

Agency Purpose

The Board of Public Defense (BOPD) is a judicial branch agency whose purpose is to provide quality criminal defense services to indigent defendants in the state of Minnesota. Overall the BOPD is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and being a full partner in the justice system. The BOPD provides the legal services required by the Constitution and statutes. The BOPD is the largest user of the court system in Minnesota.

At a Glance

District Public Defense

- 170,000 cases including 85% of serious cases, and 90% of juvenile cases.
- \$1.4 million in grant funding.
- In the last three years the program has lost 15% of its attorney staff.

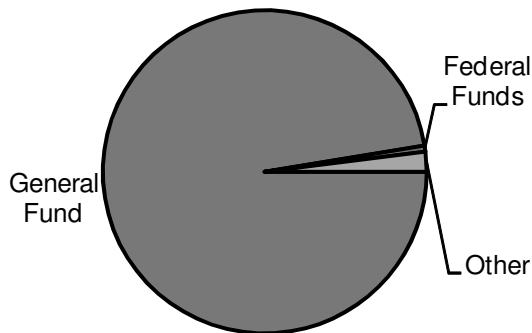
Appellate Office

- Over 4,000 cases annually.
- In the last three years the office has lost 14% of its attorney staff.

Administrative Services Office

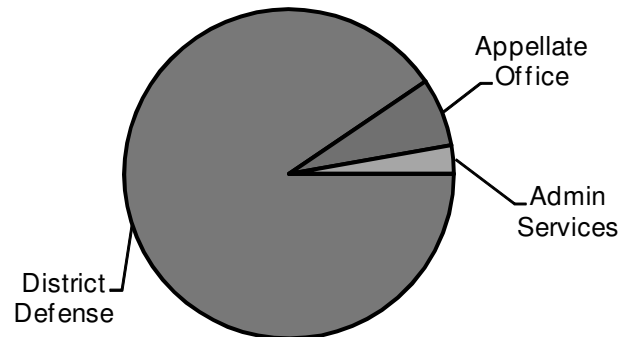
- In the last year the program has reduced staffing by 20%.

Est. FY 2010-11 Expenditures by Fund



Source: Consolidated Fund Statement.

Est. FY 2010-11 Expenditures by Program



Source: Board of Public Defense

Strategies

Due substantial loss of legal staff the BOPD has carried out a number of measures to save attorney time. These include withdrawing from first appearance calendars in half the counties in Minnesota. Although representation at these appearances likely is a constitutional right, it is very time consuming. Therefore unless there is a court ruling to the contrary we cannot be present.

While there is no substitution for the Sixth Amendment's right to counsel, the BOPD is committed to the use of volunteers and law students. We have increased the number of volunteers and law students to perform tasks previously performed by attorneys.

In many instances staff requests continuances on out-of-custody trials. In some counties the trial dates for out-of-custody misdemeanor cases are set a year from the entry of a not guilty plea. In its recent report on the public defender system, the Office of the Legislative Auditor (OLA) found that this is slowing down the justice system.

The BOPD emphasizes collaboration in handling serious matters, so that cost-effective support staff has a greater role in case preparation.

The BOPD is committed to maintaining vertical representation. Vertical representation (an attorney keeping a case from start to finish) is a key strategy that allows an attorney - client relationship to be formed like that between an accused person and a private lawyer. Repeated contact between the client, the public defender, as well as the public defender's staff, encourages the development of trust, a necessary ingredient, to the successful litigation of a case. This sort of meaningful, ongoing relationship would be impossible to develop without vertical representation, and as was noted in the OLA report is one of the keys to resolution of cases through plea agreements.

Finally, as cases become more complex as a result of forensics, "cold hits", enhanced penalties and mental illness issues just to name a few, it has become increasingly difficult for our attorneys to stay up with all of the advances and yet be prepared on all of the cases that are set for litigation. By co-counseling on these more serious matters, the attorneys are able to share their knowledge and expertise while the matter is being litigated. The clients are better served, the attorneys learn from their colleagues, the court is assured that the matter is being litigated correctly the first time, and having experienced co-counsel actually helps in resolution of matters. The experience of having litigated similar cases coupled with the fact of the credibility that is built in with more experienced counsel helps in discussing plea offers with the clients.

Operations

The ten Judicial District Public Defender Offices provide quality mandated criminal defense services to indigent persons in felony, gross misdemeanor, misdemeanor, juvenile delinquency, and children over ten years of age in Children In Need of Protective Services (CHIPS) cases. This program also includes partial funding for four nonprofit public defense corporations. The corporations provide independent criminal and juvenile defense services primarily to indigent minority clients, who otherwise would need public defender services.

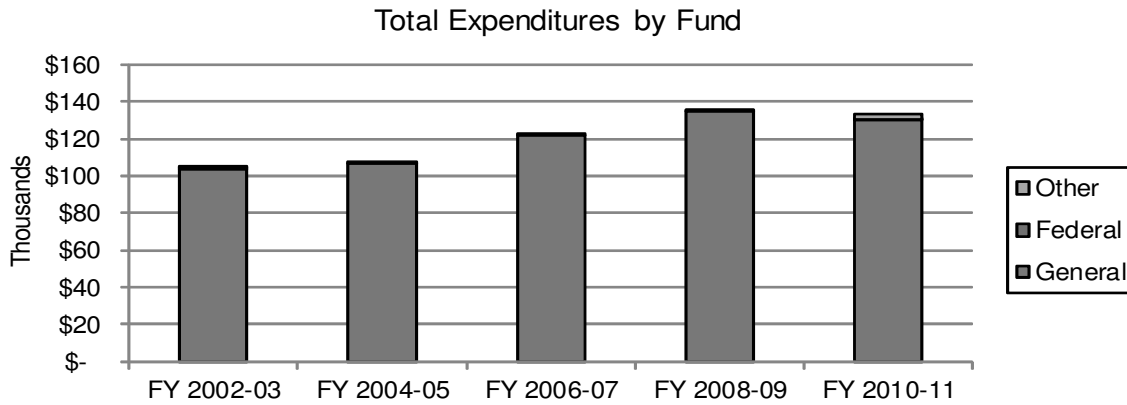
The Appellate Office provides mandated services to indigent clients in state prisons who appeal their criminal cases to the Minnesota Court of Appeals and Supreme Court; or who pursue post conviction proceedings in the District Courts throughout the state; to defendants in supervised release/parole revocation proceedings, and individuals subject to community notification who appeal their end of confinement review determinations.

The BOPD's Administrative Services Office (ASO), under the direction of the State Public Defender and Chief Administrator, provides policy implementation for the agency's programs and overall management of its activities.

The Board has been committed to a cost effective model of representation, namely a combination of full-time and part-time defenders, an approach long recommended by the American Bar Association (A.B.A.). By combining part-time and full-time workforces, the BOPD has been able to deliver services in a manner that is most cost-effective for each part of the state. Statewide, approximately one-half of the public defenders are part-time. Outside of Hennepin and Ramsey Counties the majority of public defenders are part-time.

The model takes into account a number of factors including cost, travel time, geography, conflicts, and what traditionally has been a group of experienced and dedicated part-time defenders. The model has allowed the BOPD to limit the number of full-time offices because the part-time defenders cover much of their own overhead. It has also limited the costs associated with conflicts in multiple defendant cases by having part-time defenders available to take these cases. Full-time offices have been established where caseloads, geography, client services, cost effectiveness and lack of availability of part-time defenders have warranted it.

Budget Trends



* FY 2010-11 is estimated, not actual.

**Other includes public defender client reimbursements which go directly to part-time defenders.

*** Other in 2010-2011 includes one-time funding from \$75 attorney registration fee imposed by the Supreme Court.

The BOPD cannot limit or control caseload. Eligible clients have both a statutory and a Constitutional right to public defender services. The Minnesota Supreme Court has ruled that a public defender “may not reject a client, but is obligated to represent whoever is assigned to her or him...” Dziubak v. Mott, 1993. At the same time, public defenders, appropriately, are required to meet the same ethical standards of professional conduct as any private attorney.

The criminal justice system is a core function of government driven largely by local decisions. The justice system is often pictured as a funnel. Public defense and in many cases the court itself have no control over who comes in at the top of the funnel. The control is exercised largely on the local level by police and prosecutors. In addition, the Legislature may create new crimes or penalties. The Judicial branch may re-organize its courts. The federal government may provide incentives for more of any or all of these activities to occur. All these decisions may have great merit, but they all come with a cost. The public defenders provide mandated services to those individuals whom these other entities put in the funnel.

- From 1987-2005, the Legislature created 86 sentencing enhancements.
- A 2008 survey showed that county/ city-funded prosecutors statewide outnumber public defenders 2-1.
- From 1998-2008, 26 new judgeships were created, each with a calendar needing services.
- From the 1990’s-present, 33 drug courts created: good for public safety, beneficial to the clients—also very labor-intensive for judges, lawyers, and probation.
- Recently the Department of Public Safety awarded the Stearns County Domestic Violence Partnership \$300,000 for services in Domestic Violence Court.
- Recently the Hennepin County Sheriff’s Office was awarded a federal grant for DNA testing to help reduce a backlog of “thousands” of cold cases.

Contact

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Dollars in Thousands

	Current		Forecast Base		Biennium 2012-13
	FY2010	FY2011	FY2012	FY2013	
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	65,437	64,726	64,726	64,726	129,452
Forecast Base	65,437	64,726	64,726	64,726	129,452
Change		0	0	0	0
% Biennial Change from 2010-11					-0.5%
 <u>Expenditures by Fund</u>					
Direct Appropriations					
General	64,232	65,931	64,726	64,726	129,452
Miscellaneous Special Revenue	806	1,867	408	0	408
Federal	92	17	0	0	0
Federal Stimulus	228	8	0	0	0
Gift	42	0	0	0	0
Statutory Appropriations					
General	396	569	450	450	900
Gift	140	2	0	0	0
Total	65,936	68,394	65,584	65,176	130,760
 <u>Expenditures by Category</u>					
Total Compensation	46,409	47,140	46,880	46,880	93,760
Other Operating Expenses	5,911	8,522	5,972	5,564	11,536
Local Assistance	13,616	12,732	12,732	12,732	25,464
Total	65,936	68,394	65,584	65,176	130,760
 <u>Expenditures by Program</u>					
Appellate Office	4,875	4,527	4,500	4,500	9,000
Administrative Services Office	1,814	2,040	1,910	1,910	3,820
District Public Defense	59,247	61,827	59,174	58,766	117,940
Total	65,936	68,394	65,584	65,176	130,760
 Full-Time Equivalents (FTE)	 569.7	 556.8	 536.6	 536.6	

Program at a Glance

- 756 Appellate cases opened in FY 2010
- 3,691 Parole revocation hearings FY 2010
- 444 Briefs filed in appellate cases FY 2010

Program Description

The Appellate Office provides services to indigent clients in criminal appeals, post-conviction proceedings in the District Courts, supervised release/parole revocation proceedings, and appeals of end of confinement review hearings in sex offender cases.

Population Served

In recent years, there has been a major legislative effort to increase penalties for existing crimes. In addition, new statutory penalties have been enacted to deal with specific populations or issues. Increased penalties and stronger enforcement have resulted in a significant increase in the population of the state's prisons and jails. The Minnesota Department of Corrections (DOC) records indicate that as of 1-1-10 there were 9,619 inmates in the state's correctional facilities. This population is the majority of the client base for the Appellate Office.

Supervised release/parole revocations have increased on average more than 8% per year in the last five years. After years of growth the number of appellate files opened returned to 2004 levels, only to increase by 11% between FY 2008 and FY 2009. Due to the Supreme Court decision in Deegan v. State, 711 N.W.2d 89 (Minn. 2006), the appellate office now is required to provide representation in all guilty plea cases on appeal or by post-conviction, without discretion, thus increasing the number of pleadings and appellate briefs filed in these cases.

In 1996, the Legislature enacted the community notification law for sex offenders. The law requires an end of confinement review process for classifying sex offenders. In the past, attorneys from the Appellate Office represented individuals at the end of confinement review hearings (ECRC) and in appeals (ECAR) of these reviews. Having an attorney present at the ECRC was more efficient for the entire system and cut down on the number of appeals in these cases. Due to budget constraints the office is no longer able to provide the non-mandated service at the ECRC. Since 2004 the number of ECAR cases has almost doubled. The number of contested evidentiary hearings in these cases has increased from 85 in FY09 to 115 in FY10. The increase in numbers overall is also due to the increased number of assigned level II and III offenders being released from custody.

Services Provided

The Appellate Office provides mandated services to indigent prisoners who appeal their criminal cases to the Minnesota Court of Appeals and Supreme Court; or who pursue post-conviction proceedings in the District Courts throughout the state; to defendants in supervised release/parole revocation proceedings and to individuals who appeal their designation in end of confinement reviews in sex offender cases.

Key Program Goals & Measures

The goals for the Appellate Office are to provide excellent client-centered representation to clients in criminal appeals, post-conviction proceedings in the District Courts, sex offender community notification and review hearings, and supervised release/parole revocation proceedings, and to meet court imposed deadlines for filing of appeals and other case matters.

There is a constitutional right to counsel at public expense for indigent defendant's appeals and supervised release/parole revocation hearings. As sentence lengths increase, defendants have more motivation to go through the appellate process, which takes about a year. They also have longer periods of supervised and conditional release, leading to more revocation hearings.

Faced with ongoing budget issues the office has lost four FTE attorney positions in the last three years or approximately 13% of its staff. This will mean that in fiscal year 2011, as many as 98 (13% of 756) tried cases may not be assigned to a lawyer but instead be placed on a waiting list. The office will request that the appellate court extend the time for filing the notice of appeal in all waiting list cases from 90 to 120 days. A motion will then be made to stay further appellate proceedings until counsel can be assigned. At some point, the delay in appellate services could lead the courts to release prisoners who have been on the waiting list too long or who cannot get an appellate decision before their sentence is served.

Delays will also occur in the post-conviction unit. This group handles all appeals in cases that were not tried (guilty plea withdrawal, sentencing, restitution, probation revocation, conditional release issues). The Supreme Court's decision in Deegan has significantly increased the workload for the post-conviction unit. This increase plus the reductions in staff will delay the processing of these cases the same as tried cases. Because some of these cases require immediate action to protect the client, the office will need to prioritize these cases and put some clients seeking appeals or post-conviction review on a waiting list.

The post-conviction unit also handles all the parole/supervised release hearings in the state, at which defendants have a constitutional right to counsel. Parole revocation hearings have increased on average more than 8% per year in the last five years. This increase and the reduction in staff will seriously hamper the unit's ability to meet its statewide obligations in these cases because it will no longer be possible to cover all hearings scheduled by the DOC.

The post-conviction unit also provides representation to offenders in community notification cases for sex offenders. There is a statutory obligation to provide representation of individuals who seek review of an ECRC decision if the individual wishes to challenge being ranked as a level two or three sex offender. The challenge is filed in the administrative court before a judge. Because these challenges require formal evidentiary hearings, each case requires a substantial amount of staff time. The office anticipates a significant increase in the number of offenders seeking administrative review, and in fact had an increase from 85 hearings in FY2009 to 115 hearings in FY2010. The reductions in staff and anticipated increase in these hearings also will reduce the post-conviction unit's ability to provide statutorily required representation in all community notification cases and will eventually result in motions to stay notification to the community of the offender's release because of a lack of representation and delay in the appeal process.

Program Funding

The annual budget for the Appellate Office is approximately \$4.5 million, or about 7% of the agency total. This includes approximately \$300,000 for trial transcripts, which is less than half the amount actually expended for transcripts last fiscal year. Clients have a constitutional right to obtain a transcript, the review of which is the basis for any appeal. The Appellate Office is required to obtain and pay the court reporters for the transcripts.

Contact

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PUBLIC DEFENSE BOARD

Program: APPELLATE OFFICE

Program Summary

Dollars in Thousands

	Current		Forecast Base		Biennium 2012-13
	FY2010	FY2011	FY2012	FY2013	
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	4,555	4,502	4,500	4,500	9,000
Federal	92	17	0	0	0
Federal Stimulus	228	8	0	0	0
Total	4,875	4,527	4,500	4,500	9,000
<u>Expenditures by Category</u>					
Total Compensation	3,816	3,570	3,561	3,561	7,122
Other Operating Expenses	1,059	957	939	939	1,878
Total	4,875	4,527	4,500	4,500	9,000
<u>Expenditures by Activity</u>					
State Public Defender	4,875	4,527	4,500	4,500	9,000
Total	4,875	4,527	4,500	4,500	9,000
Full-Time Equivalent (FTE)	43.4	43.9	43.9	43.9	

Program at a Glance

- Budget, information systems, policy and human resources work for 400+ state employees and 100 + county employees.
- Sets standards and policies for provision of public defense services statewide.
- Information system support for 28 regional offices around the state.
- Budget and administrative support for 10 district offices, appellate office and four public defense corporations.

Program Description

The Board's Administrative Services Office (ASO) provides policy implementation for the agency's programs, and overall management of its activities.

Population Served

The ASO provides staff support to all public defender units.

Services Provided

The ASO provides staff support to all public defender units and implements BOPD policies. In addition, it is responsible for management of the agency systems related to caseloads, budget, personnel, and information systems. It accomplishes this with a small administrative staff.

Key Program Goals & Measures

The BOPD provides the district public defenders and appellate defenders with the resources they need to provide high quality legal assistance to indigent Minnesotans.

The BOPD has developed and implemented policies covering personnel, compensation, budgeting, training, conflict cases, and management information systems. Caseload standards have also been adopted. The BOPD is working with District Chief Public Defenders to develop quality standards and best practices for public defenders, as well as updating its long term plan. The BOPD is also working with District Chief Public Defenders and county attorneys to develop a systematic approach to the use of electronic disclosure in criminal cases.

The Information Systems Office (ISO) designs, implements, and maintains systems in 12 main offices and 16 satellite offices. They are currently accomplishing this with six staff people. Significant time and effort is dedicated to maintaining and enhancing existing systems. Currently, most of the IS team's time is spent replacing the Board's time and case management system which is 12 years old and runs on software no longer supported by the developer. The system was developed in house avoiding costs in the hundreds of thousands of dollars if developed using outside contractors. The system, which integrates with the Minnesota Court Information System (MNCIS), is expected to be implemented statewide by March of 2011.

Program Funding

The ASO operates on approximately 3% of the agency's budget.

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PUBLIC DEFENSE BOARD

Program: ADMINISTRATIVE SERVICES OFFICE

Program Summary

Dollars in Thousands

	Current		Forecast Base		Biennium 2012-13
	FY2010	FY2011	FY2012	FY2013	
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	1,814	2,040	1,910	1,910	3,820
Total	1,814	2,040	1,910	1,910	3,820
<u>Expenditures by Category</u>					
Total Compensation	1,414	1,443	1,315	1,315	2,630
Other Operating Expenses	400	597	595	595	1,190
Total	1,814	2,040	1,910	1,910	3,820
<u>Expenditures by Activity</u>					
Administrative Services Office	1,814	2,040	1,910	1,910	3,820
Total	1,814	2,040	1,910	1,910	3,820
Full-Time Equivalents (FTE)	12.8	9.0	9.0	9.0	

Program at a Glance

- 170,000 cases opened in 2009
- Largest user of the court system
- Caseloads nearly double American Bar Association Standards.
- 40,000 uncompensated part-time public defender hours

Program Description

The ten Judicial District Public Defender Offices provide quality mandated criminal defense services to indigent persons in felony, gross misdemeanor, misdemeanor, juvenile delinquency, and Children in Need of Protective Services (CHIPS) cases. Under Minnesota law, all individuals accused of a felony, gross misdemeanor, misdemeanor or juvenile crime are entitled to be represented by an attorney.

Population Served

Trial level public defense serves the attorney needs of indigent Minnesotans. If an individual who is accused in one of the above proceedings cannot afford the services of a private attorney, the court will appoint a public defender to represent that individual. This is accomplished through a system that relies on a mix of full-time and part-time attorneys (50%), as well as support staff.

Services Provided

The public defender system provides trial level representation in criminal defense cases. This includes investigation, expert witnesses, and support services. This program also includes part of the cost of four nonprofit public defense corporations. The corporations provide quality, independent criminal and juvenile defense services primarily to minority indigent defendants, who otherwise would need public defense services. The four corporations are the Neighborhood Justice Corporation (St. Paul); Legal Rights Center (Minneapolis), Duluth Indian Legal, and the Regional Native Public Defense Corporation (serving Leech Lake and White Earth).

Historical Perspective

Over the last several years budget challenges, increased enforcement of complicated felony cases, statutory changes and changes in court proceedings, have all combined to push the public defender system to the brink.

In order to address the budget shortfalls among other measures, the BOPD was forced to reduce staffing for fiscal year 2009 by fifty (50) full time equivalent attorney positions on the district level. This is approximately 100,000 hours of attorney time. Faced with a loss of more than 10% of its attorney staff, caseloads are nearly double ABA standards, and with part-time defenders providing 40,000 uncompensated part-time public defender hours, the Board implemented a service reduction plan that included the elimination of non-mandated services such as representation of parents in child protection cases (CHIPS), and appearances at post-adjudication drug courts.

Facing budget reductions for 2010-2011, attorney staffing again was reduced. This was the third round of staff reductions in the last 18 months. From 2008 to 2010 the district offices have lost 15% of their FTE attorney positions. Cases assigned to the attorneys who leave remain pending while new cases continue to be charged.

Key Program Goals & Measures

It is estimated that public defenders represent about 85% of persons accused of felonies in Minnesota, and about 95% of juveniles accused of acts of delinquency, among their other cases. A public defender may not reject a case, but must accept all the clients assigned to her or him (*Dziubak v. Mott*, 503 N.W.2nd 771 (Minn.1993.)). This means that neither the BOPD, nor its Chief Public Defenders, nor the staff attorneys can control their caseloads.

The Board of Public Defense has set caseload standards, in compliance with Minn. Stat. 611.215, subd. 2 (c) (2). Following a weighted caseload study, the Board determined to adhere to caseload standards recognized by the A.B.A. since 1975, attempting to limit one year's work for an attorney to: 150 felony cases, or 275 gross misdemeanor cases, or 400 misdemeanor cases, or 175 juvenile delinquency cases, or 80 CHIPS/TPR (Termination of Parental Rights) cases, or 200 other cases, or some proportional combined number of cases of these types. To achieve proportionality the Board designated a misdemeanor as a "case unit" so that, for example, a felony would count as 2 and 2/3 "units." Thus the Board/A.B.A. Standard would be 400 "units" of mixed caseload. With the loss of staff as of June 2010, the individual public defender average caseload is 758 units, or nearly double the A.B.A. standards.

In February of 2010, the Office of the Legislative Auditor (OLA) released a program evaluation of the public defense system in Minnesota. During their site visits OLA staff observed that due to time pressures public defenders often had about ten minutes to meet each client for the first time to evaluate the case, explain the client's options and the consequences of a conviction or plea, discuss a possible deal with the prosecuting attorney, and allow the client to make a decision on how to proceed. Among the OLA's other findings: High public defender workloads have created significant challenges for Minnesota's criminal justice system; Heavy workloads have hurt public defenders' ability to represent clients and court efficiency.

In a survey of public defenders, 67% of public defenders responding to the survey disagreed or strongly disagreed with the statement that they had "sufficient time with clients"; 42% of public defenders disagreed or strongly disagreed that they were well prepared for each of their cases". Spending time with clients builds trust. Client trust is essential in providing quality representation and ensuring efficient resolution of cases. In the OLA surveys, public defenders and judges said that when clients trust their attorney, they can trust the attorney's advice on how to resolve the case, thereby leading to a more efficient disposition of the case.

Consequences of high workloads and demands of the court include: an increase in the complaints to the Lawyers Professional Responsibility Board; increased work related health issues among public defenders; and a grievance filed by several defenders over work load conditions. Besides the obvious detriment to indigent accused Minnesotans, and the obvious distress to public defender staff, there are several predictable hardships to the administration of justice which have resulted from this history of budget hardships: Inability to handle certain case types in anything like a timely manner; aggravation of jail overcrowding, which was reported as a statewide aggregate of 105% of capacity a year ago; postponement of trial settings, which are already far enough out to impinge on the right to a speedy trial; deterioration in the quality of fact-finding, as witnesses become unavailable; and increased strain on all the other participants in the justice system.

A consequence of uncontrollable public defender caseloads for the entire criminal justice system is that frequently courtrooms- each with a presiding judge, court staff, prosecutors, probation officers, victim/witness assistants, victims, witnesses, family members and the public- are unable to conduct business in a timely manner because the public defenders needed for the resolution of cases are tied up elsewhere. In a survey of judges the OLA found that 60% of judges responding to the OLA survey disagreed or strongly disagreed with the statement that public defenders spent enough time with their clients. In addition, judges and court administrators responding to the survey reported that "problems with scheduling public defenders for hearings and trials" was the most significant cause of delays. In the survey, 72% of the judges responding to the survey cited difficulty in scheduling public defenders as a moderate or significant cause of delays.

It is now questionable whether the BOPD is even meeting constitutional standards. Chief District Public Defenders report that due to insufficient resources in approximately one-half of the counties in Minnesota, clients go unrepresented at first appearance in out-of-custody misdemeanor cases. Chief District Public Defenders report that due to insufficient resources, in just under one-half of the counties in Minnesota clients who are in custody are not represented by public defenders at first appearance in gross misdemeanor and felony cases.

Program Funding

This program accounts for 90% of the budget. It is funded by general fund, special revenue from a one-time attorney registration fee of \$75 and one time federal funding.

If the \$75 registration fee increase is not continued, or this funding is not made up by the legislature, this cut would necessitate a staff reduction of roughly 20-25 lawyers.

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PUBLIC DEFENSE BOARD

Program: DISTRICT PUBLIC DEFENSE

Program Summary

Dollars in Thousands

	Current		Forecast Base		Biennium
	FY2010	FY2011	FY2012	FY2013	2012-13
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	57,863	59,389	58,316	58,316	116,632
Miscellaneous Special Revenue	806	1,867	408	0	408
Gift	42	0	0	0	0
Statutory Appropriations					
General	396	569	450	450	900
Gift	140	2	0	0	0
Total	59,247	61,827	59,174	58,766	117,940
<u>Expenditures by Category</u>					
Total Compensation	41,179	42,127	42,004	42,004	84,008
Other Operating Expenses	4,452	6,968	4,438	4,030	8,468
Local Assistance	13,616	12,732	12,732	12,732	25,464
Total	59,247	61,827	59,174	58,766	117,940
<u>Expenditures by Activity</u>					
District Public Defense	59,247	61,827	59,174	58,766	117,940
Total	59,247	61,827	59,174	58,766	117,940
Full-Time Equivalents (FTE)	513.5	503.9	483.7	483.7	

PUBLIC DEFENSE BOARD

Change Item: Constitutionally Mandated Services

Preliminary Budget Option

Fiscal Impact (\$000s)	FY 2012	FY 2013	FY 2014	FY 2015
General Fund				
Expenditures	\$700	\$700	\$700	\$700
Revenues	0	0	0	0
Other Fund				
Expenditures				
Revenues	0	0	0	0
Net Fiscal Impact	\$700	\$700	\$700	\$700

Request

The Board of Public Defense requests \$700,000 in FY 2012 and \$700,000 in FY 2013 to pay for constitutionally mandated services in the public defender system.

Background

This spring the U.S. Supreme Court decided *Padilla v. Kentucky*, ruling that defenders have to give clients accurate advice on the possible immigration consequences of their cases, or be found to be ineffective. This is a whole new area of highly specialized law that public defenders will now be held accountable for, and if not addressed may result in convictions being overturned. Funding would provide for immigration consultations and training for public defenders. (\$150,000)

During the 2010-2011 biennium the office again ran out of funding to pay for transcripts. This is a direct result of the number of cases that the office is handling, and longer sentences. In Fiscal year 2010, the actual expenditures for transcripts exceeded \$600,000. The request would increase the transcript budget to the level of the average annual expenditure over the last four years. (\$300,000)

The last several years has seen a significant increase in prosecutors' use of expert witnesses. This includes forensics, and especially DNA. Often time's prosecution budgets are enhanced by outside funding either through the use of other state and federal agencies (B. C. A., F.B.I.), or grant funding. With this expansion the need for defense experts is great and will continue to increase. Over the last several years agencies have received hundreds of thousands dollars to prosecute these cases. This spring the the Hennepin County Sheriff's Office alone received over \$1 million in federal funding to nearly double the number of employees assigned to DNA testing. This becomes even more crucial in cases where prosecuting agencies and police are using DNA on old "cold hit" cases.

A significant part of raising an effective defense in many of these cases is the use of expert witnesses (*Ake v. Oklahoma* 470 U.S. 68 (1985)). This is especially important in light of the recent report by the National Academy of Sciences which raises several questions on the validity of forensic evidence.

The current budget for expert witness fees statewide is \$87,000 (Excluding the Fourth Judicial District). This is woefully inadequate considering the increased use of experts by the prosecution often funded by the state or federal government, and the cost of individual experts. Expert fees in forensics or DNA related cases can easily reach \$20,000-\$25,000 per case. The request would provide for an additional \$250,000 annually for expert witness fees.

Relationship to Base Budget

The base budget for appellate transcripts is \$300,000, and for expert witness fees is \$87,000. There is no budget for immigration consequences.

Alternatives Considered

The items included in the request are constitutionally mandated.

Statutory Change: Not Applicable.

Preliminary Budget Option

Fiscal Impact (\$000s)	FY 2012	FY 2013	FY 2014	FY 2015
General Fund				
Expenditures	\$10,534	\$13,558	\$13,558	\$13,558
Revenues	0	0	0	0
Other Fund				
Expenditures				
Revenues	0	0	0	0
Net Fiscal Impact	\$10,534	\$13,558	\$10,534	\$13,558

Request

The Board of Public Defense requests \$10.534 million in FY 2012 and \$13,558,000 in FY 2013 in an attempt to put the public defender system on financially solid ground for the biennium and to maintain the integrity of the criminal justice system. The request would fund: the loss of one-time revenue, positions lost during fiscal years 2008-2010, and projected cost increases for 2012/2013 that if not funded would serve to reduce staffing.

Background

The Board provides the legal services required by the Constitution and statutes. It is the largest user of the court system in Minnesota handling 85% of major criminal cases and 90% of juvenile cases. The Board does not and cannot control its caseload. It must provide the services specified in statute. The Minnesota State Supreme Court in the case (Dzubiak v Mott) has recognized that a public defender “may not reject a client...”

Without this funding the public defender system will fail and with it the criminal justice system. In order to address the budget shortfalls over the last three years, attorney staffing has been reduced by approximately 15%. Caseloads are nearly double ABA standards, and part time defenders provide in excess of 40,000 uncompensated part-time public defender hours. Cases assigned to the attorneys who leave, remain pending while new cases continue to be charged.

It is questionable whether public defenders are currently meeting constitutional standards. Chief District Public Defenders report that due to insufficient resources in approximately one-half of the counties in Minnesota, clients go unrepresented at first appearance, including clients who are in jail and need an attorney to make a bail motion.

In February, 2010, the Legislative Auditor released a program evaluation of public defense. The findings include:

- high public defender caseloads are dragging down the justice system
- 72% of the state’s judges say a lack of defenders is causing delays
- courtrooms are idle because the public defender is tied up someplace else
- public defenders often have just ten minutes to meet the client, evaluate the case, explain the consequences of various options, and get a decision from the client.
- public defender schedules require some counties to set out-of-custody trials a year out.

Meanwhile many factors have made service delivery more time-consuming, including scientific evidence issues (such as DNA); the Constitutional requirement to provide advice on immigration consequences; and the need for real-time listening to evidence that used to be transcribed, but now comes on disks.

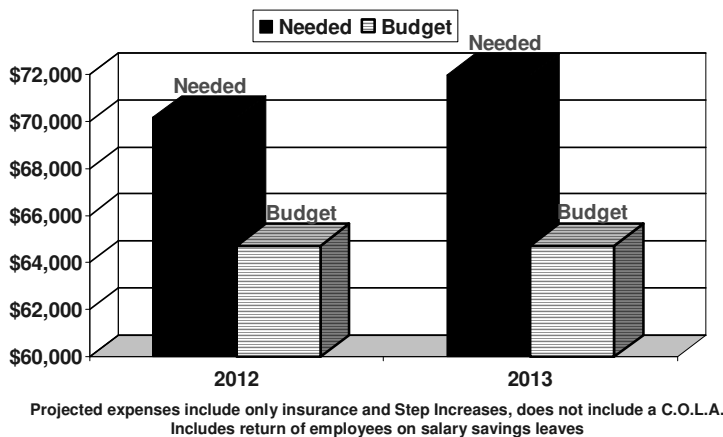
On the appellate level, staff reductions have meant significant delays in the state’s appellate courts. In fiscal year 2010, as many as 98 tried cases were not assigned to a lawyer but were placed on a waiting list. This is roughly 13% of these cases. Delays have also occurred in the post-conviction unit. The effect of this has been delays in sentencing appeal cases and appeals of plea withdrawal and conditional release. It has also delayed cases the office brings to the district court involving these issues. At some point, the delay in appellate services could lead to the courts ordering the release of prisoners who have been on the waiting list too long, as happened in Florida.

Adding to the precarious situation of public defenders—and the courts that depend on them—currently the Board is dependent on major sources of one-time funding that will expire during the biennium.

In 2009 the BOARD petitioned the Minnesota Supreme Court to impose a \$75 fee on attorney registrations. The Court granted this request but, only through June 30, 2011. In fiscal year 2011 the Board is expected to receive approximately \$1.9 million in special revenue from the lawyer registration fee. The Board was also successful in obtaining approximately \$800,000 in federal funding for this biennium. This funding is scheduled to end on June 30, 2011. Failure to make up funding from these sources will necessitate a staff reduction of approximately 30 attorney positions.

In recent years the Board has not received funding for salary and benefit increases. According to the Minnesota Office of Management and Budget, insurance costs alone are expected to rise 19% over the next three calendar years. During the current contract period the Board and Teamsters Local 320 agreed to contracts that included a salary freeze. It is not expected that state employees will settle contracts that do not include step increases. The budget request would fund step increases, cost of living increases, and insurance cost increases for the 2012-2013 biennium. If the BOARD is forced to fund these increases without additional funding it could mean the loss of an additional 65-75 attorney positions.

F.Y. 2012/2013 Shortfall w Existing Staff and Insurance and Step Increases Only



A recent e-mail from a public defender sums up the current situation:

“It is literally now impossible for me to make scheduled appearances in Juvenile court in because I am occupied with felony trials in two other counties. It is directly conflicting with the right to a speedy trial and disposition for juveniles. Constitutional rights are being violated. My salary has been frozen for two years, between student loans and the mortgage, the money is gone before I get it. I never viewed this job as any sort of stepping stone. I wanted to make a career out of it, but that’s easy to say before one has a house and kids. The idealism that motivates one to public service can be crushed by an onslaught of raw mathematics.”

Relationship to Base Budget

The base budget for District and Appellate Defense is approximately \$65 million. This represents 97% of the Board’s budget.

Alternatives Considered

There is no substitution for the 6th amendment’s right to counsel. However, the BOARD has adopted several measures to increase efficiency:

- Where funding has allowed, added support staff to provide services in lieu of attorney time.

- Replacing the time and case management system to capture data that is already being entered in MNCIS. This will eliminate redundant entry of data.
- Working with prosecutors on projects related to electronic disclosure.
- Withdrawing from first appearance calendars in half the counties in Minnesota. Although representation at these appearances likely is a constitutional right, it is very time consuming. Therefore unless there is a court ruling to the contrary we cannot be present.
- Expanded use of volunteers and law students to perform tasks previously performed by attorneys.
- In many instances staff requests continuances on out-of-custody trials. In some counties the trial dates for out-of-custody misdemeanor cases are set a year from the entry of a not guilty plea
- Collaboration in handling serious matters, so that cost-effective support staff has a greater role in case prep.
- Co-counseling on more serious matters, where attorneys are able to share their knowledge and expertise while the matter is being litigated.
- Working with the Court and prosecutors to develop practical and fair uses for ITV.

Even with these changes, it must be noted that these are not alternatives that can make up for the budget situation that the BOARD is currently facing.

Statutory Change: Not Applicable.

PUBLIC DEFENSE BOARD

Change Item: Public Defense Corporation Maintenance

Preliminary Budget Option

Fiscal Impact (\$000s)	FY 2012	FY 2013	FY 2014	FY 2015
General Fund				
Expenditures	\$101	\$101	\$101	\$101
Revenues	0	0	0	0
Other Fund				
Expenditures				
Revenues	0	0	0	0
Net Fiscal Impact	\$101	\$101	\$101	\$101

Request

The Board of Public Defense requests \$101,000 in FY 2012 and \$101,000 in FY 2012 in an attempt to maintain the public defense corporations.

Background

The four public defense corporations provide quality legal defense services primarily to the state's minority communities. These cases (4,000) would otherwise be public defender cases. The request would provide funding to maintain current staff, by providing an adjustment on the corporations' grant amounts to make up for a budget reduction in 2010/2011, and a small adjustment for 2012/2013.

Relationship to Base Budget

The base budget the public defense corporations is \$1.45 million.

Statutory Change: Not Applicable.

PUBLIC DEFENSE BOARD

Agency Revenue Summary

Dollars in Thousands

	Actual FY2010	Budgeted FY2011	Current Law		Biennium 2012-13
			FY2012	FY2013	
<u>Non Dedicated Revenue:</u>					
Total Non-Dedicated Receipts	0	0	0	0	0
<u>Dedicated Receipts:</u>					
Grants:					
Federal	109	0	0	0	0
Federal Stimulus	236	0	0	0	0
Gift	159	0	0	0	0
Total Dedicated Receipts	504	0	0	0	0
Agency Total Revenue	504	0	0	0	0