



Association of Minnesota Counties

February 21, 2024

Senator Ron Latz
3105 Minnesota Senate Bldg.
St. Paul, MN 55155

Representative Leigh Finke
423 State Office Building
St. Paul, MN 55155

Re: SF 3712/HF 3607

Dear Senator Latz and Representative Finke:

On behalf of the Minnesota County Attorneys Association and Association of Minnesota Counties, we write to express our concerns about the part of the Public defender law modification (L 11.8 of both SF 3712 and HF 3607) which increases each Counties responsibility to pay Defendants' attorneys' fees in each pretrial appeal by the State from \$5,000 to \$10,000.

Pre-trial appeals are an important aspect of the motion practice in litigation. The cases chosen for a pretrial appeal are cases where there is a judicial ruling which has a critical impact on the outcome of the trial. (MN R. Crim. Pro. 28.04 (2-2-b)). The State may seek a pre-trial appeal on a judicial ruling which precludes the County from introduction of evidence or the allowance of the same. Examples of such rulings include: suppression of physical evidence, chemical test results, or statements; they may also include permitting expert testimony or evidence concerning a victim which is contrary to the rules of evidence.

When making the determination on whether to file a pretrial appeal, county attorneys consider, inter alia, the severity of the crime, the likelihood of prevailing on appeal, the resources needed for the appeal, the victims of the crime, and unfortunately, the cost to be paid to defense for taking up the appeal. Having to make a decision that involves consideration of money means that as ministers of justice, county attorneys are not free to make determinations that best serve the people. If the cost for the appeals increase, it then increases the importance of money in our determinations. It is particularly difficult when we know we are constantly dealing with finite resources to manage our offices.

If the Legislature believes the access to these critical impact appeals should be on the merits and not based on a monetary consideration, then the Legislature has the ability to direct that the public defender's, who have an appellate division, absorb the cost for the defense's response to the appeal. It is noted that the Public Defenders have recently received a significant infusion of monies to assist them in doing their jobs.

A potential compromise would be to allow attorney fees to be paid from the Public Defenders budget if the State is successful on the appeal. If State does not prevail on appeal, the attorney's fees could then be paid by the County. It is in the interest of both defense counsel and the State to ensure correct rulings and a jury has all admissible evidence to for a true and correct verdict.

Respectfully,



Robert Small
Executive Director
Minnesota Association of County Attorneys

/s/ Matt Hilgart

Matt Hilgart
Government Relations Manager
Association of Minnesota Counties