
Assuming one-half are disposed of in other ways (average of 5.5 hours for assignments with other dispositions): 74 x 3.5 hours remaining x \$75 = \$19,425  
Travel time, mileage and lodging for out of district attorneys: \$20,000

Appellate costs: Assuming 1/15 jury trial case assignment is appealed:

93 + 75 = 168 x .066 = 11 appeals x 27.5 hours (average hours on appeal) x \$75 = \$22,687.50 + \$8,800 for transcripts (one day jury trial approximate cost) = \$31,487.50

**2017-19 DAPL estimate: \$356,519.50**

Approximately 43% of our criminal case assignments involve victims, and thus, are subject to Marsy's Law. There will be more contested preliminary hearings, more jury trials, more probation revocations and more orders to show cause hearings in these cases. At this time we estimate \$269,000 per biennium for these costs, plus reduced collection of fees for our special fund of \$377,000 in a biennium.

**2017-19 Marsy's Law estimate: \$646,000**

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Attachment

March 7, 2017

SB2022

Attachment D

Count of Assignment No		Month/Year Assigned2						FY12-FY16	FY15-FY16
Judicial Case Typ Highest	FY12	FY13	FY14	FY15	FY16	Grand Total	Differ	Differ	
EC	Appeal	9	14	12	18	12	65		
	Other	233	244	292	359	390	1518		
	Crimin: FA	73	60	76	108	132	449	80.8%	22.2%
	FAA	10	26	31	33	39	139	290.0%	18.2%
	FB	94	93	137	119	123	566		
	FC	649	788	869	954	1056	4316		
	MA	485	535	511	456	452	2439		
	MB	286	289	280	328	320	1503		
	Juvenile	403	416	389	380	577	2165		
	Post-Conviction	7	12	11	12	14	56		
<b>EC Total</b>	<b>2249</b>	<b>2477</b>	<b>2608</b>	<b>2767</b>	<b>3115</b>	<b>13216</b>	<b>38.5%</b>	<b>12.6%</b>	
NC	Appeal	8	6	3	5	12	34		
	Other	75	81	75	130	197	558		
	Crimin: FA	19	32	46	75	100	272	426.3%	33.3%
	FAA	10	20	25	29	51	135	410.0%	75.9%
	FB	45	76	69	74	71	335		
	FC	258	383	522	626	674	2463		
	MA	164	121	157	148	239	829		
	MB	70	64	57	64	88	343		
	Juvenile	127	119	138	212	227	823		
	Post-Conviction	2	6	7	7	10	32		
<b>NC Total</b>	<b>778</b>	<b>908</b>	<b>1099</b>	<b>1370</b>	<b>1669</b>	<b>5824</b>	<b>114.5%</b>	<b>21.8%</b>	
NE	Appeal	3	5	8	4	6	26		
	Other	146	127	76	100	100	549		
	Crimin: FA	18	20	36	78	50	202	177.8%	-35.9%
	FAA	7	4	4	7	8	30	14.3%	14.3%
	FB	40	57	31	61	27	216		
	FC	258	234	260	429	390	1571		
	MA	192	166	172	225	197	952		
	MB	122	139	104	136	123	624		
	Juvenile	165	239	189	238	193	1024		
	Post-Conviction	5	7	9	10	12	43		
<b>NE Total</b>	<b>956</b>	<b>998</b>	<b>889</b>	<b>1288</b>	<b>1106</b>	<b>5237</b>	<b>15.7%</b>	<b>-14.1%</b>	
NEC	Appeal	9	8	13	10	14	54		
	Other	154	166	150	208	235	913		
	Crimin: FA	48	21	29	21	26	145	-45.8%	23.8%
	FAA	6	6	6	12	4	34	-33.3%	-66.7%
	FB	42	39	48	36	54	219		
	FC	375	373	380	409	385	1922		
	MA	231	230	172	175	172	980		
	MB	126	116	89	105	128	564		
Juvenile	176	183	252	301	247	1159			

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THUR 12-15 C

NEC	Post-Conviction	9	7	5	12	10	43		
<b>NEC Total</b>		<b>1176</b>	<b>1149</b>	<b>1144</b>	<b>1289</b>	<b>1275</b>	<b>6033</b>	8.4%	-1.1%
NW	Appeal	7	3	4	7	11	32		
	Other	74	51	33	102	94	354		
	Crimin: FA	18	31	58	55	51	213	183.3%	-7.3%
	FAA	5	20	20	30	38	113	660.0%	26.7%
	FB	30	54	83	82	87	336		
	FC	239	394	600	824	670	2727		
	MA	196	188	241	252	206	1083		
	MB	154	227	300	278	280	1239		
	Juvenile	160	135	180	168	171	814		
	Post-Conviction	5	1	2	11	7	26		
<b>NW Total</b>		<b>888</b>	<b>1104</b>	<b>1521</b>	<b>1809</b>	<b>1615</b>	<b>6937</b>	81.9%	-10.7%
SC	Appeal	25	31	29	24	27	136		
	Other	502	633	556	627	855	3173		
	Crimin: FA	96	126	96	116	161	595	67.7%	38.8%
	FAA	25	42	48	32	33	180	32.0%	3.1%
	FB	96	128	97	97	144	562		
	FC	802	971	1147	1217	1503	5640		
	MA	509	614	579	514	548	2764		
	MB	405	365	323	263	366	1722		
	Juvenile	425	369	317	360	498	1969		
	Post-Conviction	20	34	22	24	23	123		
<b>SC Total</b>		<b>2905</b>	<b>3313</b>	<b>3214</b>	<b>3274</b>	<b>4158</b>	<b>16864</b>	43.1%	27.0%
SE	Appeal	10	8	7	13	7	45		
	Other	75	110	79	110	102	476		
	Crimin: FA	21	37	41	42	27	168	28.6%	-35.7%
	FAA	8	6	8	12	15	49	87.5%	25.0%
	FB	39	43	59	46	52	239		
	FC	251	328	365	405	401	1750		
	MA	244	225	193	186	187	1035		
	MB	199	214	171	187	219	990		
	Juvenile	99	89	122	134	127	571		
	Post-Conviction	7	13	10	5	7	42		
<b>SE Total</b>		<b>953</b>	<b>1073</b>	<b>1055</b>	<b>1140</b>	<b>1144</b>	<b>5365</b>	20.0%	0.4%
SW	Appeal	1	3	3	4	1	12		
	Other	86	68	85	106	81	426		
	Crimin: FA	12	13	36	26	35	122	191.7%	34.6%
	FAA	4	4	6	13	9	36	125.0%	-30.8%
	FB	22	14	19	27	21	103		
	FC	138	167	223	195	250	973		
	MA	114	143	130	156	169	712		
	MB	92	105	82	84	125	488		
	Juvenile	88	81	69	103	69	410		
	Post-Conviction	6	2	5	2	1	16		
<b>SW Total</b>		<b>563</b>	<b>600</b>	<b>658</b>	<b>716</b>	<b>761</b>	<b>3298</b>	35.2%	6.3%
<b>Grand Total</b>		<b>10468</b>	<b>11622</b>	<b>12188</b>	<b>13653</b>	<b>14843</b>	<b>62774</b>	41.8%	8.7%

SB2002

March 7, 2017

Attachment E

Count of Assignment No		Month/Year Assigned <sup>2</sup>						Differ from	Differ from
Case Type <sup>2</sup>	Highest	FY12	FY13	FY14	FY15	FY16	Grand Total	FY12-FY16	FY15-FY16
Appeal		72	78	79	85	90	404	25.0%	5.9%
Other		1345	1480	1346	1742	2054	7967	52.7%	17.9%
Criminal	FA	305	340	418	521	582	2166	90.8%	11.7%
	FAA	75	128	148	168	197	716	162.7%	17.3%
	FB	408	504	543	542	579	2576	41.9%	6.8%
	FC	2970	3638	4366	5059	5329	21362	79.4%	5.3%
	MA	2135	2222	2155	2112	2170	10794	1.6%	2.7%
	MB	1454	1519	1406	1445	1649	7473	13.4%	14.1%
Juvenile		1643	1631	1656	1896	2109	8935	28.4%	11.2%
Post-Conviction		61	82	71	83	84	381	37.7%	1.2%
<b>Grand Total</b>		<b>10468</b>	<b>11622</b>	<b>12188</b>	<b>13653</b>	<b>14843</b>	<b>62774</b>	<b>41.8%</b>	<b>8.7%</b>

1

Attachment D



SB 2022  
House Appropriations Committee – Government Operations Division  
March 7, 2017

Testimony of H. Jean Delaney, Executive Director NDCLCI

ATTACHMENT E

Listing of proposed budget reductions identified by NDCLCI to meet the Governor's 90 percent budget request guideline:

2015-17 General Fund  
Appropriation 18,304,103

Remove One Time Funding Desktop Support 122,275

Base Budget for 90% calculation 18,181,828  
10% reduction 1,818,183

Proposed budget reductions

Legal -1,760,183  
Travel -50,000  
Professional  
Supply/Material -5,000  
Office Supplies -8,000  
Office Equipment/Furniture -3,000  
Printing -2,000

March 7, 2017

SB2022

Attachment  
G

Senate Bill 2022  
House Appropriations-Government Operations Division

Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
March 7, 2017

Chairman Brandenburg, 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 Senate Bill 2022.

I hope my testimony may help to better understand the challenges we face as an agency and the ferociousness with which we greet those challenges every day. To provide background, I was just 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.

As a new attorney working in Grand Forks, I was exposed to the agency in its infancy. At that time the agency was just beginning to settle in. I enjoyed indigent defense work and the ability to represent those who needed legal representation the most. When the Bismarck Public Defender Office opened, I joined before the boom in North Dakota. I watched in awe as case numbers grew at unprecedented rates. During this crisis, Robin Huseby (the first Director of the Agency) and Jean as Deputy Director, worked in coordination with this body to address the needs of the State and in my opinion achieved just that. I was able to see from outside of the agency administration the gracious support the legislature had provided us and the care in which the agency administration took in

ensuring services were provided in a fiscally responsible way. Administration was successful in recruiting attorneys to take cases out west. Furthermore, new offices were established (Watford City and Minot Adjunct) with the blessing of the legislature. Most importantly, these challenges were met in a matter as to not compromise the promises our forefathers laid out in the Bill of Rights, particularly Gideon's promise of providing competent attorneys for those who qualify for indigent defense services.

Today, we continue to see challenges. The case numbers continue at record levels. Not only have case numbers increased, but the severity level of cases continue to increase. As an attorney who has handled these cases, the severity level of cases matters. The increase in case assignments and increase in severity of those cases has also tasked the Court system. To the benefit of North Dakota's citizens, the Court System has always recognized and respected the importance of our agency in the justice system and we reciprocate that respect. Our agency has always held the Court in high regard and continue to do so. We thank the Chief for his unwavering support and all the employees of the Judicial System for their cooperation in achieving the mission of a fair and impartial judicial system.

Another challenge not previously seen in our time, is the response to the Dakota Access Pipeline cases. I wish to make part of the record the immense gratitude our agency has for our public defender offices and our contract attorneys who have stepped up to assist. Additionally, the response by the members of the Bar in North Dakota has been nothing short of exemplary. When called upon, most attorneys have been willing to take a case even if the \$75/hr rate we pay doesn't cover overhead. Why?? It is the North Dakota way. When someone needs help, we step up, and I am humbled by the support we have received from the attorneys we have been in contact with.


Lastly, I would like to expressly recognize the dedication of the employees of the agency. One of the optional packages we included in our budget request was the result of a salary survey we conducted. 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 are cognizant of the budget situation in our great state, but our agency's employees deserve to be considered. It is with their dedication to the cause and the gracious support of the legislature, we have been able to carry out our mission. We are steadfast in fulfilling Gideon's promise and will continue to be good stewards of the people's money.

In closing, this session is one of incredible importance in North Dakota's history and we are very cognizant of the economic state we are in. However, dissimilar to a lot of state agencies, we do not see a downturn in work with a downturn in the economy. In fact, we, as best described by Chief Justice Vandewalle, see an inverse relationship. As the economy has gone down, we have seen an increase in case numbers in many locations across the state. With the projected increase in case assignments, we need to be prepared to meet the challenges that are forthcoming. And we will. For as Albert Pike once put it: "What we have done for ourselves alone dies with us; what we have done for others and the world remains and is immortal." We, meaning the administration of the agency, the employees of the agency and the contractors who provide services, will rise to the occasion.

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 7<sup>th</sup> day of March, 2017



Travis W. Finck, Deputy Director  
N.D. Commission on Legal Counsel  
(701) 845-8632, tfinck@nd.gov

SB 2022  
House Appropriations Committee - Government Operations Division  
March 14, 2017  
Testimony of H. Jean Delaney, Executive Director, NDCLCI

Good morning. My name is Jean Delaney and I am the Director of the ND Commission on Legal Counsel for Indigents.

In response to the Committee's questions during the hearing on SB 2022 on Tuesday, March 7, we attempted to gather the requested information regarding the number of cases in which attorney recoupment is waived, how much is collected per biennium, and the percentage of the serious felonies in which the Commission provides counsel.

The Commission does not collect information on the number of assignments in which fees are imposed or not imposed, nor the amounts collected. According to a financial officer in the Supreme Court, the court tracks what has been assessed, and what has been collected, but does not keep track of the number of cases in which recoupment is waived. The amount of collections for recoupment (as reported to the financial officer by the State Treasurer's office) was \$288,519.16 in 2009-11; \$347,151.74 in 2011-13; \$466,355.95 in 2013-15; and \$372,070.38 for the first 19 months of 2015-17. This data is in Attachment A.

As to the percentage of felonies in which the Commission provides counsel, the Supreme Court's Financial Director was able to calculate a percentage of felony and misdemeanor cases in which the Commission provide counsel in FY 2016. He pulled the numbers of felonies and misdemeanor cases off of Odyssey, however, there is no simple way to pull numbers off of Odyssey by severity level, so was not able to separate the serious felonies from the lower level felonies. He determined the percentage of felonies and misdemeanors in which the Commission provided counsel by using the case assignment numbers from Attachment C of my March 7 testimony. His figures are attached as Attachment B and show that the Commission provided counsel in 87.8% of the felony cases state-wide. While this number is likely close to the actual percentage, our agency keeps track of "case assignments" which are not exactly the same as a "case" on Odyssey. A criminal "case" on Odyssey refers to charges brought in one complaint filed with the court. A criminal "case assignment" pursuant to the Commission's standards/policies refers to all charges against a single defendant arising from the same incident or event handled by one attorney. While generally one complaint equals one "case assignment" it is not

always so. There may be one or more “case assignments” in a complaint, and there may be more than one complaint in a “case assignment” depending on how the prosecutor has charged the offenses. So the percentage is not totally accurate, but does show that the Commission provides counsel in a great percentage of the felony cases state-wide.

I have also attached a copy of the Commission’s Report to the 65<sup>th</sup> Legislative Assembly as required by 2015 HB 1022 to this testimony as Attachment C.

I am happy to answer any questions you may have.

Deputy Director Travis Finck is also present. He has testimony regarding two other questions asked during the hearing on March 7 – what happens if there isn’t sufficient funding to provide counsel in cases, providing counsel in DAPL cases.

Submitted this 14<sup>th</sup> day of March, 2017



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H. Jean Delaney, Director  
ND Commission on Legal Counsel for Indigents  
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**From:** Ulrich, Dion [mailto:DUlrich@ndcourts.gov]  
**Sent:** Thursday, March 9, 2017 2:18 PM  
**To:** Petrowitz, Aaron L. <apetrowitz@nd.gov>  
**Subject:** Indigent Defense Recoupment revenue

Indigent Defense Recoupment Revenue  
As reported by the State Treasurer's Office

09-11 Biennium \$288,519.16

11-13 Biennium \$347,151.74

13-15 Biennium \$466,355.95

07/15-06/16 \$243,158.90

07/16-01/17 \$ 128,911.48 (7 months)

CASES WITH A PUBLIC DEFENDER

	Felonies		
	<u>FY 2016 Total Cases Filed</u>	<u>FY 2016 Cases w/ Public Defender</u>	<u>Percentage</u>
Total statewide	7,617	6,687	87.8%

	Misdemeanors		
	<u>FY 2016 Total Cases Filed</u>	<u>FY 2016 Cases w/ Public Defender</u>	<u>Percentage</u>
Total statewide	19,315	3,819	19.8%

*Attachments*





**NDCLCI**

*North Dakota Commission on Legal Counsel for Indigents*

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H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

January 25, 2017

Jim Smith  
Director, Legislative Council  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Rep. Larry Bellew  
Speaker of the House

Rep. Al Carlson  
House Majority Leader

Rep. Corey Mock  
House Minority Leader

Sen. Rich Wardner  
Senate Majority Leader

Sen. Joan Heckaman  
Senate Minority Leader

Greetings:

Kindly find enclosed the Commission's Report to the 65<sup>th</sup> Legislative Assembly as required by 2015 HB 1022.

Sincerely,

H. Jean Delaney

REPORT TO LEGISLATURE ON EFFECTIVENESS OF PROCEDURES  
AS REQUIRED BY 2015 HB 1022  
JANUARY 24, 2017  
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

The Commission's "mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at reasonable cost to the community." We have always recognized that services should be provided only to those persons who are eligible. The Guidelines for Determining Eligibility for Indigent Defense Services note that "[i]t is in the interest of all parties, the court, and the public, to insure that indigent defense services are provided in appropriate cases. However, there are abuses to the system, both intentional and unintentional. Applicants are not always forthcoming with their income information, and do not always inform the court of changes which could affect their eligibility. Additional screening is necessary to curb abuses, and to insure that services are available for those who are truly indigent." It has been the policy of the Commission to seek additional screening and review of applications by the court in questionable cases. Additionally, the Commission had implemented an Indigent Defense Task Force to investigate possible abuses of the system and to look at strategies for improvement. The Task Force members include Representative Kim Koppelman, who is one of the Commission's members, two judges, public defenders and contract attorneys, a court clerk, and a director of juvenile court services.

In 2015 House Bill 1022, the Legislature has directed the Commission to "report to the sixty-fifth legislative assembly regarding the effectiveness of limits and procedures used to ensure that defense services are provided only to indigent clients." To facilitate this report, the Commission's Indigent Defense Task Force undertook a review of many aspects of the determination of indigency. During several meetings, the Task Force members reviewed the Commission's governing statute, the Guidelines to Determine Eligibility for Indigent Defense Services, forms and procedures used for appointment of counsel in the various judicial districts, the procedures for review of findings of eligibility and the effectiveness of requests for reassessment, ethical issues of attorneys in requesting reassessment of eligibility and procedures to be followed by an attorney when the attorney obtains information that the client is ineligible. The Task Force also looked at how eligibility and assignment of attorneys is handled in some

other jurisdictions, and how screening for eligibility for services is handled by some other North Dakota agencies. The Task Force randomly sampled applications and findings of eligibility from all judicial districts to determine compliance with agency standards and policies. The Task Force also sampled compliance following additional training on the Guidelines. Indigent defense attorneys were surveyed, and it was generally felt that in the vast majority of the cases, the clients were truly indigent.

Based on the information received and research conducted, the Task Force made several findings of procedures that are effective in ensuring services are provided only to eligible persons, and the Task Force made several recommendations. These findings and recommendations were adopted by the Commission at its meeting on October 5, 2016.

The findings/recommendations deal with three main areas: training, updating the applications for the services, and review of indigency determinations,

Training on the Guidelines to Determine Eligibility for Indigent Defense Services is of primary importance to ensure compliance. It was found that the Commission should continue to provide training to those persons who make the eligibility determinations, and look at new and additional ways to reach them. The Commission has been providing training to court clerks individually, in their counties, and through Go To Trainings organized by the judiciary; and is seeking to provide training to judges. It was also found that the Commission should provide training to State's Attorneys on the Guidelines. The Commission's Director and Deputy Director provided this training on January 18, 2017 at the State's Attorneys' winter meeting.

It was found that the Commission should continue to provide training to its attorneys and court staff on what an attorney should do to seek review of eligibility of persons who have become employed or whose circumstances have significantly changed following an initial finding of eligibility. This training is provide to its attorneys and court staff as part of the training on the Guidelines, and as part of training of attorneys on the attorney's ethical obligations.

It was found that the application for services should be updated with simpler language; this will make it easier to obtain necessary information on income and assets. It was also found that the application should be updated to include authorization by the applicant for investigation of the applicant's income and assets, and a release of information from any source that might have such information. An updated application has been drafted at an 8<sup>th</sup> grade reading level,

and it includes an authorization/release. It has gone out to interested persons for comment. Based on the comments received, the Commission will determine whether to adopt the updated form, or further modify it.

It was recommended that the Commission consider, develop and implement a process to review eligibility of persons who have bonded out of jail when they were initially found eligible while in jail. The current procedure is to send out a letter asking the Court to reassess eligibility of a person who found to be eligible if it looks like the person was temporarily indigent due to incarceration, but who is likely employed upon release. A more formal process is being explored.

It was found that the Commission should continue to randomly spot check applications in the different judicial districts to ascertain compliance with the Guidelines. This is a valuable way to make sure that the person for whom services was provided is truly eligible for services. The Commission continues to do this.

It was found that the Commission should ascertain whether statutory revision is necessary to ensure compliance with the Guidelines. The Commission is in support of 2017 HB 1235 as a way to permit it to verify eligibility when spot checking applications, and when questions arise as to eligibility in a specific case.

Finally, it was recommended that there be no changes as to which entity determines eligibility. Pursuant to NDCC section 54-61-01, the Court makes the determination of eligibility. It is most effective to have the Court or the clerk as the Court's designee determine eligibility. To have another entity, such as the Commission, make this determination would be more expensive, and due to the large number of applications, findings of eligibility would be delayed, which would lead to delayed assignment of counsel.

The vast majority of the clients to whom services are provided are truly indigent. The policies and procedures currently in place are effective in ensuring that services are provided only to indigent persons. Implementing the recommendations as discussed above will further ensure that services are provided only to indigent persons.

March 14, 2017

SB2022

Attachment B

Senate Bill 2022  
House Appropriations-Government Operations Division

Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
March 14, 2017

Chairman Brandenburg, 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 Senate Bill 2022.

My testimony today is an attempt to answer two of the questions last week raised by the members of the committee. Specifically what happens if we do not have adequate funding to provide attorneys in cases, and why does the state pay for prosecution and defense in the pipeline cases?

The short answer is it exposes the State to lawsuits. To explain further, start with an old English proverb: "you don't know where you are going until you know where you've been". The Commission on Legal Counsel for Indigents was founded in 2005 as a result of an involved study of indigent defense services in North Dakota in the early years of the millennium. The State Bar Association of North Dakota formed an indigent defense task force and recommended a review by the Spangenberg Group which resulted in a report to the state bar and ultimately in the formation of the agency. The reports indicated that if something didn't change, the state would be sued.

The Fifth Amendment, the Sixth Amendment and the 14<sup>th</sup> Amendments' guarantee that an indigent person who is charged with a crime is entitled to legal representation at state expense. If counsel is not provided to an individual when they are entitled, they have strong legal ground upon which to sue. This agency was formed to ensure state delivered services to entitled persons satisfy the constitutional requirements guaranteed by the U. S. Constitution. The agency has historically achieved

that while being fiscally responsible to the State and its citizen taxpayers. However, as indicated in previous testimony, we have no control over how many cases are tried, what types of cases are charged, and what cases law enforcement chooses to investigate. And unfortunately, increased case numbers leads to increase in money required to have attorneys appointed to those cases.

Not only is there a guarantee to an attorney under the constitution, there is a guarantee to competent counsel and a requirement to provide them with sufficient resources to do an adequate job. This requirement was summed up best by a comment then president of the North Dakota Bar, Gary Lee, highlighted in the State Bar Association of North Dakota Indigent Task Force "Report of the Indigent Defense Task Force to the State Bar Association of North Dakota":

As we now reflect upon **Gideon**, and our own state history we must keep in mind the right to counsel is empty rhetoric if the attorney provided is not reasonably competent or lacks the resources to do an adequate job. 'The right to counsel includes the right to effective counsel; and ineffective, incompetent or inadequate representation is the same as having no counsel at all.' State v. Keller, 59 ND 645, 223 NW 2d. 698, 699 (1929).

Simply put, there is a constitutional requirement to provide the attorneys and the necessary resources to have those attorneys provide competent representation. Furthermore, we are mandated to provide experts and/or investigators and we also must provide training to our employees and contractors. Governor Dalrymple, Governor Burgum and the Senate Appropriations recognized the importance of meeting the constitutional commitment.


An additional constitutional concern is an attorney can only handle so many cases and remain effective. There are caseload standards to insure an attorney handles only the number of cases as he/she would be able to competently handle. There are national standards recognizing the strain of handling too many cases and established guidelines to avoid excessive workload. The Commission has always strived to remain within those guidelines but it is not always possible given the extremely thin

margins we run on. Similar to the situations above, if adequate funding is not received and case numbers continue to rise, we expose ourselves to liability. Currently, several states are involved in class action litigation over the public defense delivery and financial support of the same. The lawsuits range from conflict of interests in systems where the court still appoints counsel, suits for inadequate funding to guarantee meaningful and effective representation, excessive caseloads and for pay disparities between prosecutors and defense attorneys.

Lastly, our obligations are no different in the DAPL cases than they are in every other case. If there is a constitutional, statutory or rule based right to counsel, we provide an attorney. We have treated the DAPL cases the same as every other case. An indigent person charged with a crime who faces the possibility of imprisonment has a right to counsel at public expense. We have provided training to the clerks of court as to eligibility, we have spot checked applications to insure only those who are indigent receive our services, and we have attempted to insure delivery of effective and competent services. In indigent defense, it is important to remember that we represent people, not causes.

In conclusion, the legislature has always been a valued partner in providing the constitutionally required services. And we look forward to your continued support.

Submitted this 14<sup>th</sup> day of March, 2017



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