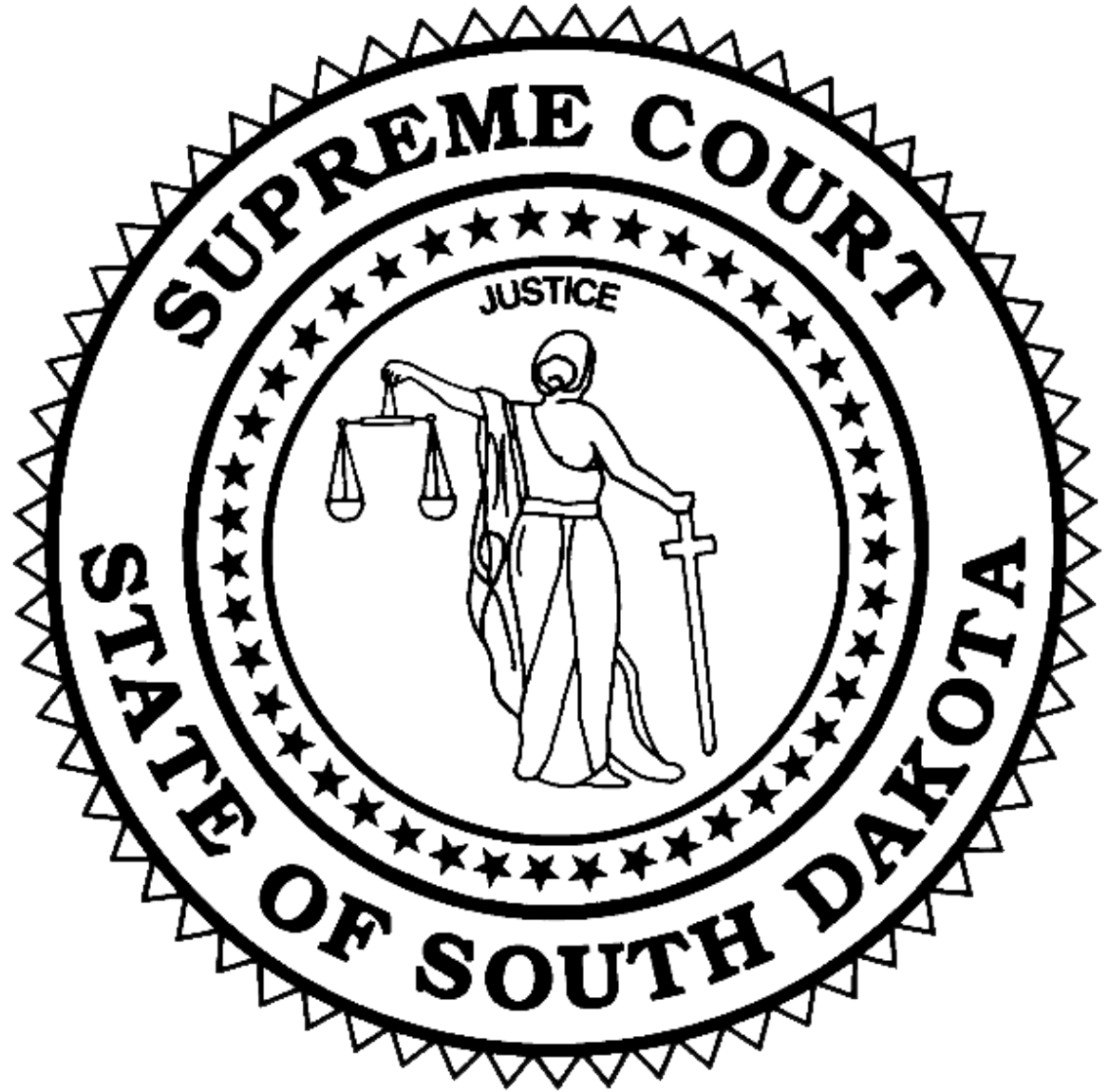


# Indigent Legal Services Task Force

## Proposed Recommendations

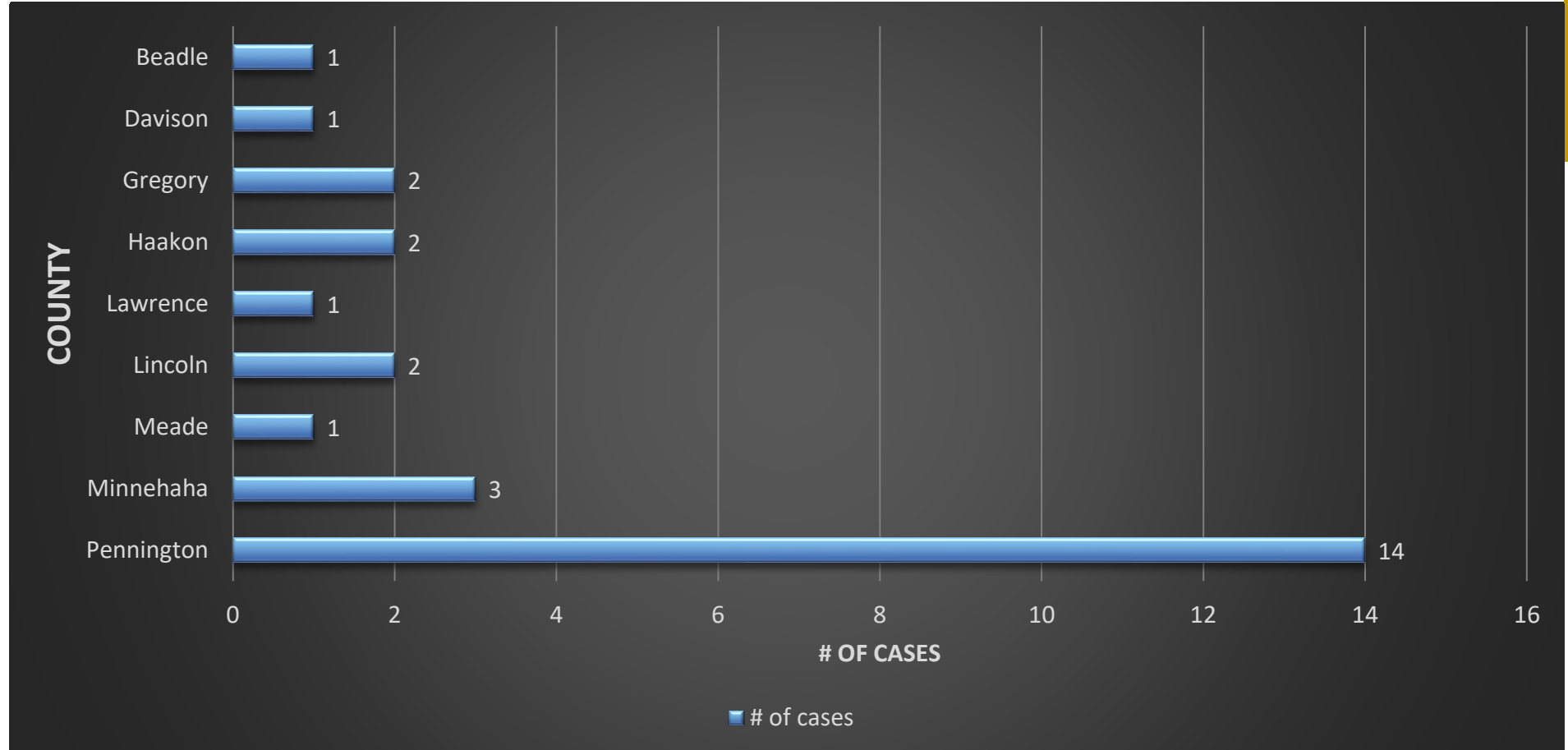


# Supreme Court Case Filing Data



\*Keep in mind impact of COVID on numbers

# FY21 A&N Appeals

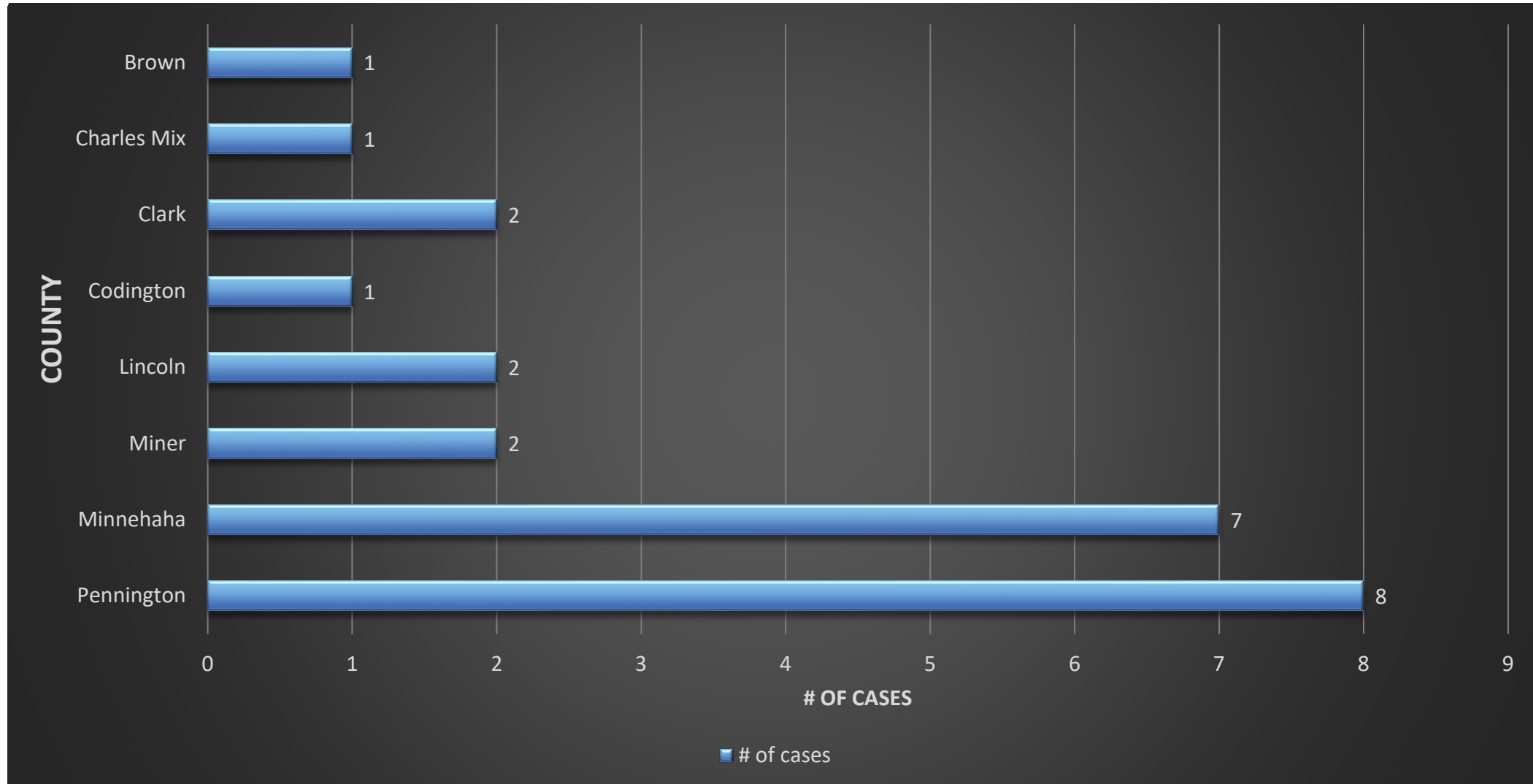


Total= 27



# FY22 A&N Appeals

Total= 24

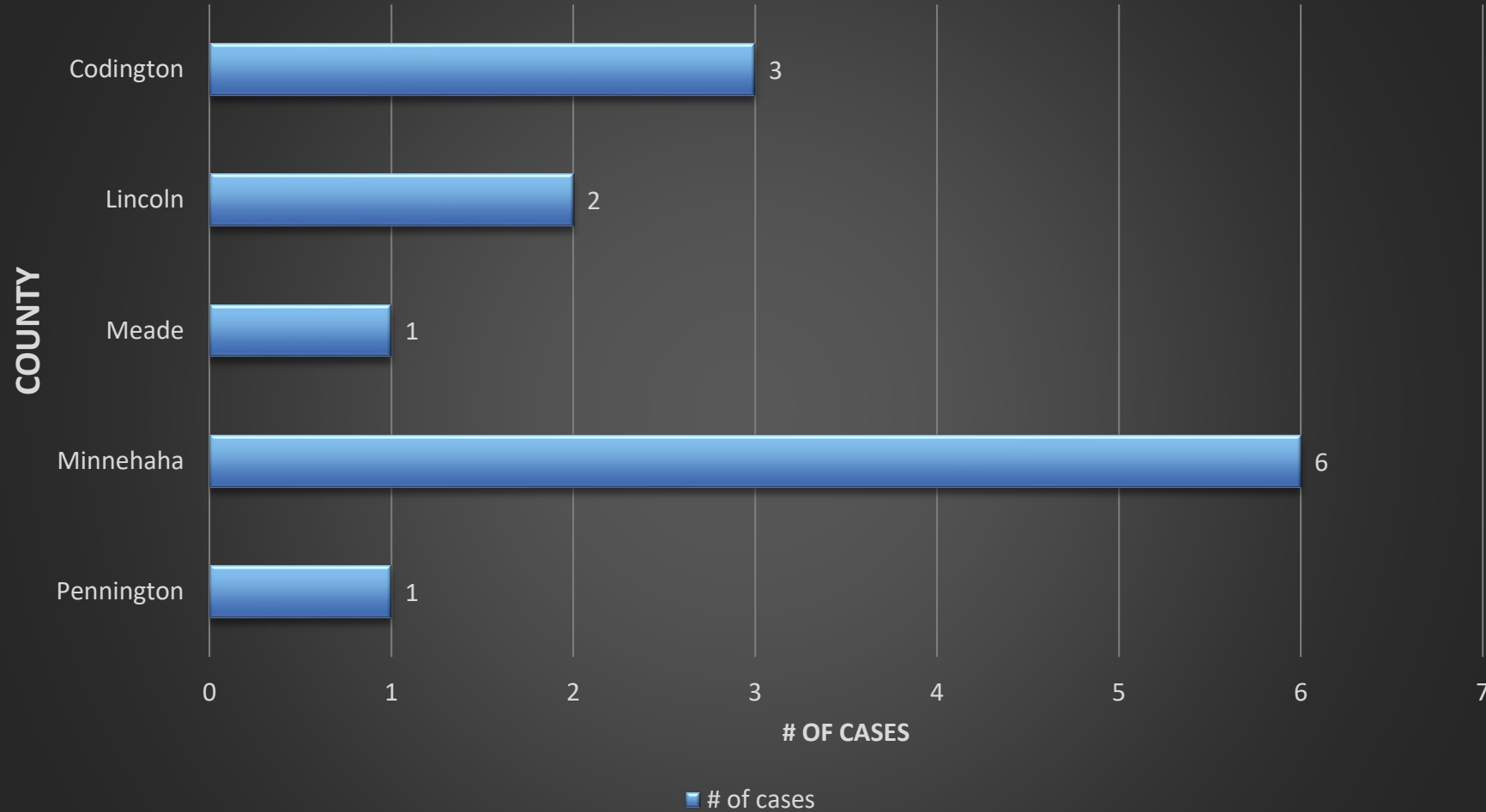


ujs.sd.gov



# FY23 A&N Appeals

Total= 13

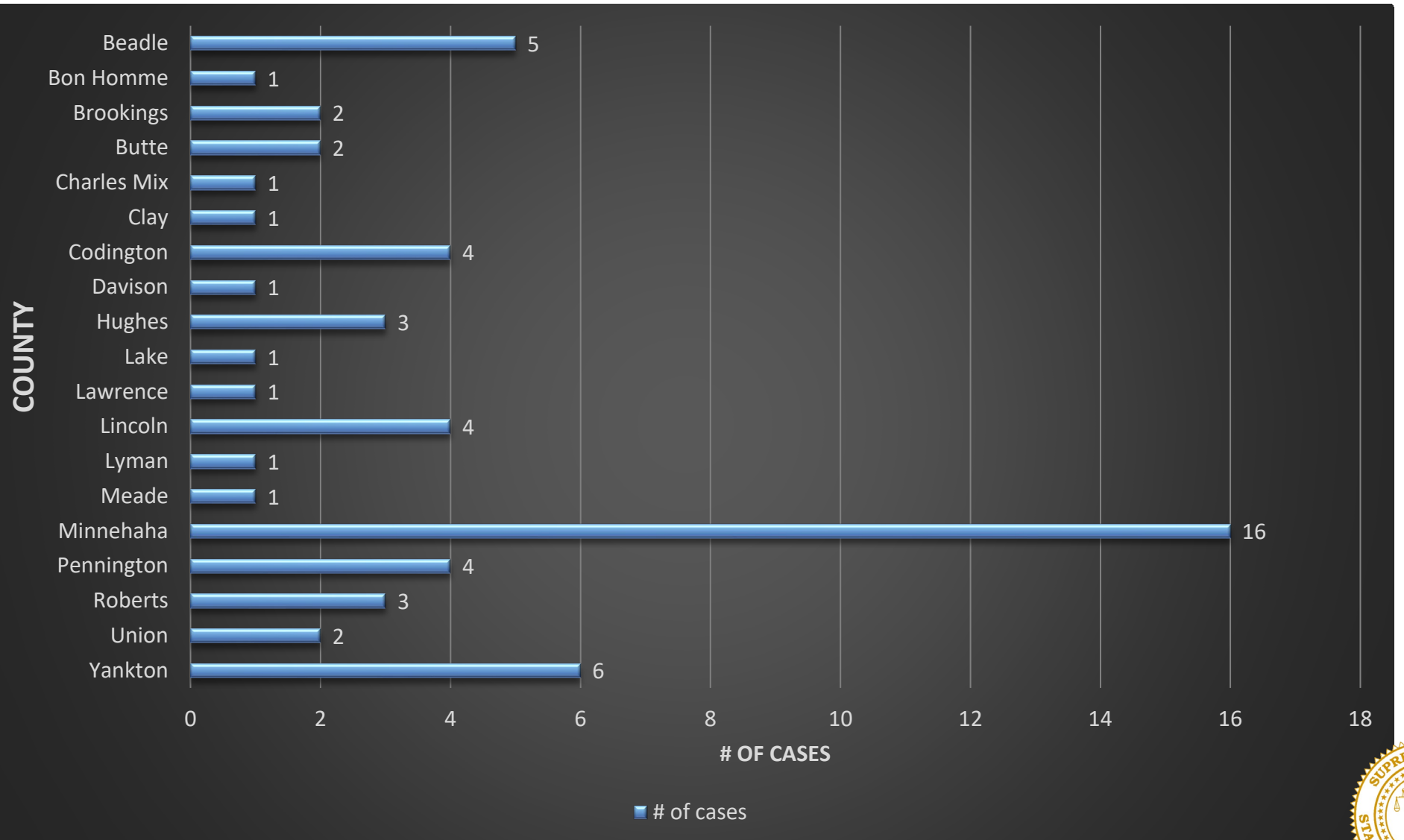


uj.s.sd.gov



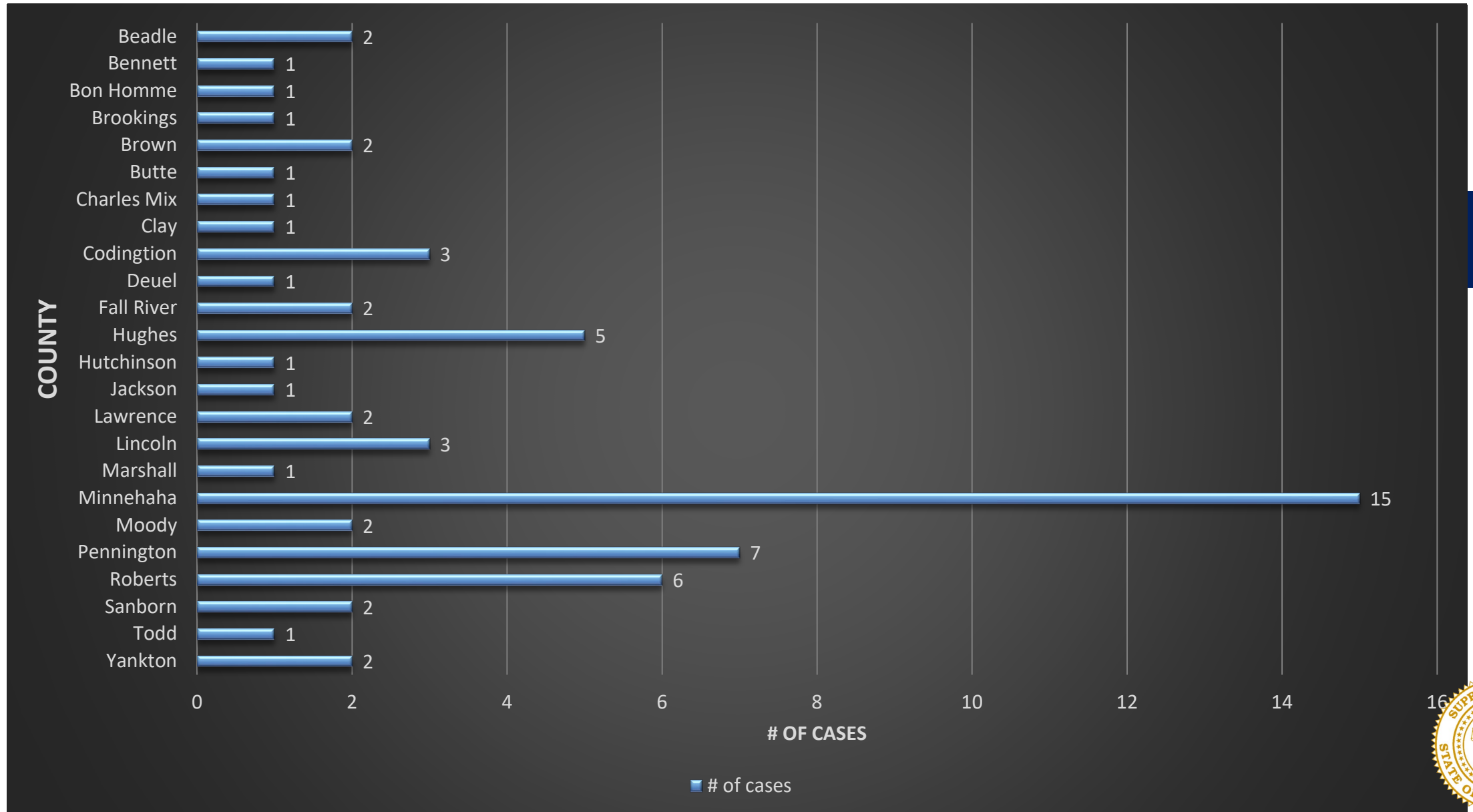
# FY21 Criminal Appeals

Total=59



# FY22 Criminal Appeals

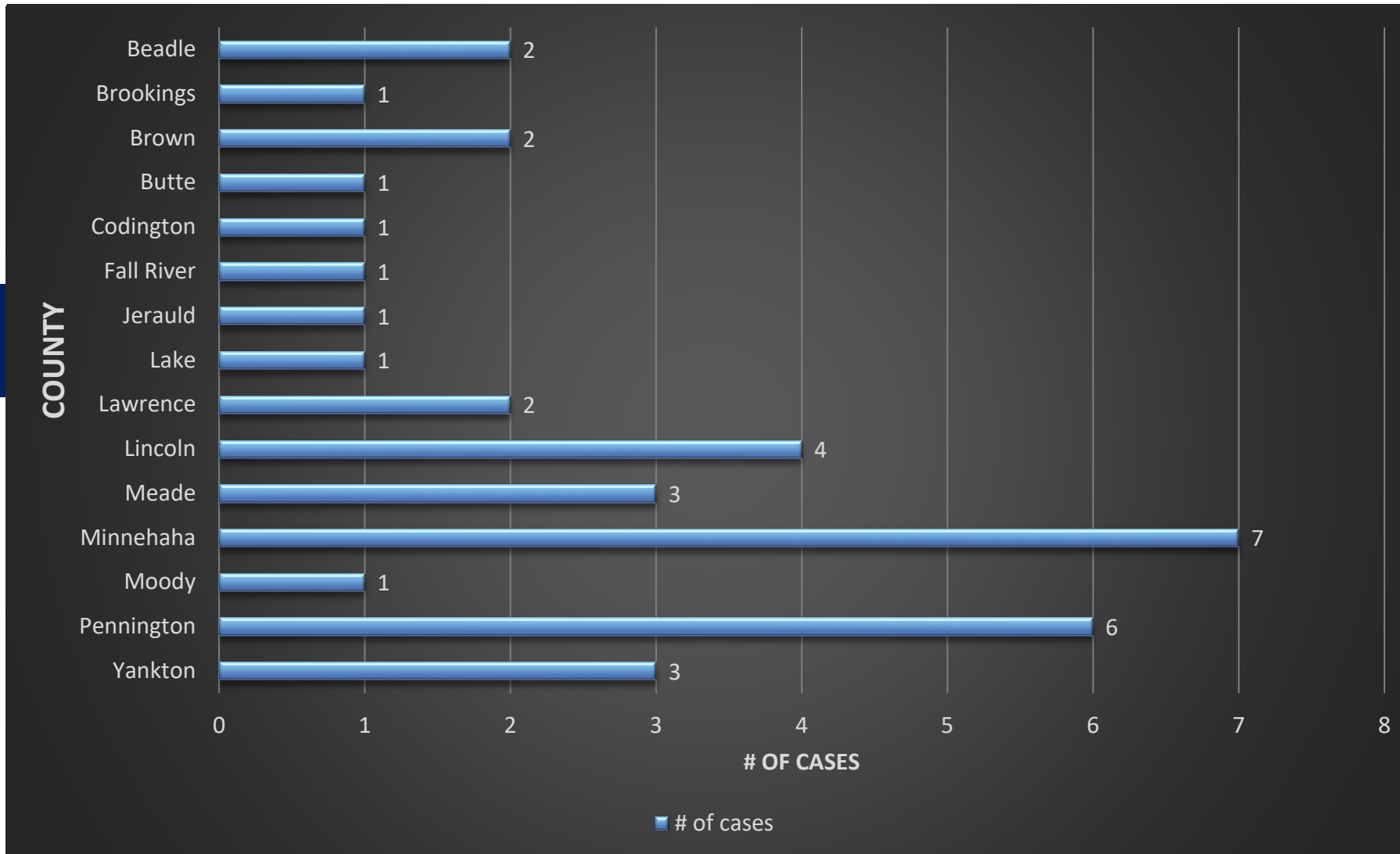
Total= 64



# FY23 Criminal Appeals

Total= 36

ujs.sd.gov





# Supreme Court Case Data Summary

52 criminal appeals on average in the last 3 years briefed before the Court.

21 abuse and neglect cases on average in the last 3 years briefed before the Court.



# Minnehaha County Public Defender's Office

Calendar Year	Habeas	Criminal Appeals
2020	0	28
2021	1	21
2022	0	16

Average= 22 per year



# Pennington County Public Defender's Office

Calendar Year	Criminal Appeals
2020	18
2021	7
2022	8

ujs.sd.gov

Pennington Co. indicates 1 habeas every 2 years

Average = 11 per year



# Attorney General's Office

## Resources

- 11 FTE in Appellate Division
  - Estimated 60-70% of time spent on appeals (direct and intermediate) and habeas in state courts
    - 6-7 FTE equivalent

## Case Data

- Over last 3 years averaged:
  - 71 appeals
  - 2 intermediate appeals
  - 3 state habeas appeals

	2020-2021 FY	2021-2022 FY	2022-2023 FY
<b>TOTALS</b>			
Briefed direct appeals	58	72	82
Intermediate appeals	1	2	4
Briefed state habeas	3	3	2



# Attorney General's Office... (cont'd)

State habeas underlying counties	2020-2021 FY	2021-2022 FY	2022-2023 FY
Minnehaha	2	1	
Brookings	1		
Codington		1	
Deuel		1	
Bennett			1
Roberts			1

Intermediate appeals underlying counties	2020-2021 FY	2021-2022 FY	2022-2023 FY
Minnehaha		1	
Charles Mix		1	
Brule			4
Beadle	1		



# Attorney General's Office... (cont'd)

Criminal direct appeals underlying counties	2020-2021 FY	2021-2022 FY	2022-2023 FY
Minnehaha	Unknown	17	26
Pennington	Unknown	10	15
Lincoln	Unknown	5	8
Hughes	Unknown	7	5
Brown	Unknown	2	2
Meade	Unknown	1	5
Beadle	Unknown	2	2
Bennett	Unknown	1	
Bon Homme	Unknown	1	
Brookings	Unknown	2	2
Butte	Unknown	1	1
Charles Mix	Unknown	1	
Clay	Unknown	1	

Codington	Unknown	3	1
Corson	Unknown		1
Davison	Unknown		2
Deuel	Unknown	1	
Fall River	Unknown	1	1
Hutchinson	Unknown	2	
Jackson	Unknown	1	
Jerauld	Unknown		1
Lake	Unknown		1
Lawrence	Unknown	2	2
Marshall	Unknown	1	
Moody	Unknown	1	1
Roberts	Unknown	4	2
Sanborn	Unknown	2	
Todd	Unknown	1	
Yankton	Unknown	2	4



# Department of Social Services- Abuse and Neglect Cases

- June 2020 to June 2023 77 cases handled by the Department of Social Services representing the State in abuse and neglect cases.
  - Caseload projected to be enough for 1 FTE (they do not currently have any staff dedicated exclusively to this function).
  - DSS averages 25 abuse and neglect cases a year over the last 3 years.
- Brown: 2
  - Charles Mix: 1
  - Clark: 1
  - Codington: 3
  - Davison: 1
  - Fall River: 1
  - Gregory: 4
  - Haakon: 1
  - Lawrence: 1
  - Lincoln: 7
  - Meade: 1
  - Miner: 2
  - Minnehaha: 21
  - Pennington: 31



# Habeas Corpus Proceedings Statewide

Habeas Corpus Cases With Attorney	FY21	32
Habeas Corpus Cases With Attorney	FY22	20
Habeas Corpus Cases With Attorney	FY23	15





# Appellate Caseload Standards

- An appellate defender focused 100% of time on appeal work is recommended not to have more than 25 appeals in one year
  - National Advisory Commission Standards
  - Addition of supervisory or managerial responsibilities reduces that caseload.
- This is a dated standard
- Each jurisdiction's appellate work is unique
  - Ideally a state entity could create its own localized workload measures.
  - Note: The creation of an appellate office tends to lead to more appeals based on experiences in other states.



# Creating a State Public Defender Office

- Typically housed for budget purposes under the Executive or Judicial Branch.
- But are an independent entity
- Typically overseen by a Board that consists of 9-13 members appointed by various appointing authorities.
- Potential appointing authorities:
  - Governor
  - Legislature
  - Supreme Court or Chief Justice
  - Judges Association
  - Law School
  - State Bar
  - Tribal Representation
  - Rural Representation
- Need to ensure the Commission and the Executive Director are non-partisan and non-political positions.



# Resources Needed for State Appellate Defender Office

- Executive Director/Chief Public Defender **1.0 FTE**
  - Oversees office
  - Supervising attorney
  - Performs reduced case work
  - Identifies and oversee training of staff
  - Strategic planning and implementation
- Attorney FTE Estimated
  - **3.0 FTE** for Criminal Case Direct Appeal and Habeas Representation
    - Supreme Court 3-year average of 52 cases a year
    - AG's office has 6-7 FTE equivalent
    - Minnehaha and Pennington effectively have 1.0 FTE each for their current caseloads
  - **1.0 FTE** for Abuse and Neglect Case Representation
    - Supreme Court 3-year average of 21 cases
    - DSS has 1 FTE current on prosecution side
- Other Budgetary Considerations
  - **2.0 FTE** Support Staff
    - Paralegal
    - Secretary
  - Budget for Commission or State Board
    - Per diem
    - Travel
    - Training
  - Office rent/furniture/supplies/technology
  - Case management system
  - Human resources support
  - Accounting and Budget/Finance Support
  - Contract dollars for conflict cases- or to hire outside counsel as necessary
  - Travel and Training budgets
  - Legal research subscriptions



# Projected Budget

## Personal Services

Executive Director	133,750
Attorney - Direct Appeal & Habeas	110,000
Attorney - Direct Appeal & Habeas	100,000
Attorney - Direct Appeal & Habeas	80,000
Appellate Attorney - A&N	85,000
Paralegal	60,000
Legal Secretary	50,000
Commissioners (7)	7,000
<b>Total Salaries</b>	<b><u>625,750</u></b>
Social Security & Medicare	47,870
Retirement	37,545
Health Insurance	82,474
Workers Compensation	3,567
Unemployment Compensation	626
<b>Total Benefits</b>	<b><u>172,081</u></b>
<b>Total Salaries and Benefits</b>	<b><u><u>797,831</u></u></b>

## Operating Expenses

Commission Travel, CS and Supplies	25,000
Staff Travel	15,000
Legal Research Subscriptions	50,000
Defense Counsel Contracts - Conflicts	200,000
Training Contracts	100,000
Rent	25,000
Case Management System	30,000
IT Infrastructure, Hardware & Software	100,000
Office Supplies	25,000
Office Furniture	20,000
Misc Operating Expenses	25,000
<b>Total Operating Expenses</b>	<b><u><u>615,000</u></u></b>
<b>Total Personal Services &amp; Operating Expenses</b>	<b><u><u>1,412,831</u></u></b>



# Board/State Office Statutory Responsibilities

Reporting provisions to the Legislature

Best practices in indigent legal defense

Establishes training/mentorship requirements for defenders statewide and coordinates such training

Sets rates for court appointed counsel



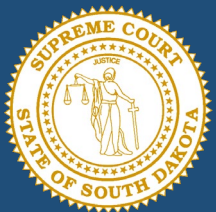
# Board/ State Office Statutory Responsibilities (cont'd)...

- Develop a plan for providing indigent legal defense for child representation in abuse and neglect cases and felony cases on a statewide basis
  - Exclude misdemeanor cases as highest charged offense
  - Establish processes for conflict cases
- Recommend joint county-state funding structure moving forward
- Seek grants to support defender services
- Audits billing and services provided to ensure efficient and fair representation
- Creates and monitors caseload standards for defenders statewide



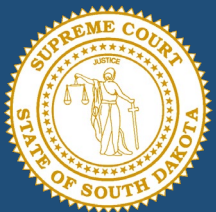
# Proposed Indirect Cost Savings

- Increase current fees assessed to reimburse counties for criminal and abuse and neglect defense.
- Structure and funding sources will need to be re-evaluated after further development of statewide office but would provide some relief right away.
- Currently \$7.50 for court appointed and public defender fund
  - \$25.50 recommended new cost
  - FY 22 collected \$635,000
- Currently \$1.00 for abuse and neglected child defense fund
  - \$3.50 recommended new cost
  - FY 22 collected \$90,000



## Estimated Cost Savings for Counties

- \$1.5-2.0 million dollars for appellate, abuse and neglect and habeas defense.
- \$2.4 million estimated to be collected through reimbursement funds for liquidated costs with proposed increase.
- \$1.7million increase over FY 22 reimbursement





# 6AC Evaluations

- UJS contract with 6AC fall of 2023 to conduct evaluations of 7 counties to objectively and independently evaluate the indigent legal services process, data collection and analysis, observe court and interview relevant stakeholders.
- The results of that study will inform the work of the Board in making recommendations moving forward related to case types and funding decisions.
- Process would be completed in Summer of 2024.

