

**Attorney General
Budget No. 125
Senate Bill Nos. 2003 and 2015**

| | FTE Positions | General Fund | Other Funds | Total |
|--|----------------------|-------------------------------|-------------------------------|-------------------|
| 2019-21 legislative appropriation | 246.00 | \$45,804,596 ¹ | \$39,104,240 | \$84,908,836 |
| 2017-19 legislative appropriation | <u>237.00</u> | <u>44,845,840²</u> | <u>49,070,230³</u> | <u>93,916,070</u> |
| 2019-21 appropriation increase (decrease) to 2017-19 appropriation | 9.00 | \$958,756 | (\$9,965,990) | (\$9,007,234) |

¹This amount includes \$200,000 of one-time funding. Excluding this amount, the agency's ongoing general fund appropriation is \$45,604,596.

²This amount includes a deficiency appropriation of \$50,000 for prosecution witness fees.

³This amount includes a supplemental appropriation of \$855,910 of federal funds for capital assets.

Item Description

FTE position changes - The 2019 Legislative Assembly approved 246 FTE positions for the Attorney General's office for the 2019-21 biennium, an increase of 9 FTE positions from the 2017-19 biennium authorized level of 237, as follows:

| Position | FTE | General Fund | Other Funds | Total Funds |
|--|-------------|---------------------|--------------------|--------------------|
| Paralegal | (1.00) | (\$134,989) | | (\$134,989) |
| Criminal records specialist II | (1.00) | (125,320) | | (125,320) |
| Assistant attorney general | (1.00) | (255,460) | | (255,460) |
| Administrative assistant II | (1.00) | (125,320) | | (125,320) |
| Forensic scientist | 1.00 | 224,500 | | 224,500 |
| Criminal justice information sharing | 2.00 | 260,789 | \$111,766 | 372,555 |
| Social Security Administration program | 2.00 | | 661,888 | 661,888 |
| Medicaid Fraud Control Unit - Attorney | 1.00 | 21,471 | 193,231 | 214,702 |
| Auditor | 2.00 | 45,328 | 407,960 | 453,288 |
| Criminal investigator | 2.00 | 32,126 | 289,142 | 321,268 |
| Administrative assistant | 1.00 | 12,977 | 116,780 | 129,757 |
| Fire marshal administrative assistant position | 1.00 | | 128,716 | 128,716 |
| Assistant attorney general ¹ | 1.00 | | | |
| Total | 9.00 | (\$43,898) | \$1,909,483 | \$1,865,585 |

¹Section 3 of Senate Bill No. 2015 authorizes 1 FTE assistant attorney general position for the Attorney General for the 2019-21 biennium. The Attorney General is required to request funding transfers from OMB's litigation funding pool line item for the salaries and wages costs of the position. This position and funding provided from the litigation funding pool line item are considered one-time funding items.

Status/Result

The FTE paralegal, criminal records specialist II, assistant attorney general, and administrative assistant III positions have been removed. The 2 FTE criminal justice information sharing positions were transferred from the Department of Emergency Services in July 2019. The Attorney General has hired the FTE forensic scientist and fire marshal administrative assistant positions. The Attorney General has also hired an assistant attorney general position pursuant to Senate Bill No. 2015 and estimates the total cost of the position will be \$260,319 from OMB's litigation funding pool line item for the 2019-21 biennium. For additional information, see the **Medicaid Fraud Control Unit** and **Social Security Administration cooperative disability investigations program** sections below.

Deficiency and supplemental appropriations - In Senate Bill No. 2024 (2019) the Legislative Assembly provided a deficiency appropriation of \$50,000 from the general fund for prosecution witness fees and a supplemental appropriation of \$855,910 of federal funds for capital assets for the 2017-19 biennium. The supplemental appropriation for capital assets includes funding for 15 handheld narcotics analyzers (\$455,910) for each Bureau of Criminal Investigation (BCI) office and 1 analyzer for the Crime Laboratory and for the purchase of a liquid chromatography mass spectrometer for the analysis of narcotics evidence at the Crime Laboratory.

One-time funding - The 2019 Legislative Assembly identified \$3,417,956 of one-time funding for the Attorney General's office for the 2019-21 biennium, including:

| | General Fund | Other Funds | Total Funds |
|--|------------------|--------------------|--------------------|
| Criminal history improvement project ¹ | | \$400,000 | \$400,000 |
| Capital assets ² | | 1,851,956 | 1,851,956 |
| Undercover vehicles | \$200,000 | | 200,000 |
| Fingerprint identification system replacement project ³ | | 316,000 | 316,000 |
| Charitable gaming technology system ⁴ | | 400,000 | 400,000 |
| Additional income from federal and other funds | | 250,000 | 250,000 |
| Total | \$200,000 | \$3,217,956 | \$3,417,956 |

¹Funding for the criminal history improvement project is from the Attorney General refund fund.
²Funding for capital assets is from federal funds.
³Funding for the fingerprint identification system replacement project is from the Attorney General refund fund (\$158,000) and federal funds (\$158,000).
⁴Funding for the charitable gaming technology system is from gaming tax revenues deposited in the Attorney General operating fund.

During the 2017-19 biennium, the Attorney General spent \$415,219 of the \$855,910 supplemental appropriation for capital assets and \$18,172 of the \$50,000 deficiency appropriation for prosecutive witness fees. See the **Prosecution witness fees** section below.

The following is a summary of the status of the Attorney General's one-time funding items:

| | |
|---|--|
| Criminal history improvement project | Through March 2020, the Attorney General has spent \$217,253 of the \$400,000 appropriation and anticipates spending between \$360,000 to \$400,000 on the project during the biennium. |
| Capital assets | Through March 2020, the Attorney General has spent \$1,364,392 of the \$1,851,956 appropriation and anticipates spending the entire amount during the biennium. The Attorney General is using the funds to purchase equipment, including IT equipment and additional fleet vehicles. |
| Undercover vehicles | Through March 2020, the Attorney General has spent approximately \$90,000 of the \$200,000 appropriation for the purchase of four undercover vehicles for BCI. The Attorney General anticipates spending the remaining \$110,000 on approximately four to five additional undercover vehicles during the biennium. |
| Fingerprint identification system replacement project | Through March 2020, the Attorney General has not spent any funding for this project. A request for proposal is being developed for the project. The Bureau of Criminal Investigation is partnering with the Minnesota Bureau of Apprehension to upgrade each state's automated fingerprint identification system. |
| Charitable gaming technology system | See the Charitable gaming technology system section below. |
| Additional income from federal or other funds | See the Additional income section below. |

Medicaid Fraud Control Unit - In Senate Bill No. 2347 (2019), the Legislative Assembly approved the establishment of a Medicaid Fraud Control

Through March 2020, the Attorney General has hired 5 of the 6 FTE MFCU positions and has spent \$296,745 of the \$1,528,620 appropriation. The Attorney

Unit (MFCU) for the investigation of false medical assistance claims in North Dakota. Section 4 of the bill allows the Attorney General's MFCU to investigate any alleged violation related to false medical assistance claims and allows the Attorney General to file a civil action, a criminal action, or both against any person that violated or is violating these provisions.

Section 9 of Senate Bill No. 2347 establishes the MFCU as a division in the Attorney General's office. The MFCU is under the supervision of the Attorney General, is staffed by the agents and employees the Attorney General considers necessary and appropriate, and is considered a criminal justice agency. Agents designated by the Attorney General have peace officer status and authority, including the authority of search, seizure, and arrest. All recovered money is required to be forwarded to the designated state Medicaid agency for appropriate allocation between the federal government and the state general fund. The required state match for the MFCU is appropriated from the general fund. The federal government will pay up to 90 percent of the expenses of the program for the first 3 years. After the first 3 years, the federal government will pay up to 75 percent of the expenses of the program.

In Senate Bill No. 2003, the Legislative Assembly appropriated \$1,528,620 for the MFCU for the 2019-21 biennium, of which \$152,863, or 10 percent, is from the general fund and \$1,375,757, or 90 percent, is from federal funds. The funding includes salaries and wages funding of \$1,119,015 for 6 FTE positions, including 1 attorney, 2 auditors, 2 criminal investigators, and 1 administrative assistant. The remaining \$409,605 is for operating expenses and capital assets of the MFCU for the 2019-21 biennium.

Social Security Administration cooperative disability investigations program - In Senate Bill No. 2003, the Legislative Assembly appropriated federal funds of \$661,888 for a Social Security Administration cooperative disability investigations unit (CDIU) program, of which \$453,288 is for salaries of 2 FTE criminal investigator positions, \$136,520 is for operating expenses, and \$72,080 is for capital assets. The program partners state and federal personnel to investigate social security-related fraud.

Human trafficking prevention - In Senate Bill No. 2003, the Legislative Assembly appropriated \$1.4 million from the general fund to the Attorney General for human trafficking victims grants during the 2019-21 biennium.

Forensic nurse examiners grant program - In Senate Bill No. 2003, the Legislative Assembly appropriated ongoing funding of \$250,000 from the general fund for the program for the 2019-21 biennium. Section 11 of the bill requires the Attorney General to report to the 67th Legislative Assembly on the

General anticipates hiring 1 FTE MFCU auditor position in the summer of 2020. The Attorney General does not anticipate spending the entire appropriation during the biennium due to delays while starting the program.

Through March 2020, the Attorney General has investigated 13 cases of suspected Medicaid fraud, of which 4 cases have been closed without criminal or civil findings. The remaining cases are under investigation. The MFCU staff have had MFCU training and are partnering with federal and state agencies, including the Department of Human Services Medicaid Program Integrity Unit.

Through March 2020, the Attorney General has hired the 2 FTE criminal investigator positions. The CDIU program includes the collaboration of the two criminal investigators, two BCI task force officers, and one claims analyst from the Department of Human Services. The United States Attorney's Office District of North Dakota has also provided an assistant United States attorney to prosecute CDIU cases on a federal level. The CDIU program became operational in December 2019 after the program personnel completed an internal new agent training program. Through March 2020, CDIU is reviewing 20 social security fraud allegations and has opened 7 full investigation cases. Through March 2020, the Attorney General has spent \$125,530 of the \$661,888 appropriation. It is unknown how much will be spent in total during the biennium.

Through March 2020, the Attorney General has spent \$299,704 of the \$1.4 million appropriation. It is unknown how much will be spent in total during the biennium.

Through March 2020, the Attorney General has spent \$41,738 of the \$250,000 appropriation. It is unknown how much will be spent in total during the biennium.

use of the funds received and the outcomes of the programs. The Attorney General is required to report to the Appropriations Committees of the 67th Legislative Assembly on the number of nurses trained, the number and location of nurses providing services related to the sexual assault nurse examiner programs, and documentation of collaborative efforts to assist victims which includes nurses, the hospital or clinic, law enforcement, and state's attorneys.

Prosecution witness fees - Section 4 of Senate Bill No. 2003 amended Section 31-01-16 to limit the amount of prosecution witness fees a county may be reimbursed by the Attorney General to \$25,000 per county per biennium. The Attorney General budgeted \$95,056 in the operating expenses line item for prosecution witness fees for the 2019-21 biennium.

Charitable gaming technology system - The 2019 Legislative Assembly provided a one-time appropriation of \$400,000 from the Attorney General operating fund to the Attorney General to purchase equipment and software for a charitable gaming technology system to address charitable gaming needs in the state during the 2019-21 biennium. Section 12 of Senate Bill No. 2003 provides an exemption from Section 53-06.1-12(3) to allow the Attorney General to retain \$400,000 of gaming tax revenues and deposit the revenue in the Attorney General operating fund during fiscal year 2020. This change reduced 2019-21 estimated general fund revenues from gaming tax collections by \$400,000.

Attorney salary equity increases - On April 10, 2019, the Consumer Protection Division of the Attorney General's office received a \$1,215,561 settlement for a Wells Fargo lawsuit related to Wells Fargo's automobile gap insurance, the company opening accounts without consumers' knowledge, and its mortgage interest rate extension fees. The funding was deposited in the Attorney General refund fund.

In Senate Bill No. 2003, the Legislative Assembly appropriated \$425,000, of which \$25,000 relates to anticipated interest and earnings of the settlement amount, of the \$1.2 million settlement to the Attorney General for the 2019-21 biennium. In Section 14 of the bill, the Legislative Assembly provided legislative intent that the Attorney General use up to \$425,000 from the April 2019 settlement for providing salary equity increases to attorney positions in the Attorney General's office for the 2019-21 biennium.

Further intent was provided that the remaining settlement proceeds and investment earnings on the remaining proceeds be retained in the Attorney General refund fund and be used for the cost to continue the salary equity increases provided in the 2019-21 biennium during the 2021-23 and 2023-25 bienniums, subject to legislative appropriations.

Through March 2020, the Attorney General has spent \$29,561 for prosecution witness fees and anticipates a total of \$95,056 will be spent for this purpose during the 2019-21 biennium. Through March 2020, there have been no concerns regarding payments for county prosecution witness fees as a result of the amendments to Section 31-01-16.

Through March 2020, the Attorney General has spent \$27,806 of the \$400,000 appropriation and anticipates spending the entire appropriation during the biennium. The project consists of four phases. Phase 1 includes developing the charitable gaming organization system, which is scheduled to be completed in December 2020. Phase 2 includes a core system rewrite, which is scheduled to be completed in June 2021. The Attorney General anticipates requesting additional funding from the 2021 Legislative Assembly to complete Phase 3 and Phase 4 of the project; however, the amount to be requested is not yet known.

In September 2019, the Attorney General invested \$1.1 million with the State Investment Board. Through March 2020, the Attorney General has spent \$141,354 and provided salary equity increases to 29 FTE attorney positions. The Attorney General anticipates spending \$377,000 of the \$425,000 appropriation during the 2019-21 biennium.

Section 15 of the bill allows the Attorney General to invest up to \$1,215,561 of the settlement proceeds under the supervision of the State Investment Board for the period beginning July 1, 2019, and ending June 30, 2025.

Additional income - In Section 7 of Senate Bill No. 2003, the Legislative Assembly authorized the Attorney General to receive and spend up to \$250,000 of federal or other funding for defraying the expenses of the office.

Concealed weapon rewrite project - Section 13 of Senate Bill No. 2003 provides the Attorney General an exemption to continue unexpended 2015-17 biennium funding that was continued into the 2017-19 biennium for a concealed weapon rewrite project into the 2019-21 biennium.

Statewide automated victim information and notification - Section 8 of House Bill No. 1003 (2017) required the Attorney General to enhance the statewide automated victim information and notification (SAVIN) program by utilizing \$500,000 of rent savings realized as a result of the Attorney General relocating a portion of its operations to the Job Service North Dakota (JSND) central office building. The section provides if the Attorney General does not relocate a portion of its operations to the JSND central office building, the Department of Trust Lands is required to provide a grant of up to \$500,000 from funds provided for law enforcement grants during the 2015-17 biennium to the Attorney General for the SAVIN program.

Section 9 of House Bill No. 1003 (2017) provided the Attorney General and the North Dakota Association of Counties establish a cost-sharing program to defray the expenses related to the enhancement of the SAVIN program. The section provided \$315,000 of funding to the Attorney General from political subdivisions for the enhancement of the SAVIN program to comply with the crime victim rights requirements of the November 2016 general election Initiated Measure No. 3, also known as Marsy's Law, which is now Section 25 of Article I of the Constitution of North Dakota.

In Section 9 of Senate Bill No. 2003 the Legislative Assembly provided the Attorney General an exemption to continue the \$815,000 of other funds appropriated to the Attorney General for the SAVIN program in the 2017-19 biennium into the 2019-21 biennium.

In November 2019, Attorney General was awarded a \$1 million grant from the United States Department of Justice for a Community Oriented Policing Services (COPS) Anti-Methamphetamine Program (CAMP) to investigate illegal activities related to the manufacture and distribution of methamphetamine. Of this amount, the Attorney General accepted \$250,000 pursuant to Section 7 of Senate Bill No. 2003. The \$250,000 was spent from November 2019 to March 2020 to purchase additional equipment and undercover vehicles.

In May 2020, the Emergency Commission and Budget Section approved an Attorney General request to accept and spend the remaining \$750,000 for the program, of which \$41,650 was for operating expenses, \$401,420 was for capital assets, and \$306,930 was for grants. The new program will be similar to the COPS anti-heroin grant program.

The Attorney General continued \$155,711 of unexpended 2015-17 biennium funding that was continued into the 2017-19 biennium into the 2019-21 biennium. Through March 2020, the Attorney General has spent \$58,392 of this funding and anticipates spending the entire amount by the end of the 2019-21 biennium. The anticipated project completion date is May 2021.

The Attorney General did not relocate a portion of its operations to the JSND central office building and therefore did not realize \$500,000 of rent savings. The Department of Trust Lands provided a \$500,000 grant to the Attorney General in March 2018. The Attorney General spent \$258,506 of this funding during the 2017-19 biennium.

During the 2017-19 biennium, the Attorney General spent \$16,494 of the funding provided from political subdivisions for the SAVIN cost-sharing program.

The Attorney General continued a total of \$540,000 for the SAVIN program from the 2017-19 biennium into the 2019-21 biennium, of which \$241,494 was from funding from the Department of Trust Lands and \$298,506 was funding from political subdivisions. Through March 2020, the Attorney General has spent \$69,418 of the funds available, including \$28,691 for salaries and benefits and \$40,727 for IT contractual services. The Attorney General does not anticipate spending the entire appropriation. The anticipated completion date for the SAVIN enhancements is June 2021.

Tobacco settlement trust fund - In Section 12 of Senate Bill No. 2003 (2015), the Legislative Assembly amended Section 54-27-25 regarding the tobacco settlement trust fund and the use of principal and interest of fund investments. The section was amended to allow the Attorney General to receive an appropriation from the fund for the purpose of enforcing the Master Settlement Agreement and any disputes with the agreement. Section 1 of the bill appropriated \$200,000 from the tobacco settlement trust fund to the Attorney General for the purposes identified in Section 12.

In Section 4 of House Bill No. 1003 (2017), the Legislative Assembly identified \$200,000 from the tobacco settlement trust fund, which the Attorney General may use to enforce the Master Settlement Agreement and any related disputes. Section 1 of the bill appropriated \$200,000 from the tobacco settlement trust fund to the Attorney General for the purposes identified in Section 4.

In Section 9 of Senate Bill No. 2012 (2019), the Legislative Assembly amended Section 54-57-25 to remove the Attorney General's authority to use funds from the tobacco settlement trust fund.

Industrial Commission fund litigation costs - Section 5 of House Bill No. 1003 (2017) authorized the Attorney General to submit litigation-related expenses to the Industrial Commission for payment from the Industrial Commission's litigation fund for costs related to protests and other activities associated with the Dakota Access Pipeline (DAPL) project.

In April 2016, OMB transferred the \$200,000 appropriation authorized by the 2015 Legislative Assembly from the tobacco settlement trust fund to the Attorney General. Of this amount, the Attorney General spent \$41,078 during the 2015-17 biennium. The remaining \$158,922 was retained by the Attorney General and continued into the 2017-19 biennium rather than being returned to the tobacco settlement trust fund at the end of the 2015-17 biennium. The amount was subsequently transferred to the tobacco settlement trust fund in July 2018.

In April 2018, OMB transferred the \$200,000 appropriation authorized by the 2017 Legislative Assembly from the tobacco settlement trust fund to the Attorney General. During the 2017-19 biennium the Attorney General spent \$44,714 of this funding. The remaining \$155,286 was returned to the tobacco settlement trust fund at the end of the 2017-19 biennium.

The Legislative Assembly did not include any provisions allowing the Attorney General to continue any unspent appropriation authority relating to the tobacco settlement trust fund in the 2015, 2017, or 2019 legislative sessions.

Through the 2017-19 biennium, the Attorney General incurred \$2,142,313 of litigation-related expenditures from eight lawsuits, of which \$1,170,703 was incurred in the 2015-17 biennium and \$971,610 was incurred in the 2017-19 biennium.