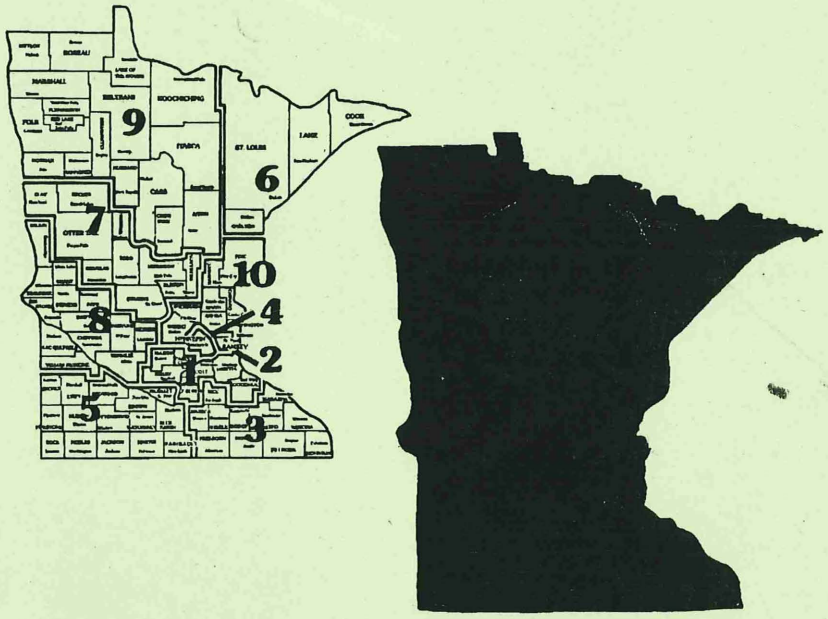
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TRIAL COURT AND PUBLIC DEFENSE FUNDING

THE TRANSITION FROM COUNTY TO STATE FUNDING



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TRIAL COURT AND PUBLIC DEFENSE FUNDING
THE TRANSITION FROM COUNTY TO STATE FUNDING

Introduction

Among the initiatives which the Legislature must consider in the 1991 session are the court and public defense financing transfers to the state mandated by the 1989 Legislature. Numerous groups, including the Governor's Advisory Committee on State and Local Relations, the Supreme Court State Financing Task Force, and the Citizen's League have reviewed and made recommendations on this subject. The Legislative Committee on Fiscal Policy included this topic as one they would like to review. As a result, a study group comprised of representatives from the executive, judicial and legislative branches of state government, under the leadership of the Department of Finance, have examined these initiatives. This paper outlines the policy rationale and financial impact of the transfers already enacted in law, identifies the policy determinations which must be addressed during the 1991 Legislative Session and identifies additional court and public defense programs which the Legislature may wish to consider transferring to state funding.

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Funding Issues Summary

During the 1991 Legislative Session, four issues will be presented to the Legislature:

Eighth Judicial District Continuation

1. Whether to make permanent the state funding of local court administrator offices in the Eighth Judicial District. In making the state funding permanent, the Legislature must also decide whether to replace the 1991 county special levy revenue of $740,000 in the base with general fund or HACA offset revenue.

	FUNDED BY:
Annual Base Cost: $3,011,000	HACA offset
1991 County Special Levy Revenue Amount	General Fund or HACA offset

Statewide Six Month Transition Cost

2. Whether to use general fund revenue or additional HACA reductions to fund the six-month transition costs for the court reporters, referees/judicial officer's salary and expenses and law clerk expenses currently scheduled for January 1, 1992. The HACA funding mechanism is scheduled for all base costs of these components.

	FUNDED BY:
Base Cost: $18,875,000	HACA offset
Six-Month Transition Cost: $9,441,000	HACA offset or General Fund

Funding of Increased Costs Subsequent to Year of Transfer

3. Whether the state should hear the policy and funding responsibility for growth of services through the general fund or assess the counties for cost of increases in years subsequent to the initial expense transfer by reducing HACA or other county aids.

Statewide Additional Court and Public Defense Financing Transfers

4. Whether to continue legislative efforts to achieve coherence between state policy setting and state funding by scheduling the transfer of additional court and public defense* functions to the state. Most of the cost of the transfers could be funded with HACA if the Legislature chose to use the HACA funding mechanism.

	FUNDED BY:
Approximate Base Costs for remaining court components: $60,000,000	HACA Offset

*Cost of additional Public Defense components is currently unknown.

Chapter 1: The Trial Courts

The Changing Court System

Unification of the Trial Courts

In the last two decades, Minnesota's fragmented system of municipal, probate and justice of the peace courts were consolidated into a single county court funded at the local level. In 1978 the state assumed responsibility for paying the salaries and expenses of judges within Minnesota and the salaries of the 10 judicial district court administrators. In 1987, after a multi-year effort, the county courts were merged into a single state district court. With this unification of the trial courts, the judicial district budget, which is mandated by the district court judges and assessed on a per capita basis to the counties within a judicial district, has expanded to meet an increased need for judicial support staff. In 1988, the counties funded 79 percent of the cost of Minnesota's trial courts.

Over this same time period, a clear statewide administrative structure was established for the judicial branch by legislation. Administrative authority for operating the trial courts was vested at the state level in the Chief Justice with the assistance of the State Court Administrator and at the district level in the Chief Judge of the judicial district under the general supervision of the Chief Justice.

As a result of these changes, the state and the judicial district, rather than the county, have emerged as the administrative units of the court system. That shift in structure and organizational emphasis has led to conflict with county officials who increasingly feel as if they no longer have control of the court budgets and yet must bear the public criticism for cost increases necessitated by judicial and legislative mandates.

This conflict between county-based financing and judicial district administration has led to confusion about which level of government--the county, the judicial district or the state--is responsible for defending certain court employees in the event of a lawsuit and for the settlement of cases or payment of judgments. It also leads to confusion as to which level is responsible for workers compensation and other employment-related claims.

Funding Problems

The courts are currently dependent on multiple funding mechanisms. There are a number of problems inherent in the process of obtaining funding from the several court funding sources--the county, the district budget mandated to the county by the courts, and the state. These include:

- court cost increases which push against and may exceed county levy limitations;
- unequal delivery of service depending on a county's ability to pay;
- severance of the policy decisions from the funding decisions;
- fragmented and generally limited fiscal oversight;
- an inability to implement programs uniformly;
- existence of volatile constitutionally mandated expenses such as jury/witness fees, psychiatric exams, and court appointed attorneys fees outside the court's control;
- the inability to obtain increasing amounts of funding in growth counties;
- dependence of the third branch of government on the uncoordinated decisions of 88 funding bodies;
- unclear liability and defense costs for court employees.

1989 Budget Units

The variety of funding sources has created disparate budgeting practices. The following chart indicates court expenses contained in the several budgeting levels. The same expense items may be found at all three levels. Between counties the same expense items may be found in the court, the county attorney, the community corrections/probation office, court services or human services budget making systematic cost information almost impossible to obtain. For example, guardian ad litem costs may be contained in an independent budget, the local court administrator's budget, a court services budget or in all three depending on the county.

State Budget

Judges' Salaries
District Administrator Salaries
Judges' Travel & Training Expenses

District Budget

District Administrator Staff
District Administrator Office Expenses
Trial Court Information System Facilities Costs
Law Clerk Salaries & Expenses
Court Reporters Salaries & Expenses
Judges' Expenses

County Budget

Judges' Furniture & Equipment
Judges' Telephone & Postage
Trial Court Information System Supplies (Computer Paper & Printer Ribbons)
Law Clerk Expenses, including travel, furniture, equipment, communications
Court Reporter Expenses including travel, furniture, equipment, communications
Court Administrator staff
Court Administrator operating budget including:

- guardian ad litem costs
- juvenile/misdemeanor defense costs
- jury fees
- transcript fees
- witness fees
- psychiatric exam costs

Supreme Court Task Force Recommendations

In response to these problems the 1988 Legislature, requested that the Supreme Court study the financing and control of the trial courts. Consequently, the Supreme Court established the Task Force on Financing of the Trial Courts broadly representative of the courts, the legislature, and the counties, and included representatives of the bar association and the public. The Task Force began studying the financing of the trial courts in July 1988. It examined the current adjudicative, administrative, and fiscal structures, identified problems with the current system, reviewed alternative funding mechanisms, and after six months of study presented observations and recommendations to the Legislature. Simultaneously a Governor's Advisory Council on State and Local Relations examined the funding sources for trial courts and reached similar conclusions.

The difficulties experienced in Minnesota in finding the appropriate funding base for the judicial branch are paralleled in other states. In the 1970s some states moved to funding at the state level to accomplish court reform agendas. In the 1980s many more states have moved to state funding for economic reasons. At the present time in this country 29 states have moved to funding trial courts at the state level.

The Task Force found that the structural and administrative changes which have occurred within Minnesota's judicial system over the past twenty years have moved the trial courts from a municipal and county focus to a judicial district and statewide focus. This transition has made the 87 counties a mismatched mechanism for funding.

Funding Mechanisms Considered

After examining the effectiveness of different funding mechanisms dependent on the property tax base such as exemption from levy limitations or special taxing districts for the courts, the Task Force concluded that the state general fund was the appropriate funding mechanism to provide an adequate and stable funding source for the coequal third branch of state government. The Task Force considered several funding mechanisms which are possible within the state general fund including a grant in aid program, a cost reimbursement program, and direct general fund appropriation but concluded that the first two mechanisms did not provide solutions to other administrative issues identified.

The Task Force concluded and recommended:

- State funding in the form of a direct general fund appropriation to the judicial branch.
- The appropriation for the trial courts should be part of a unified judicial branch budget presentation by the State Court Administrator. The 1990-1991 biennium appropriation should include the costs associated with judges, court reporters, law clerks, judicial officers, referees, and district administration staff and programs, except for facilities rental currently provided directly by the counties for these court officials, employees and functions. In FY94-95 all costs except facilities for court administrator offices statewide should be transferred to the state.
- Cognizance by the Legislature in authorizing the transition from county to state general fund financing of the need to adjust salary inequities among existing court personnel and acknowledgement of the necessity to finance salary and benefits adjustments.
- Recognition by the Legislature in authorizing the transition from county to state general fund financing of the need for some expansion of the judiciary's administrative infrastructure to manage the system beyond what currently exists and the inclusion of necessary positions and funding for the infrastructure as part of the judicial branch budget base.
- For transition purposes, creation by the Legislature of the right of current court reporters, law clerks, judicial officers, referees, and district administration staff to elect to retain current benefits including pension program or to participate in the judicial branch benefit plan and state pension program effective January 1, 1990

or the effective date of implementation. The courts would reimburse the host counties for the salaries and fringe benefits of employees electing to remain on a county payroll.

- Participation of all state funded judicial branch employees in the judicial branch personnel plan subject to the aforementioned right of benefits and pension election recommended to facilitate the transition.
- Further study of the benefits and limitations of additional direct state general fund appropriation for remaining court functions, including the office of the court administrator and court services/probation, as a mechanism for improving the effectiveness of the operation of the trial courts.
- Retention of the court administrator's statutory salary and budget appeal right.

It is clear that structural and financial issues exist which are of concern to the courts and the counties alike. State funding of the salaries and operating expenses of court reporters, law clerks, judicial officers and referees, and district administration support staff would address many of those issues and remove from county responsibility the judicial district budget which is currently mandated to them.

The Task Force proposal makes sense for the following reasons:

1. It shifts from the counties some of the financial burden for the judicial branch to a statewide revenue source which should support a more equitable level of judicial service across the state.

2. It eliminates the judicial district budget which essentially has put trial court judges in the position of directly levying property taxes.

3. It brings together at one level of government the decision making responsibility regarding the levels of judicial service and the responsibility for paying for those decisions.

4. Finally, it unifies and centralizes within the state judicial system the budget for all trial court judges and related staff and expenses, which should bring greater administrative coherence within the judiciary.

Implementation

The Supreme Court presented the 1989 Legislature with a legislative proposal transferring responsibility for funding law clerks, district administration staff, court reporters, referees and judicial offers to the state. Legislation was enacted in1989 (Chapter 335, Article III) to phase in these financing responsibilities to accommodate state fiscal limitations.

The transfer timetable as set out in legislation:

Eighth Judicial District	January 1, 1990
District Administration Staff	July 1, 1990
Local TCIS (computer) expenses	July 1, 1990
Law Clerk Salaries	October 1, 1990
Court Reporter Salaries	January 1, 1992
Law Clerk and Court Reporter Expenses	January 1, 1992
Referee and Judicial Officer Salaries and Expenses	January 1, 1992

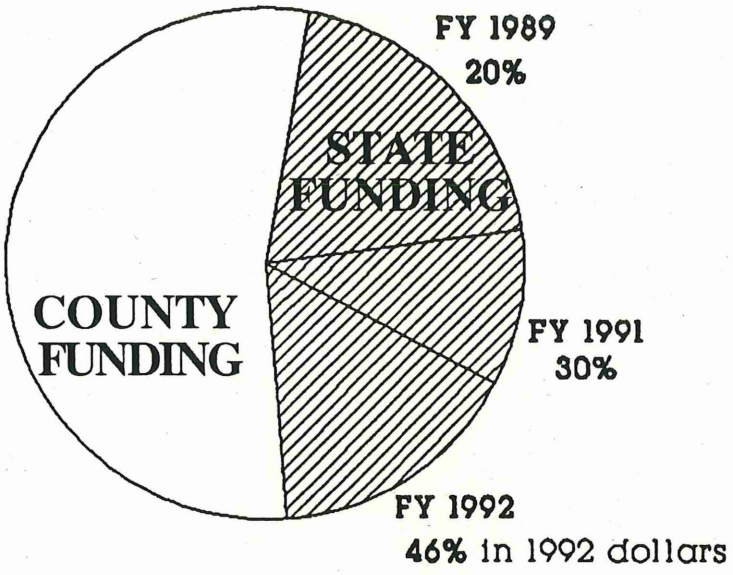
The chart below summarizes the funding mechanism and cost of the court components transferred during the FY90-91 biennium.

FY90-91 STATE FUNDING TRANSFER FOR COURTS

COURTS	COSTS	TAX CHANGE	REVENUES OR AID OFFSETS	
1-1-90 8TH District Project (18 mos)	4,620.0	Levy Limit Reduction	8th District Fees & Fines (18 mos)	1,491.0
7-1-90 District Administration	1,500.0	Aid Offset	Fee Increases (2 yrs)	6,892.0
7-1-90 Local TCIS Costs	520.0	Aid Offset	Base Fees Transfer (1 yr)	5,990.0
10-1-90 Law Clerk Salaries	4,468.0	Levy Limit Reduction	County LGA/HACA Statewide Reduction	1,859.0
TOTAL	11,108.0			16,232.1

Costs and Revenues in$1000's

With the transfer of various court segments from county to state funding, the state share of expenses associated with the operation of the trial courts, a part of the judicial branch of state government, increases. In 1992 dollars the impact of the phased transfer is shown below:



Summarized below is the January 1, 1992 breakdown between county and state funding absent further law changes :

County Funded Areas:

Court Administrators Offices (Except: Eighth Judicial District)

State Funded Areas:

Trial Court Judges
Judicial District Administrators
Judicial District Administrators' staff
Law Clerks
Court Reporters
Referees & Judicial Officers
Eighth District Court Administrator Offices

The chart below indicates the number of employees in the various categories and the 1990 salary funding source.

Trial Court Personnel Summary

Table A. - 1990 Employee Breakdown

Class	State Funded	County Funded	Class Total
Trial Court Judges	241	0	241
District Administration Staff	31	0	31
Trial Court Law Clerks	176	13[a]	189
Court Reporters	2[b]	250	252
Referees	2[b]	23	25
Court Administration Staff	75[c]	1300	1375
OVERALL TOTALS	526	1586	2114

[a] Includes 13 law clerks not funded by the state in Hennepin County
[b] Housing Calendar Pilot Project
[c] Eighth Judicial District and housing calendar pilot project personnel

EIGHTH JUDICIAL DISTRICT

In addition to the transfer of the district budget (law clerks, court reporters, district administration, referee and judicial officers), the Legislature funded local court administration offices in 13 counties in west central Minnesota*, the least populous judicial district, as a pilot project. As the amount needed to finance this project was uncertain, the Legislature made a general fund appropriation of $4.2 million, a contingent fund appropriation of $420,000 and provided that any additional expenses would be apportioned on a per capita basis and funded by a special levy by the counties in the Eighth Judicial District

Court and county officials began working to implement the pilot project legislation in May 1989. Supreme Court, judicial district and local court staff began the process of communicating with county officials about the intent of the legislation and the scope of the transfer.

A myriad of issues were identified and resolved. Court personnel identified the historic court operational costs and the projected costs for the 18 month pilot project. Issues surrounding the transfer of title to property used by transferred court employees were discussed with county officials. Court personnel were informed of the details of state and county pension and health programs so that employees could make informed choices in remaining on county benefit programs or transferring to state benefit programs. The effects of changing from deferred compensation plans in each of the counties to the state plan were explored and negotiated.

*Those counties are: Big Stone, Grant, Lac Qui Parle, Pope, Stevens, Traverse, Yellow Medicine, Chippewa, Kandiyohi, Meeker, Renville, Swift and Wilkin.

The details of identifying salary rates and leave balances and transferring employees to a new system were worked out.

Issues surrounding the transfer of court liabilities incurred but not paid were negotiated with the counties as were issues surrounding the transfer of fines assessed but not paid prior to the date of the takeover.

In spite of the difficulties ofestablishing in a short period of time a new administrative system from the individualized operations of the 13 counties by January 1990 the following had been achieved :

- employees had elected state or county benefits,
- the shift in payroll function had been accomplished,
- the establishment of new expenditure accounts in the statewide accounting system had been implemented,
- financial controls using the accounting system were in place for the courts and public defense function in the 13 counties,
- depository banks had been selected and cash accounting procedures from remote sites were being implemented with the assistance of the Department of Finance and the Legislative Auditor.

The business of the courts continued uninterrupted during the transition as it does to this day.

In spite of the administrative accomplishments, the Supreme Court had determined by the 1990 legislative session that a $740,000 shortfall in the Eighth District Pilot Project would be likely. The Court sought from the Legislature a general fund appropriation to cover the shortfall. As originally funded the taxpayers in the Eighth Judicial District counties would have received property tax relief of 2.4 million dollars for the eighteen month period - the net difference between the transferred revenue and expenses , both adjusted according to the statutory formula.

Rather than an additional appropriation, the Legislature determined that a special levy, which is outside the levy limits in payable 1991 would be used to fund the shortfall and that the HACA funding mechanism would be applied to the calendar year 1991 funding for the project. These legislative actions made the project revenue neutral for the last twelve months instead of providing property tax relief for the Eighth District counties. The pilot project was extended to December 31, 1991 to provide for recoupment of HACA and to allow time for the 1991 Legislature to consider whether to continue the project permanently.

A combination of levy limit adjustments and aid reductions for the counties in the 8th district for payable 1990 and for payable 1991 were enacted. They are summarized below.

Levy Limit Adjustments

In 1990 a $2,324,006 levy limit adjustment was made. The purpose of this adjustment was to estimate the counties1990 court costs and to subtract that amount from the counties levy limit base since the counties are no longer responsible for paying for those services in 1990.

Cost for trial courts (county and district administration)	$3,264,484
Less court fees	95,973
Less court fines	844,504
Net levy limit adjustment (Total all Eighth District Counties)	$2,324,006

Since the court costs were taken over for all of calendar year 1990, no adjustment was required for payable 1991 except to correct for a technical error in statutory language. The payable 1990 levy limit base was recomputed to exclude the offset for court fees relating to law clerks and public defender services. The $95,973 court fee amount from the previous year, plus inflation factors, were subtracted from the base. Hence, an additional total adjustment of about $100,000 was made to the 8th judicial district's levy limit for payable 1991.

Aid Offset

Payable 1991 aid offset	$1,926,035
Trial court costs	$3,199,652
Juvenile/Misdemeanor defender services	719,165
Less court fees and fines	1,175,975
Less: county share of pilot project not funded by state (shortfall)	805,805*
Net aid offset (Total all Eighth District Counties)	$1,926,035

*This is the amount of the shortfall which had been estimated and given to the Department of Revenue at the time that the Department was calculating the levy limits. It was later found that the amount of the shortfall was only $740,000 and that was the amount which was prorated and certified to the counties as the special levy amount. However, the levy limits were not recalculated for this estimating error.

Status after Fiscal Year 1991 and Its Implications for Aids and Levy Limits

During the 1991 session, the legislature will need to decide the appropriate funding entity for the Eighth Judicial District. There are three apparent choices which can be made. Each option requires a discrete set of changes to levy limits, fine revenue disposition, appropriations and state aid. The three options, each of which are discussed below, are:

- Discontinue the Eighth Judicial District Pilot Project, or
- Continue State Funding of the Eighth Judicial District Funding the Base Costs with Aid Offsets and Growth with New State Dollars.
- Continue State Funding of the Eighth Judicial District Funding Base Costs and Growth through an Aid Offset

Option 1) Discontinue the Eighth Judicial District Pilot Project*

If the legislature chooses to discontinue the Eighth District Pilot Project, the following actions will need to occur.

- The restoration of $1,926,035 of local government aid and homestead and agricultural credit aid (HACA) that was deducted when the county auditors determined the affected counties' net levies for taxes payable in 1991. In reality, if the legislature makes the determination not to continue with the pilot project, the actual aid cut for 1991 will only be $963,018 (which is one-half of the $1,926,035) since the state will not be funding the district court costs in the second half of 1991. No legislative action is necessary to restore this aid, since legislation was enacted in 1990 to allow this as an option.
- The legislature must explicitly restore the levy authority of the counties to fund the court costs returned to them as the result of this legislative action. The individual counties' "levy limit bases" would have to be increased by $3,907,815 less the fine revenue that automatically reverts to the county (which is approximately $800,000), plus the automatic general levy limit increase of 3% and whatever increase, if any, the individual counties qualify for as a result of population or household increases. This "automatic increase" applies to counties' entire levy limit bases under current law. While the counties' levy limits would go up by approximately $3,107,815 plus the inflationary adjustment, their net levies (after state aids) would go up by only $1,181,780 plus the inflationary increase since the 1991 state aid offset of $1,926,035 would no longer be made.
- Statutory coordination of pension program participation for Eighth District employees would be required since employees hired since 1/1/90 participate in MSRS rather than PERA.
- Protective legislation requiring re-entry into county insurance programs without penalty would be required.
- Protective legislation requiring recognition of leave accumulation by the counties would be required.

*This option of discontinuing the 8th district project assumes that those court services which have been assumed by the state in the other counties would continue to be funded by the state in the 8th judicial district. Discontinuing the 8th district demonstration project would mean "giving back" to those counties local court administration and public defender services for misdemeanants and juveniles.

Option 2: Continue the Eighth Judicial Pilot Project Funding the Base Costs with Aid Offsets and Growth with New State Dollars

- Fine revenue would have to be continued as a state revenue after December 31, 1991 for funding the term of the district's state funding.
- The legislature would have to appropriate the gross amount necessary to fund local court administration and public defender services for misdemeanors and juveniles for the term of the district's state funding.
- No levy limit adjustment is required since the levy limits were already adjusted in 1990/1991.
- The aid offset of $1,926,035 which was made in 1991 will be offset against the cost of operations, leaving the growth funded by new state dollars.

Option 3 Continue the State Funding of Eighth Judicial District Funding Base Costs and Temporarily Fund Growth through an Aid Offset

If the legislature elects to continue state funding for the Eighth Judicial District through aid offsets, the following actions are necessary.

- The aid offset has to be made permanent (or for whatever term the legislature elects to continue the demonstration project). The legislature could decide that the offset should be recalculated annually so the state has no financial exposure for future cost increases for local court administration and public defender services for misdemeanors and juveniles. This action would increase county property taxes without allowing county boards to have a voice in managing the service and would be contrary to the state financing policy goal of unifying the policymaking and funding responsibility.
- Fine revenue would have to be continued as a state revenue after December 31, 1991 for the term of the district's state funding.
- The legislature would have to appropriate the gross amount necessary to fund local court administration and public defender services for misdemeanors and juveniles for the term of the district's state funding.
- No levy limit adjustment is required since the levy limits were already adjusted in 1990/1991 when the demonstration project initially began.

While it is possible to return the Eighth Judicial District to county funding, neither the courts nor the counties recommend this course of action. The courts have achieved a broader district-wide perspective as budget personnel and procedural issues have been discussed. Judges and Court Administrators have sought consensus and compromise which would best use scarce resources. Court administrative personnel have assumed greater management control over their own budgets and have been able to manage within existing resources even though extraordinary trial demands and costs have occurred because of lengthy murder trials. The Court Administrators are working closely with each other and with state staff to implement uniform policies and procedures. Progress is being made toward the administrative and funding coherence which was the basic rationale for the transfer to state funding. To reverse the transfer will negate that gain and will cause personal dislocation for court employees as they once again convert insurance policies, pension programs, payroll cycles and deferred compensation programs, and are subjected to disparate administrative and budgetary programs which are at odds with the goal of uniform judicial policies and procedures statewide. Continued state funding of the Eighth Judicial District is recommended.

Chapter 2: The Fragmented Public Defense System

Under Minnesota Law, all individuals accused of a felony, gross misdemeanor or misdemeanor crime are entitled to be represented by an attorney. If an individual demonstrates an inability to pay for the services of a private attorney, the Court will appoint a Public Defender to represent that individual. It is estimated that 90% of those charged with crimes in the state of Minnesota are indigent and require public defender counsel.

Issues Surrounding State Public Defense Responsibilities

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as Constitutional mandates, Legislative policies, Supreme Court Rules, Sentencing Guidelines, and judicial calendaring changes which the board does not direct. The Board of Public Defense, after conducting public hearings, reviewing agency data sources and examining projected caseload increases, has determined that the following significant issues warrant attention by the Legislature.

Increases in Police, Prosecution and Judges

In the past several years, there have been significant influxes of monies to local prosecutors and police on a local, state and national level to combat crime. There has not been the same funding balance accorded to the public defense field. New judges and prosecutors have been added to process those defendants accused of committing crimes. Public defender staff has not increased within the same period. In addition, the system of biennial appropriations is extremely difficult to administer since many variables that increase caseload such as local funding of police and prosecutors occurs on an annual and in some cases six month cycle.

Prior to 1988 the public defense system was a combination of several systems delivering state mandated programs. In Hennepin and Ramsey Counties the county boards determined the budget and policy of the public defender offices, which provided felony, gross misdemeanor, misdemeanor and juvenile defense. In six other judicial districts the board of public defense, a state entity, set the budget and therefore the county tax level for felony and gross misdemeanor public defense services. In the two remaining judicial districts, district judges assigned attorneys to individual cases at an hourly rate, an appointive counsel system. The appointive counsel system was also used for juveniles and misdemeanants, outside of Hennepin and Ramsey counties.

Several critical issues warranted serious discussion when examining funding of public defense.

- The first was an unequal distribution of funding and therefore justice because of reliance on the property tax and thus property values.
- Second, cost increases in state mandated public defense services continued to push against levy limits.
- Third, at least in the six counties where the Board of Public Defense set the budgets the counties felt there was severance of policy decisions from funding decisions.
- Fourth, fiscal oversight was fragmented or limited.
- Fifth, there was a question for liability purposes of whose employees the public defenders were.
- Six, there is a movement at the state level to sort out costs between local government and state government.

The need for study of the Public Defense System

The 1988 Legislature created two committees, the State and Local Services/Fiscal Responsibility Study Committee instituted by the Governor's Advisory Council on State and Local Relations and the Supreme Court Task Force on the Financing of the Trial Courts

created by Chapter 582, Section 2 which examined the existing funding of public defender systems statewide. One of the primary issues examined was whether or not counties should continue to pay for the state mandated public defender programs.

The committees recommended a phased approach to state funding of public defense services. The 1989 Legislature adopted the Committee recommendations and began a phased approach to funding Judicial District Public Defender Offices through state general fund appropriations starting in F.Y. 1991. The 1989 Legislature also appropriated $16,910,000 of State funds to the Board of Public Defense to provide representation in all judicial districts for indigent felony

and gross misdemeanor cases and representation of juveniles and misdemeanants in Hennepin and Ramsey Counties. Appropriations were also provided to the Supreme Court for juvenile and misdemeanor defense in the 8th Judicial district Pilot Project. The Supreme Court then contracted with the Board of Public Defense to establish and administer a juvenile and misdemeanant district defense system in the Eighth Judicial District starting in F.Y. 1991. With the exception of the Second, Fourth, and Eighth Judicial Districts, the responsibility for misdemeanor, juvenile and other cases requiring appointment of counsel remains with the individual counties.

Adequate and Competent Counsel

An approximate 30% increase in felony and gross misdemeanor cases has occurred in Judicial Districts between 1986 and 1989. Appeals handled by the Appellate Public Defender Office, are up 45% since 1986. The Department of Corrections records indicate a 31% increase in their prison population since 1986 and project a 61% increase by January, 1993. Sentencing

Guidelines and statutory changes that occurred in August, 1989, have increased sentences in

many cases to double what they were prior to that date. This rapid growth in individuals ntation is required by Supreme Court Rules, ABA Standards, and Rules of Professional Responsibility. Under existing budget conditions, the public defense system within the State is in serious jeopardy of failing to provide competent and constitutionally mandated services.

Performance results for the State Public Defender's Office, Judicial District Public Defender Offices and Public Defense Corporations would indicate there are significant problems in

attempting to meet the demands of public representation in our State. Preliminary data from the Weighted Caseload Study, indicates the need for significant personnel increases to meet responsible and ethical caseload standards.

A paramount issue is whether the public defender staff can handle the number of cases that they are accepting at present. Currently, caseloads are rising at such numbers that a serious question of competent representation is being raised in some Judicial Districts. The Board has recognized that something must be done soon concerning whether its attorneys should continue to accept cases where there is a question of violation of the Rules of Professional Conduct.

Weighted Caseload Study for Felony and Gross Misdemeanor Cases

In order to properly administer the newly implemented statewide system, the Legislature in 1989 also appropriated $100,000 to the Board of Public Defense to conduct a weighted caseload study for felony and gross misdemeanor cases. The Legislature recognized that such a study was necessary to develop reliable caseload standards throughout the state to substantiate further appropriations to the statewide system. The design of the study permits the Board of Public Defense to develop appropriate caseload standards for various regions of the State that would reflect differences in practice and procedures. The results of the study will provide both a comprehensive management planning tool for the Board of Public Defense, as well as a set of caseload standards that can be built into a funding formula which will permit the Board and the Legislature to plan and budget for public defender expenditures in a more reliable and realistic way in the future. Presently, the weighted caseload study is due for presentation to the Minnesota Legislature in January, 1991.

Minimum standards regarding the number of cases an individual attorney can competently represent are being developed in the state of Minnesota through the weighted caseload study.

In addition, all attorneys are governed by Constitutional mandates, the Minnesota Rules of Professional Conduct, and Court rules which require an attorney not to exceed the amount of cases for which she or he is capable of providing effective representation. If the weighted caseload study's final report indicates that competent caseload standards are being exceeded in a gross manner, adequate funding will need to be provided to ensure adequate representation. If the weighted caseload study identifies standards which are significantly exceeded by current public defender caseloads, the alternative for the Board is to request

additional staff and associated resources. If those requests cannot be funded, the Board may have to notify the Court that attorneys under its jurisdiction cannot take any more public defender cases. The Board would not be able to allow its attorneys to accept additional cases, after standards have been instituted through the weighted caseload study, as such a decision would place their attorney licenses in jeopardy and place them in a situation where they could be disciplined by the Board of Professional Responsibility. The Court would need to make a decision as to what government entity should be ordered to pay for such services. Alternatively, the Board would be forced to pursue remedies in the Courts. This choice is not unrealistic as it is happening in other states.

A major issue that confronts the Board relates to the current funding process of providing for new positions and salary increases, significant salary and benefit variances exist among judicial district statewide. In addition the costs of increasing caseloads, increasing working hours and for cost of living increases must be accommodated. The uneven availability of health insurance benefits for employees of the Judicial District Public Defenders offices is a further significant problem.Currently the only Judicial District Public Defenders eligible for health insurance benefits are those in Hennepin and Ramsey Counties or in counties where through some historical quirk the Chief Public Defender was able to acquire these benefits through a County.

Misdemeanor and Juvenile Representation

The Juvenile Representation Study Committee recommended that new eligibility criteria for representation of juveniles be enacted. It further recommended that a study be conducted to identify the costs of the new eligibility criteria so that the Legislature would have that information prior to deciding whether or not the State should take over funding of this area.

Recommendations from two State policy committees have concluded that the State needs to continue taking over the cost of public defender services, which it began in 1989. In addition, the policy committees recommended that a juvenile appeals unit be established in the State Public Defender's Office.

F.Y. 1992-1993 Funding Proposals

The Board of Public Defense and the State Financing Task Force propose that the state continue the assumption of public defense costs by funding the following in F.Y. 1992-1993:

1. A juvenile representation weighted caseload study to determine the current level of services statewide and to project the costs of meeting the Juvenile Representation Study Committee's recommendations.

2. An appellate defense team in the State Public Defender's Office to handle juvenile appeals statewide.

3. Misdemeanor and juvenile defense costs statewide.

If sufficient resources are not available for statewide implementation in FY92-93, the Task Force recommended a phased approach where the State would pay for misdemeanor and juvenile defense costs in the Third and Sixth Judicial Districts. It is important to note that funding of these two districts would be for the costs of the current level of service. If this recommendation were accepted and funded, there would then be full public defender representation in the Second, Third, Fourth, Sixth and Eighth Judicial Districts, leaving misdemeanor and juvenile representation to be State funded in the future in five judicial districts.

Chapter 3: Funding Mechanisms

With the recommendation of the Governor, the Legislature appropriated general fund dollars for trial court and public defense costs transferred in the F.Y. 1990-1991 biennium. Those general fund dollars came from several sources: new general fund appropriation; fee and fine revenue generated by the courts which was transferred from the county to the state; new fee revenue generated by substantial fee increases enacted in 1989; and reductions in Local Government Aid and Homestead and Agricultural Credit Aid.

New Revenue

As part of the FY90-91 financing package, $13,540,000 in transferred fees and fines and court fee increases generated by the courts were authorized to support part of takeover costs.

State Aids Offset

State takeover of the various court and public defender services was not intended to provide an immediate financial gain to county governments by creating disposable revenue to fund non-court county obligations. To prevent this, and, coincidentally, to limit the state's immediate financial exposure as expenses are transferred from county to state funding, selected county fees and fines are transferred to the state and certain expenses are offset against state aids.

A dollar for dollar offset mechanism reduces a county's local government aid (a non categorical state aid analogous to the old federal revenue sharing program) and homestead and agricultural credit aid (an aidreplacement for the old Homestead and Agricultural Aid and reimbursement for certain class rate reductions) by the amount of expenditures for the selected court or public defender services assumed by the state in the transition or "base" year. The result of using the aid offset is no immediate financial gain for the county and no immediate cost to the state. The

county has no immediate financial gain because the savings from the state assumption of the cost of the selected court or public defender services is equal to the county's increased cost -local cost of providing other services as a result of the loss of state aid revenue in an amount identical to the expenditures for the cost of selected services taken over by the state. The state has no immediate cost because its increased cost to pay for the selected court or public defender services is offset by an equal reduction in its cost for other state aids.

The programs or services, the cost of which have been or will be assumed by the state and accompanied by a commensurate aid reduction, are listed below along with the base year, and the amount of the aid offset.

PROGRAM OR SERVICE	BASE YEAR	AMOUNT
District Administration Other than Hennepin and Ramsey counties	F.Y. 1991 assumption costs were offset against C.Y. 1990 and subsequent years aids.	$1,352,945
Trial Court Information System	F.Y. 1991 assumption costs were offset against C.Y. 1990 and subsequent years' aids	$ 506,331
Public Defender Services for Juveniles and Misdemeanors in Hennepin and Ramsey Counties	F.Y. 1991 assumption costs were offset against C.Y. 1990 and subsequent years' aids.	$4,047296
Costs (Salaries) of Court Reporters Judicial Officers and Referees & Expenses of Law Clerks and Court Reporters	C.Y. 1992 assumption costs are to be offset against C.Y. 1992 and subsequent years' aids.	$18,229,000

Thus far aid offsets have prevented immediate financial gains for the counties and immediate net cost increases for the state as a result of the takeover of costs for selected court and public defender services. Availability of aid to be offset in specific counties may be an issue for segments of the court takeover beyond those currently scheduled through 1992.

Property Tax Relief/Levy Limit Adjustments

As this court funding proposal was discussed by the Legislature, it became clear that tax relief for the citizens as well as administrative coherence for the courts was an important policy motivation. As expenses were transferred from the county budgets, the county levy limits were reduced according to a statutory formula which recognized the loss of revenue as well as expenses. For some of the transferred services, the taxpayer received property tax relief through lower levy limits. For all of the transferred expenses the county government was relieved of the burden of current court costs and with the future growth in specified areas.

Counties' levy limits were adjusted incidental to the state aid offsets to prevent what otherwise would be automatic increases in the counties' levy authorities. Long standing law provides that a county's levy authority is directly reduced by the local government aid it receives from the state and indirectly by the amount of homestead and agricultural credit aid it receives. Consequently, absent an adjustment, a county's levy authority would automatically go up when its state aids are reduced, creating a financial gain when coupled with the loss of county expenses.

A county's net cost for providing locally financed services supported by property tax levies remains unchanged after the state assumption of the costs of selected court or public defender services and the deletion of a like amount of state aid, so in this instance no levy authority increase would be necessary. However, a county's net cost for providing locally financed services are increased (or, more accurately, its resources to finance such services are decreased) as the result of making former county fee revenue a state resource. Consequently some levy authority increase is warranted for the transfer of fee revenue from the counties to the state. Therefore, it was necessary to adjust the counties' levy limits to prevent automatic levy increases from the state aid offsets while allowing levy limit increases for the loss of fee revenue.

The following chart indicates the specific levy limit adjustment by program or service, the cost of which was taken over by the state, along with the amount of the adjustment.

PROGRAM OR SERVICE	LEVY LIMIT ADJUSTMENT	AMOUNT
District Administration other than Hennepin and Ramsey Counties	Each county's payable year 1990 adjusted levy limit base was reduced by the amount of the aid offset for C.Y. 1990. The reduction is automatically taken into account in the computation of future years' levy limits	$5,279,543
Trial Court Information System	Each county's payable year 1990 adjusted levy limit base was reduced by the amount of the aid offset for C.Y. 1990. The reduction is automatically taken into account in the computation of future years' levy limits.	Included above.
Public Defender Services for Juveniles	Each county's payable year 1990 adjusted l levy limit base was reduced by the amount of the aid offset for C.Y. 1990. The reduction is automatically taken into account in the computation of future years' levy limits.	Included above.
Costs (Salaries of Court Reporters, Judicial Officers and District Court	Each county's payable year 1991 levy limit base will be reduced by the amount of the C.Y. 1992 cost of these services assumed by the aid offset for C.Y. 1992 and subsequent years.)	$18,299,000
Costs of Public Defender Services for Felonies & Gross Misdemeanors & Costs of Law Clerks	Each county's payable year 1991 levy limit base (1991 will be the first full year of the state's cost assumption) will be reduced by the amount of the C.Y. 1991 cost of these services assumed by the state less the county's 1989 fee revenue computed at rate of $20 for marriage dissolution and $30 for other civil and probate filing fees.	

*The total levy limit adjustment of $5,279,543 for district court administration, the trial court information system and public defender services for juveniles and misdemeanors in Hennepin and Ramsey Counties is less than the toal aid offset of $5,906,572 for these programs or services because $627,029 of reconciliation adjustment were made to the aid offsets effective for C.Y. 1991 while no reconciliation adjustments were explicitly provided for in the levy limit provisions.

Transfer Financing Issues

The use of HACA as a funding mechanism requires the careful consideration of several issues.

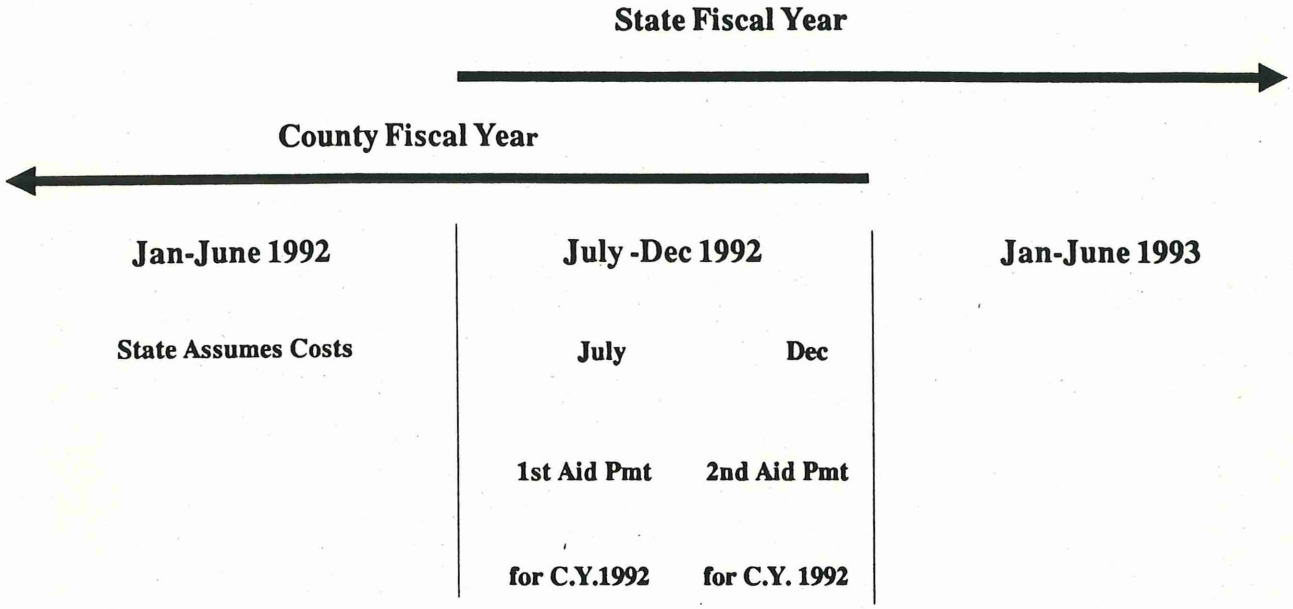
Base

As costs are transferred to the state, using the HACA funding mechanism, issues arise concerning the level of funding in the year of transfer. A primary issue is whether the budget amount is established as the amount expended by the county in the year immediately preceding the transfer or the amount needed to fund the level of service in the first budget year of the transfer. The counties argue that the historic cost is the appropriate level for establishing the HACA reduction since it is the amount upon which their levy limit was established. Yet, where there are escalating salaries and benefit costs in the year of transfer, an operating budget would be seriously handicapped by limitation to historic costs of the preceding year. Therefore, an equally persuasive argument can be made that the base year costs should be the amount the agency would have required in the year of transfer. This figure represents the costs of which the county was relieved in the year of the transfer.

Six Month Gap

Additionally, the six-month transition cost is a critical issue where resources are tight. Because of the difference in fiscal years whenever a transfer of funding occurs, six months' costs must be initially funded before the aid offset can be used. This transition funding may occur in the form of increased revenue or increased offset to recoup the expenses. The following chart indicates for any given period the impact of the differing fiscal years on transition funding while using an aid offset.

TRANSITION FUNDING
Six Month Gap



Both the county and the state are dependent on the two aid payments which occur from July/December to finance costs for 12 of the 18 months involved in a transfer, albeit different 12 month periods.

How is the 6 Month Transition Cost Funded?

1. **Raise new revenue at county level.**
2. **Use general fund dollars at state level.**
3. **Increase Aid Deduction at state level.**

Three mechanisms have previously been identified: raise new revenue, have the state grant an additional general fund appropriation, have the counties finance the cost through an additional HACA reduction. In the latter instance the state could be viewed as prepaying what has traditionally been a county expense in the first six months which the county would repay once aid payments become available. Thereafter, the counties are matching expenses and aid payments for each six month period. It should be noted, however, that the HACA funding mechanism contemplates that the reduction of HACA aid occurs at the time of transfer and would not escalate over time to pay for future programmatic increases associated with transferred court or public defense costs.

Accelerating the Takeover

In order to clarify fiscal and administrative responsibility the Legislature may wish to accelerate the pace of the scheduled (and unscheduled) takeovers of the court and public defender systems. If the legislature elects to accelerate the takeover schedule, it can minimize the state's immediate financial exposure by expanding its utilization of aid offsets. To delay the use of offsets may result in recouping less and less of the state's expenditures for further takeovers as time goes on because aids may one by one be completely exhausted by aid offsets for other purposes.

In FY91 an excess of approximately $98,000,000 of homestead and agricultural credit aid would remain after using aid offsets for state takeover of the approximately $60,000 local trial court costs that remain locally funded under current law after 1991. This is computed without regard to the possible additional financial impact of funding the first six months of the counties' fiscal (calendar) year costs in the year of the takeover.

Conclusion

The use of Local Government Aid and Homestead and Agriculture Credit Aid as a funding mechanism should result in a revenue neutral shift of expenses from county to state government. The use of this funding mechanism has implications for

- the state and county tax policy,
- requires close coordination between the appropriations and tax committees, and
- necessitates a clear understanding of problems associated with differing state and county fiscal years.

This mechanism, however, can be used to achieve coherence between the state policymaking and funding responsibilities for the third branch of state government.

State of Minnesota
Total Court Financing Projections
F.Y. 1992-1993 Funding Balance - Under Current Law
($ in Millions)

Description	Effective Dates	F.Y. 1990	F.Y. 1991	Total 1990/91	Projected F.Y. 1992	Projected F.Y. 1993
Revenue & Aid Reductions:						
8th District						
Fees, Fines, Bail Forfeitures	1-11-90	$ .5	$ 1.0	$ 1.5	$ 1.0	$ 1.0
Aid Reductions	7-1-90	-	-	-	1.9	1.9
Special Levy		-	.7	.7	-	-
All Other Counties:						
Fees, Bail Forfeitures	7-1-89/90	3.0	9.9	12.9	9.9	9.9
Aid Reductions	7-1-90	-	1.0	1.0	1.9	20.2
Public Defender:						
Henn. & Ram.-HACA/LGA	7-1-90	-	4.3	4.3	4.3	4.3
Distressed Co. Aids	7-1-90	-	1.0	1.0	-	-
Total Revenue & Aid Reductions		$ 3.5	$ 17.9	$ 21.4	$ 19.0	$ 37.3
Expenditures:						
8th District:						
Court Costs	1-1-90	$ 1.5	$ 3.0	$ 4.5	$ 3.0	$ 3.0
Public Defense Costs	1-1-90	.2	.7	.9	.7	.7
Deficiency	7-1-90	-	.7	.7	-	-
All Other Counties:						
District Court Admin. Cost	7-1-90	-	1.5	1.5	1.5	1.5
Trial Court Info. System Cost	7-1-90	-	.5	.5	.5	.5
Law Clerk Salaries	10-1-90	-	4.4	4.4	6.0	6.0
Law Clerk Expenses	1-1-92	-	.1	.1	.5	.9
Court Reporter Salaries	1-1-92	-	-	-	6.5	13.1
Court Reporter Expenses	1-1-92	-	-	-	.5	1.0
Referees Sal. & Exp.	1-1-92	-	-	-	1.3	2.5
Jud. Officers Sal. & Exp.	1-1-92	-	-	-	.1	.1
Public Defender:						
Weighted Caseload Stdy.	7-1-89	.3	-	.3	-	-
Hennepin & Ramsey County	7-1-90	-	4.6	4.6	4.6	4.6
Hennepin & Ramsey-Salary Def.	7-1-90				.4	.4
All Counties - Fel. & G/M.	7-1-90	-	12.3	12.3	12.3	12.3
All Counties - J. & M.	7-1-91					
Total Expenditures		$ 2.0	$ 27.8	$ 29.8	$ 37.9	$ 46.6
Revenue Minus Expenditures Net (Cost) to General Fund		$ 1.5	$ (9.9)	$ (8.4)	$ (18.9)	$ (9.3)
F.Y. 1991 Base					(9.9)	(9.9)
F.Y. 1992/1993 New General Fund Dollars					(9.0)	-

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State of Minnesota
Total Court Financing Projections
F.Y. 1992-1993 Funding Balance - *With Law Change
($ in Millions)

Description	Effective Dates	F.Y. 1990	F.Y. 1991	Total 1990/91	Projected F.Y. 1992	Projected F.Y. 1993
Revenue & Aid Reductions:						
8th District						
Fees, Fines, Bail Forfeitures	1-11-90	$ .5	$ 1.0	$ 1.5	$ 1.0	$ 1.0
Aid Reductions	7-1-90	-	-	-	1.9	1.9
Special Levy		-	.7	.7	-	-
All Other Counties:						
Fees, Bail Forfeitures	7-1-89/90	3.0	9.9	12.9	9.9	9.9
Aid Reductions	7-1-90	-	1.0	1.0	11.0	20.2
Public Defender:						
Henn. & Ram.-HACA/LGA	7-1-90	-	4.3	4.3	4.3	4.3
Distressed Co. Aids	7-1-90	-	1.0	1.0	-	-
Total Revenue & Aid Reductions		$ 3.5	$ 17.9	$ 21.4	$ 28.1	$ 37.3
Expenditures:						
8th District:						
Court Costs	1-1-90	$ 1.5	$ 3.0	$ 4.5	$ 3.0	$ 3.0
Public Defense Costs	1-1-90	.2	.7	.9	.7	.7
Deficiency	7-1-90	-	.7	.7	-	-
All Other Counties:						
District Court Admin. Cost	7-1-90	-	1.5	1.5	1.5	1.5
Trial Court Info. System Cost	7-1-90	-	.5	.5	.5	.5
Law Clerk Salaries	10-1-90	-	4.4	4.4	6.0	6.0
Law Clerk Expenses	1-1-92	-	.1	.1	.5	.9
Court Reporter Salaries	1-1-92	-	-	-	6.5	13.1
Court Reporter Expenses	1-1-92	-	-	-	.5	1.0
Referees Sal. & Exp.	1-1-92	-	-	-	1.3	2.5
Jud. Officers Sal. & Exp.	1-1-92	-	-	-	.1	.1
Public Defender:						
Weighted Caseload Stdy.	7-1-89	.3	-	.3	-	-
Hennepin & Ramsey County	7-1-90	-	4.6	4.6	4.6	4.6
Hennepin & Ramsey-Salary Def.	7-1-90				.4	.4
All Counties - Fel. & G/M.	7-1-90	-	12.3	12.3	12.3	12.3
All Counties - J. & M.	7-1-91					
Total Expenditures		$ 2.0	$ 27.8	$ 29.8	$ 37.9	$ 46.6
Revenue Minus Expenditures Net (Cost) to General Fund		$ 1.5	$ (9.9)	$ (8.4)	$ (9.8)	$ (9.3)
F.Y. 1991 Base					(9.9)	(9.9)
F.Y. 1992/1993 New General Fund Dollars					-	-

* Law Change to Cover 6 Month Transition Cost.

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