



To: Senate Public Safety and Judiciary Committee Members

From: Kevin Kajer, Chief Administrator

Date: 2/21/2024

Re: House File 3607

The provisions in the bill (with one exception noted below) were adopted by a unanimous vote of the Board of Public Defense. The bill modifies or removes language that reflects a time when public defense was a county based system or language that deals with the transition from a county based to a state based system. There are four policy changes in the bill.

The four policy changes include:

1. Elimination of the \$75 public defender client co-payment.

The co-payment has been around for several years. In the early 2000's during particularly difficult budget times, the legislature raised the copayment significantly to fund the public defender system. In that form (it was not waivable) the co-payment was found to be unconstitutional. The legislature then scaled back the co-payment and made it waivable. It was later increased to \$75 to again deal with a state budget shortfall. Co-payment receipts are deposited in the general fund. The co-payment raises approximately \$1.1 million annually.

- The co-payment is another financial burden placed on individuals going through the court system in addition to the other fines and fees that can be assessed (See below).
- Imposition of the copayment varies across the state. For example, in the 2nd and 4th Judicial Districts it is rarely if ever imposed, in the 7th and 9th Judicial Districts it is rarely waived.

2. Elimination of the ad hoc Board of Public Defense and terms for Chief Public Defenders and the State Public Defender.

District Chief Public Defenders

Currently, the Board is expanded by two members appointed by the chief judge of the district when appointing district chief public defenders. This "ad hoc" board is a holdover from when the system was county/district based and the counties were providing funding for services. Concern has been expressed about the conflict created when judges are appointed as ad hoc members (vast majority of appointments). Concern has also been expressed about the accountability to individuals outside of the agency, as well as parochial interests and potential biases that ad hoc members can bring to the selection process.

District Chief Public Defenders are appointed to four-year terms and can only be removed for cause. This language dates back to a time when the Chief Public Defenders were part time, were appointed and supervised by the judges of the district or the Judicial Council and funded by the county.

The proposed language provides for better accountability by removing the term and having the chiefs serve at will but requiring a 2/3 vote of the Board to remove a Chief Public Defender. It also removes the requirement that Chief Public Defenders have to "reapply" for their jobs every four years.

State Public Defender

The State Public Defender is appointed to a four-year term and can only be removed for cause. This language dates back to a time when the Judicial Council appointed and supervised the State Public Defender and later when the Office of the State Public Defender and the Board of Public Defense were separate offices.

Provides for better accountability by removing the term but requiring a 2/3 vote of the Board to remove the state public defender.

3. Public Defender Reimbursements

Judges can require public defender clients to "reimburse" the public defender system for services rendered. The original thought behind the reimbursement was to have clients who could afford to pay something contribute to the county which was providing the funding for public defense.

Under the current reimbursement statute, revenue generated in a particular district stays in the district and is divided among the part time defenders in the district to help defray the cost of overhead. The current reimbursement statute dates to a time when the system was largely comprised of part time public defenders.

- While the court generally does a good job of screening for eligibility, the reimbursement provides an incentive to judges to appoint public defenders to folks who may not qualify.
- Imposes a hardship on individuals who face other fines and fees (See below)
- Uneven application and benefits; annual reimbursements can run as high as \$16,000 for a 75% time defender in one district, very little or nothing in other districts.
- Many times, full time defenders are providing the service (65% of the staff), and part time defenders receive the benefit.

As a part of this change the Board is seeking seek funding through the supplemental budget process or a separate bill to replace the funding that would be lost by eliminating the reimbursements, and to increase the current overhead payments equally among the part time defenders statewide.

4. Prosecution Appeal of Pre Trial Motions

In situations where the prosecuting attorney loses a pretrial motion he/she may appeal that decision to the Minnesota Court of Appeals. The cost of the defense of these appeals is a county expense and is handled by appointed counsel. In 2012 a threshold of \$5,000 was established (it has not been raised since). In cases where fees were expected to exceed this amount the appointed counsel would need permission of the Chief Judge of the district. The bill would raise this threshold to \$10,000. In 2012 the most common hourly rate for county appointed counsel was around \$75 per hour. Rates are now in excess of \$100 per hour in most counties.

Note - The Board has not taken a position on this provision.



Public Defender Co-payments and Reimbursements Impacts

Public defender clients by definition are poor, often have families. The reimbursements and co-payment are additional burdens that are placed on individuals going through the criminal justice system and are two more hurdles for clients to overcome.

The reimbursement and co-payment are in addition to other burdens that may be imposed on clients, including:

- criminal fines
- law enforcement fees
- criminal/traffic surcharge
- booking fee
- victim assistance fund fee
- chemical dependency assessment fee/surcharge
- corrections fee
- prosecution costs
- probation fee
- jail room and board
- law library fee