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Board of Public Defense

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AT A GLANCE

- Largest user of Minnesota Courts- provides mandated criminal defense services at the trial and appellate court level.
- 155,000 trial court cases and 4,000 appellate cases opened annually.
- 4,000 appellate cases opened annually.

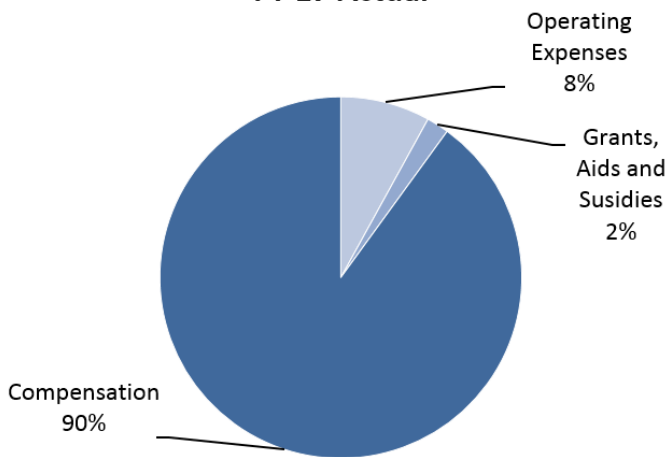
PURPOSE

The Board of Public Defense (BOPD) is a judicial branch agency whose purpose is to provide legal services mandated by the Constitution and statute. The Board’s mission is to provide excellent criminal and juvenile legal defense services to indigent clients through an independent, responsible and efficient public defender system.

We are committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and being a full partner in the justice system. A well-funded and functioning public defender system insures that the constitutional rights of the indigent are protected. This helps to protect the rights of all of our citizens. It also helps to make sure that the work of the court system continues uninterrupted which helps ensure that people in Minnesota are safe. Public defender services are almost exclusively financed by the general fund. In Hennepin County (the 4th Judicial District) there is a cost sharing between the State of Minnesota and Hennepin County.

BUDGET

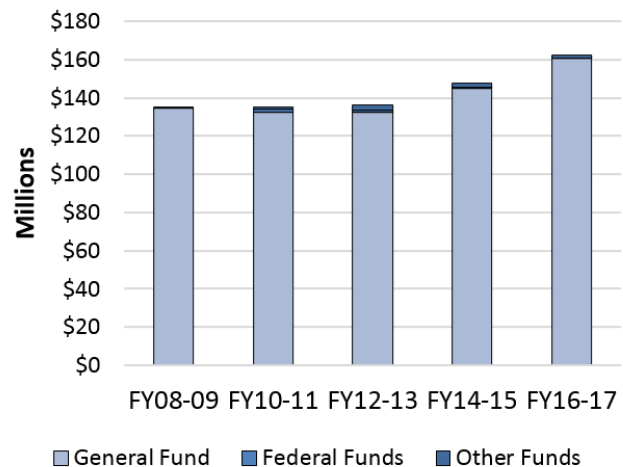
**Spending by Category
FY 17 Actual**



Source: Budget Planning & Analysis System (BPAS)

Compensation includes funding of county employees in the 2nd and 4th Judicial Districts; however, this is included in the grants, aids, and subsidies funding category on the fiscal pages.

Historical Spending



Source: Consolidated Fund Statement

STRATEGIES

We have developed various tools to further our mission and goals and to provide effective and efficient service delivery. These include:

- Implementation of quality representation guidelines on the trial and appellate levels
- Development of an electronic content management system
- Commitment to vertical representation
- Commitment to team defense
- Commitment to continual training of all staff
- Using a cost-effective model of representation that combines full and part time defenders
- Development of an internal resource allocation policy to better target attorney resources

M.S. 611 (<https://www.revisor.mn.gov/statutes/cite/611>) provides the legal authority for the Board of Public Defense

(Dollars in Thousands)

	Actual FY16	Actual FY17	Actual FY18	Estimate FY19	Forecast Base FY20 FY21		Governor's Recommendation FY20 FY21	
<i>Expenditures by Fund</i>								
1000 - General	72,224	88,540	79,779	95,603	89,026	89,026	99,060	110,040
2000 - Restrict Misc Special Revenue	1,131	204	135	207				
2403 - Gift	85	40	110	132	35	35	35	35
3000 - Federal	49							
Total	73,489	88,783	80,024	95,942	89,061	89,061	99,095	110,075
Biennial Change				13,694		2,156		33,204
Biennial % Change				8		1		19
Governor's Change from Base								31,048
Governor's % Change from Base								17

Expenditures by Program

Appellate Office	5,404	5,830	6,024	5,988	5,959	5,959	6,118	6,336
Administrative Services Office	1,907	2,188	2,292	2,298	7,149	7,149	7,944	9,034
District Public Defense	66,177	80,765	71,709	87,656	75,953	75,953	85,033	94,705
Total	73,489	88,783	80,024	95,942	89,061	89,061	99,095	110,075

Expenditures by Category

Compensation	57,538	62,551	65,006	76,577	70,762	70,762	78,714	89,610
Operating Expenses	7,981	8,408	7,873	8,992	8,658	8,658	8,658	8,658
Grants, Aids and Subsidies	7,689	17,622	5,913	9,355	9,283	9,283	11,365	11,449
Capital Outlay-Real Property	0		0					
Other Financial Transaction	281	202	1,232	1,018	358	358	358	358
Total	73,489	88,783	80,024	95,942	89,061	89,061	99,095	110,075

Full-Time Equivalent

	651.13	699.84	705.92	705.92	705.92	705.92	780.92	813.92
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(Dollars in Thousands)

	Actual FY16	Actual FY17	Actual FY18	Estimate FY19	Forecast Base FY20 FY21		Governor's Recommendation FY20 FY21	
1000 - General								
Balance Forward In	167	5,752	183	6,742				
Direct Appropriation	77,429	82,662	85,949	88,471	88,636	88,636	98,670	109,650
Transfers In	1,174	979	3,640	6,154	1,390	1,390	1,390	1,390
Transfers Out	795	605	3,250	5,764	1,000	1,000	1,000	1,000
Cancellations		66						
Balance Forward Out	5,752	183	6,743					
Expenditures	72,224	88,540	79,779	95,603	89,026	89,026	99,060	110,040
Biennial Change in Expenditures				14,619		2,670		33,718
Biennial % Change in Expenditures				9		2		19
Governor's Change from Base								31,048
Governor's % Change from Base								17
Full-Time Equivalents	650.93	699.56	705.79	705.79	705.79	705.79	780.79	813.79

2000 - Restrict Misc Special Revenue

Balance Forward In	1,318	186	142	207				
Receipts			200					
Transfers In		160						
Balance Forward Out	186	142	208					
Expenditures	1,131	204	135	207				
Biennial Change in Expenditures				(993)		(342)		(342)
Biennial % Change in Expenditures				(74)		(100)		(100)
Governor's Change from Base								0
Governor's % Change from Base								

2403 - Gift

Balance Forward In	103	88	129	97				
Receipts	70	216	78	35	35	35	35	35
Transfers Out		135						
Balance Forward Out	88	129	97					
Expenditures	85	40	110	132	35	35	35	35
Biennial Change in Expenditures				117		(172)		(172)
Biennial % Change in Expenditures				94		(71)		(71)
Governor's Change from Base								0

(Dollars in Thousands)

	Actual	Actual	Actual	Estimate	Forecast Base		Governor's Recommendation	
	FY16	FY17	FY18	FY19	FY20	FY21	FY20	FY21
Governor's % Change from Base								0
Full-Time Equivalents	0.20	0.28	0.13	0.13	0.13	0.13	0.13	0.13

3000 - Federal

Balance Forward In	1	1						
Receipts	49							
Transfers Out		1						
Balance Forward Out	1							
Expenditures	49							
Biennial Change in Expenditures				(49)		0		0
Biennial % Change in Expenditures								
Governor's Change from Base								0
Governor's % Change from Base								

(Dollars in Thousands)

	FY19	FY20	FY21	Biennium 2020-21
Direct				
Fund: 1000 - General				
FY2019 Appropriations	88,471	88,471	88,471	176,942
Base Adjustments				
Pension Allocation		165	165	330
Forecast Base	88,471	88,636	88,636	177,272
Change Items				
Maintain and Stabilize Public Defense		10,034	21,014	31,048
Total Governor's Recommendations	88,471	98,670	109,650	208,320
Dedicated				
Fund: 2000 - Restrict Misc Special Revenue				
Planned Spending	207			
Forecast Base	207			
Total Governor's Recommendations	207			
Fund: 2403 - Gift				
Planned Spending	132	35	35	70
Forecast Base	132	35	35	70
Total Governor's Recommendations	132	35	35	70
Revenue Change Summary				
Dedicated				
Fund: 2403 - Gift				
Forecast Revenues	35	35	35	70
Total Governor's Recommendations	35	35	35	70

Board of Public Defense

FY 2020-21 Biennial Budget Change Item

Change Item Title: Maintain and Stabilize Public Defense

Fiscal Impact (\$000s)	FY 2020	FY 2021	FY 2022	FY 2023
General Fund				
Expenditures	10,034	21,014	21,014	21,014
Revenues	0	0	0	0
Other Funds				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact = (Expenditures – Revenues)	10,034	21,014	21,014	21,014
FTEs	75	108	108	108

Recommendation:

The Governor recommends funding this request from the Board of Public Defense.

The budget request can be summed up in two words: maintenance, and stability. The budget request provides the staffing necessary to keep up with the caseload growth in the area of child protection cases; provides for a stable workforce by being able to offer salaries that are comparable to other public agencies and maintains the board's commitment to its public defender partners.

Rationale/Background:

Between 2015 and 2018 child protection case have increased nearly 50%. This is a direct result of statutory changes and changes in enforcement. Based on fiscal year 2018 caseloads and current staffing the board is now at 68.5% of the attorney staffing recommended by state and national standards. If the growth in child protection cases continues and there is no additional staffing provided it is estimated that this percentage will drop to approximately 63% by fiscal year 2021. This will seriously impair the board's ability to provide services. The board is also operating with approximately 57% of the support staff recommended by state and national standards.

The starting salary for Assistant Public Defenders is 11% below that of comparable public agencies. The top of the salary range is 12% below comparable public agencies. It also takes longer for public defenders to progress through the salary range. Budget constraints are hampering the board's ability to recruit and retain staff and is losing experienced defenders often to other public agencies. Excluding retirements, the turnover rate among Assistant Public Defenders in 2015 was approximately 4%. The 2018 rate will be to be closer to 7%. The average level of experience for the defenders who leave is approximately 6 years. The board spends a significant amount of time and money in training staff only to have them leave after they gain experience. In addition, the employer share of employee insurance costs is expected to increase over the next two years.

Over twenty years ago, the legislature enacted state assumption of public defender costs from the counties. This included a cost sharing arrangement with Hennepin County and grandfathering employees in the Hennepin County office as county employees. As county employees in Hennepin County have separated from service, the board has replaced these employees with state employees, and has continued the cost sharing arrangement with Hennepin County. At the time this law was enacted, there was an understanding among legislators, that at some point the legislation would result in a financial situation that would not be sustainable. That time has come.

Proposal:

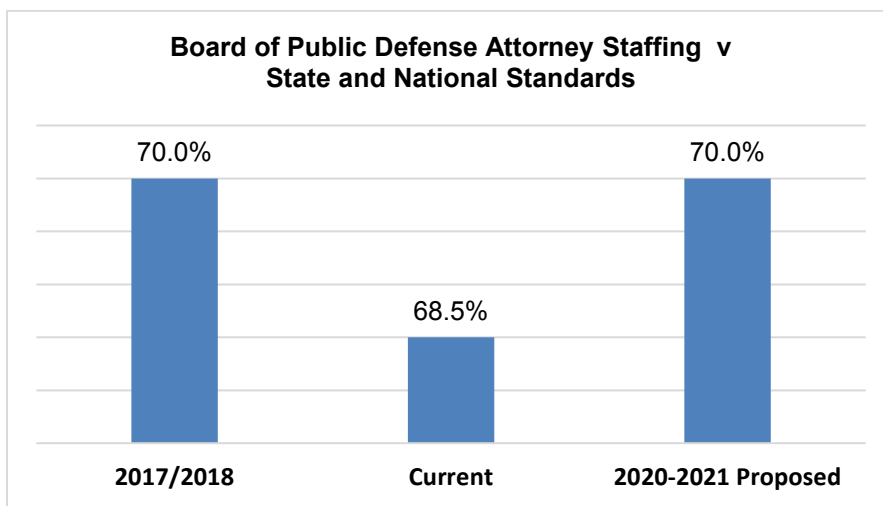
The proposal seeks to maintain and stabilize the public defender system by providing the staffing necessary to keep up with increased caseloads and to maintain and stabilize its work force in the face of competition from other public agencies.

By law public defenders represent children 10 years of age and older in child protection cases. With the increased emphasis on child protection cases at the state and local level, these cases are now the fastest growing area of cases on the trial court level, and is responsible for much of the overall growth in caseloads. If the current trend continues we could see a doubling of the cases between 2015 and 2021. A consequence of uncontrollable public defender caseloads for the entire criminal justice system is that frequently courtrooms--each with a presiding judge, court staff, prosecutors, probation officers, victim/witness assistants, victims, witnesses, family members and the public--are unable to conduct business in a timely manner because the public defenders needed for the resolution of cases are tied up elsewhere.

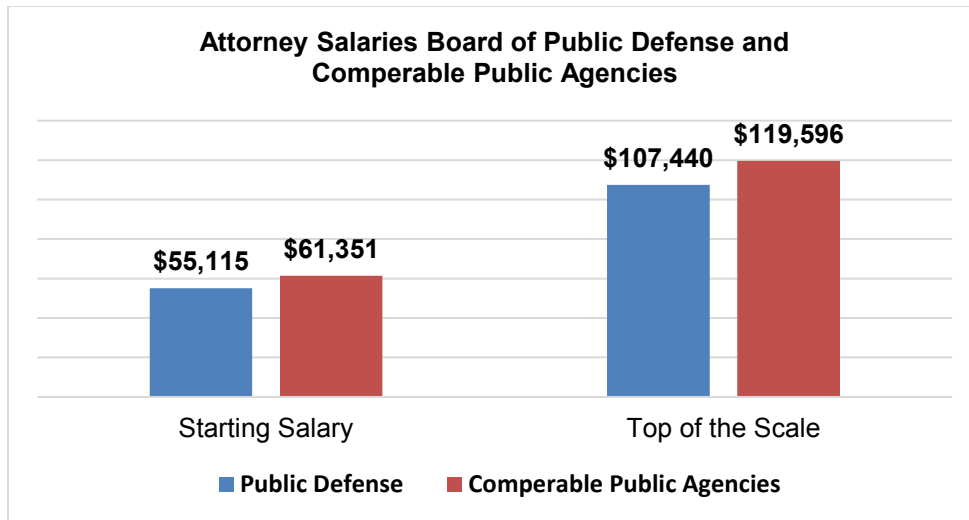
Public defenders cannot refuse cases (*Dzubiak v Mott*), and the only funding source the Board has is legislative appropriation. Since 90% of the board's budget is personnel and another five percent (5%) is contractually obligated, failure to fund salary and benefit increases for existing staff would require a reduction in staffing and would result in a reduction in services. This will lead to; the inability to handle certain case types in anything like a timely manner; aggravation of jail overcrowding; postponement of trial settings, which are already far enough out to impinge on the right to a speedy trial; deterioration in the quality of fact-finding, as witnesses become unavailable; increased strain on all the other participants in the justice system.

On the appellate level, between 2015 and 2017 the number of cases appealed increased by 15%, and parole revocation filings increased by 18%. A lack of funding on the appellate level has meant significant delays in the state's appellate courts. Delays have also occurred at the trial and appellate court levels in post-conviction matters. These matters include all appeals in cases that were not litigated (guilty plea withdrawal, sentencing, conditional release, parole revocation, and cases where new evidence may be found). Staff shortages have caused delays in sentencing appeal cases and appeals of plea withdrawal and conditional release.

The request would address the increase in child protection and appellate cases over the last few years by adding thirty-one (31) FTE attorneys in fiscal year 2020 and an additional nineteen (19) FTE attorney positions in fiscal year 2021, as well as the professional staff to support these positions. It also includes professional staff to bring these ratios in line with attorney staffing. The requested increase in attorney staffing only addresses the growth in caseloads since the start of the last biennium.



In order to continue to recruit and retain staff, the request includes funding to provide for salaries that are in line with other public agencies including the Attorney General's Office, and to fund the estimated insurance cost increases during the biennium.



Average of: Attorney General’s Office, State Court Administration, Anoka, Scott, Dakota, Stearns, St. Louis, Washington, Hennepin, and Ramsey Counties.

Hennepin County continues to provide a significant contribution (\$6-7 million annually) to the operation of the public defender office in the county including rent, IT services and other services. Funding would be provided to maintain the state’s contribution to the cost sharing arrangement.

The request also includes a modest increase in grant funding to the four public defense corporations that provide legal defense services primarily to the state’s minority communities. The cases handled (3,300 annually) by the corporations would otherwise be public defender cases.

Equity and Inclusion:

In child protection cases public defenders represent the most vulnerable of our community its children. The public defenders represent children who have been abused or neglected, and where chemical and mental health issues are pervasive.

Public defender’s represent the poorest segment of society. Clients by definition are living in poverty, many are homeless, and a high percentage suffer from mental health issues, and chemical dependency issues, as well as traumatic brain injuries. Estimates of the number of individuals in county jails who suffer from mental illness range anywhere from 30-50%. It is estimated that 90% of Minnesota’s criminal cases in involve alcohol or other chemical dependency issues.

People of People of color make up a significant portion of public defender clients. African Americans make up nearly 28% of the felony offenders in the state, and 35% of the state’s prisoners. Native Americans make up about 10% of the state’s prison population and about 7% of the felony offenders.

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Previous</i>	<i>Current</i>	<i>Dates</i>
Quantity	Public defenders as a percent of national and state standards	70%	68.5%	2016-2018
Quality	Counties w public defender at first appearance for in custody clients	37	77	2015-2018