



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Public Defender System

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

February 2010

Members of the Legislative Audit Commission:

Public defenders fulfill a constitutional requirement. By representing people who cannot afford an attorney in criminal proceedings, public defenders can also help the judicial process operate more efficiently.

However, budget cuts and growing workloads have raised concerns about the state's public defender system. In response, the Legislative Audit Commission requested an evaluation.

We found that the public defender system faces significant challenges. Workloads are too high, affecting both the ability of public defenders to represent clients and the operation of state courts. We offer several recommendations to improve the system, but options for significant change will require additional resources.

Our evaluation was conducted by Deborah Parker Junod (evaluation manager) and KJ Starr. We received the full cooperation of the public defender's office. We also received full cooperation and helpful insight from members of the district court bench and court administrators.

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles".

James Nobles
Legislative Auditor

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Summary

High public defender workloads have created significant challenges for Minnesota's criminal justice system.

Major Findings:

- Public defender workloads are too high, resulting in public defenders spending limited time with clients, difficulties preparing cases, and scheduling problems that hinder the efficient operation of criminal courts. (pp. 35-49)
- Staff reductions in 2008 are the most immediate cause of high workloads, but case complexity and other factors add to the time required per case. (pp.38-40)
- Minnesota's heavy reliance on part-time public defenders presents risks that need to be addressed, but the public defender's office has few staff resources available for planning, research, and policy-development activities. (pp. 24-28)
- The Minnesota Board of Public Defense has strengthened accountability in the state's public defender system but could do more to measure and supervise the quality of public defender services. (pp. 20-24)
- Standards for determining eligibility for a public defender are not clearly defined in state law, and district court judges reported wide differences in how they weigh eligibility factors. (pp. 51-54)
- District court judges reported having little confidence in the accuracy of information they use to assess defendants' financial circumstances, but it appears that

the vast majority of applicants cannot afford a private attorney. (pp. 60-63)

- State law requires defendants with some financial means to reimburse the state for a portion of their public defender costs, but these reimbursements are inconsistently ordered and collected. (pp. 64-68)

Recommendations:

- The Board of Public Defense should improve management practices for the supervision of public defenders and for measuring performance of the public defender system as a whole. (p. 23)
- The Board of Public Defense should study long-range staffing needs, the proper balance of full-time and part-time public defenders, and the merits of establishing additional full-time offices. (p. 27)
- The Legislature should enact fixed income standards for public defender eligibility and define circumstances warranting a judicial waiver of the standards. (p. 59)
- The Legislature should enact a single standard governing which clients should contribute toward the cost of their public defenders and how much they should pay. (p. 69)
- The Legislature should strengthen statutory procedures granting recipients of public assistance automatic eligibility for a public defender. (p. 63)

Caseloads of supervisors limit the time they can spend monitoring the performance of assistant public defenders.

Report Summary

In 1963, the U.S. Supreme Court ruled that the assistance of counsel in criminal prosecutions was essential to fair trials and a fundamental right under the Constitution. Minnesota state government employs attorneys, called public defenders, to represent persons unable to afford an attorney.

The Minnesota Board of Public Defense oversees the public defender system. The system is administered by the state public defender, district chiefs in each of the state's ten judicial districts, a chief appellate public defender, and a chief administrator. About 450 full- and part-time assistant public defenders represent clients.

Resources for the public defender system have fluctuated along with the state's fiscal condition.

Public defender system expenditures totaled \$136 million in the fiscal year 2008-09 biennium, with staffing of about 528 full-time-equivalent staff. About 95 percent of the office's fiscal year 2009 budget went to personnel, lease, and other mandatory costs.

Budget deficits resulted in staff reductions affecting fiscal years 2003 through 2005. The Legislature provided funding for additional staff in fiscal years 2006 and 2007, but budget challenges again resulted in staff reductions in the next biennium.

The Board of Public Defense has taken important steps to improve accountability.

About 20 years ago, Minnesota state government assumed responsibility for public defender services, shifting from a patchwork of local public defense systems. Since then, the

Board of Public Defense has established a clear chain of accountability from assistant public defenders in the field to the board, and it has adopted systemwide policies, procedures, and compensation systems. The state public defender has established training programs for public defenders and procedures for assessing their performance.

The supervision of public defenders needs to be strengthened.

We found weaknesses in day-to-day supervision of assistant public defenders. For example, 43 percent of public defenders responding to our survey said their supervisors in the past year had not reviewed any of their cases in the context of assessing performance. Several district chiefs told us they were seriously concerned about the performance of some part-time public defenders, particularly those that often work alone and with limited supervision.

One problem is that supervisors also represent individual clients. Officials from around the state told us that supervisors' caseloads limit the time they can spend monitoring and coaching assistant public defenders. This also hinders their ability to handle performance problems before they become serious. Public defense officials said they want to increase the ratio of supervisors to assistant public defenders, but have been stymied by budget constraints.

Minnesota may need to reconsider its heavy reliance on part-time public defenders.

As of July 2009, about half of the state's 450 public defenders (and 65 percent of public defenders outside the Twin Cities) worked on a part-time basis. Many of them worked

High workloads limit the time public defenders have to meet with clients and prepare cases.

without the benefit of a local public defender office housing support staff and district managers. District chief public defenders said that without access to a public defender office, part-time defenders may not request investigative or support services when needed. They also have less opportunity to interact with other public defenders in brainstorming sessions, mentoring, and support.

The public defender's office has had problems accurately quantifying public defender workloads.

Minnesota has a system for measuring caseloads that weights cases based on the level of defense effort required. However, the methodology used to develop the weighting system in 1991 was flawed. Weighting standards do not reflect regional differences affecting the time needed to defend cases. For example, in sparsely populated but geographically large districts, public defenders spend much more time driving to see clients or attend court.

The weighting standards also do not reflect the changes in criminal law and procedure that have taken place over the past 20 years. For example, cases involving sex crimes are now more time-intensive.

Public defender workloads are high, exceeding state and national standards.

State and national standards call for public defenders to carry no more than 400 case units per year. In 2009, Minnesota public defenders carried an average weighted caseload of 779 case units.

During our site visits, we observed public defenders working under severe time pressures. Roughly 60

percent of public defenders, public defender staff, and district court judges responding to our surveys reported that public defenders' workloads were much higher in 2009 than 2002.

Heavy workloads have hurt public defenders' ability to represent clients as well as court efficiency.

Those we interviewed and surveyed agreed that public defenders were, on the whole, excellent criminal defense attorneys. However, stakeholders also reported that workloads were having a noticeable impact on public defenders' ability to adequately and ethically represent their clients.

Public defenders responding to our survey felt strongly that they were not spending enough time with clients. This has made it difficult for them to build trust, explain the system and charges, and make decisions with their clients regarding their defense.

Time pressures have made it more difficult for public defenders to prepare their cases. In order to effectively represent their clients, attorneys need sufficient time to interview clients and witnesses, perform legal research, draft motions, request investigative and expert services, and otherwise prepare for hearings and trials.

About 50 percent of district court judges responding to our survey said that criminal cases in their courtrooms progressed too slowly or much too slowly toward disposition. Judges and court administrators responding to our surveys reported that problems scheduling public defenders for hearings and trials was the most significant cause of delays relative to other factors, such as a general increase in the number of

Lack of preparation by public defenders can affect court efficiency.

District court judges told us they determine eligibility to be represented by a public defender very quickly and without sufficient evidence.

criminal cases or availability of prosecutors.

Judges' considerations when appointing a public defender vary widely.

State law establishes two general standards controlling eligibility for a public defender. Recipients of means-tested public assistance should be automatically granted eligibility. However, we found that this did not always happen.

The second standard for eligibility is a judge's determination that the defendant cannot afford private counsel. When evaluating an applicant's financial circumstances, judges are to consider income, assets, and local costs for a private attorney.

District court judges weigh these eligibility factors differently. In our survey, 63 percent of judges responding said they adjusted income based on household expenses; 28 percent did not. When considering assets, 27 percent of judges said they placed little or no weight on ownership of a primary residence. And contrary to requirements in state law, 24 percent of district judges reported that they did not consider the local cost of private counsel.

Absent good information on applicants' financial circumstances, judges often rely on "gut instinct."

We asked district court judges how confident they were in the accuracy of the information they use to determine eligibility. Only half of judges responding to our survey thought they had an accurate picture of applicants' earned income. Judges felt even less confident in the accuracy of information on unearned income or the availability of assets

that could be converted to cash or used to secure a loan.

Judges stated they must make eligibility decisions very quickly and without sufficient evidence. In practice, judges told us they rely on their "gut feelings" and a belief that most applicants would not ask for a public defender if they could afford a private attorney.

We reviewed about 100 public defender applications, comparing information provided by applicants with state public assistance and unemployment data. While the evidence is limited, it appears that the vast majority of applicants are very low income and likely cannot afford an attorney.

State law requires clients with some financial means to contribute to the cost of their defense, but these payments are inconsistently ordered and collected.

By law, judges must order reimbursements from employed defendants and others who can afford to make partial payment toward the cost of their defense. These reimbursements are inconsistently ordered. In our survey, 30 percent of judges responding said they rarely if ever order defendants to make any reimbursement. Data for fiscal years 2007 to 2009 from the state court information system confirm that judges in some districts were far more likely to order reimbursements from defendants than their peers in other districts.

Introduction

In 1963, the U.S. Supreme Court ruled that the assistance of counsel in criminal prosecutions was essential to fair trials and a fundamental right under the Sixth Amendment of the Constitution. Accordingly, Minnesota state government employs attorneys, called public defenders, to represent persons who are charged with a crime in Minnesota, but are unable to afford a private attorney. Minnesota has a broad eligibility standard meant to assure that those who cannot afford an attorney have access to one. Minnesota's District Court Judges appoint public defenders.

In Minnesota, the Board of Public Defense oversees the public defender system. It appoints the state public defender and chief public defenders for each of the state's ten judicial districts and the appellate office. The board also determines how state funds are allocated to the districts and appellate office.

The Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate Minnesota's public defender system in April 2009. Legislators' concerns centered around the following questions, which we used to structure the evaluation:

- **How well are the resources of Minnesota's public defender system being managed?**
- **To what extent do the resources and administrative structure of the public defender system support adequate representation of clients and efficient operation of the criminal justice system?**
- **Does Minnesota have reasonable criteria and procedures for determining eligibility, and are they applied consistently?**

To understand Minnesota's public defender system and how it is managed, we interviewed staff and managers in the public defender's office, directors of Minnesota's four public defense corporations, officials from the State Court Administrator's Office, district court judges, and local prosecutors. We also reviewed Minnesota statutes, public defender's office policies and publications, state budget submissions, and other documents. In addition, we attended two meetings of the Board of Public Defense.

To help put Minnesota's public defender system and issues in context, we reviewed national literature on public defense standards and national efforts to evaluate and improve public defender systems around the country. We also identified 18 states with public defense systems similar to Minnesota's. For each state, we obtained documents and conducted interviews to collect comparative information on public defender eligibility and reimbursement standards.

We obtained and analyzed data from two main sources. The state court administrator's office provided summary-level trend data on criminal case filings, cases pending, and case dispositions for all criminal cases. The public defender's office provided historical and current data on public defender cases, case management, budget, and staffing.

It is possible that data related to a specific crime was recorded differently in the two systems. For example, cases in the state court information system may count one criminal complaint with five defendants and five public defenders as a single case. In the public defender case management system, it would be recorded as five separate cases. Because of these differences, we used the statewide data from the courts primarily for background. All analyses specific to the public defender system was derived from the public defender case management system data.

We conducted site visits in four of the state's ten judicial districts to learn in detail how the public defender system operates in metropolitan, suburban, and rural areas of the state. We selected districts that provided diversity in caseloads, staffing levels, geographic size, and location. The four districts were the first district (Dakota and six surrounding counties), the fourth district (Hennepin County only), the sixth district (St. Louis and three other northeastern counties), and the eighth district (Meeker and 12 counties extending west). We focused on two counties each in the first, sixth, and eighth districts: (1) the county where the main public defender office is located and (2) a county among the smallest in population. We visited both juvenile and adult court in Hennepin County.

In each of the four selected districts, we interviewed the chief district public defender and a supervising attorney. In each county (seven in total), we interviewed and observed assistant public defenders, and we interviewed the county court administrator and a district court judge. In each district, we interviewed a lead prosecutor from a county attorney's office. We also observed the eligibility determination process in several counties. After completing the site visits, we conducted extended interviews with the chief district public defenders in the remaining six districts and the interim chief appellate public defender.

We conducted six separate surveys to learn how the public defender system works from various stakeholders' points of view. One was directed at all assistant public defenders, supervising public defenders, and district chief public defenders in Minnesota. The second survey went to nonattorney staff in public defender offices, including investigators, sentencing advisors, paralegals, legal secretaries, and office administrators. The third survey was directed to all district and appellate court judges and Supreme Court justices. The fourth survey went to all court administrators. The fifth survey went to the county attorney and a lead prosecutor for criminal cases in each county.

Most questions in each of these five surveys were tailored to the survey's target population, but each contained three common sets of questions about Minnesota's public defender system. We administered the surveys online in September 2009 and sent reminders to nonrespondents in October. Response rates were: 277 of 532 public defenders (52 percent); 107 of 182 nonattorney

staff (59 percent); 206 of 305 judges (68 percent); 57 of 69 court administrators (83 percent); and 104 of 173 prosecutors (60 percent).

Our sixth survey went to public defender clients. Because of logistical and privacy-related barriers, we were not able to select a statistically representative sample of public defender clients. Instead, we created a short, paper survey that could be given to and collected from public defender clients who had just concluded their cases in a courthouse or were visiting their probation officers.¹ The survey included six questions related to the client's satisfaction with his or her public defender.

To administer the client survey, we enlisted the aid of probation officers in Dakota, Hennepin, McLeod, Olmsted, and Sibley counties (encompassing 14 probation office locations). The probation officers handled a range of clients with felony, gross misdemeanor, and misdemeanor convictions. Parole officers or administrators in each office handed a survey to visiting clients who said they had been represented by a public defender. Clients completed and immediately returned the survey. In addition, a member of our evaluation team visited three courthouses and approached public defender clients who had just completed a settlement conference in which they were sentenced or the case was dismissed. In total, we obtained completed surveys from 317 former clients.

We also reviewed public defender applications collected during one week in each of our site visit counties (including both juvenile and adult courts in Hennepin County). Of these, we judgmentally selected 127 to review in more detail. We obtained information on public assistance status from the Department of Human Services for 81 applicants. From the Department of Employment and Economic Development, we obtained for 102 applicants any information on unemployment benefits received in the month the applicant applied for a public defender and wages reported by employers in the previous quarter.

¹ To respect the boundaries of attorney-client privilege, we did not contact clients in open public defender cases.

Background

In 1963, the United States Supreme Court ruled in *Gideon v. Wainwright* that the assistance of counsel in criminal prosecutions was essential to fair trials and a fundamental right under the Sixth Amendment of the U.S. Constitution. The Court also held that the right to counsel was obligatory on states by virtue of the due process of law provision in the Fourteenth Amendment.¹ Accordingly, Minnesota state government employs attorneys, called public defenders, to represent persons unable to afford an attorney.

Our evaluation focused on management of Minnesota's public defender system, eligibility determination, public defender workloads, and the quality of representation provided. As background, this chapter provides an overview of who can qualify for a public defender in Minnesota; federal and state standards governing public defenders; the organization and funding of Minnesota's public defender system; and data on the type and number of criminal cases in Minnesota's judicial system.

APPOINTMENT OF A PUBLIC DEFENDER

Public defenders are obligated to represent all clients assigned to them by a judge.

The right to have an attorney in criminal prosecutions applies to crimes established in federal, state, and local laws. The federal government provides public defenders to people charged with a crime under federal law. Minnesota's public defender system applies to those charged with crime under state or local law. In Minnesota, district court judges appoint public defenders.² Public defenders are obligated to represent any clients assigned to them, regardless of caseloads or difficulty of the case.³

The Bill of Rights in Minnesota's Constitution directly addresses the rights of the accused in criminal prosecutions. The Constitution says:

The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses

¹ The scope of the *Gideon* decision was limited to felony prosecutions, but the right to counsel has since been expanded. In 1967, the U.S. Supreme Court extended the right to counsel to children charged with juvenile delinquency and in 1972 to any case in which the defendant could be sentenced to imprisonment. In 2002, the Court found that defendants must receive counsel if they received a suspended jail sentence or were placed on probation, and later, the probation was revoked and imprisonment imposed. Defendants also have a right to counsel in their first direct appeal of a verdict and in appeals following a guilty plea.

² Public defenders may also, at their discretion or upon request, represent individuals prior to a court appearance if it appears that the individual is financially unable to obtain counsel. For example, a public defender may represent an arrested individual during a police interrogation. *Minnesota Statutes* 2009, 611.18.

³ *Dzubiak v. Mott*, 503 N.W.2d 771, 775 (Minn. 1993).

against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.⁴

Minnesota courts have interpreted this language as guaranteeing the assistance of counsel in “any criminal matter in which the accused [stands] a substantial chance of facing incarceration.”⁵

Within this constitutional framework, Minnesota statute requires a public defender to be appointed to persons who are financially unable to obtain counsel and fit into one of the following categories:

Public defenders are appointed to defendants unable to afford private counsel.

- Persons charged with a felony, gross misdemeanor, or misdemeanor (see Table 1.1);
- Persons appealing a conviction of a felony or gross misdemeanor, or pursuing a post-conviction proceeding prior to having a direct appeal of the conviction;
- Convicted persons who face revocation of probation or supervised release;
- Minors ten years of age or older who are (a) charged with a juvenile offense (other than a petty offense or habitual truancy) or (b) a child in need of protection or services (CHIPS).⁶

Minnesota statutes elaborate on the meaning of “financially unable to obtain counsel,” but the criteria leave room for judicial discretion. The law states that

“a defendant is financially unable to obtain counsel if: (1) the defendant, or any dependent of the defendant who resides in the same household as the defendant, receives means-tested governmental benefits; or (2) the defendant, through any combination of liquid assets and current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter.”⁷

The first category of eligibility, receipt of means-tested government benefits, sets a relatively straight-forward eligibility standard. The second category, however, allows substantial discretion in evaluating applicants’ financial circumstances. We discuss the implications of this level of discretion in Chapter 4.

⁴ *Minnesota Constitution*, art. I, sec. 6.

⁵ *State v. Dumas*, 587 N.W.2d 299, 301 (Minn. Ct. App. 1998), citing *State v. Borst*, 154 N.W.2d 888, 894 (Minn. 1967).

⁶ *Minnesota Statutes* 2009, 611.14. In addition, Minnesota law requires public defenders to represent predatory offenders subject to community notification hearings. *Minnesota Statutes* 2009, 244.052, subd. 6(b). There is no statutory requirement that public defenders represent those facing revocation of supervised release. However, these individuals do have a constitutional right to representation which has traditionally been fulfilled by the Appellate Office.

⁷ *Ibid.* Programs that provide means-tested benefits include food stamps, Medical Assistance, and the Minnesota Family Investment Program, among others.

Table 1.1: Levels of Offenses in Minnesota

Offense	Description	Eligibility for a Public Defender
Felony	A criminal offense punishable by more than one year in prison. It usually also involves the possibility of a fine of more than \$3,000. Examples include murder, manslaughter, and most criminal sexual misconduct crimes.	Yes
Gross Misdemeanor	A criminal offense punishable by imprisonment of more than 90 days but not more than one year. It may also involve a fine of more than \$1,000 but not more than \$3,000. Examples include a second domestic assault in ten years and contributing to a child's habitual truancy.	Yes
Misdemeanor	A criminal offense punishable by up to 90 days imprisonment and/or a fine of up to \$1,000. Examples include disorderly conduct or first-time driving while impaired.	Yes
Petty Misdemeanor	An offense punishable only by a fine of up to \$300. Examples include most traffic violations and other minor violations.	No ^a

^a Because it carries no possibility of imprisonment, a petty misdemeanor is not a crime under state law. As a result, persons charged with a petty misdemeanor are not eligible for a public defender.

SOURCES: Minnesota House of Representatives Research Department, *The Minnesota Judiciary: A Guide for Legislators* (St. Paul, 2008); Minnesota Sentencing Guidelines Commission, *Minnesota Sentencing Guidelines and Commentary* (St. Paul, 2009); and *Minnesota Statutes* 2009, 169.89, subd.1, 169A.27, 609.20, 609.2242, subd.2, 609.26, subd.1(7), 609.72, subd.1, and 611.14.

District court judges appoint public defenders, and state law requires each judicial district to screen requests for representation by a public defender and make “appropriate inquiry into the financial circumstances of the applicant.”⁸ Application and screening procedures vary by judicial district, but applicants for a public defender are required to submit a financial statement under oath.⁹ Persons appointed a public defender also have a continuing duty to disclose any changes in their financial circumstances.¹⁰

State law requires individuals appointed a public defender to share in the cost of these services. Public defender clients must make a \$75 copayment for public defender services unless the copayment has been waived by a judge.¹¹ Copayment receipts are deposited in the state’s general fund. In addition, judges

⁸ *Minnesota Statutes* 2009, 611.17(a) and (b).

⁹ *Minnesota Statutes* 2009, 611.17(b).

¹⁰ *Ibid.*

¹¹ *Minnesota Statutes* 2009, 611.17(c). *Laws of Minnesota* 2009, chapter 83, art. 2, sec. 47, raised the copay from \$28 to \$75.

may order defendants who are employed or otherwise able to pay to reimburse the state in some amount for the cost of the public defender.¹² Receipts from these reimbursement payments are allocated to the Minnesota Board of Public Defense.¹³

STANDARDS FOR PUBLIC DEFENSE

State standards require public defenders to provide prompt, competent, and diligent representation.

Various types of federal, state, and professional standards apply to public defenders in Minnesota. At the highest level, the U.S. Supreme Court has ruled that defendants have a constitutional right to the “effective assistance of counsel.”¹⁴ The U.S. Supreme Court has also held that indigent defendants must have access to the “raw materials integral to the building of an effective defense.”¹⁵ The Minnesota Court of Appeals (among other courts) has stated that this means that a defendant has a constitutional right to adequate investigative and expert services.¹⁶

The Minnesota Supreme Court has authorized rules of professional conduct for attorneys, including public defenders.¹⁷ The rules require attorneys to provide prompt, competent, and diligent representation. Among other things, the rules require attorneys to (1) possess necessary legal knowledge, skill, thoroughness, and preparation; and (2) communicate promptly with clients to keep the client informed about the case and respond to requests for information. Lawyers’ workloads must be controlled so that each matter in the case can be handled competently. Breach of these rules can result in disciplinary action up to disbarment.

Although not binding on states, the American Bar Association in 2002 issued guidance that set forth principles of a public defense delivery system. It was intended to be a practical guide for policymakers and others to design efficient, effective, and ethical public defense delivery systems. As shown in Table 1.2, the principles address the organizational structure of a public defense system and effective working conditions for public defenders, among other things.

¹² *Minnesota Statutes* 2009, 611.20, subd. 2 and subd. 4.

¹³ *Minnesota Statutes* 2009, 611.20, subd. 3 and 4, allocates reimbursements from employed defendants to “the state” and reimbursements from those with an ability to make partial payments to part-time public defenders to offset their overhead costs. In practice, however, all reimbursements are paid to part-time defenders.

¹⁴ *Strickland v. Washington*, 466 U.S. 668 (1984). The Supreme Court said that for an attorney to be found ineffective, his or her conduct must have “so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Also, the defendant must show that, but for the attorneys’ conduct, the result of the proceeding would have been different. This two-pronged test has made the ineffectiveness standard hard to meet. In past cases, defense attorneys who have slept through the trial, used illegal drugs during the trial, or said they were not prepared were *not* deemed “ineffective.” Thus, a finding of ineffectiveness is more a measure of egregious dysfunction than a useful measure of quality.

¹⁵ *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985).

¹⁶ *In Re the Application of Charles Ray Wilson for Payment of Services*, 509 N.W.2d 568, 571 (Minn. Ct. App. 1993).

¹⁷ *Minnesota Rules of Professional Conduct* (2007), <http://www.courts.state.mn.us/lprb/mrpc.html>, accessed May 8, 2009.

Table 1.2: American Bar Association's Principles of a Public Defense Delivery System, 2002

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

SOURCE: American Bar Association, *Ten Principles of a Public Defense Delivery System* (2002).

MINNESOTA'S PUBLIC DEFENDER SYSTEM

Minnesota's public defender system is part of the state's judicial branch but not under judicial administrative control.

The organization of Minnesota's public defender system has evolved over time. Historically, the public defense system consisted of part-time attorneys working for and funded by counties. The Minnesota Legislature created the State Board of Public Defense in 1981 to oversee the public defense system.¹⁸ In establishing the board, the Legislature made it part of the judicial branch of state government but not under judicial administrative control. The state began assuming financial responsibility for public defense in 1989, phasing in full state control over several years.¹⁹

Minnesota's transition to state control of the public defender system was part of a national trend. Researchers had found that county-based systems were more likely than state systems to have excessive caseloads, judicial interference, and

¹⁸ *Laws of Minnesota* 1981, chapter 356, sec. 360, subd. 1 and 2.

¹⁹ *Laws of Minnesota* 1989, chapter 355, art. 1, sec. 7.

insufficient training for public defenders.²⁰ Further, locally-funded systems more often led to inequitable representation because local caseloads and revenue varied. Minnesota has sought to promote uniformity in the access to public defender services across the state and is now one of about 20 states with a centrally funded and managed system.

Organization

The current organization of Minnesota's public defender system is illustrated in Figure 1.1. By law, the State Board of Public Defense consists of seven members, including four attorneys appointed by the Supreme Court and three public members appointed by the governor.²¹ The board is charged with appointing a state public defender, chief district public defenders in each judicial district, a chief appellate public defender, and (with the advice of the state public defender) a chief administrator.²² The State Board of Public Defense must also recommend a budget to the Legislature and establish procedures for distribution of state funding.²³ Members are reimbursed for expenses and a per diem of \$55 per day of board activities.²⁴

The Minnesota Board of Public Defense oversees the public defender system.

The state public defender and chief administrator have primary administrative responsibility for the public defender system. The state public defender establishes (1) standards regarding qualifications, training, size of legal staff, caseloads, and eligibility; and (2) policies and procedures to administer the district public defense system.²⁵ The chief administrator serves at the pleasure of the board and is the head of the Administrative Services Office, which operates the budget, accounting, human resources, and information technology functions. The chief administrator also has direct responsibilities to the board, including enforcing board rules, regulations, and orders; managing research and planning; assisting the board with its financial duties; and making recommendations to improve the efficient operation of the public defense system.²⁶

Responsibility for providing public defense services is divided among ten public defense districts that align with the court system's ten judicial districts and an appellate office. Each district has one administrative office and may have satellite offices as well. An appointed chief public defender leads each district and is responsible for managing the budget allocated to the district, hiring and supervising personnel, and managing case assignments. Chief public defenders

²⁰ National Legal Aid & Defender Association, *A Race to the Bottom: Trial-Level Indigent Defense Systems in Michigan* (Washington, D.C., 2008); National Legal Aid & Defender Association, *Justice Impaired: The Impact of the State of New York's Failure to Effectively Implement the Right to Counsel* (Washington, D.C., 2007).

²¹ *Minnesota Statutes* 2009, 611.215, subd. 1(a).

²² *Minnesota Statutes* 2009, 611.215, subd. 2(a); 611.23; 611.24(a); and 611.26, subd. 2.

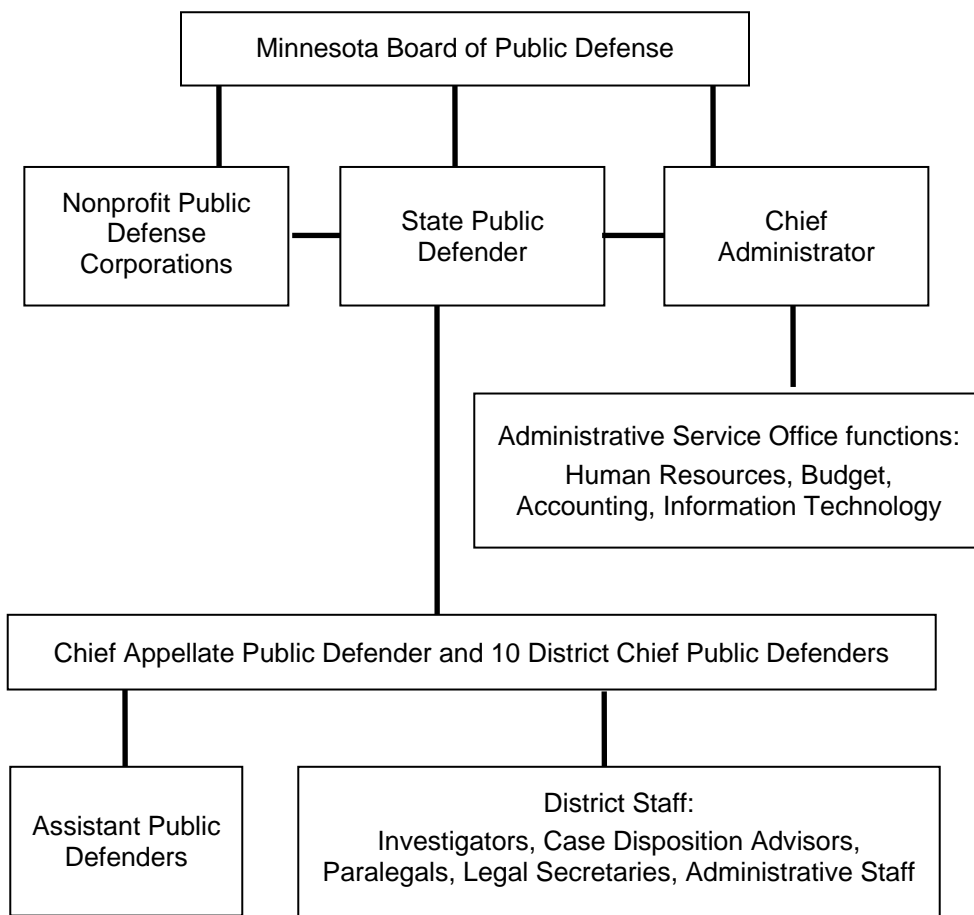
²³ *Minnesota Statutes* 2009, 611.215, subd. 2(a) and subd. 2(b).

²⁴ *Minnesota Statutes* 2009, 611.215 subd. 1(b) and 15.0575, subd. 3.

²⁵ *Minnesota Statutes* 2009, 611.215, subd. 2(c) and 611.25, subd. 3.

²⁶ *Minnesota Statutes* 2009, 611.215, subd 1a.

Figure 1.1: Organization of the Minnesota Public Defender System, 2010



SOURCE: Office of the Legislative Auditor, analysis of *Minnesota Statutes* 2009, chapter 611.

may also carry caseloads. The chief appellate public defender represents defendants appealing felony or gross misdemeanor convictions, those pursuing other post-conviction proceedings, those facing revocation of supervised release, and children appealing a delinquency adjudication.

The staff attorneys representing clients on a daily basis are called “assistant public defenders,” and they are supervised by “managing attorneys.” As shown in Table 1.3, Minnesota employs a mix of full-time and part-time public defenders.²⁷ Part-time public defenders usually maintain a private practice in

²⁷ As a carryover from the county-based system, some public defenders in Hennepin and Ramsey counties are still county employees. Their numbers are dwindling through attrition as all new hires must be state employees.

addition to representing public defender clients. All public defender offices are staffed with investigators, paralegals, legal secretaries, case disposition advisors, and support staff.

Table 1.3: Public Defender Staffing, July 2009

District	Number of Full-Time Attorneys	Number of Part-Time Attorneys	Total Full-Time-Equivalent Attorneys
First	15	26	34
Second	26 ^a	22	39
Third	16	16	27
Fourth	88 ^b	15	97
Fifth	11	12	19
Sixth	5	22	20
Seventh	9	31	32
Eighth	1	16	12
Ninth	16	19	30
Tenth	22	36	47
Appellate	<u>23</u>	<u>4</u>	<u>25</u>
Total	232	219	381

^a As a carryover from the county-based system, 23 public defenders in the second district are still Ramsey County employees.

^b In the fourth district, 61 public defenders remain Hennepin County employees.

SOURCE: Public Defender Administrative Services Office.

In addition to distributing state funds to the district public defenders and the Appellate Office, the Board of Public Defense may appropriate money to nonprofit criminal and juvenile defense corporations that serve low-income clients.²⁸ These public defense corporations may accept felony, gross misdemeanor, misdemeanor, and juvenile cases where defendants meet financial eligibility standards. In order to receive state funds, the public defense corporations are required to provide matching funds. The Board of Public Defense currently funds four public defense corporations that primarily serve minorities who would otherwise need public defender services.²⁹

Resources

Public defender system expenditures totaled \$136 million in the fiscal year 2008-09 biennium, with staffing of about 528 full-time-equivalent staff.³⁰ About 91 percent of these expenditures and staff were allocated to the ten public defender districts. The appellate office accounted for seven percent of spending,

²⁸ *Minnesota Statutes* 2009, 611.216, subd. 1.

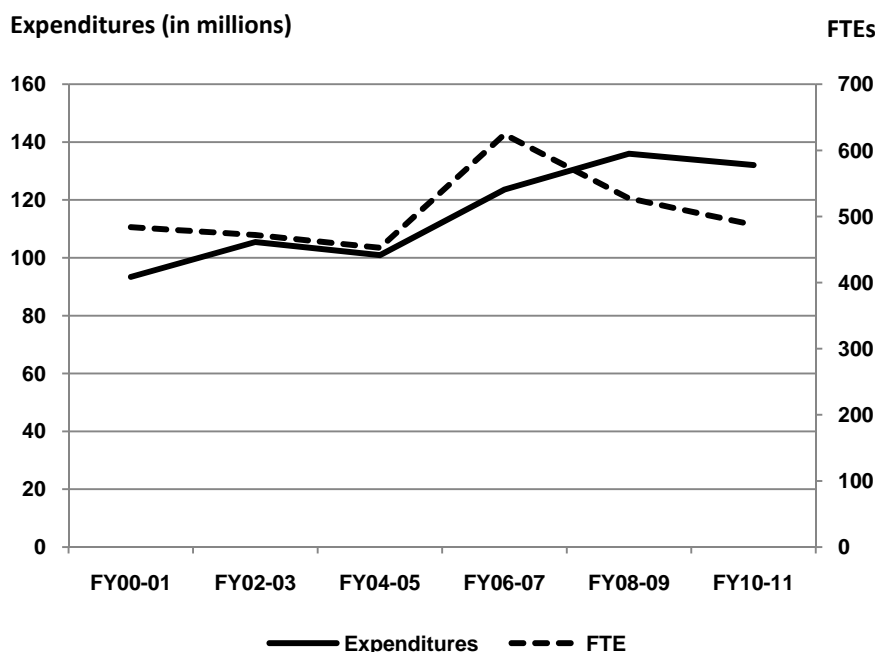
²⁹ The four public defense corporations are the [Neighborhood Justice Center](#) (St. Paul), the [Legal Rights Center](#) (Minneapolis), [Duluth Indian Legal](#), and the [Regional Native Public Defense Corporation](#) (serving members of the Leech Lake and White Earth tribal communities).

³⁰ Full-time-equivalent staff counts include assistant public defenders in Hennepin and Ramsey counties who remain county employees.

Budget reductions resulted in two rounds of layoffs in 2003 and 2008.

and administrative office expenditures accounted for the remainder. As shown in Figure 1.2, expenditures and staffing for the public defender system have fluctuated. Budget deficits resulted in staff reductions affecting fiscal years 2003 through 2005. The Legislature provided funding for additional staff in fiscal years 2006 and 2007, but budget challenges again resulted in staff reductions in the 2008-09 biennium.

Figure 1.2: Board of Public Defense Budget Data by Biennium, Fiscal Years 2000 to 2011



NOTES: FTE is full-time-equivalent staff. Fiscal year 2010-11 expenditures are as budgeted; all other years are actual expenditures except for fiscal year 2003 where we used the budgeted amount because the actual amount was not available. Data are not indexed for inflation. FTE data are imprecise. According to the public defender’s office, FTE counts compiled for biennial budget documents did not consistently account for those public defenders in Hennepin and Ramsey counties who are county, not state, employees. FTE counts may also include open positions that the state public defender did not intend to fill. The Public Defender’s Office does not maintain historical staffing data; thus, we relied on the information in state budget documents.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Board of Public Defense biennial budget documents, fiscal years 2000 to 2011.

In fiscal years 2008-09, roughly 95 percent of the office’s budget was dedicated to personnel costs, mandatory expenditures (such as mileage reimbursement), and lease costs. Important among remaining expenditures are funds set aside for services other than counsel, including expert witnesses, interpreters, grand jury transcripts, and short-term lawyer help for complex cases.

CRIMINAL CASE STATISTICS

The number of felony cases in Minnesota's criminal justice system grew by 37 percent between 1999 and 2008.

According to the state public defender's office, public defenders are quite likely to be appointed in felony and gross misdemeanor cases. In 2008, the courts recorded filings of about 29,000 felony cases and 32,000 gross misdemeanor cases, as shown in Table 1.4.³¹ Compared to filings in 1999, this represents a 37 percent increase in felony cases and a 12 percent increase in gross misdemeanor cases. As we discuss more in Chapter 3, the increase in felony and gross

Table 1.4: Criminal Cases Filed for Case Types Likely to Involve a Public Defender, 1999 to 2008

	Gross		Misdemeanor ^a	Juvenile Delinquency ^b	Total
	Felony	Misdemeanor			
1999	21,420	28,579	244,060	25,030	319,089
2000	22,262	29,121	246,566	24,740	322,689
2001	24,448	30,127	229,722	24,020	308,317
2002	28,239	29,574	246,315	23,493	327,621
2003	29,119	28,566	264,580	22,388	344,653
2004	30,075	30,737	263,344	20,916	345,072
2005	31,749	32,004	248,148	20,511	332,412
2006	32,607	34,029	258,152	22,577	347,365
2007	31,268	33,984	234,595	22,094	321,941
2008	29,287	32,043	214,612	20,144	296,086
Percentage Change, 1999-2008	36.7%	12.1%	-12.1%	-19.5%	-7.2%

NOTES: The data include all criminal cases filed. Public defenders may or may not have been assigned.

^a Filing counts include three misdemeanor types: fifth degree assault, misdemeanor DWI, and other nontraffic misdemeanors. The counts exclude parking, juvenile traffic, and other traffic-related misdemeanors.

^b Filing counts include felony, gross misdemeanor, and misdemeanor juvenile delinquency cases. Public defenders could be appointed in other types of juvenile cases, but according to the public defender's office, they are most likely to be involved in delinquency cases.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota court information system data.

misdemeanor cases tracks with a general legislative trend of recategorizing offenses to higher levels (for example, reclassifying misdemeanors as gross misdemeanors and gross misdemeanors as felonies).

In misdemeanor cases, public defenders are more likely to be appointed when the offense is more likely to result in jail time, for instance in charges of fifth degree assault or driving while under the influence of drugs or alcohol. Table 1.4 shows the number of misdemeanor cases filed for case types likely to involve a public

³¹ Counting criminal cases is actually quite complicated because a crime can involve multiple charges, defendants, and court events. Thus, case counts can vary depending on which element is the focus of analysis.

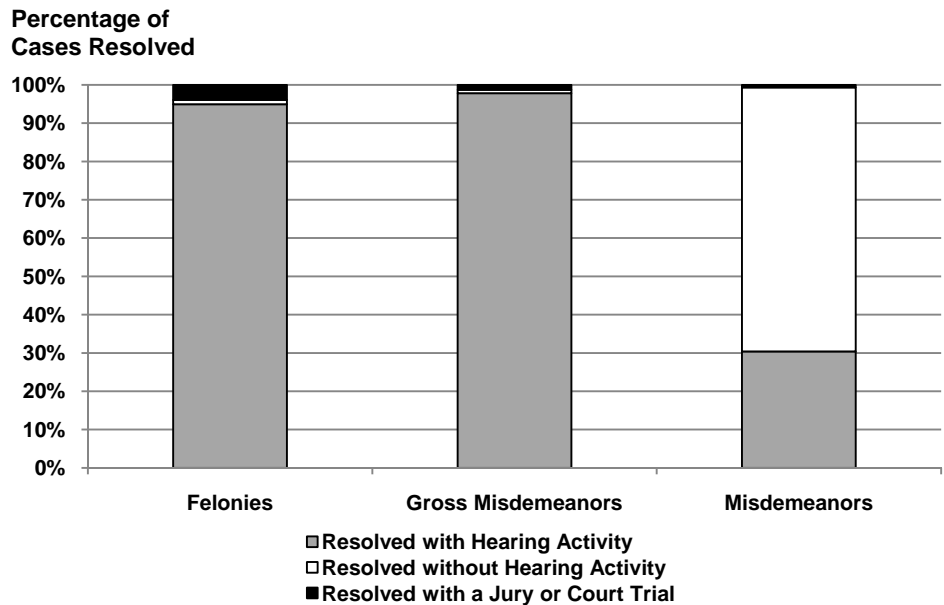
The vast majority of criminal cases are resolved without a trial.

defender.³² As shown, the number of misdemeanor cases in these categories declined by about 12 percent from 1999 to 2008.

Public defenders also represent juveniles, commonly in cases with charges of felony, gross misdemeanor, or misdemeanor juvenile delinquency. As shown in Table 1.4, juvenile delinquency case filings declined by almost 20 percent between 1999 and 2008.

The vast majority of criminal cases were closed without a trial in 2008, as shown in Figure 1.3. About 95 percent of felony cases and 98 percent of gross misdemeanor cases were closed at a hearing, often through a plea agreement (an agreement between the prosecutor and defense attorney in which a defendant pleads guilty as part of a bargained-for resolution of the case). Among misdemeanor cases, about 30 percent of cases were resolved at a hearing, and 69 percent were resolved outside of a hearing or trial. For example, many misdemeanors (such as traffic violations) are settled with payment of a fine. Court data for 1999 through 2007 show very similar resolution patterns.

Figure 1.3: Means of Case Resolution by Level of Offense, 2008



NOTES: Jury trials are heard by a panel of citizens, while court trials are heard by a judge but no jury. Cases resolved without a hearing could be settled with a plea bargain, payment of a fine, or dismissal of the case by the prosecutor. Cases resolved with a hearing generally refers to cases in which the defendant agrees to a plea bargain with prosecutors in order to avoid a trial. It may also refer to cases where the judge dismisses a case, or where the defendant pleads guilty as charged.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota court information system data.

³² As agreed with the public defender’s office, we included three misdemeanor case types as categorized in the state court information system: fifth degree assault, misdemeanor driving while under the influence, and “other nontraffic.” Including all misdemeanor case types, there were 1.5 million misdemeanor cases filed in 2008.

Management

About 20 years ago, the Minnesota Legislature determined that the public defense system was properly the state's responsibility and began shifting control of public defender services from counties to the state. In 1992, the Office of the Legislative Auditor evaluated the adequacy of the public defender system's organizational structure and administration. We found numerous management challenges stemming from limited progress at the time in moving from a county-financed system to a statewide system, as shown in Table 2.1.

In this evaluation, we again assessed how well the public defense system is managed by the Board of Public Defense and its management team. Specifically, we evaluated the uniformity of the public defender system across the state, performance assessment and accountability, reliance on part-time public defenders, strategic planning and budgeting, and management of recent resource reductions.

Table 2.1: Findings from the Office of the Legislative Auditor's 1992 Evaluation of the Public Defender System

- Eight of ten districts did not have full-time public defender offices.
- State funds for public defenders were being spent by counties without adequate reporting and review of expenditures.
- District chiefs provided limited supervision of assistant public defenders, particularly those based in other communities.
- District chiefs lacked sufficient training in administration, personnel, and financial management.
- Compensation for part-time public defenders was inequitable.
- Goals for the state public defender system were not clearly articulated and defined.
- The board and administrative staff had not done enough systematic, long-range planning.
- The board and its administrative staff had established few written, uniform management policies and procedures.
- The board allocated money to districts based on historical tradition, not assessments of need.

SOURCE: Office of the Legislative Auditor, *Public Defender System* (St. Paul, 1992).

STATEWIDE ADMINISTRATION

We assessed the extent to which the public defender system has uniformity in its administrative control over staff, compensation practices, public defense policies, and information systems. We found that:

- **The administration of the public defender system has become more uniform following the state's assumption of responsibility for it.**

Minnesota now has a centrally managed public defender system. Financial authority, policy setting, and other administrative control is centralized with the Board of Public Defense, chief public defender, and chief administrator. In addition, each of the ten districts are staffed with at least one full-time public defender and at least one office, as shown in Figure 2.1. With the exception of Hennepin County, counties do not provide funds for public defender services that are by law the responsibility of the state.¹ The board allocates funds to district chiefs who manage each district's budget and staffing.

For the most part, the public defender system operates under a unified compensation structure. Assistant public defenders have been represented by a union since 2000, and their contract with the Board of Public Defense sets forth the terms of compensation and benefits. Nonattorney staff, including investigators and paralegals, are also covered by a union contract.

Certain assistant public defenders in Hennepin and Ramsey counties are county employees covered by county compensation systems, although their salaries are funded by the state. At the time the state assumed responsibility for public defense, only Hennepin and Ramsey counties employed full-time public defenders. These attorneys were allowed to remain county employees; newly hired public defenders were (and still are) state employees.

Pay disparities exist among assistant public defenders employed by the state and those who are still employed by Hennepin and Ramsey counties. Both counties' pay scales are higher than the state's, allowing county-employed public defenders to earn more than state-employed public defenders with comparable years of experience. Absent other changes to the system, attrition among the county-employed attorneys will eventually eliminate these differences.²

The Board of Public Defense has adopted systemwide policies and procedures. Several of the statewide policies respond to issues raised in our 1992 report. For example, the board has established statewide standards for caseloads, public defender qualifications, staffing of public defender offices, and conflicts of interest. The board has also adopted standard procedures for personnel matters and handling client complaints.

The public defender's office has struggled with creating a useful case management system since the state assumed responsibility for public defense. In 1992, we reported that the Board of Public Defense needed to establish a uniform management information system for monitoring cases and hours across districts. The board developed a case information management system, and all districts

¹ Hennepin County pays for the office space used by the District 4 public defender's office, an expense paid in all other districts by the state. Also, Hennepin County pays the cost of having the public defender's office provide certain services that are the responsibility of counties, including appeals of misdemeanor convictions and representation of adults in child protection cases.

² We discuss another compensation disparity in Chapter 3 that relates to payments made to certain part-time public defenders.

The Board of Public Defense has addressed many of the problems identified in our 1992 evaluation of the public defender system.

Figure 2.1: Minnesota Public Defender Districts, 2010

District 9

17 counties
 23 judgeships
 16 full-time attorneys
 19 part-time attorneys
 Offices in Bemidji, Brainerd,
 Crookston, Grand Rapids, Thief
 River Falls, Walker

District 6

4 counties
 16 judgeships
 5 full-time attorneys
 22 part-time attorneys
 Office in Duluth

District 7

10 counties
 28 judgeships
 9 full-time attorneys
 31 part-time attorneys
 Offices in Fergus Falls,
 Moorhead, and
 St. Cloud

District 10

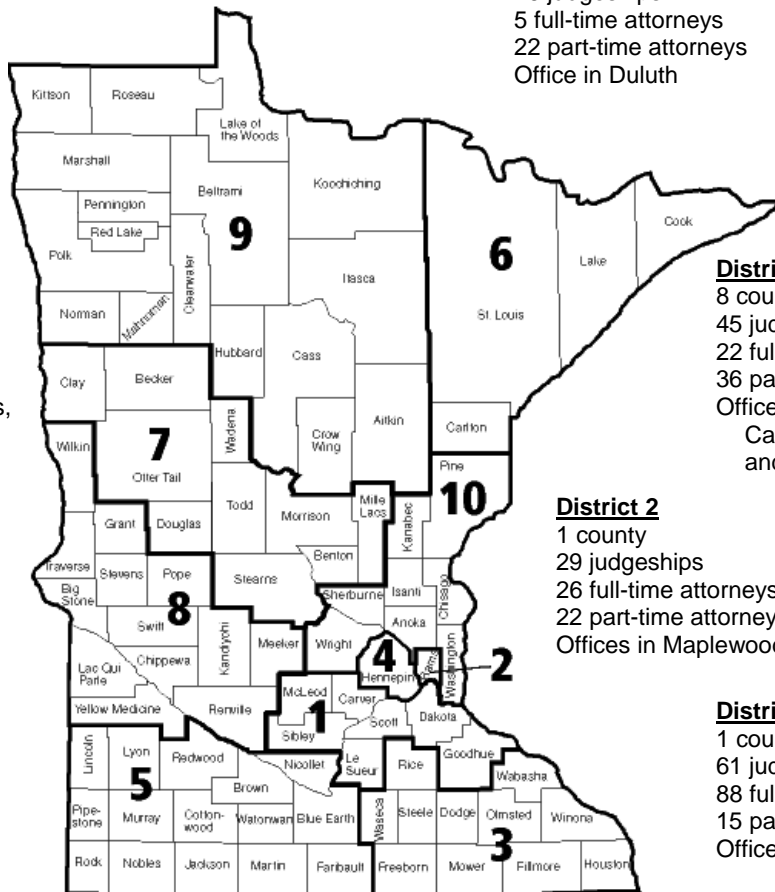
8 counties
 45 judgeships
 22 full-time attorneys
 36 part-time attorneys
 Offices in Anoka, Buffalo,
 Cambridge, Elk River,
 and Stillwater

District 8

13 counties
 10 judgeships
 1 full-time attorney
 16 part-time attorneys
 Office in Willmar

District 2

1 county
 29 judgeships
 26 full-time attorneys
 22 part-time attorneys
 Offices in Maplewood and St. Paul



District 5

15 counties
 16 judgeships
 11 full-time attorneys
 12 part-time attorneys
 Offices in Fairmont, Mankato,
 Marshall, and Worthington

District 1

7 counties
 35 judgeships
 15 full-time attorneys
 26 part-time attorneys
 Offices in Chaska, Glencoe, and
 Hastings

District 3

11 counties
 23 judgeships
 16 full-time attorneys
 16 part-time attorneys
 Offices in Owatonna and Rochester

SOURCE: Office of the Legislative Auditor, analysis of public defender and state court administrator's office data, as of February 2010.

were using online case reporting as of January 2002. The system is outdated, however, and the office plans to implement a new case management information system in 2010. The new system will pull case data directly from the court information system (making it more accurate) and is expected to support better tracking of cases.

ACCOUNTABILITY FOR PERFORMANCE

In addition to weaknesses in uniform administration of public defender services in Minnesota, we also found in 1992 that the public defender system lacked a clear chain of command leading to the board, defined goals, and adequate training and supervision of assistant public defenders. In this evaluation, we found that:

- **The Board of Public Defense and state public defender have taken important steps to improve accountability, but they could do more to measure and supervise the quality of public defender services.**

Performance Goals and Accountability

The Board of Public Defense has established five performance goals to guide the public defender system. They are listed in Table 2.2. The state public defender makes annual work plans structured around these goals and submits annual reports to the board on his success in meeting his plan. Several years ago, the state public defender began requiring district chiefs to submit annual work plans as well. The board's personnel committee reviews and approves these plans.

There is now a clear chain of accountability from assistant public defenders in the field to the Board of Public Defense.

Table 2.2: Board-Established Goals for the Public Defender System in Minnesota, 2009

- Ensure that the statewide system of public defense is a fully involved partner in the criminal justice system.
- Encourage excellent, creative, collaborative advocacy.
- Provide client-centered representation at both the trial and appellate level.
- Pay continual attention to training, skills-development, and mentoring for all staff.
- Demonstrate a commitment to recruiting and retaining a highly dedicated, well trained, and diverse workforce.

NOTES: The Board of Public Defense originally adopted performance goals in December 2006. The goals presented in this table reflect wording revisions adopted by the board in August 2009.

SOURCE: Minnesota Board of Public Defense policy document, August 2009.

The chain of accountability from assistant public defenders in the field to the Board of Public Defense is organizationally clear, and the state public defender uses a variety of mechanisms to ensure communication up and down the chain. The Board of Public Defense meets regularly with the state public defender, chief administrator, and district chiefs. On a rotating schedule, chiefs make presentations on their districts to the board.

The Board of Public Defense recently implemented new procedures to strengthen supervision of district chief public defenders.

Based on our attendance at Board of Public Defense meetings and a review of board agendas, minutes, and information packets for the past year, we think the board stays well informed on the status of its budget and the general activities of the state public defender and districts (training provided, district caseloads, staffing levels, meetings held, etc.). However, the district work plans varied in breadth and specificity, and some are less useful than others as tools for assuring accountability. In addition, district chiefs' presentations to the board focused on descriptive characteristics of their districts and caseloads. They were not written or used as a way to assess how well the district chiefs are doing their jobs. The board also did not use the presentations as platforms to discuss with the district chiefs solutions to specific district challenges.

The board recently concluded that the process used to assess the performance of district chief public defenders needed to be changed to provide more involvement by the state public defender and the Board of Public Defense. In August 2009, the board adopted a revised policy that added several components to the performance review process. For instance, the state public defender will annually prepare a written evaluation of the chief public defender's performance in managing the district and implementing his or her work plan. These evaluations and any written response from the chief will be submitted to the board's Personnel Committee for review.

The Board of Public Defense and state public defender have emphasized quality representation of clients as the office's top priority. However, they have not developed measures of outcomes related to the quality of representation provided to clients. In October 2009, the state public defender asked for and received the board's approval to begin developing criteria of quality representation. Lack of such criteria make it harder to objectively measure the performance of individuals and districts. It also makes it harder for the board to demonstrate to the Legislature and others the impact of budget and staff cuts.

Training and Performance Appraisal

The state public defender has established training programs for public defenders and procedures for assessing their performance. The state public defender said the office tries to provide enough in-house training to meet continuing professional education requirements for attorneys. Some training is statewide, while other sessions are district-specific. The office also has a mandatory training curriculum for new public defenders.

Annually, district chiefs and managing attorneys are to formally assess assistant public defenders' performance. The major appraisal elements are case administration, pre-trial preparation, advocacy, client communication, office communication, and professional development. The performance review process is also to include progress toward individual goals established the previous year and setting of goals for the coming year.

Public defenders responding to our survey were generally satisfied with their access to training and the quality of it, as shown in Table 2.3. About 94 percent of respondents reported that they were able to meet their most recent continuing legal education obligations on time. Still, 25 percent of survey respondents

disagreed or strongly disagreed that they had sufficient access to professional training. During our site visits, several public defenders noted that recent budget cuts had resulted in the loss of several important training opportunities, namely an annual, statewide meeting of public defenders and access to outside criminal defense training.

Table 2.3: Public Defenders’ Opinions of Training and Performance Appraisal, 2009

	Percentage of Respondents		
	Agree or Strongly Agree	Disagree or Strongly Disagree	No Opinion
I had sufficient access to professional training.	72%	25%	1%
The training I received was timely and useful.	79	15	2
I received a formal performance review that included goal setting.	82	12	3
My supervisor provided useful feedback and coaching.	74	17	5
My good work was recognized and celebrated in some way.	65	23	9

NOTES: Percentages are based on 277 survey responses. Percentages may not sum to 100 because of rounding and because we did not include in the table the small percentage of respondents who did not answer the question.

SOURCE: Office of the Legislative Auditor, analysis of public defender survey results, 2009.

We found weaknesses in the day-to-day supervision of assistant public defenders.

About three-quarters of respondents agreed that they received an annual performance appraisal and useful feedback and coaching from their supervisors, as shown in Table 2.3. Most of these performance reviews seem to have been done on time. Seventy-eight percent of public defenders responding to the survey said they had received their most recent review on time or within a few months. However, 11 percent said their last review was over six months late or still had not been provided.

Although training and performance appraisal procedures are in place, we found evidence of weaknesses in day-to-day supervision of assistant public defenders. For example, we asked assistant public defenders in our survey how often in the past year their supervisors had reviewed one or more of their cases in the context of assessing performance. Forty-three percent reported “not at all.”³ Managers and chiefs told us they rely extensively on complaints from clients and others to judge whether a public defender is doing an acceptable job.

The extent of day-to-day supervision is limited partly by the fact that supervisors (called managing attorneys) also represent public defender clients. Officials around the state interviewed for our site visits said supervisors’ caseloads limit

³ About 22 percent of assistant public defenders responding to our survey said their supervisors had reviewed a case once or twice; another 23 percent said three or more times.

The state public defender said he needs additional resources to increase the amount of time managers have available for supervisory duties.

the time they can spend monitoring and coaching assistant public defenders. Limited supervisory time also undermines managing attorneys' ability to handle problems before they become serious. Recognizing this, the Board of Public Defense established a policy that, by July 2008, managing attorneys would carry caseloads not greater than three-quarters time and, by January 2009, no greater than half time. According to the public defender's office, lack of resources has hindered the office's progress in reducing managing attorney caseloads.

Judges we interviewed and surveyed had mixed opinions of public defenders' performance and the extent to which they are supervised. During our site visits, some judges reported that public defenders were poorly managed and supervised and that the Board of Public Defense and state public defender were not sufficiently aware of or responsive to problems in the districts. In our survey, 43 percent of responding district court judges said that any problems with public defenders' performance were promptly and adequately addressed by their supervisors. However, 33 percent said this was not the case. Among this group of respondents, one district judge commented that, "there really is no supervision of the more senior public defenders, so problem behaviors are not addressed."

RECOMMENDATIONS

The Board of Public Defense should ensure that district chief public defenders' presentations to the board focus more on district performance and challenges rather than descriptive characteristics of the district.

The state public defender should establish stricter criteria for the structure and content of district chiefs' work plans.

The Board of Public Defense and state public defender should establish standards for and measures of quality representation of clients.

The Board of Public Defense and state public defender should improve management practices that ensure active supervision of full- and part-time assistant public defenders to monitor their performance representing clients and litigating in court.

The Board of Public Defense has made important progress establishing a uniform, accountable public defender system throughout the state. Nevertheless, we identified several areas that need attention. To improve accountability, the board and state public defender need to establish higher expectations for the quality of district chief work plans and presentations to the board. In turn, board members need to do more to engage district chiefs in meaningful discussions of district performance and policy. The board's changes to the process for assessing district chief public defenders' performance are a good starting point.

The board has stated its intent to better define and measure what it means to provide quality legal representation for public defender clients. Development of such measures will be another important step in improving the accountability of Minnesota's public defender system.

Supervision of assistant public defenders is an issue we raise in different contexts in this report. Here, we recommend that the Board of Public Defense improve procedures and expectations surrounding the supervision and appraisal of assistant public defenders' performance. The purpose is to ensure more active supervision and observation of how public defenders represent their clients. In discussing this recommendation, the chief administrator said that a shortage of resources may be a barrier to implementing it. For example, increasing the amount of time managers have available for supervisory duties would require an infusion of resources to lessen their case loads.

RELIANCE ON PART-TIME PUBLIC DEFENDERS

Minnesota depends heavily on part-time attorneys to provide public defense services around the state. In the early 1990s, when the Minnesota Board of Public Defense was leading the transition to a statewide system, national public defender standards called for public defender organizations to be staffed with full-time attorneys. However, the board felt that the existing pool of part-time public defenders in the state were a talented and committed group. Thus, the board chose to proceed using offices staffed with full-time attorneys as well as a network of part-time public defenders assigned to one or more counties, "so as to get the best of both worlds."⁴ In addition, the American Bar Association standards for public defender systems (see Table 1.2) call for active participation of the private bar. According to the public defender's office, this takes different forms in different states; in Minnesota, it is implemented through part-time public defenders.

In 1996, the state public defender concluded that using full-time public defenders had important advantages over retaining part-time attorneys.

In 1996, the state public defender's office formally assessed the pros and cons of full-time and part-time public defense arrangements.⁵ It concluded that establishing full-time public defender offices had several key advantages over, and was more cost effective than, retaining part-time attorneys to do the same work. As shown in Table 2.4, the office concluded that full-time offices can connect otherwise isolated public defenders to training opportunities and support staff services as well as improve accountability.

Today, the state public defender, chief administrator, and others in the public defense management team continue to believe there are important advantages to using a mix of full-time and part-time public defenders. They assert that retaining part-time public defenders is more cost-effective than using all full-time attorneys, provides a flexible way to assign public defenders when another attorney has a conflict of interest in a case, and allows the state to attract and retain very experienced lawyers who would otherwise not be public defenders.

⁴ Stuart, John, *Branch Offices For Public Defenders in Greater Minnesota: An Evaluation for the State Board of Public Defense* (St. Paul, 1996), 1.

⁵ *Ibid.* The evaluation was conducted about 16 months after new public defender offices had been established in Greater Minnesota. The evaluation focused on 6 of the 11 new offices.

Table 2.4: State Public Defender's Conclusions Regarding the Benefits and Risks of Using Full-Time Public Defender Offices, 1996

Advantages of Full-Time Public Defender Offices	
More accessible to clients	Provide identified "public defender" offices open during regular hours Have staff specialized in criminal and juvenile court work
Uniform delivery of support services and specialized resources	Access to training, investigation, legal research, and other services Access to social work support for planning alternative sentences
Improved interactions with the court system	Greater participation as a partner in the criminal justice system Quick coverage of cases when needed
Improved administrative structure and accountability	Facilitate regional balance of case assignments Serve as communication hubs for public defense staff, the courts, and outside organizations
More cost-effective	Among six full-time offices and three methods of estimating costs, full-time offices were more cost-effective than retaining part-time attorneys to do the same work.
Risks associated with Full-Time Offices ^a	
Reallocates resources	Adding full-time offices may reduce resources for part-time public defenders
Makes the handling of conflict cases more difficult	Over-investment in full-time offices may make it hard to pay qualified attorneys to handle conflict cases
Possible loss of expertise	Full-time public defenders may have less experience than part-time attorneys in a particular county

^a The report notes that "none of these [risks] seem to be an active problem at the moment, but they remain items to keep in mind when planning for the future."

SOURCE: Stuart, John. *Branch Offices For Public Defenders in Greater Minnesota: An Evaluation for the State Board of Public Defense* (St. Paul, 1996), 13-22.

We assessed the risks and advantages of the continued reliance on part-time public defenders and found that:

- **The Board of Public Defense has not fully addressed long-standing risks presented by heavy reliance on part-time defenders.**

In our 1992 report, we said that supervision of assistant public defenders needed to be strengthened because it was difficult for district chiefs to supervise and hold accountable public defenders working in different communities. The eight non-metro districts were staffed at the time almost exclusively by part-time defenders, and we recommended that the board establish full-time positions and offices in

In districts outside of the Twin Cities, about 65 percent of public defenders in 2009 were part time.

those districts.⁶ By 1995, the public defender system included 10 main district offices and 13 satellite offices. Yet as of July 2009, about 65 percent of assistant public defenders in districts outside of the Twin Cities were part-time.

Part-time defenders are typically assigned to work in one or more specific counties, and many of those residing in non-metro districts work without the benefit of a public defender office located in their immediate vicinities. Main district offices and satellite offices house support staff and the districts' managers. District chief public defenders interviewed during our site visits were concerned that without ready access to a public defender office, part-time public defenders do not request investigative or support services when needed and appropriate. They also have less opportunity to interact with other public defenders for brainstorming sessions, mentoring, and support. District supervisors may also not be aware of the workloads, performance problems, or other challenges faced by part-time defenders.

Many part-time public defenders in rural areas of the state work without the benefit of support from a nearby public defender office.

Several district chiefs told us they were seriously concerned about the performance of certain part-time public defenders, particularly those that often work alone and with limited supervision. According to the district chiefs, there is a danger that these part-time attorneys' skills have become stale and their litigation techniques outdated. One chief also said that part-time attorneys were reluctant to challenge judges during their public defense work for fear that doing so would damage their private practices.

In addition, the public defender's office and Board of Public Defense have anticipated a wave of retirements among long-term assistant public defenders, many of whom are part-time. The board has begun to address this issue. In a 2007 memorandum to the board, the chief administrator reported that the office had 116 public defenders over age 50 (and among them, 70 over age 55). Of those over age 50, 70 percent were part time, and of those over age 55, 74 percent were part time. He added that chief district public defenders were finding it difficult to recruit and retain part-time public defenders in certain parts of the state. For example, a part-time defender opening in the ninth district drew three applicants. Another part-time opening in northeastern Minnesota did not draw any qualified applicants. The chief administrator told the board, "with a significant number of employees over 50 years of age, the problem of recruiting and retaining defenders will only get worse."

In response to these concerns, the board approved two separate measures to attract and retain public defenders and in particular part-time defenders. The first was a 2008 legislative proposal that would have granted the Board of Public Defense the authority to establish a law school loan repayment assistance plan for public defenders (full and part time) not eligible for similar federal programs.⁷ Bills introduced in the House and Senate did not pass.

The board also approved a proposal to offer pay incentives to new hires who agreed to provide public defense services in counties where it was particularly

⁶ Only two districts (serving Hennepin and Ramsey counties) had offices staffed with full-time defenders.

⁷ [HF 3876](#), introduced in 2008.

difficult to attract attorneys. The board introduced the proposal in labor negotiations for the public defender contract for fiscal years 2008-09. According to the chief administrator, the union bargaining committee opposed the measure, and it was not included in the final contract.

The board has considered alternate models of representation in some areas of the state. For example, in some less populated areas, the board discussed capping caseloads for some part-time public defenders to ensure that their public defense work did not overrun their private practices. The board has also discussed the possibility of arranging for new part-time public defenders to share offices or expenses with local private firms.

RECOMMENDATION

The Board of Public Defense and state public defender should complete long-range planning efforts to:

- *estimate future staffing needs in light of anticipated retirements among long time public defenders;*
- *evaluate the proper balance of full-time and part-time public defenders needed in the future;*
- *study the costs associated with establishing additional public defender satellite offices; and*
- *consider other options to recruit and retain public defenders.*

The Board of Public Defense needs to implement strategies that address the concerns related to Minnesota's heavy reliance on part-time public defenders. This could include reintroducing the loan forgiveness program or acting on other options to recruit and retain public defenders. We also think the board needs to consider increasing the proportion of full-time to part-time public defenders and establishing additional satellite offices. To this point, court staff and judges said that distances and scheduling complexities in rural Minnesota, which support the use of part-time public defenders, must be part of this consideration.

The state public defender's office told us that it has established a long range planning committee to study a number of issues regarding the structure and operation of the public defender system. Two of the issues will be location of full time offices and the ratio of managing attorneys to assistant public defenders. When considering new satellite offices, the chief public defender said it will be important to consider associated costs, including rent, support staff, communications, and equipment.

STRATEGIC PLANNING AND BUDGETING

While we recommend that the public defender's office undertake a long-range planning effort related to staffing and location of offices, we also realize that the office faces resource challenges in doing so. We found that:

- **The public defender's office has few staff resources available for needed planning, research, and policy development activities.**

Administrative staffing for the public defender system is very lean.

The administrative services office is responsible for staffing the Board of Public Defense and day-to-day administration of the public defender organization. Excluding the state public defender and chief administrator, the office currently has 12 staff working out of the central office in Minneapolis. Of the central staff, five are directors of human resources, information services, training, fiscal services, and government relations. Reporting to these five directors are four information technology staff and an accounting officer. The remaining staff are temporary: a project manager for the new public defender information system and contract programmers. According to the chief administrator, the office in recent years eliminated five support staff positions in the central office through layoffs and leaving positions unfilled.

With this lean administrative structure, the board and state public defender have few staff available to support strategic planning and policy development activities. District chief public defenders have in-district management duties and some carry caseloads as well. This, along with the time it takes to drive to the Twin Cities area for policy committees, limits the ability of district chiefs to effectively contribute to policy development and planning activities.

In addition to having staff time available for planning and analysis, the public defender's office also needs good information. We assessed current procedures for determining caseloads and allocating the public defender budget and found that:

- **The public defender's office has had problems accurately quantifying public defender workloads.**

Not all public defender cases are alike. As discussed in Chapter 1, individuals have the right to a public defender in a variety of circumstances, ranging from misdemeanors to felonies and probation revocations. The amount of time required to prepare and defend a case is generally proportional to the severity of the case, with misdemeanors requiring fewer resources than felonies.

To quantify the levels of effort associated with different types of cases, Minnesota conducted a "weighted caseload study" and adopted a system of weighting cases based on the study in 1991.⁸ This system is still in use today. In it, one "case unit" equals the defense service that goes into the average

⁸ The Spangenberg Group, *Weighted Caseload Study for the State of Minnesota Board of Public Defense* (Newton, MA, January 1991).

misdemeanor case.⁹ Gross misdemeanors, felonies, and other types of cases are awarded a higher number of case units. Table 2.5 shows case units opened by district for fiscal years 2003-09.

Table 2.5: Weighted Case Units by District, Fiscal Years 2003 to 2009

	Weighted Case Units for Cases Opened (in thousands)						
	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
First	28.3	24.4	26.7	28.0	28.8	27.5	25.1
Second	36.6	31.2	34.9	36.4	35.1	31.7	30.5
Third	19.8	19.8	20.0	21.6	21.8	20.7	19.2
Fourth	86.2	86.1	83.5	87.8	87.3	71.9	92.4
Fifth	16.2	14.2	15.6	16.0	16.5	15.3	13.5
Sixth	15.9	13.7	14.4	15.7	15.4	15.3	13.3
Seventh	28.0	25.4	26.8	27.9	27.3	25.6	22.0
Eighth	9.3	8.6	9.1	9.7	9.2	9.2	9.0
Ninth	26.0	25.1	28.0	28.3	29.4	28.2	25.1
Tenth	<u>40.5</u>	<u>39.9</u>	<u>41.6</u>	<u>45.9</u>	<u>45.4</u>	<u>41.4</u>	<u>36.9</u>
Total	306.9	288.5	300.6	317.3	316.1	287.0 ^a	287.3

^a In 2008, the public defender's office stopped representing parents in child protection and termination of parental rights cases.

SOURCE: Office of the Legislative Auditor, analysis of public defender case management data.

Current caseload measures do not accurately reflect differences in public defenders' day-to-day workloads.

Case unit counts, however, do not accurately reflect public defenders' day-to-day workloads. In our 1992 evaluation report, we found that the weighted caseload study underlying Minnesota's standards was flawed. The study assessed how the annual caseload of the average public defender in Minnesota deviates from an ideal caseload size. The study did not provide district-level data on caseloads even while the authors acknowledged that the time for similar cases varied among districts. The standards do not reflect regional differences affecting the time needed to defend cases, nor do they reflect the complexity of criminal defense work today.

For example, driving time is a factor that significantly affects a public defender's workload. In sparsely populated but geographically large districts, public defenders spend much more time driving to see clients or attend court. One district chief pointed out that a fifteen minute hearing in a remote county can require two hours to complete. Public defenders who cover more than one county, or who cover conflicts in several counties, have workloads that are especially affected by high travel times. During one site visit, a public defender travelled six hours roundtrip to cover fewer than five court cases. As a result, the

⁹ The caseload standards for full-time attorneys per year are: 100-150 felonies; 250-300 gross misdemeanors; 400 misdemeanors; 80 child welfare cases; 175 other juvenile cases; or 200 other cases. To calculate how many case units each type of case represents, the misdemeanor caseload standard is divided by the standard for the type of case. For example, a felony case is 400/150=2.67 case units.

Public defenders’ workloads are affected by driving distances, prosecutors’ charging practices, and other characteristics of local criminal justice systems.

average time expended for the same case could vary considerably in metropolitan and rural areas.

Local caseloads are also influenced by local prosecutors’ charging practices and whether they use pre-trial diversion programs.¹⁰ While the public defender and court systems are statewide, prosecution is still locally controlled by counties and cities, and prosecutors’ practices vary. For example, the individual decisions of city and county prosecutors regarding how much evidence they need to charge a case greatly affects how many cases are filed. In addition, pre-trial diversion should reduce caseload burdens on district courts and the criminal justice system. However, diversion programs are not used by prosecutors in some parts of the state.

The levels of effort codified in the 1991 caseload measures do not reflect changes in criminal law and procedure that have taken place over the past 20 years. As we discuss in more detail in Chapter 3, changes to Minnesota’s criminal statutes and the consequences associated with crimes have changed the nature of public defender workloads. More complex cases and serious consequences mean public defenders need to expend more time and effort to represent their clients. For example, Minnesota laws defining sex crimes and their associated criminal and civil consequences have changed considerably since 1991. According to the public defenders we interviewed, cases involving sex crimes are particularly time-intensive. Minnesota’s caseload standards do not reflect this reality. One public defender summarized his views on the causes of high workloads this way:

When I arrived here twenty years ago, I was amazed at the low volume and the number of “low level felonies.” Over the years I have seen an incredible increase in both the numbers and seriousness of the felonies we are seeing. Criminal sexual conduct and armed robberies, violent assaults, etc. have increased exponentially. At the same time, we have less money for experts and investigation, and are required to be in multiple “boutique” courts. All the while, the Legislature is increasing the penalties for most crimes and giving prosecutors less flexibility to negotiate settlements. Have I said enough!?

In addition, we found that:

- **The process used by the Board of Public Defense to allocate resources among districts is outdated.**

The board’s budget and staffing allocation procedure continues to rely predominantly on the 1991 caseload study. The current budget allocation process begins with a division of funds proportional to prior year weighted caseloads. These allocations are then roughly adjusted to account for factors such as geography, differences in practice, and the availability of resources such as law

¹⁰ “Pretrial diversion” means the decision of a prosecutor to refer an offender to a diversion program on condition that the criminal charges against the offender will be dismissed after a specified period of time, or the case will not be charged, if the offender successfully completes the program. *Minnesota Statutes* 2009, 401.065, subd. 1(2).

clerks and diversion programs. The rough adjustments to caseloads are based on the number of excess hours logged by part-time public defenders in districts outside of the Twin Cities metropolitan area. The chief administrator acknowledged that this not a perfect measure, but he believes the method provides some relief to districts where travel, scheduling, and lack of support resources are issues.

We think the budget allocation process should be updated. At its core, the process is based on flawed and outdated caseload weighting done in 1991. The current process of adjusting staff allocations based on excess hours reported by part-time public defenders is questionable as well. The state public defender and chief administrator are not confident that part-time public defenders accurately report the excess hours they work, so use of excess hours as a proxy for regional workload differences is suspect.

Although caseload measures are flawed, it is important that the public defender's office be able to have a relative measure of workloads per public defender. Comparison of workloads per attorney over time and among districts is key to internal decisions on resource allocation and policy discussions with the Legislature. However, we found that:

- **Lack of consistent data on staffing levels limits the ability to analyze public defender caseloads over time.**

Our efforts to analyze trends in caseloads per attorney were stymied because of incomplete data on public defender staffing. As we noted in Chapter 1, the data on full-time-equivalent (FTE) staffing included in Board of Public Defense budget submissions are imprecise. According to the public defender's office, FTE counts compiled for the biennial budget documents do not consistently account for public defenders in Hennepin and Ramsey counties who are county employees. FTE counts may also include open positions that the state public defender did not intend to fill.

Independent of the budget process, the public defender's office does not maintain detailed staffing data by position type in its information systems. For example, we asked the public defender's office for the number of attorneys and attorney FTEs employed at the beginning of each year for fiscal years 2003 to 2009. The office could not readily produce these data. Instead, the chief administrator reviewed documents prepared for various Board of Public Defense meetings and provided snapshot data from the documents on the number of public defender FTEs for 2007 through 2009. The chief administrator said that a staffing component had been planned when the office implemented its management information systems, but the staffing functions were eliminated to reduce costs.

RECOMMENDATIONS

The Board of Public Defense should seek the resources necessary to fund a planning and analysis position in the administrative services office.

When funding becomes available, the Board of Public Defense should conduct a caseload study that includes methods sufficient to develop separate caseload standards for metropolitan area, suburban, and rural public defender districts.

The state public defender should ensure that the office collects and records staff counts by position at regular intervals during the fiscal year.

Minnesota's public defender system faces many short- and long-term challenges. As we said earlier, it is imperative that these challenges be addressed with analytical and strategic planning. Valid and reliable data are essential to the process. We think it is important that, when resources become available, the Board of Public Defense conduct a new caseload study and devote more administrative staff time to strategic analysis and planning. In the meantime, the public defender's office can establish a procedure for capturing and recording detailed staffing data at standard intervals.

MANAGEMENT OF RESOURCE REDUCTIONS

We found that as a result of both legislative action and rising agency costs:

- **The Board of Public Defense has experienced a series of budget shortfalls since 2002 and taken reasonable actions to reduce costs.**

In fiscal year 2003, the legislature cancelled \$3.4 million of the agency's \$54.7 million appropriation. The Legislature appropriated funding for the fiscal year 2006-07 biennium sufficient to allow the board to fill an additional 30 attorney positions. In June 2008, the board closed a \$4 million projected deficit for fiscal year 2009. This amount included the 2008 Legislature's \$1.5 million reduction to the board's appropriation and shortfalls caused primarily by rising personnel and insurance costs.

The public defense appropriation for fiscal years 2010-11 signed by the Governor called for a \$4 million reduction in the board's budget over the two years. But the bill also included a request that the Supreme Court implement a \$75 increase in the attorney registration fee, with the funds to be dedicated to public defense.¹¹ At the time, legislative staff estimated that the fee increase would result in revenues of about \$2.7 million for fiscal years 2010 and 2011. The Supreme Court enacted the fee increase in November 2009, leaving a net reduction to the board's budget of approximately \$1.3 million. However, the fee increase is

The state's appropriation for public defense services was reduced in the 2008-09 and 2010-11 biennia.

¹¹ *Laws of Minnesota* 2009, chapter 83, art. 2, sec. 49.

temporary (expiring July 1, 2011). Thus, it does not provide a long-term solution to public defense funding problems.

Over 90 percent of the board's budget is related to personnel or contract obligations, leaving little room to achieve significant cost savings without affecting current personnel. Beginning in 2003, the board used several methods to reduce personnel costs short of layoffs. These included a hiring freeze and hiring delays; voluntary separation and early retirement incentives; and a voluntary salary savings leave program. The board has continued to use these measures as needed in the years since. As of May 2009, for example, 22 individuals had taken advantage of the most recent round of voluntary separation, early retirement, and salary savings options. In addition, the board and Teamsters Union representing public defenders agreed to a fiscal year 2010-11 contract with no cost of living adjustments and a two-year freeze on step increases.

Voluntary personnel actions and layoffs in 2008 resulted in a reduction of 53 full-time-equivalent public defender positions.

When voluntary staff reductions were not sufficient, the board laid off staff in 2003 and 2008. In total, voluntary measures and layoffs resulted in a 2003 staff reduction of 20 FTEs. In fiscal years 2006-07, the board had sufficient funds to regain 30 positions. Then, the 2008 personnel actions resulted in a reduction of 50 attorney FTEs in the districts and 3 attorney positions in the appellate office. The 2008 reductions accounted for a 12 percent loss in attorney staff. The board chose not to lay off any nonattorney staff in 2008 because it thought support staffing was already at a minimal level.

The Board of Public Defense authorized other budget-saving actions in June 2008, as shown in Table 2.6. These included the elimination of nonmandated services, cutbacks in public defender participation in specialty courts, reductions in the time public defenders were available for court appearances, and prioritization of felony and gross misdemeanor cases over misdemeanors. Counties protested the decision that public defenders not represent parents in child protection cases. But the Minnesota Court of Appeals ruled in September 2009 that counties commencing child protection cases are obligated under state law to pay reasonable compensation to attorneys appointed to represent indigent parents.¹²

District chiefs developed district-specific plans for controlling public defenders' time in court and prioritizing assignment of cases. For example, the First District stopped sending public defenders to misdemeanor arraignment hearings¹³. The district also stopped covering extra court calendars.¹⁴ The Fifth District created a waiting list for certain misdemeanor cases and reduced the number of staff available for certain courts. The Seventh District also declined to appear at

¹² *In the Matter of the Welfare of the Child of: S.L.J., Parent*, 772 N.W.2d 833 (Minn. Ct. App. 2009). The state law requiring counties to appoint counsel for parents is *Minnesota Statutes* 2009, 260C.331, subd. 3(4).

¹³ An arraignment hearing is a hearing before a judge during which the judge reads the charges to the defendant and the defendant pleads guilty or not guilty.

¹⁴ District courts generally have a set schedule or "calendar" establishing when certain types of cases are heard. A court may add extra cases if there are an unusually large number of cases on a given day, an extra judge is available, or there is a case backlog.

arraignment hearings and extended timeframes for scheduling certain court appearances. The district also established protocols for making case assignments that placed highest priority on clients being held in custody or with demands for speedy trials, followed by certain felony cases. Driving under the influence, drug, and property offenses received lower priority, and misdemeanors were assigned the lowest priority.

Table 2.6: Changes to Public Defender Services Resulting from Budget Actions, 2008

Eliminated nonmandated services	<p>Effective with new cases after July 8, 2008, public defenders stopped representing parents in child protection and termination of parental rights cases. As a result, responsibility for these cases shifted to counties.^a</p> <p>Public defenders were appointed to represent parents in about 5,600 child protection cases in 2007. This accounted for about 3 percent of cases (or 9 percent of weighted case units).</p>
Reduced participation in specialty courts	<p>Public defenders stopped representing clients in post-adjudication specialty courts, such as drug courts, effective July 8, 2008.</p> <p>Public defenders are required to represent clients through sentencing. After sentencing, public defenders are required to be involved only if the client violates the terms of the sentence. Thus, defendants sentenced to participation in specialty court programs do not have a right to counsel while participation in the program is going smoothly.</p>
Implemented scheduling controls	Districts implemented scheduling limitations to control the time public defenders spend in and out of court.
Prioritized case assignments	Districts implemented steps to prioritize services to in-custody criminal defense clients.

^a Hennepin County is the exception; it continued to provide supplemental funding to the Fourth District public defender's office to pay for public defender representation of parents in child protection cases.

SOURCE: Minnesota Board of Public Defense budget reports and meeting minutes, 2008.

We think the board's cost reduction actions were reasonable. The board's actions were guided by an appropriate set of budget reduction principles and service priorities. They also took into account the necessary balancing of attorney and support staff levels.

Delivery of Public Defender Services

Because of its legal mandate, the public defender system has no control over the volume of cases it must handle. Caseload size is determined by external factors, such as the level of crime; state sentencing policies; and the practices of judges, prosecutors, and police. On a day-to-day basis then, workloads for public defenders are controlled largely by the number of defenders and support staff available. With this in mind, we evaluated the size and nature of public defenders' current workloads and the impact of workloads on the way public defenders do their work, case outcomes, and court efficiency.

PUBLIC DEFENDER WORKLOADS

Although we identified flaws in the public defender's office weighted caseload data, a quantified measure of attorney caseloads is essential to the discussion of public defender workloads on a day-to-day basis. Consistent trend data on public defender staffing levels were not available for a long term analysis, but we used what data the public defender's office could provide to calculate workloads per attorney full-time-equivalent (FTE), as shown in Table 3.1.

Based on these data, survey results, site visit observations, and the many interviews conducted as part of our site visits, we found that:

- **Public defender workloads are too high and exceed state and national standards.**

State and national standards call for public defenders to carry no more than 400 case units per year. As shown in Table 3.1, Minnesota's weighted caseloads per attorney far exceed that standard. For example, the statewide average weighted caseload per public defender FTE was 779 at the end of fiscal year 2009. Weighted caseloads in the districts ranged from a low of 688 in the seventh district (10 counties in central Minnesota) to 860 in the ninth district (17 counties in the northwest).

When caseloads exceed these national and state standards, it is more difficult for public defenders to adequately prepare their cases. In order to effectively represent their clients, attorneys need sufficient time to interview clients and witnesses, perform legal research, draft motions, request investigative and expert services, and otherwise prepare for hearings and trials. Public defenders and others described the current environment as one of practicing triage, moving from crisis to crisis rather than thoughtfully managing cases. Insufficient case preparation can result in mistakes. In one district, a public defender's inattention led to a client charged with a misdemeanor spending 60 days (the entire sentence

Table 3.1: Number of Full-Time-Equivalent Attorneys and Case Units per Attorney, 2007 to 2009

District	Number of Full Time Equivalent (FTE) Attorneys and Weighted Case Units Per FTE					
	2007		2008		2009	
	FTE	Case Units per FTE	FTE	Case Units per FTE	FTE	Case Units per FTE
First	40	688	40	732	35	739
Second	48	761	49	691	42	755
Third	31	689	31	691	27	745
Fourth	118	789	107	721	104	819
Fifth	24	652	24	682	20	717
Sixth	24	643	24	654	20	712
Seventh	38	752	39	674	35	688
Eighth	14	661	14	656	12	786
Ninth	37	779	35	834	32	860
Tenth	<u>56</u>	811	<u>60</u>	724	<u>49</u>	823
Total	429	748	422	714	376	779

NOTES: FTE counts are snapshots as of May 2007, May 2008, and May 2009. FTE data for earlier years were not available. Case units per FTE were calculated using weighted case units for the previous calendar year. District FTEs may not sum to total due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of public defender case management data.

We observed public defenders working under intense time pressures.

if found guilty of the crime) in jail waiting for trial. Smaller errors are more common, such as a public defender or client failing to appear in court after a re-scheduling.

Criminal court stakeholders we surveyed reported that public defender workloads have increased since 2002, as shown in Table 3.2. Roughly 60 percent of public defenders, public defender staff, and district court judges responding to our surveys reported that public defenders' workloads were much higher in 2009 than 2002. County court administrators and county prosecutors also reported in our surveys that public defender workloads had increased, but to a lesser extent. One court administrator commented:

I think the public defenders that we have work very hard and do the best they can with the excessive volume of cases per attorney. However, this does not always translate into quality representation because the PD's office is grossly understaffed. The long-term impact of being in triage mode could have tragic results.

During our site visits, we observed public defenders under such time pressures that they often had about 10 minutes to meet each client for the first time, 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. One public defender showed us her schedule, which had a criminal sexual conduct trial on the same

Table 3.2: Opinions of the Change in Public Defender Workloads from 2002 to 2009

Change in Public Defender Workloads Since 2002	Public Defenders (N=225)	Public Defender Staff ^a (N=76)	District Court Judges (N=145)	County Court Administrators (N=54)	County Prosecutors (N=100)
Workload is much lower	0%	0%	0%	0%	4%
Workload is somewhat lower	3	0	2	6	8
Workload has not changed	8	3	10	11	8
Workload is somewhat higher	28	26	24	39	62
Workload is much higher	59	66	61	35	15
Don't know	2	5	2	9	3

NOTE: Only respondents who reported working with public defenders since 2002 answered this question.

^a Nonattorney staff include investigators, paralegals, legal secretaries, dispositional (sentencing) advisors, and office managers.

SOURCE: Office of the Legislative Auditor, analysis of public defender, public defender's office staff, district court judge, county court administrator, and county prosecutor surveys, 2009.

day she was scheduled to staff an arraignment calendar to pick up new cases. Another public defender was not available to cover the arraignment calendar for her. She anticipated having to ask the trial judge to adjust the trial proceedings so that she could handle arraignments for a half a day. She also told us she was so overbooked that she routinely scheduled up to five trials in a day, anticipating that most would settle. One judge commented that such over-booking is extremely stressful and that he could not imagine having to prepare for several trials at once. Another judge commented on our survey:

I get repeated complaints [from defendants] that the public defenders don't return calls and the pre-trial is the first time they have met with the public defender. Although some of the clients would complain no matter how good the services were, the complaints are legitimate. The returned calls don't occur because [public defenders] are over worked, not because they don't work hard.

A court administrator shared this example in her survey response:

There are myriad of continuance requests. An example: [We have] a two-hour omnibus hearing this Monday. A public defender's request [to continue] came in at 3:45 today, Friday.

There are 16 officers subpoenaed to testify. The defendant is in custody. The public defender has not been able to get prepared.

Many public defenders and judges are concerned about increased stress and declining morale among public defenders due to high workloads. Public defenders we interviewed reported that, in order to provide competent representation, they donated their personal time to visit clients in jail, return phone calls, and otherwise prepare their cases.¹ They described feeling “underwater,” “bruised,” “beat up,” and being treated as “the help.” Separately, managers described instances in which they found public defenders showing signs of great emotional stress.

One public defender commented on our survey:

There aren't enough attorneys, there's not enough time to meet with my clients. My schedule is so crazy with three counties that my clients end up waiting forever. I'm not notified when I've got in-custody clients waiting for a long time for a hearing because MY schedule is a problem. I often don't have time to prepare for important hearings, so I'm constantly requesting continuances and then the clients' cases get dragged on and on.

We also found that:

- **Many factors influence public defender workloads.**

Staffing cuts sustained in 2008 were the most immediate cause of high public defender workloads.

The most immediate cause of high public defender workloads is staffing cuts sustained in 2008. However, other factors such as the severity of the consequences of crimes and challenging clients affect the amount of attorney time required per case.

State legislation in recent years has increased the severity of consequences for certain crimes. When the consequences for a crime are more severe, clients are less likely to settle, and it becomes more essential for public defenders to provide zealous advocacy to have charges dropped or to avoid conviction. As illustrated in Table 3.3, these legislative policy changes have taken various forms. For example, revised sentencing guidelines have increased presumptive sentences for many crimes. The Legislature has recategorized some minor crimes to higher level offenses, and created “enhanceable” offenses. These are offenses for which additional convictions for the same offense carry a higher penalty. For example, successive domestic assaults are treated more seriously than the first incident, so public defenders should spend more time fighting the first conviction, even when the initial sentence is minimal.

¹ Part-time public defenders reported consistently working more than their contracted hours, and full-time public defenders told us they were working uncompensated overtime as well. The chief administrator reported that excess hours among part-time staff rose from 28,000 hours in fiscal year 2000 to 44,000 in fiscal year 2008. We did not attempt to verify that information. The chief administrator said the office did not track uncompensated time among full-time public defenders.

Table 3.3: Increased Severity of Consequences Associated with Crimes in Minnesota

Type of Policy Change	Description
Recategorized crimes	Changes of offense severity level from misdemeanor to gross misdemeanor or gross misdemeanor to felony. Example: Purchasers of tickets to dogfights are now guilty of a gross misdemeanor rather than a misdemeanor.
Increased sentences	Legislation that increases penalties for specific offenses. Example: Mandatory life sentences for certain first time sex offenders were added in 2005.
Sentencing guidelines revisions	Changes to the sentencing guidelines grid that adjust the range or duration of presumptive sentences, alter the way criminal history score points are considered, or change whether an offense is a presumptive prison commitment or a presumptive stayed sentence. Example: In 2005, guidelines ranges were increased to allow for greater sentences without a departure.
Enhanceable crimes	Additional convictions for the same offense carry a higher penalty. Example: First time driving while impaired offenses (without other aggravating factors) are misdemeanors, but successive offenses are gross misdemeanors and felonies.
Creation of new crimes	Broader scope of actions or circumstances that define a crime. Examples: Broadening the definition of electronic solicitation of children and creation of domestic abuse by strangulation as a separate, more serious, offense than domestic abuse.
Collateral (civil) consequences	Legal or social consequences incurred when charged with or convicted of a crime. Examples: Banning access to professional licenses in certain professions, requiring sex offender registration, or encountering difficulties gaining housing or employment.

SOURCE: Office of the Legislative Auditor compilation.

Statutory changes increasing the severity of consequences attached to certain crimes have also contributed to high workloads.

Criminal charges or convictions in Minnesota are also more likely to have civil consequences attached. These consequences (often referred to as “collateral consequences”) include denied access to public assistance or student loans; prohibition from owning a gun; requirements to register as a sex offender; and loss of immigration status, jobs, or housing. Public defenders stated that collateral consequences were big impediments to resolving cases because the consequences of pleading guilty or otherwise settling the case can be so high. In addition, many civil consequences attach upon being charged with a crime (not convicted). In such cases, public defenders may choose to litigate whether there is probable cause for the charge.

Other factors mentioned by public defenders as influencing their workload included additional hearings required by new legal requirements (such as pre-sentence investigations and extended juvenile jurisdiction) and increased use of problem-solving courts (such as drug and mental health courts), which require far more court appearances than traditional courts.²

Clients with special challenges also add to the time needed for representation. Public defenders told us that more so today than in the past, they have clients who do not speak English and may not understand American legal concepts. Translating the language and ideas of a criminal case can be time consuming. In addition, these clients often cannot take plea deals because of the immigration consequences of criminal charges or convictions.

Public defenders also stated that they see more clients with mental illness and chemical dependency than they did previously. During our site visits, we met clients who had undergone shock treatment and suffered memory loss, sold their psychiatric medicine for money to survive, suffered from co-occurring mental illness and chemical dependency, and some who simply could not understand legal ideas or processes. Public defenders may need to spend far more time explaining the process to clients in these circumstances.

QUALITY OF REPRESENTATION

Given widespread concern over public defender workloads, we assessed the impact workloads have on public defenders' ability to represent their clients. Those we interviewed generally agreed that public defenders were, on the whole, excellent criminal defense attorneys. However, we found that:

- **Public defenders reported that they are spending limited time meeting with clients and preparing cases.**

Public defenders reported that high workloads made it difficult for them to have enough time with their clients to build trust, explain the system and charges, and make decisions with their clients regarding their defense. Many public defenders identified client trust as essential to providing quality representation and ensuring the efficient resolution of cases. Attorneys build trust by spending time with their clients and being accountable to them. Some public defenders and judges said that when clients trust their attorneys, they can trust the attorneys' advice on how to resolve the case, thereby leading to more efficient disposition of the case. One chief public defender pointed out that clients' trust in the fairness of the judicial system is linked to their decisions to abide by the law in the future.

Public defenders responding to our survey felt strongly that they were not spending enough time with clients, as shown in Table 3.4. For example, 1 percent of responding public defenders strongly agreed that they spent enough time with clients; 21 percent strongly disagreed. Public defenders were also

Time pressures make it more difficult for public defenders to build trust with clients and make decisions about their defense.

² Minnesota currently has 37 problem-solving courts. In 2008, the board chose to stop providing representation in post-sentencing problem-solving courts in order to save public defender staff time. However, public defenders continue to staff pre-sentencing problem-solving courts.

Table 3.4: Public Defenders' Opinions of their Ability to Represent Clients, 2009

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
I had sufficient time with clients.	21%	46%	27%	1%	0%
I regularly visited clients in jail.	1	14	56	18	2
I returned phone calls from clients within one working day.	7	30	50	9	1
When I entered the courtroom, I felt well-prepared for each case I had on the calendar.	7	35	40	11	1
I provided constitutionally adequate representation for all my clients.	4	14	47	28	4
I ran into potential ethical issues surrounding my obligation to provide competent and diligent representation.	7	40	34	11	4

NOTES: The full question read, "Think about your service with the public defender's office in the past year, then indicate the extent to which you agree with the following statements." Percentages are based on 277 assistant public defenders, managing attorneys, and district chiefs responding to our survey. Percentages may not sum to 100 because a small percentage of respondents on each item reported that it was not applicable or left it blank. The percentage of blank/not applicable responses ranged from 2 percent to 8 percent.

SOURCE: Office of the Legislative Auditor, analysis of public defender survey, 2009.

concerned about other indicators of timely client interactions. About 15 percent of respondents strongly disagreed or disagreed that they regularly visited clients in jail; 37 percent strongly disagreed or disagreed that they returned client phone calls within a day.

Public defenders' responses to our survey also indicate their concern over the quality of representation they provide. For example, 42 percent of public defenders responding to the survey disagreed or strongly disagreed that they were well prepared for each of their cases in the past year. Most (75 percent) felt they had provided constitutionally adequate representation in the past year, but 45 percent also agreed or strongly agreed that they had run into potential ethical issues surrounding their ability to provide competent and diligent representation.³

We surveyed groups of public defender clients to understand how they felt about the quality of representation provided by their public defenders.⁴ Relative to other aspects of their public defenders' performance, clients responding to our

³ As discussed in Chapter 1, the fact that representation is constitutionally adequate does not show that the representation meets standards of quality. Rather, a finding of constitutionally inadequate representation would show extreme dysfunction.

⁴ The survey included six questions related to the client's satisfaction with his or her public defender. To distribute the survey, we enlisted the aid of probation officers in Dakota, Hennepin, McLeod, Olmsted, and Sibley counties (encompassing 14 probation office locations). Parole officers or administrators in each office handed a survey to visiting clients who said they had been represented by a public defender. In addition, a member of our evaluation team visited two courthouses and approached public defender clients who had just completed a settlement conference in which they were sentenced or the case was dismissed. In total, we obtained completed surveys from 317 former clients.

Most public defender clients we surveyed were generally satisfied with their public defenders, but a significant number of district court judges said that high workloads were harming the quality of representation.

survey were less satisfied with the amount of time spent with their public defenders and the timeliness with which public defenders returned their phone calls. As shown in Table 3.5, over 80 percent of the clients we surveyed reported that their public defenders treated them with respect, listened to them, and explained things in an understandable way. A smaller proportion, yet still a majority, said their public defenders spent enough time with them, returned phone calls in a reasonable amount of time, and did a good job representing them.

Table 3.5: Public Defender Client Survey Results, 2009

	Percentage of Respondents		
	Yes	No	Don't Know or Did Not Respond
My public defender listened to me.	82%	12%	6%
My public defender treated me with respect.	84	10	6
My public defender explained things so I could understand.	83	15	2
My public defender spent enough time with me.	61	33	6
My public defender returned my phone calls in a reasonable amount of time. ^a	55	27	19
My public defender did a good job representing me.	67	23	11

NOTES: Percentages are based on 317 survey responses. Percentages may not sum to 100 due to rounding.

^a There are a variety of circumstances in which a public defender may not need or be able to call a client, for example, when a case is heard and resolved at the first appearance in court or if the defendant were homeless. This likely explains the higher rate of respondents who either skipped this question or replied "don't know."

SOURCE: Office of the Legislative Auditor, analysis of public defender client survey, 2009.

District judges we interviewed and surveyed are also concerned that public defenders' workloads are having a negative impact on the quality of representation. Only one-third of district judges responding to our survey said the public defenders they interacted with spent enough time with clients, as shown in Table 3.6. Nearly a quarter of the district judges responding were concerned that public defenders did not have sufficient knowledge of their cases or were not thoroughly prepared for court. Like the public defenders we surveyed, most district judges (90 percent) felt that defenders were providing constitutionally adequate representation, but many (37 percent) also said that public defenders appearing in their courtrooms had run into potential ethical

Table 3.6: District Judges' Opinions of the Representation Provided by Public Defenders, 2009

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Opinion
Public defenders I know spend enough time with their clients.	52%	8%	27%	6%	6%
At hearings, public defenders in my courtroom displayed thorough knowledge of their cases.	0	25	60	13	2
At trials, the public defenders appearing before me were fully prepared.	1	22	55	17	4
Public defenders appearing in my courtroom provided constitutionally adequate representation for all of their clients.	1	10	57	33	0
Public defenders ran into potential ethical issues surrounding their obligation to provide competent and diligent representation.	6	45	31	6	11

NOTES: The full question read, "Please think about your interactions with public defenders in the past year, then indicate the extent to which you agree with the following statements." Percentages are based on 191 district judges responding to our survey. Row percentages may not sum to 100 because some respondents did not answer the question.

SOURCE: Office of the Legislative Auditor, analysis of district court judge survey, 2009.

issues with regard to competent and diligent representation. One judge commented on our survey:

While the defense provided has met constitutional and ethical standards, the increasing caseload, complexity of cases, and the difficulty of scheduling has resulted in lower quality of service. It is at a point where it will soon be that the services of the public defender will not meet these requirements.

CASE OUTCOMES

Although public defenders are struggling with daily representation of their clients that does not necessarily mean that case outcomes are less favorable. We investigated this issue and found that:

- **It is difficult to empirically establish the actual impact of public defender workloads on the outcome of cases.**

The difference between good and poor representation may not be reflected in whether clients are found guilty or innocent. Rather, it is in the quality of the plea agreements that public defenders obtain. We were not able to assess the quality of plea agreements. An empirical study in the quality of plea agreements would require detailed information about individual cases, an ability to compare cases with different defendants and facts, and detailed disposition data over time.

Most public defender cases are settled with a plea agreement, but it is difficult to assess the impact of high workloads on the quality of these agreements.

Public defenders told us that high workloads have increased pressure to settle cases rather than proceeding to trial or moving to dismiss charges. Increases in the number of settlements and decreases in the number of trials and cases dismissed may be evidence of less zealous representation by public defenders. We analyzed data on the disposition of public defender cases to look for patterns in plea agreements, motions to dismiss, and trial rates.⁵

Our analysis did not reveal a clear pattern of change in case outcomes statewide. Statewide, case disposition trends varied little from fiscal year 2004 to fiscal year 2009, as shown in Table 3.7. For example, trial rates remained at just over one percent during the six-year period. The percentage of cases dismissed declined slightly, then rose in fiscal year 2009, and the percentage of cases settled with a plea agreement ranged from 80 percent to 82 percent. However, looking only at statewide trends can mask differences among districts and among counties. In addition, the aggregated dismissal data does not distinguish between dismissals initiated by the prosecution and defense (the latter being a more direct indicator of public defenders' behavior). As a result, we conducted a more detailed analysis.

Table 3.7: Disposition of Public Defenders' Felony, Gross Misdemeanor, and Misdemeanor Cases, Fiscal Years 2004 to 2009

	Number of Cases					
	FY04	FY05	FY06	FY07	FY08	FY09
Total	78,116	77,174	86,600	91,334	86,906	86,391
Disposition	Percentage of Cases					
	FY04	FY05	FY06	FY07	FY08	FY09
Plea Agreement	80.4%	80.4%	81.4%	82.1%	82.0%	80.5%
Dismissal ^a	18.4	18.5	17.4	16.8	16.9	18.4
Trial	1.2	1.1	1.2	1.1	1.1	1.1

NOTE: The analysis excluded child protection and juvenile cases.

^a Includes dismissals initiated by prosecution motion, defense motion, or the bench and cases dismissed before indictment.

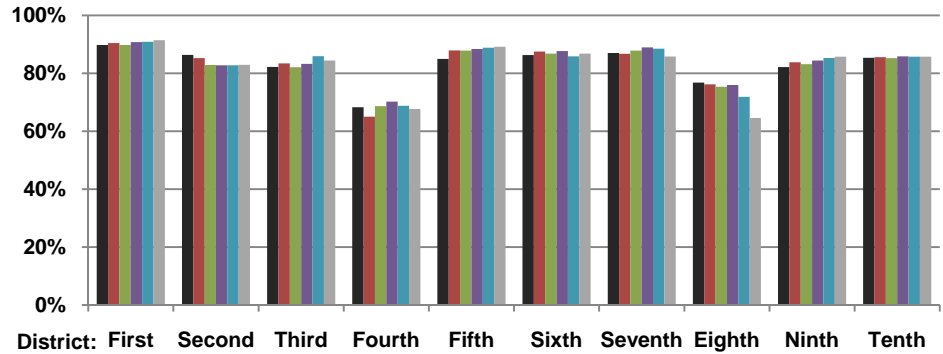
SOURCE: Office of the Legislative Auditor, analysis of public defender case management data.

Our more detailed analysis by district also did not clearly demonstrate a link between workloads and case outcomes. As shown in Figure 3.1, districts differ in the percentage of cases dismissed by defense motion, settled with plea agreements, and closed with a trial. The first year of data available on dispositions by case type was for fiscal year 2004 and our analysis period began there. But public defender staffing levels in 2004 and 2005 were similar to those of 2008 and 2009. Both periods experienced a reduction of public defenders

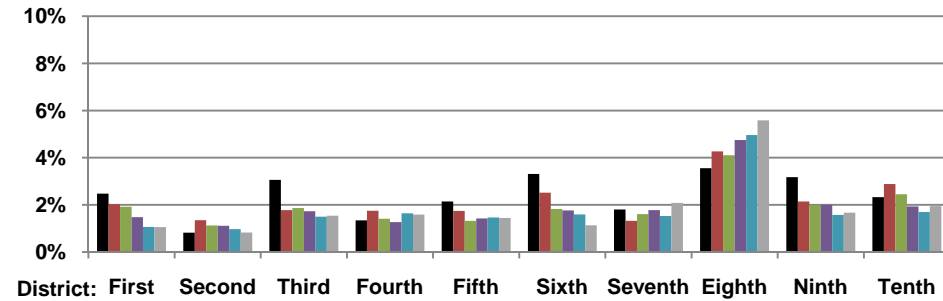
⁵ The first set of consistent data on case dispositions was available from the public defenders' case management system for fiscal year 2004; thus, we analyzed trends for fiscal years 2004 to 2009.

Figure 3.1: Felony, Gross Misdemeanor, and Misdemeanor Case Dispositions by District, Fiscal Years 2004 to 2009

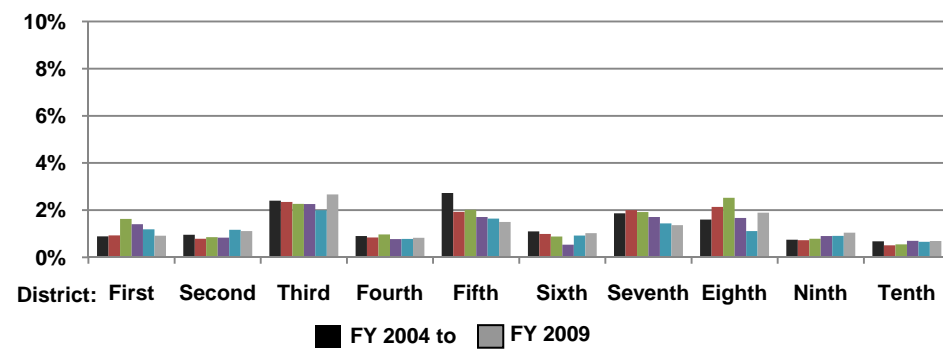
Resolved with a Plea Agreement



Dismissed Following Defense Motion



Closed with a Trial



NOTES: The analysis excludes child protection and juvenile cases. Percentages are based on the total number of felony, gross misdemeanor, and misdemeanor case dispositions.

SOURCE: Office of the Legislative Auditor, analysis of public defender case management data.

because of budget shortfalls. Relatively speaking, staffing was more robust in 2006 and 2007 following an appropriation increase to restore attorney positions. Thus, we looked for a difference in case disposition patterns in 2006 and 2007 compared to the prior and following years, but consistent trends over time were

not readily apparent. Only one of the ten districts (the first) showed evidence of an increase in the number of settlements in conjunction with fewer dispositions by trial and defense motion to dismiss.⁶

The interim chief of the appellate office told us that her office has not seen a change in the nature of appeal claims in recent years as they relate to behavior by public defenders.⁷ The interim chief reported that her office does receive complaints of poor representation by specific attorneys, but does not often see public defender behavior that would reach the standard required to show ineffective assistance of counsel.

Absent an independent, parallel investigation of the case by a third party, it is not possible to objectively confirm whether the time a public defender spent on a case was sufficient. How much time was spent on a case and whether a case was investigated will affect the evidence an attorney has available to negotiate a favorable plea agreement, gain a dismissal, or win the case. One judge stated that the quality of representation by public defenders generally looked adequate, but he also said it was impossible for him to tell what a case might be missing or if the public defender had done an appropriate investigation.

Managers largely rely on complaints from clients and others to determine whether public defenders are doing an adequate job.

Chiefs and managing attorneys rely on complaints from clients and others to determine whether attorneys are doing an adequate job, but this system may fail to catch problems having a negative impact on case outcomes. One chief reported that only after a public defender voluntarily terminated his employment did the chief begin to hear complaints from justice partners about the public defender's performance. Another chief pointed out that some clients do not complain, even when there are problems.

Judgment of public defender services based on client complaints relies on clients' perception of their representation, rather than objective criteria regarding the quality of lawyering. Lawyers that are good with people may receive few client complaints, even if they are poor advocates. Conversely, very good lawyers with poor people skills may receive many client complaints.

IMPACT ON THE CRIMINAL COURT SYSTEM

Public defense is an integral part of Minnesota's entire criminal justice system. As a result, staffing and workload challenges in the public defender's office can affect other parts of the criminal court system. We found that:

⁶ Chiefs and managers we interviewed about these data stated that it is hard to tell what, if anything, the data show. Some suggested that the data are flawed because attorneys do not consistently record dispositions in the case management system. For example, some cases are charged with multiple counts on one complaint. If a defendant pleads guilty to some counts and wins dismissal for others, an attorney may code that case as either a dismissal or a plea. Several chiefs also noted that it is impossible to tell from the data available whether public defenders are making fewer motions to dismiss or winning these motions less often.

⁷ Common issues related to poor representation include lack of investigation by the public defender and failure to object to prosecutorial misconduct.

- **Judges and court staff reported that strain on the public defender system has had a detrimental effect on the efficient administration of criminal courts.**

In particular, availability of public defenders affects the scheduling of court hearings and trials and the length of time it takes to resolve cases.

Many judges and court administrators are troubled by the slow pace of criminal cases through the judicial system.⁸ About 50 percent of district judges responding to our survey said that criminal cases in their courtrooms progressed too slowly toward disposition. Another 39 percent described the pace of cases as adequate, and 8 percent described the flow of criminal cases as prompt or very prompt. Responses from court administrators were similar, with 35 percent reporting that the progress of criminal cases was too slow and 47 percent finding the progress of cases to be adequate.⁹

Many judges and court administrators said difficulty scheduling public defenders for hearings and trials was a significant cause of court delays.

Judges and court administrators responding to our surveys reported that problems scheduling public defenders for hearings and trials was the most significant cause of delays. As shown in Table 3.8, survey respondents found scheduling of prosecutors and judges to be a much less significant problem. Among judges and court administrators, other influential factors underlying court delays were the number of crimes being charged and the increased severity of consequences associated with crimes.

Availability of public defenders affects court efficiency in several ways. Due to the high number of cases they handle, public defenders are routinely scheduled for several trials in one day; they count on the assumption that most cases will be settled before a trial actually occurs. When cases do not settle, public defenders find themselves booked for multiple trials, which means that some cases must be continued for trial at a later date.

Some public defenders stated that their schedules are often so tight that, if anything goes wrong (such as not receiving an offer ahead of time, a client being late, or a hearing taking longer than anticipated), it has a cascading effect on the court calendar that results in having to reschedule cases. Court administrators also discussed the difficulty of scheduling public defender cases in rural counties that share public defenders. When these shared public defenders are not present when cases come up, the cases need to be continued.

⁸ *Minnesota Statutes* 2009, 631.021, directs the courts to adopt rules and procedures to ensure that judges meet timing objectives for the disposition of criminal cases. The timing objects set in law say that 90 percent of all criminal cases be disposed within 120 days, 97 percent within 180 days, and 99 percent within 365 days.

⁹ We could not independently confirm the trends asserted by district judges. We obtained data from the court information system showing average time to disposition for criminal cases closed in 2008, but trend data were not readily available. The statewide average time to disposition in 2008 was 198 days for felonies and 124 days for gross misdemeanors. Comparing districts, the time to disposition for felonies ranged from 135 days in the fourth district (Hennepin County) to 272 days in the third district (southeast Minnesota).

Table 3.8: Opinions of Factors Causing Delays in the Progress of Criminal Cases Through the Courts, 2009

	Not at All a Cause of Delays	A Minor Cause of Delays	A Moderate Cause of Delays	A Significant Cause of Delays	No Opinion/ No Answer
District Judges					
Difficulty scheduling public defenders for hearings and trials	1%	17%	29%	44%	9%
Difficulty scheduling prosecutors for hearings and trials	17	42	25	6	9
Difficulty scheduling judges for hearings and trials	15	45	22	8	10
Insufficient availability of translators	26	41	16	3	14
The number of defendants representing themselves	21	41	20	7	10
General increase in the number of criminal cases being charged	18	17	31	19	15
Increase in the severity of consequences attached to criminal conviction	13	19	35	19	14
Court Administrators					
Difficulty scheduling public defenders for hearings and trials	5%	16%	28%	32%	19%
Difficulty scheduling prosecutors for hearings and trials	26	35	14	5	19
Difficulty scheduling judges for hearings and trials	28	30	16	7	19
Insufficient availability of translators	54	23	5	0	18
The number of defendants representing themselves	33	30	12	4	21
General increase in the number of criminal cases being charged	18	21	32	9	21
Increase in the severity of consequences attached to criminal conviction	12	25	25	5	33

NOTES: Percentages are based on 191 district court judges and 57 court administrators responding to our surveys. Row percentages may not sum to 100 due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of district court judge and court administrator surveys, 2009.

In response to staffing cuts, chief public defenders in several districts stopped having public defenders present at some arraignments.¹⁰ Under these circumstances, a defendant who is appointed a public defender at arraignment is given the name of his or her public defender and scheduled for another appearance in court. This practice is less efficient because many misdemeanor cases have historically been settled at the arraignment hearing with the assistance of a public defender. By not having representation at their first appearance,

¹⁰ Arraignment is the hearing before a judge during which the judge reads the charges to the defendant and the defendant pleads guilty or not guilty.

clients must appear at successive hearings, thereby slowing down the court process.

OPTIONS

By various measures public defender workloads are too high, resulting in hurried and perhaps less thorough criminal defense. Unfortunately, there are no easy options to reduce stress on the public defender system.

There are no easy options to reduce stress on the public defender system.

Although we think adding more public defenders to the system would address many of the concerns we identified, the likelihood of substantial funding increases in the state's current fiscal environment is small. An alternative would be to carefully evaluate the state's policies regarding crime and punishment.

Stakeholder groups past and present have suggested reforms intended to relieve pressure on Minnesota's criminal justice system. Table 3.9 summarizes some of the more recent initiatives and their recommendations. The reforms suggested by these groups seek to reduce burden on public defenders and the courts by decriminalizing certain lower level offenses, making greater use of diversion programs, removing or lessening the civil consequences associated with crimes, changing court procedures to reduce the number of hearings per case, modifying criminal sanctions, and altering the probation delivery system, among others.

In 2009, the Legislature considered a bill that would have allowed the courts to handle unpaid misdemeanor citations on the payables list as guilty pleas, sending them to collections.¹¹ Because the citation would automatically be treated as a petty misdemeanor with the imposition of a fine, rather than jail, the defendant would no longer have a right to a public defender. The provision was dropped in conference committee.

The State of Wisconsin established an aggregate maximum caseload threshold beyond which public defenders could take no more cases. If the maximum is reached, Wisconsin diverts public defender cases to private-sector, contract attorneys. In our opinion, this approach has several drawbacks. Diverting cases to contracted attorneys when the maximum threshold is met could be very expensive for the state. Diverting cases to counties could result in significant cost-shifting from state to local governments. Both options run counter to Minnesota's commitment to a uniform, statewide public defender system.

Another option would be to amend or repeal Minnesota's case flow statute. If public defenders and the courts were not bumping up against statutory time limits, it might be possible to provide short-term relief by allowing public defenders more time per case. With the permission of the Minnesota Court of Appeals, the public defender's appellate office has adopted this strategy.

Nonetheless, we do not see easing of case flow standards to be a long term solution because victims and defendants both deserve timely resolution of their

¹¹ *Minnesota Statutes* 2009, 609.101 subd. 4, grants Minnesota's Judicial Council authority to establish a uniform fine schedule, known as the payables list, which allows individuals to pay a fine in lieu of a court appearance for certain listed offenses.

cases. Some judges and other state court system officials believe that easing of case flow standards is a poor option both in the short and long term. They said that extending statutory time standards would not provide short-term relief because delayed cases take more lawyer time than timely disposed cases. (However, public defenders stated that additional time per case is exactly what they need in order to prepare their cases and provide meaningful representation.)

Table 3.9: Recommendations to Reform Minnesota's Criminal Justice System, 1997 to 2009

Year	Source	Recommendations
1997	Nonfelony Enforcement Advisory Committee (NEAC)	Among other things, recommended removing the threat of jail time for many first time offenses (including driving after suspension and low level theft and worthless check cases).
2003	Working Group on Criminal Justice System Efficiency	Identified seven themes for improving criminal justice efficiency, including: <ul style="list-style-type: none"> - mandated diversion; - new procedures for processing nonviolent misdemeanors; - developing alternatives to prison and jail; and - examining civil consequences.
2007	Minnesota Department of Public Safety	Recommended serious review and reconsideration of the imposition of collateral consequences.
2008	Access and Service Delivery Committee	Recommended a serious reconsideration of NEAC recommendations and committed to educate the legislature that no proof of insurance, registration, and driver's license crimes are best handled by the Department of Vehicle Services.
2008-present	Criminal Justice Forum	In 2008, identified seven issues to pursue, including changing venue where judges can hear a case and handling no proof of insurance through an administrative process. Going forward, the group intends to pursue issues such as: <ul style="list-style-type: none"> - combining some hearings and eliminating meaningless hearings; - determining if pre-sentence investigations are necessary; - expanding pre-charge diversion and designing and implementing graduated sanctions of probation violations; and - examining changes to the probation delivery systems.

SOURCES: Minnesota Supreme Court, *Nonfelony Enforcement Advisory Committee Final Report* (St. Paul, January 15, 1997); Minnesota Departments of Corrections and Public Safety, *Working Group on Criminal Justice System Efficiency 2003 Report to the Legislature* (St. Paul, January 2003), 2-3; Minnesota Department of Public Safety, *Collateral Consequences Report to the Legislature* (St. Paul, January 2007), 6-7; Minnesota Supreme Court, *Access and Service Delivery Committee Report to the Minnesota Judicial Council* (St. Paul, July 17, 2008), 10; and meeting minutes from the Criminal Justice Forum, 2008 and 2009.

Eligibility and Reimbursements

Minnesota’s eligibility standard for public defender services is broad in order to assure that those who cannot afford an attorney have access to one. Judges may order some individuals who are appointed a public defender to reimburse the state to the extent they can.

In this chapter, we discuss practices for determining eligibility and ordering reimbursements. Specifically, we assessed the statutory framework for determining eligibility; application of statutory eligibility criteria by judges and court staff; procedures for determining eligibility; accuracy of eligibility determinations; and ordering, collection, and distribution of reimbursements.

STATUTORY STANDARDS

State law establishes two general standards controlling eligibility for appointment of a public defender in criminal cases. A defendant is defined as financially unable to obtain counsel if (1) the defendant (or a dependant of the defendant who resides in the same household) receives means-tested government assistance or (2) “through any combination of liquid assets and current income” the defendant would not be able to pay the “reasonable costs charged by private counsel.”¹

We examined this standard and found that:

- **Imprecise wording in Minnesota law and other incentives encourage the appointment of public defenders.**

The Minnesota law that establishes eligibility criteria for public defense services is vague. Eligibility standards that are too rigid could result in an unconstitutional denial of counsel to persons unable to afford an attorney. Further, simply using an income-based cut-off without further inquiry can be a violation of Minnesota statute. In 2009, the Supreme Court held that the district court has a duty to make a “broad inquiry” and “must consider all available information about the defendant’s financial circumstances” in order to determine eligibility.²

The vague standard in Minnesota statutes provides limited guidance to eligibility decision makers about who should be eligible for a public defender and who should not. The law does not clearly define the income or asset criteria that

¹ *Minnesota Statutes* 2009, 611.17(a).

² *State v. Jones*, 772 N.W.2d 496, 503 (Minn. 2009).

State law gives judges considerable discretion in deciding who is eligible for a public defender.

judges should consider when determining eligibility. Nor does the law elaborate on the process or criteria for determining the reasonable cost of private counsel. As a result, judges have a great deal of discretion in determining eligibility for a public defender.

In addition to appointing public defenders in order to protect constitutional rights, judges have various other incentives to appoint a public defender. Not appointing a public defender to an unrepresented defendant can result in a significant slowing of the court process. According to state court officials, there is a natural inclination for overloaded courts to appoint public defenders to move cases along. We discuss the implications of the vague eligibility standard in conjunction with courts' incentive to appoint public defenders throughout the rest of this chapter.

APPLICATION OF ELIGIBILITY CRITERIA

Although the law allows leeway, state statutes require judges to consider several factors when making eligibility decisions. The factors include: earned and unearned income; the value and encumbrances on any real property; the liquidity of real estate assets or other assets; and the value of all property transfers occurring on or after the date of the offense.³ (Transfers of assets after the crime was committed can be voided.)

Consideration of Eligibility Factors

We used surveys and interviews to learn how judges apply these factors when making public defender eligibility decisions. We found that:

- **Judges weigh eligibility factors differently, with some judges paying little or no attention to considerations spelled out in statute.**

Inquiry about an applicant's income is required by law, but some judges used a more expansive view of income than others. As shown in Table 4.1, 75 percent of judges responding to our survey said they place great weight on an applicant's income relative to federal poverty guidelines. However, some judges also take household expenses into consideration, making it easier for applicants to qualify for a public defender. About 63 percent of judges placed great or moderate weight on the amount of an applicant's household expenses while 28 percent placed little or no weight on this factor.

Use of income standards varies among districts. Many district courts compare applicants' self-reported income to the federal poverty guidelines, but they may use different cut-off points to establish eligibility. The most restrictive standard we saw granted a public defender to applicants with income below 125 percent of the federal poverty guidelines (about \$27,600 for a family of four in 2009). One district court we visited used 150 percent of the guidelines as a minimum standard (about \$33,100 for a family of four in 2009).

³ *Minnesota Statutes* 2009, 611.17(b).

Table 4.1: How Judges Weigh Various Factors When Considering Appointment of a Public Defender, 2009

	Great Weight	Moderate Weight	Little Weight	No Weight	Don't Know
Income relative to federal poverty guidelines	75%	13%	6%	0%	4%
Ownership of a second residence	74	5	4	4	11
Hourly wage	53	34	5	2	4
Ownership of other property (cars, boats, etc.)	34	41	15	3	5
Ownership of a primary residence	31	36	22	5	4
Severity of the criminal charge	30	35	17	11	4
Proportion of income going to necessary household expenses	16	47	23	5	5
Impact of NOT appointing a public defender on the progress of the case through the courts	15	35	28	16	4
Defendant's previous attempts to retain an attorney	9	35	35	11	8

NOTES: Percentages are based on 191 district court judges responding to the survey. The question was, "How much weight do you place on each of the following factors when weighing your decision to appoint a public defender?" Row percentages may not sum to 100 because some respondents did not answer the question.

SOURCE: Office of the Legislative Auditor, analysis of district court judge survey, 2009.

Judges vary considerably in how they weigh information on income, assets, and local costs for retaining private counsel.

Consideration of assets is also inconsistent. About 30 percent of judges responding to our survey said they do not consider at all whether the applicant transferred assets to others on or after the date of the alleged offense. Twenty-seven percent said they place little or no weight on the applicant's ownership of a primary residence. Both of these asset inquiries are specifically required by statute.

Contrary to requirements in state law, 24 percent of district judges reported that they did not consider the costs of private counsel at all when determining public defender eligibility. Some judges we interviewed said they had a rough idea of what local private attorneys charge for misdemeanors, gross misdemeanors, and felonies. However, a survey to determine actual costs of representation for specific crimes was done in only two counties we visited (both in the metro area).

In other jurisdictions, stakeholders told us the high cost of private counsel is a factor considered in public defender appointments. Most criminal defense attorneys require payment for their services in advance. Many defendants do not have savings sufficient to pay this fee, even if they have a job or some money to contribute toward their defense. In such cases, judges will sometimes appoint a

public defender to a person with relatively high income but also order a reimbursement.⁴

Respondents to our surveys and many of the officials we interviewed during our site visits said that the working poor in their communities do not have sufficient access to affordable private attorneys. For example, only eight percent of judges responding to the survey agreed that the working poor had affordable options. One judge working in very rural counties pointed out that, because very few of the counties he worked in had private attorneys who could represent a defendant in a serious case, he was more likely to overlook some income or assets in such cases.

Judges also differed in the extent to which they consider how the courts will be affected if they do not appoint a public defender and the defendant represents himself or herself (a person who represents himself or herself is called a “*pro se*” defendant). This factor is not mentioned at all in state law, but judges have an incentive to appoint public defenders because *pro se* defendants significantly slow down the court process. Half of district judges reported placing great or moderate weight on the implications for the courts of not appointing a public defender; 44 percent put little or no weight on this factor.

Individual Attitudes Affecting Eligibility Determinations

We observed eligibility determinations during site visits across the state and found that:

- **The absence of strict statutory criteria in Minnesota has resulted in eligibility determinations driven in part by the individual attitudes of judges and court personnel.**

Absence of specific statutory standards has given leeway to those determining eligibility, not just in the factors they consider, but also in how their personal opinions and perspectives affect eligibility determinations. For example, we observed one judge deny a public defender to a defendant with three children earning \$20,000, even though his income fell below the district’s income standard. The judge reviewed the application, very briefly, in chambers without any contact with the applicant. The judge told us that the charge (a first time driving while intoxicated offense) was not serious enough to merit appointment of a public defender.

One judge described himself as “proactive and aggressive” in assuring defendants had counsel. While reviewing the application of a person residing on an Indian reservation, the judge commented that he generally assumed that those

⁴ Some communities have established panels of private attorneys who will represent the working poor at reduced rates. For such panels to work, they need support from the bench, a sufficient number of clients able to make some payment for their defense, and a sufficient number of attorneys willing to work for lower rates. These conditions do not exist in all Minnesota communities, especially in rural areas.

People working in the criminal justice system did not uniformly support establishing fixed standards for obtaining a public defender in Minnesota.

living on reservations were very poor. However, he also pointed out that he did not know whether this particular applicant received monies from the tribe. He approved the application in chambers without questioning the applicant about her means of support.

A screener in another county failed to ask whether an unemployed man's newborn baby and his unemployed girlfriend (both living with him) received means-tested assistance such as Medical Assistance. Receipt of such benefits would have made him automatically eligible for a public defender. When we asked the screener about this later, she incorrectly said the law only granted public defenders to those who themselves were on needs-based assistance. She also expressed the opinion that many male public defender applicants living with their children and partners on assistance are not reporting themselves as living in the household and are therefore committing welfare fraud.

While it is apparent that absence of firm standards has resulted in a lack of uniformity in the eligibility determination process, judges we interviewed did not uniformly support establishing a fixed income standard, or more generally, being too stringent in eligibility determinations. These judges said a certain amount of judicial discretion in public defender eligibility decisions is necessary in order to meet constitutional requirements to provide counsel.

Many public defenders, on the other hand, said Minnesota should have more definitive eligibility standards set in law. Such standards would sufficiently protect defendants' constitutional rights as long as judges retained the ability to waive the standard for those in exceptional circumstances.

In Dakota County, judges and public defenders worked together to develop set income standards, linked to the severity of the charge, to help determine public defender eligibility. Under the standards, those charged with more serious offenses can make up to \$20 per hour, while those charged with the least serious offenses can make a maximum of \$12 per hour. To help guide decision making, Dakota County has documented its standards in a grid. While screeners in Dakota County make recommendations based on this grid, judges make the final eligibility determination and may waive the standard. Dakota County's eligibility grid is reproduced in the Appendix, where we have also included a similar instrument developed by the Colorado Supreme Court.

Eligibility Standards in Other States

Other states have also struggled with balancing the constitutional right to counsel with objective criteria and uniform eligibility determinations. We identified 18 states with statewide public defense systems in which trial-level representation is provided by salaried staff public defenders paid from state funds.⁵ We found that:

⁵ The states we included in our comparison were: Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maryland, Missouri, Montana, New Jersey, New Mexico, North Dakota, Rhode Island, Vermont, Wisconsin, and Wyoming.

Half of the 18 other states we reviewed had fixed eligibility standards for a public defender but also allowed for judicial waivers.

- **Several states have chosen to establish set eligibility standards in law or policy but have allowed for judicial discretion in waiving those standards.**

Of the 18 states we reviewed, 9 give eligibility decision makers set standards for determining eligibility. For example, in Colorado all persons with household incomes under 125 percent of the federal poverty guidelines are eligible. For those making over 125 percent of the poverty guidelines, public defenders use a scoring instrument that weighs income, assets, expenses and the charge in determining whether applicants should be found eligible. (The scoring instrument is reproduced in the Appendix.) The other nine states give eligibility decision makers more discretion. For example, in Wyoming the court reviews the applicant’s affidavit of income and assets and determines whether he or she is a “needy person.” In Missouri, the public defender’s office determines eligibility by evaluating “all circumstances” affecting defendants’ ability to retain counsel.

Judicial waiver provisions allow states to use set standards while remaining flexible enough to meet constitutional requirements. If a defendant in Colorado does not meet the minimum eligibility score but still cannot afford counsel, an exception may be granted by a judge. Wisconsin has established a firm but very low income-based cut-off for state-funded public defense services. However, judges must appoint a county-funded attorney when the defendant’s income exceeds the state standard and the defendant still cannot afford an attorney. It is important to note that implementing the Wisconsin model in Minnesota could undermine one purpose of having a statewide public defender system—uniformity and consistency in representation.

PROCEDURES FOR DETERMINING ELIGIBILITY

There are few requirements in Minnesota law defining how defendants apply for a public defender and how courts assess the applications. State statute requires the court to make an “appropriate inquiry” regarding the financial circumstances of the applicant.⁶ The statute also requires the state public defender to furnish an application form for use by the courts in collecting financial information.⁷

Application Steps

We assessed public defender application practices in district courts around Minnesota. We found that:

- **The process of applying for a public defender varies widely around the state.**

As shown in Table 4.2, only 30 percent of court administrators responding to our survey reported that the standard form issued by the state public defender was

⁶ *Minnesota Statutes* 2009, 611.17(b).

⁷ *Ibid.*

Table 4.2: Public Defender Application Practices in Minnesota District Courts as Reported by District Court Administrators, 2009

	Never	Sometimes	About Half the Time	Often	Always	Don't Know
Use of the standard application form created by the Office of the State Public Defender	39%	5%	0%	4%	26%	19%
Use of an application form unique to the county or district	23	4	0	4	56	9
Face-to-face screening interview with applicants in custody (before the application goes to the judge)	49	23	0	9	11	4
Face-to-face screening interview with applicants applying when not in custody (before the application goes to the judge)	42	21	5	12	12	2
Use of a structured decision-making framework, such as a grid relating net income to severity of the charge	33	5	0	12	19	23
Recommendation from an application reviewer that the judge appoint or not appoint a public defender	47	4	2	11	26	5
Recommendation to the judge from an application reviewer on the amount of reimbursement the defendant should be ordered to pay	65	0	2	11	11	9
Discussion regarding eligibility between the judge and defendant	16	53	5	5	11	7
Application screening performed by staff assigned specifically to this role	54	7	2	16	14	2
Requiring the applicant to provide evidence to verify income (tax returns, pay stubs, etc.)	30	49	2	4	2	11
Requiring the applicant to provide verifications for non-income aspects of their applications (assets, expenses, etc.)	37	46	2	2	2	9
Use of a credit check at the time of application	84	2	0	0	0	11
Check of Driver and Vehicle Services records to verify information provided by the applicant	72	11	0	0	0	14
Check of property records to verify property ownership	72	12	0	0	0	12

NOTES: The question read, "Think about the procedures currently used in your jurisdiction for determining a defendant's eligibility for a public defender. How often are the following activities used as part of the process?" Percentages are based on 57 district court administrators responding to our survey. Row percentages may not sum to 100 because some respondents did not answer the question.

SOURCE: Office of the Legislative Auditor, analysis of district court administrator survey, 2009.

often or always used in their county's courts. About 60 percent said that a county- or district-specific application form was often or always used in their counties.

Other aspects of the application process vary as well. For example, 20 percent of court administrators responding to the survey said a face-to-face screening interview was often or always a part of the application process for in-custody

applicants. Thirty-one percent of court administrators responding to the survey reported that their jurisdictions use a structured framework to evaluate applications (such as those shown in the Appendix). One court administrator observed: “Because there are no established criteria or even forms, everyone is doing this differently, and that should not be the case.”

We interviewed and surveyed stakeholders regarding best practices for determining eligibility and found that:

- **District court judges and court administrators agreed on a number of steps that should be standard practice when considering appointment of a public defender.**

Over half of court administrators responding to our survey said that standard practices should include: (1) use of a structured decision-making framework (like a grid relating net income to severity of the charge) to evaluate the application; (2) review of the application by court staff resulting in a recommendation to the judge that a public defender be appointed or not appointed; and (3) an additional recommendation from the application reviewer on the amount of reimbursement the defendant should be ordered to pay. The majority of judges responding to our survey also felt that court staff should review the application and make recommendations on appointment and reimbursement. However, judges and state court officials also told us that making this review a standard practice was problematic because of resource constraints.

Screening and Verification Steps

Judges and, in some counties, court staff are currently responsible for reviewing public defender applications and determining whether the applicant can afford to pay for an attorney. We assessed the extent to which judges and court administrators screened applicants and verified applicant statements. We found that:

- **Practices for confirming the information defendants report on their applications vary widely, from virtually no scrutiny to routine screening interviews.**

In some Minnesota courts, applications to be represented by a public defender are often rubberstamped.

“Screening” of an application can be as simple as asking applicants reporting zero income how they pay for food or gas. But some courts did not apply even this level of inquiry. In some cases, public defender applications were reviewed in chambers without any contact with the applicant. In many cases, applicants’ declarations of income and assets are essentially rubberstamped. For example, one court administrator reported:

[We need] better screening. There are defendants that give false or incomplete information, and there is no one to confirm eligibility. The court relies upon the application, which is signed supposedly under oath.

But other courts have staff specifically responsible for conducting brief screening interviews with defendants seeking a public defender.

Some courts have staff specifically responsible for conducting brief, face-to-face screening interviews with defendants seeking a public defender. In those counties we visited that screen applicants, judges, court administrators, and public defenders were generally strong advocates of the practice, believing that even a short (one to two minute) interview resulted in more accurate information about the applicant's financial circumstances. We observed face-to-face screening sessions in two jurisdictions and found them to be a quick and effective means of obtaining information, largely because the screeners were adept at asking probing questions. Although many stakeholders agreed that face-to-face screening would be a useful tool, the cost of dedicating staff to the task is a barrier to more widespread implementation.⁸

The courts rarely verify with third party sources the information defendants provide on their public defender applications. No county we visited does regular verification of applicants' statements. Among respondents to our survey, 30 percent of court administrators said applicants were never required to provide evidence verifying income; 49 percent said that verification was sometimes required. Thirty-nine percent of judges said that they had never required verification and 50 percent of judges said they sometimes required verification.

Even with sufficient time and staffing, third-party verification is difficult to do. The Minnesota Department of Employment and Economic Development (DEED) maintains records of wages reported by employers each quarter, but such information is not available until well after eligibility needs to be determined. A call to a current employer could show how much an applicant makes, but is not a useful check for the many people reporting to be unemployed. The Minnesota Department of Human Services (DHS) maintains records of persons receiving means-tested public assistance. The courts could verify application information with DHS or DEED, but the courts and the departments do not currently exchange information in a way that would allow application information to be easily verified.

RECOMMENDATIONS

The Legislature should amend state statutes to (1) establish fixed income standards for public defender eligibility and (2) describe the exceptional circumstances that would warrant judicial waiver of the standards. The standards should reflect the cost of private representation across the state.

The Legislature should establish eligibility procedures in statute that require use of a uniform public defender application form and in-person screening by court staff or the judge.

⁸ *Minnesota Statutes* 2009, 357.021, subd. 1a(b), allows *counties* that employ screener-collectors to be reimbursed for the cost of screener-collector salaries from the county's court fee revenues. However, now that the state has assumed control of the court system, screeners are court employees, not county employees. Hence, the statute is obsolete and no longer provides an incentive for district courts to employ screener-collectors.

While the available evidence indicates that most applicants for a public defender are very poor and unlikely to be able to afford a private attorney (discussed in more detail below), it is still important for Minnesota to have a reasonably uniform standard for obtaining a public defender. To meet constitutional and other requirements, the law must allow judges some flexibility. But we think some guidance is needed as to the nature of circumstances warranting a waiver.

We also think defendants should be subject to uniform application and screening procedures when requesting a public defender in Minnesota. Our work showed that brief, face-to-face screening interviews helped establish a clearer picture of applicants' circumstances. District court judges and court administrators agreed that such screening and use of a common application form should be standard practice. They also said that the courts currently do not have the resources available to conduct in-person screening. However, as we stated earlier, "screening" of an application can be as simple as asking applicants reporting zero income how they pay for food or gas.

ACCURACY OF ELIGIBILITY DETERMINATIONS

In addition to assessing the uniformity of application practices among districts, we looked in more detail at the extent to which judges are actually using accurate information about applicants' financial circumstances when they rule on requests for a public defender. Further, public defenders are required by law to advise the court if their clients become able to afford an attorney, and we evaluated the extent to which this occurs.

Accuracy of Information About Defendants' Financial Circumstances

We assessed how decision makers felt about the accuracy of information on public defender applications. We found that:

- **Judges have little confidence in the accuracy of the information they use when assessing applicants' financial circumstances, often relying on "gut instinct" regarding an applicant's eligibility.**

In our survey, we asked judges how confident they were in the accuracy of the information they use to determine eligibility. As shown in Table 4.3, only 47 percent of judges responding thought they had an accurate picture of applicants' income from employment. Judges felt even less confident in the accuracy of information on income from non-employment sources or the availability of assets that could be converted to cash or used to secure a loan.

In our site visit interviews, judges stated they must make eligibility decisions very quickly and without sufficient evidence. One judge pointed out that judges must determine in a matter of seconds whether a person can hire an attorney without sacrificing food and shelter for his or her family. Some judges stated that defendants who are "savvy" know how to fill out the application so that they

are approved. One judge described the eligibility determination process as “guesswork at best.” In practice, they rely on their “gut feelings” and a belief that most applicants would not ask for a public defender if they could afford a private attorney.

Table 4.3: Judges’ Views on the Accuracy of Information Used to Determine Eligibility for a Public Defender, 2009

	Not at All Accurate	Somewhat Accurate	Mostly Accurate	Very Accurate	Factor Not Considered
Income from employment	4%	43%	41%	6%	2%
Income from other sources	28	44	18	3	3
Assets that could be converted to cash or used to secure a loan	39	30	18	4	4
Value of assets transferred to others on or after the date of the alleged offense	35	18	10	3	30
Applicants’ household expenses	15	44	20	3	13
Cost of retaining a private attorney in the area	9	22	32	7	24

NOTES: Percentages are based on 191 district court judges responding to the survey. The question directed respondents to think about eligibility determinations made in the past year, then asked: “In general, how accurate do you feel your picture of applicants’ financial circumstances was, with respect to the following factors?” Row percentages may not sum to 100 because some respondents did not answer the question.

SOURCE: Office of the Legislative Auditor, analysis of district court judge survey responses, 2009.

In addition to surveys and site visits, we obtained from the counties we visited public defender applications completed during one week in October 2009. We then judgmentally selected a range of applications to review, focusing on applicants’ reports of (1) income and unemployment benefits and (2) public assistance status. We reviewed 127 applications in total.

We compared 102 applications with wage and unemployment insurance benefit information we received from DEED. We found that:

- **Although some discrepancies existed between applicants’ reported income and income reported to DEED, most applicants still appeared to be very low income.**

DEED records showed that 8 of the 102 applicants included in our review received unemployment income in the month they applied for a public defender. Only four of the eight applicants had actually reported receiving unemployment benefits on their applications.

Based on our review of public defender applications, it appears that most applicants have very low income.

We could not directly compare earned income as reported by applicants to earned income recorded in DEED's system because wage data for October 2009 were not yet available. Instead, we looked at income three ways. We obtained applicants' self-reports of income from their application forms. We asked DEED to provide the amount of wages reported by employers, if any, for DEED's most recent quarter of available data. For those applicants that received unemployment benefits in October 2009, we asked DEED to provide the benefit amount. We then annualized the amount of each type of income.

Among the applications we reviewed, it appears that the vast majority of applicants were very low income, whether income was measured by self-report, wage income reported to DEED for a previous quarter, or annualized unemployment insurance income. Among 121 applications with income information reported by the applicant, 85 percent reported income amounts that we estimated to be below 125 percent of the federal poverty guidelines.⁹ DEED had employer-reported data on wages earned the previous quarter for 37 of our applicants. Among the 37, we estimated that 73 percent had annualized income under 125 percent of the poverty guidelines. For seven of eight applicants who, according to DEED, received unemployment benefits in October 2009, the annualized amount of those benefits was below 125 percent of federal poverty guidelines. While this evidence is anecdotal, it does appear that the vast majority of applicants are very low income and likely cannot afford an attorney.

Receipt of public assistance serves as a set standard to determine if a public defender applicant has low enough income to merit automatic appointment of a public defender. We compared information from 81 applications we collected from site visit counties with DHS records. We found that:

- **Recipients of public assistance were not always automatically granted a public defender as they should have been.**

Public defender applicants under-reported their public assistance status. Nineteen of 81 applicants (23 percent) stated on their applications that they and their household members were *not* on public assistance, but DHS records showed that they were in fact active for public assistance in the month they applied for a public defender. Two of 81 applicants (2 percent) who reported receiving public assistance (and who, in fact received public assistance according to DHS) were denied a public defender.

Among the counties we visited, public defender applications were poorly written for the purpose of identifying applicants receiving public assistance. Application forms did not contain a complete list of public assistance benefits that would qualify an applicant. Some applications asked about income from assistance, rather than simply asking about assistance status. Further, in both observing screening of applicants and in reviews of applications, we noted that some applicants were questioned regarding their income and assets even after it was clear that they were eligible due to their public assistance status. When we asked

⁹ Poverty guidelines vary by household size. We estimated household size using information reported on the applications. We excluded from the analysis six applications on which the applicant reported either no income or household size information.

one screener why further inquiry was needed, she stated that public assistance recipients may be assessed a reimbursement based on their income, including income received from government assistance programs. Considering the income levels of those receiving public assistance benefits, this additional screening seems unnecessary.

Public Defenders' Duty to Advise the Court

Minnesota statute requires public defenders to advise the court if they become aware that a defendant can afford to pay for private counsel or can make a partial payment for his or her defense. We asked public defenders and judges how often this happens. We found that:

- **Public defenders rarely inform judges when their clients' financial circumstances improve.**

Public defenders said they were reluctant to challenge a client's eligibility once a case has been opened.

In our survey, 53 percent of public defenders responding said that they frequently or occasionally became aware of information that may make a client ineligible for their services. Among these respondents, 35 percent stated that they never took information regarding a client's potential ineligibility to the judge and 28 percent said they never took such information to their district chief public defender. Thirty-one percent of judges responding to our survey said that a public defender had never informed him or her of a change in a defendant's circumstances resulting in a greater ability to pay.

Public defenders we interviewed stated that they were willing to challenge eligibility at the outset when they believed that a client was ineligible, but were reluctant to do so after a case was opened. Some chiefs stated that they did not have access to their clients' original public defender applications, making it difficult to assess whether their clients' financial circumstances had changed. Some public defenders said that updating the court about a client's eligibility could interfere with the attorney's relationship with the client and potentially violate ethical duties of confidentiality.

RECOMMENDATIONS

The Legislature should amend Minnesota Statutes, 611.17, to (1) require that the public defender application form, or a document shown to applicants during the eligibility determination process, clearly lists the public assistance programs that automatically qualify an applicant for a public defender and (2) prohibit further screening of applicants found to be public assistance recipients.

The Legislature should amend Minnesota Statutes, 611.20, subd. 1, to make public defender clients' original applications available to public defender offices to assist them in evaluating whether clients have experienced a change in financial circumstances.

A more specific and simplified process for screening and approving public assistance applicants will decrease errors in eligibility determinations for this population and minimize screening time. Making public defender applications available to public defender offices will assist public defenders in determining whether a client's circumstances have changed and will encourage bringing this change in circumstances to a judge's attention. However, the public defender's office noted that public defenders may not have time to review applications because they are already over-worked. We are not recommending that public defenders do more eligibility screening than is required under current law. We anticipate that having clients' applications available to review, as needed, will allow public defenders to challenge appointments when they suspect a client should be found ineligible for their services.

REIMBURSEMENTS

Minnesota's broad eligibility standard is accompanied in statute by cost-sharing requirements. All defendants are required to pay a \$75 copay, although it can be waived by the judge.¹⁰ In addition, judges must order reimbursements from employed defendants and others who can afford to make partial payment toward the cost of their defense. Reimbursements are then distributed to each judicial district's part-time public defenders to offset their overhead costs. In this section, we assess when, from whom, and how much reimbursement is ordered and whether it is collected. We also discuss how reimbursement monies are distributed.

Judges can order clients with some financial means to reimburse the state for a portion of public defense costs.

Order and Collection of Reimbursements

The eligibility standard and reimbursement requirements should work together to assure that those with some means are appointed a public defender yet pay for all or part of the cost. However, we found that:

- **While state law requires defendants with financial means to reimburse the state for a portion of their public defender costs, these reimbursements are inconsistently ordered and collected.**

Reimbursements were almost always ordered in some courts, and they were almost never ordered in others. In our survey, about 30 percent of judges said they *do not* order employed defendants to make any reimbursement in 90 to 100 percent of their cases. At the other end of the spectrum, about 15 percent of judges said they always required defendants to pay a reimbursement. Data that could directly verify judges' reported practices were not readily available from the state court information system, so we asked the courts to extract data on reimbursement orders and payments for cases disposed in fiscal years 2007 to 2009.

¹⁰ Copay revenue goes to the general fund. We did not assess the order, collection, or distribution of copays in this report except to the extent that we assessed stakeholders' philosophies regarding cost-sharing.

Judges in some districts were far more likely to order these reimbursements.

Data from the state court information system confirm that the practice of ordering reimbursements from public defender clients varies widely among districts. As shown in Table 4.4, judges in the first, fifth, and eighth districts were far more likely to order reimbursements from defendants than their peers in other districts.¹¹ Judges in the second district (Ramsey County) and fourth district (Hennepin County) rarely ordered reimbursements. These data are consistent with what we heard from those we interviewed, namely that reimbursements are almost never ordered in the state’s two largest counties (Hennepin and Ramsey).

Table 4.4: Reimbursement Amounts Ordered by District, Fiscal Years 2007 to 2009

District	Reimbursements Ordered, FY 2007-09	Public Defender Cases Opened, FY 2007-09 ^a	Reimbursements Ordered per Case
First	\$ 424,832	45,526	\$9.33
Second	2,600	58,835	0.04
Third	105,510	33,466	3.15
Fourth	7,227	148,529	0.05
Fifth	321,412	26,340	12.20
Sixth	21,760	25,569	0.85
Seventh	410,148	44,316	9.26
Eighth	160,222	15,341	10.44
Ninth	62,549	47,788	1.31
Tenth	78,154	70,363	1.11
Total	\$1,594,414	516,073	\$3.09

NOTE: Data on the amount of reimbursements ordered and case counts are from separate data systems. The amount of reimbursements ordered per case should be considered a rough estimate as the purpose of the analysis was to identify variation in reimbursement practices among districts.

^a Case counts are unweighted.

SOURCE: Office of the Legislative Auditor, analysis of state court information system reimbursement data and public defender case management system data.

Lack of clarity in Minnesota law allows inconsistency in reimbursement practices. Minnesota statutes do not clearly set forth who should contribute to the cost of a public defender or how much they should pay. Prior to its repeal in 2007, state law set a \$40 dollar per hour reimbursement rate for public defender services. State law currently includes a suggested reimbursement schedule for a percentage of net income that should be paid each month, with the percentage varying by income level and number of dependents. However, the total amount that should be paid is not specified. In our survey, 35 percent of judges who responded said they never followed the suggested reimbursement schedule set forth in statute, while 14 percent of judges said they always or usually did.

The current statute is also unclear regarding who should pay a reimbursement. The law differentiates between defendants who can afford to make a partial payment for their public defender and those who are employed. However, in our

¹¹ Dakota County’s eligibility determination grid, shown in the Appendix, sets a reimbursement amount of \$50 to \$400 based on hourly income. Dakota County is in the first district.

Table 4.5: Court Fees Applicable to Public Defender Clients in Dakota County, 2009

Fee	Assessing Agency	Amount	Can be Waived?
Criminal Surcharge	District Court	\$80	No
Fine (punishment)	Court/City	Varies	Yes
Restitution	Court and Victim	Varies	Maybe
Court Collector Fee ^a	District Court	\$50	No
Collection Agency Fee ^b	Collection Agency	23.5%	No
Booking Fee (Felonies and Gross Misdemeanors)	Sheriff	\$15	No
Warrant Fees	District Court	\$50	Yes
Jail Fees (Pay to Stay)	Sheriff	\$20/day	No
Public Defender Copay	District Court	\$75	Yes
Probation Fees	Corrections	\$251-\$328 ^c	No
Drug Laboratory Testing	Drug Task Force	\$75	Discretionary
Urinanalysis	Corrections	\$15/test	Sliding Scale ^d
Driver's License Reinstatement Fee ^e	Public Safety	\$680	No
Chemical Dependency Evaluation Fee	Court/Corrections	\$125	\$25 only
Drug Court Fee	Corrections	\$300	No
Diversion Program Fee	County Attorney	\$480	No ^f
Alco-Sensor Pretrial Release	Corrections	\$14/day	Sliding Scale
Electronic Home Monitoring	Corrections	\$15/day	Sliding Scale
Domestic Abuse Class	Corrections	\$25/session ^g	Sliding Scale
Anger Management Class	Corrections	Varies	Sliding Scale
Mothers Against Drunk Driving Impact Panel	Corrections	\$35	Sliding Scale
Alcohol Education Class	Corrections	Varies	Sliding Scale
Safe Streets First ^e	Corrections	\$825	Sliding Scale

NOTE: The list is illustrative and may not include every criminal case-related fee authorized in Dakota County. Fee types and amounts may be different in other counties.

^a Applies to payment plans established with the court.

^b Dakota County courts attempt to collect amounts not paid in full within 30 days. If they are unsuccessful, these amounts are sent to an outside collection agency. The agency then charges the defendant an additional 23.5% of the amount due as a collection fee.

^c Probation fees are \$251 for misdemeanors and \$328 for gross misdemeanors and felonies.

^d Amount due may be reduced based on a sliding scale of income.

^e Applies to driving under the influence offenders.

^f Community service may be substituted for the fee.

^g Each class includes 15 to 25 sessions.

SOURCE: Dakota County court administration, Dakota County probation, and first district public defender offices.

Some judges are reluctant to order reimbursements because defendants are already subject to many other court fees.

survey, only seven percent of judges stated that they treated the ordering of reimbursements from employed defendants differently than from those they have determined can make a partial payment. While the law mandates full reimbursement from employed defendants and partial reimbursement from others who can make payment, this distinction serves no practical purpose.

Stakeholders we interviewed and surveyed are divided on the value of requiring any type of cost-sharing by persons assigned a public defender. In our surveys, 77 percent of court administrators, 63 percent of judges, and 54 percent of public defenders responding agreed or strongly agreed that “all but the truly indigent should pay something toward the cost of their public defender.” However, some public defenders and judges we interviewed felt that most public defender clients are either indigent or too poor to pay anything toward the cost of their public defender (either as reimbursements or a copay). They stated that many judges are reluctant to order a public defender reimbursement or copay because defendants are already burdened with so many other fees. As shown in Table 4.5, these fees are significant, and many cannot be waived by the judge.

We also examined whether reimbursements that were ordered were actually paid. Some judges and court administrators we interviewed believed that reimbursements, along with other types of court fees, were not being fully collected. One judge told us that because of collection problems, he does not order reimbursements as frequently as he otherwise would.

As shown in Table 4.6, state court data show that total reimbursements collected in fiscal years 2007 through 2009 were roughly 60 percent of reimbursements

Table 4.6: Reimbursement Receipts and Reimbursements Ordered by District, Fiscal Years 2007 to 2009

District	Reimbursement Receipts, FY 2007-09 ^a	Reimbursements Ordered, FY 2007-09	Receipts as a Percentage of Reimbursements Ordered
First	\$234,648	\$ 424,832	55%
Second	450	2,600	17
Third	45,502	105,510	43
Fourth	1,067	7,227	15
Fifth	228,886	321,412	71
Sixth	13,471	21,760	62
Seventh	221,453	410,148	54
Eighth	105,090	160,222	66
Ninth	40,680	62,549	65
Tenth	<u>36,800</u>	<u>78,154</u>	47
Total	\$928,047	\$1,594,414	58%

^a These reflect the amount of reimbursement payments from defendants disbursed from the courts to the State of Minnesota.

SOURCE: Office of the Legislative Auditor, analysis of state court information system reimbursement data.

ordered in the same years. This should be considered a rough estimate due to the difficulty of extracting data on reimbursement orders and payments from the state court information system. Currently, if a person does not abide by a payment plan, the fine goes to a private collection agency without further collection efforts by the court. The courts have recently begun automating and centralizing collections, which they anticipate will help in the collection of all fees, including public defender reimbursements and copays.

We reviewed the policies of 18 other states and found that reimbursement requirements varied considerably. Rhode Island, Arkansas, and Delaware do not collect reimbursements, but may require a flat-rate copayment. New Jersey and Iowa require all defendants to pay the full cost of public defender services provided. Some states require certain defendants (for example, those with income over 125 percent of the federal poverty guidelines or those with an ability to make a partial payment) to make payment based on a schedule of fees or other set rate. For example, Wisconsin's Board of Public Defense sets a fee schedule for each type of case based on the average cost of providing representation for the type of case. In New Mexico, defendants who are found ineligible for a public defender but who still cannot afford a private attorney can pay set fees to retain the services of a public defender. Other states, such as Hawaii and Colorado, have reimbursement policies similar to Minnesota's; state laws authorize reimbursements but allow judges to determine any amount to be paid.

Distribution of Reimbursements

Minnesota statute requires reimbursements to be distributed to part-time defenders to offset their overhead costs. In fiscal year 2009, reimbursements distributed among part-time public defenders totaled about \$480,000. Each district receives the amount of the payments received from reimbursements ordered in the district. Within a district, the funds are disbursed to individual part-time public defenders based on the hours worked (75-, 50-, or 25-percent time). Due to the district-based reimbursement scheme, we found that:

- **The amount of reimbursement receipts part-time defenders receive varies substantially among districts.**

The statute allocates reimbursements from employed defendants to "the state" and reimbursements from those with an ability to make partial payments to part-time public defenders to offset their overhead costs. In practice, however, all reimbursements are paid to part-time defenders.

Because judges' reimbursement practices vary widely, the total amount of reimbursement receipts available for distribution to part-time defenders varies by district. That, coupled with the fact that the number of part-time public defenders varies among districts, means that the payment per defender can vary widely. As shown in Table 4.7, in fiscal year 2009, defenders working 75-percent time in the second district received \$24 each while 75-percent time defenders in the fifth district received \$9,235 each.

By law, receipts from client reimbursement payments are distributed among part-time public defenders.

Table 4.7: Distribution of Reimbursement Receipts to Part-Time Public Defenders, Fiscal Year 2009

District	Payment per Part-Time Public Defender		
	75% Time Defender	50% Time Defender	25% Time Defender
First	\$4,445	\$2,965	\$ 0
Second	24	16	0
Third	2,096	1,397	0
Fourth	0	0	0
Fifth	9,235	6,160	0
Sixth	391	261	0
Seventh	3,128	0	0
Eighth	3,179	2,121	0
Ninth	882	588	0
Tenth	612	408	204

SOURCE: Minnesota Board of Public Defense, *Report on Public Defender Reimbursements, FY 2009* (St. Paul, 2009), 6.

RECOMMENDATIONS

The Legislature should amend Minnesota Statutes, 611.20, to (1) establish a single standard identifying the public defender clients who should contribute toward the cost of their representation and how much they should pay and (2) prohibit judges from ordering reimbursements from public assistance recipients.

The Legislature should amend Minnesota Statutes, 611.20, subd. 3, to eliminate the requirement that reimbursement funds be distributed among part-time public defenders and instead give the Board of Public Defense authority to use the funds as they see fit.

We think the Board of Public Defense should be allowed to use reimbursement receipts as they see fit.

Clear standards defining who should contribute toward the cost of a public defender and the amount of payment promote fairness and uniformity across the state. Based on their automatic eligibility for a public defender, we think public assistance recipients should be automatically excluded from paying reimbursements.

The rationale for distributing reimbursement receipts to part-time public defenders was the belief that part-timers should be compensated for overhead costs associated with the public defense portions of their practices. However, part-time public defenders receive compensation for overhead costs under terms established in their union contract. As implemented, the policy has highly inequitable results. We think the reimbursement funds should continue to be appropriated to the Board of Public Defense, but use of the funds should be left up to the board. Part-time defenders may choose to negotiate, through their union, for additional compensation for their overhead costs.

Judges and court officials said that judges have an incentive to order reimbursements when reimbursement receipts go to district public defender programs. If the Legislature enacts our recommendation, the board should consider allocating reimbursement receipts to purposes that benefit public defenders in all districts, such as training.

List of Recommendations

- The Board of Public Defense should ensure that district chief public defenders' presentations to the board focus more on district performance and challenges rather than descriptive characteristics of the district. (p. 23)
- The state public defender should establish stricter criteria for the structure and content of district chiefs' work plans. (p. 23)
- The Board of Public Defense and state public defender should establish standards for and measures of quality representation of clients. (p. 23)
- The Board of Public Defense and state public defender should improve management practices that ensure active supervision of full- and part-time assistant public defenders to monitor their performance representing clients and litigating in court. (p. 23)
- The Board of Public Defense and state public defender should complete long-range planning efforts to:
 - estimate future staffing needs in light of anticipated retirements among long time public defenders;
 - evaluate the proper balance of full-time and part-time public defenders needed in the future;
 - study the costs associated with establishing additional public defender satellite offices; and
 - consider other options to recruit and retain public defenders. (p. 27)
- The Board of Public Defense should seek the resources necessary to fund a planning and analysis position in the administrative services office. (p. 32)
- When funding becomes available, the Board of Public Defense should conduct a caseload study that includes methods sufficient to develop separate caseload standards for metropolitan area, suburban, and rural public defender districts. (p. 32)
- The state public defender should ensure that the office collects and records staff counts by position at regular intervals during the fiscal year. (p. 32)
- The Legislature should amend state statutes to (1) establish set income standards for public defender eligibility and (2) describe the exceptional circumstances that would warrant judicial waiver of the standards. The standards should reflect the cost of private representation across the state. (p. 59)
- The Legislature should establish eligibility procedures in statute that require use of a uniform public defender application form and in-person screening by court staff or the judge. (p. 59)

- The Legislature should amend *Minnesota Statutes*, 611.17, to (1) require that the public defender application form, or a document shown to applicants during the eligibility determination process, clearly lists the public assistance programs that automatically qualify an applicant for a public defender and (2) prohibit further screening of applicants found to be public assistance recipients. (p. 63)
- The Legislature should amend *Minnesota Statutes*, 611.20, subd. 1, to make public defender clients' original applications available to public defender offices to assist them in evaluating whether clients have experienced a change in financial circumstances. (p. 63)
- The Legislature should amend *Minnesota Statutes*, 611.20, to (1) establish a single standard identifying the public defender clients who should contribute toward the cost of their representation and how much they should pay and (2) prohibit judges from ordering reimbursements from public assistance recipients. (p. 69)
- The Legislature should amend *Minnesota Statutes*, 611.20, subd. 3, to eliminate the requirement that reimbursement funds be distributed among part-time public defenders and instead give the Board of Public Defense authority to use the funds as they see fit. (p. 69)

Samples of Eligibility Determination Guides

APPENDIX

Dakota County Public Defender Eligibility Grid

Felonies	High									
	Medium	Eligible for a								
	Low	Public Defender								
Gross Misdemeanors	High									
	Medium									
	Low				Not Eligible for a					
Misdemeanors	High				Public Defender					
	Medium									
	Low									

Hourly Income: \$0 \$8 \$12 \$14 \$16 \$17 \$18 \$19 \$20

Reimbursement due:^a \$50-\$100 \$150 \$200 \$250 \$300 \$350 \$400

Felonies	High	Murder, kidnapping, criminal sexual conduct, 1st and 2nd degree controlled substance
	Medium	Identity theft, burglary, terroristic threats, DWI, aggravated forgery, 3rd and 4th degree controlled substance
	Low	5th degree controlled substance, welfare fraud, financial card fraud
Gross Misdemeanors	High	Domestic and other assault, 2 nd and 3 rd degree DWI, forgery, criminal vehicular operation, 5th degree criminal sexual conduct
	Medium	Theft, property damage, serving alcohol to minors, offering a forged check
	Low	Driving after suspension/revocation, intent to escape tax, school bus stop arm, prostitution, shoplifting
Misdemeanors	High	4th degree DWI, domestic assault, 5th degree assault
	Medium	Bad check, theft, careless driving, driving after license revocation/cancellation
	Low	Loud party, housing code violations, driving after suspension, minor consumption

^a Depending on their income and the criminal charge, defendants found eligible for a public defender pay a reimbursement to the state to offset the cost of their defense.

Colorado Supreme Court: Fiscal Standards Eligibility Scoring Instrument

Attachment A
Chief Justice Directive 04-04

Applicant Name _____ Court _____
Case Number _____ Case Name _____

FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT

Use information from Form JDF208 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Factor	At or below guidelines	Up to 10% above guidelines	11% to 75% above guidelines (Not eligible if income is more than 75% above guidelines.)	Points
1. Income Guidelines Gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony. Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran's benefits earned from a disability, child support payments or other public assistance programs. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the Applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.)	150	100	0	
	2. Expenses vs. Income (Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included.)	Monthly expenses exceed income by over \$100 50	Monthly expenses are within \$100 of income 25	Monthly income exceeds expenses by over \$100 0
3. Charge (most severe) vs. Assets which could be used to pay defense costs (Assets to include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.)	Class 1 - Class 3 Felony or Habitual Offender related	Class 4 - Class 6 Felony	Class 1 - Class 3 Misdemeanor or jailable Traffic	
	Assets \$0 - \$750	150	125	50
	Assets \$751 - \$1,500	125	100	25
	Assets \$1,501 - \$2,500	100	75	0
	Assets \$2,501 - \$5,000	75	50	0
	Assets \$5,001 - \$7,500	50	25	0
	Assets \$7,501 - \$10,000	25	0	0
Assets over \$10,000	0	0	0	
TOTAL POINTS				

150 or greater

Less than 150

Indigent - Eligible for Public Defender
(Note: Reimbursement of costs of representation may be ordered by the court pursuant to Section 21-1-106, C.R.S.)

Not Eligible for State-Funded Counsel

EXCEPTION REQUESTED TO [ALLOW / DISALLOW] APPOINTMENT OF [PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict)] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by _____ Print/Type Name _____ Evaluator Signature _____ Date

NOTE: Colorado's income guideline is set at 125 percent of federal poverty guidelines.

Source: Supreme Court of Colorado, *Appointment of State-Funded Counsel in Criminal and Juvenile Delinquency Cases and for Contempt of Court* (Chief Justice Directive 04-04, Amended July 2008), Attachments A and B.



(612) 349-2565

**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

331 Second Avenue South
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Minneapolis, MN 55401



FAX (612) 349-2568

February 1, 2010

Mr. Jim Nobles
Office of the Legislative Auditor
658 Cedar St.
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond to the program evaluation of the public defender system. Your staff did a fine job. They gained a deep understanding of our situation in a short time and reported clearly and fairly what they found.

In response we are highlighting the most significant themes in the report.

Public defense has a vital mission. Yet, it has a drastic shortage of resources.

You are correct that public defenders serve "a fundamental right under the Constitution." We are also crucial to "the efficiency of the courts." But, public defender caseloads are double what would be permitted by national standards. Many developments in criminal justice have made these cases more time-consuming. In 2008, the Board lost 12% of its lawyer positions. Now, managers, who are supposed to be supervising and training, are carrying high caseloads. Our chief public defenders have caseloads. Our central management is only seven people.

The Board of Public Defense has made client service its top priority. We acknowledge that the mentoring and supervision of assistant public defenders could be improved. However, that can't be done within our budget without taking resources from client service, where 97% of the Board's funding goes. Meanwhile, as your Report demonstrates:

- 82% to 84% of clients surveyed said their defenders listened to them, treated them with respect, and explained things so they could understand.
- The Board appropriately dropped non-mandated services to concentrate on its Constitutional mission of effective assistance to criminal court clients.
- Public defense leadership is developing measures of quality service to clients.

Public defense administration makes good use of what resources it has. As you note:

- 94% of the lawyers get the Continuing Legal Education they need from the Board.

- 72% of the staff surveyed, stated that they received “useful feedback and coaching,” even though their managers have heavy caseloads themselves.
- The review process for the work of the District Chiefs has been improved.
- A long-range planning process is already in progress.

This long-range planning process certainly will address the balance of part-time and full-time public defenders. Over the years the part-timers have contributed experience and expertise, in areas where full-timers have been relatively fresh out of law school. By covering many of their own office expenses, they have subsidized our system. But, they do need supervision, training, technology, and more access to professional support staff. In some cases these will come by the Board getting additional funds for more full-time offices; other strategies to enhance services to part-timers are possible as well.

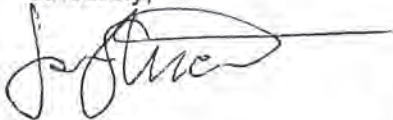
As with the part-time/full-time situation, we acknowledge that the Board’s weighted caseload formula could be improved. Although it is quite similar to the national standards provided by the American Bar Association, in Minnesota we have differences in geography, the mix of serious and less-serious cases, access to diversion and treatment, and philosophical differences on the bench and among our 87 elected prosecutors. These could be taken into account in a more sophisticated study, which, however, would be expensive.

Finally, eligibility for public defender services is an issue that every jurisdiction that funds public defense struggles with. There is a tension between containing public defense costs, and the efficient operation of the courts, which are slowed down greatly by defendants who do not have attorneys. In 2009 the Board did work with its justice system partners on legislation that would more specifically define eligibility. The Board is ready to provide assistance to the Legislature if it chooses to address this issue.

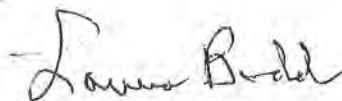
With regard to public defender reimbursements the Board believes that a more equitable distribution of the proceeds among public defenders would be desirable.

Thank you again for the opportunity to comment on the Report.

Sincerely,



John Stuart
State Public Defender



Laura Budd
Chair, Board of Public Defense



Kevin Kajer
Chief Administrator

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