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**STATE OF MINNESOTA  
BOARD OF PUBLIC DEFENSE**

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**1990 A N N U A L R E P O R T**

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## INTRODUCTION

The purpose of the State of Minnesota Board of Public Defense's 1990 Annual Report is to update the Governor's Office, the Supreme Court, and the Legislature on the operations of the Board itself, the State Public Defender's Office, the Judicial District Public Defender Offices, and Public Defense Corporations. The report covers the period from January 1, 1990, through December 31, 1990, and reviews statutory changes, the integration of the Judicial District Public Defender offices into State funding, the Board's accomplishments, personnel changes, and the Board's short-term and long-range goals for providing quality defense services for the indigent of our State.

### Right to Representation

The defense of accused persons is constitutionally mandated and must be provided even when such costs are borne by the public. The right to representation by counsel was established under the Constitution by three United States Supreme Court decisions. In Gideon v. Wainwright, 372 U.S. 335 (1963), the United States Supreme Court held that the Sixth Amendment right to counsel was applicable to the States, through the due process clause in all felony prosecutions. Juveniles were accorded the right to counsel by the Court in In re Gault, 387 U.S. 1 (1967). Subsequently, in Argersinger v. Hamline, 407 U.S. 25 (1972), the Court further extended the right to counsel to those misdemeanor cases that can lead to imprisonment.

Under Minnesota law, all individuals accused of a felony, gross misdemeanor, or misdemeanor are entitled to be represented by an attorney. Individuals undergoing civil commitment, paternity, non-support or contempt proceedings and juveniles subject to judicial proceedings, are also entitled to representation by an attorney. If a defendant in one of the above proceedings demonstrates an inability to pay for the services of a private attorney, the Court will appoint a Public Defender to represent that individual (Minnesota Statutes §611.14 - 611.18). It is estimated that 90% of those charged with crimes in the State of Minnesota are indigent and require public defense counsel.

The Public Defender "system" is an integral part of the State of Minnesota's justice system and has a profound impact on the lives of thousands of poor people. Public defense, however, is perhaps the least popular area of public expenditure. Yet, it is a public service guaranteed as a fundamental right under the United States Constitution, and as such, public defender representation cannot be denied to poor people who meet indigency standards. Thus, it



is important to state that the public defender system does not and cannot control its client intake. Rather, public defender caseloads are controlled by external circumstances, such as Constitutional mandates, Legislative policies, Supreme Court Rules, Sentencing Guideline changes, Statutory changes, judicial calendaring changes and Department of Corrections policies, etc., which the Board does not direct.

Equally important, the current system of Legislative Biennial appropriations for the Board of Public Defense is extremely difficult to administer since many variables that increase caseloads, such as local funding of police and prosecutors, occur on an annual or in some cases, a six month budget cycle. For example, when a City decides to add more police officers or a County decides to add more prosecutors to concentrate on drug arrests, the Public Defender system within that locality has no ability to match those increased services under the current State budgeting system. Another example is money collected and used by prosecutorial and police agencies as a result of forfeitures. In many cases, the use of this money is outside the budget review of the local governmental entity. The availability of forfeiture money to police and prosecutors allows those agencies to either add additional personnel to their departments or increase their services, without the defense having an opportunity to do the same.

The rapid increase of individuals charged with crimes and eventually incarcerated directly affect the ability of the Board of Public Defense to provide adequate and competent representation to their indigent clients. Effective representation is required by Supreme Court Rules, American Bar Association 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 constitutionally mandated services. This is the paramount issue for the Board of Public Defense in the upcoming year.



## History of the Minnesota Public Defender System

The foundation of Minnesota's system for the delivery of indigent criminal defense services to the poor was established in the mid-1960's. In 1967, the Judicial Council of Minnesota was created by the Minnesota Legislature. The purpose of this Council, comprised of Minnesota Supreme Court members, was to oversee the public defender system in operation at that time. In 1978, the Judicial Council was empowered by the Legislature to prepare funding proposals and to distribute appropriated money for non-profit criminal and juvenile defense corporations, which primarily serve minority populations located throughout the State.

Eventually, the Court became concerned about conflicts between its role in overseeing public defender services and its judicial function. In 1981, the Judicial Council recommended to the Legislature that it create a Board of Public Defense to supervise and review public defense operations throughout the State. During that year, legislation was enacted creating the Board of Public Defense and charging it with the responsibility of appointing the State Public Defender and six Judicial District Chief Public Defenders. It also mandated that the Board approve and certify budgets for each Judicial District Public Defender office under its jurisdiction.

The public defense system was, at this point, 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 set the budget and therefore the county tax level for felony and gross misdemeanor public defense services. In the two remaining judicial districts, district court judges assigned attorneys to individual cases at an hourly rate. The "appointed counsel" system was also used for juvenile and misdemeanor cases outside of Hennepin and Ramsey counties.

In 1987, the Minnesota Legislature expanded the Board of Public Defense's statutory authority (Minnesota Statutes §611.215 - 611.27). The legislation modified the Board's membership, created an administrative office, instituted greater oversight in regard to the State Public Defender's Office, created two new Judicial District Public Defender positions and offices (Third and Eighth), mandated new standards regulating the offices and conduct of all public defender organizations and established new reporting, budgeting and funding processes. These legislative changes created greater administrative oversight of public defender activities and significantly expanded the role of the Board in governing public defender organizations in Minnesota. A second step was taken by the Legislature in 1987 with the appropriation of over \$800,000 of



State funds to assist those counties that were in a "distressed situation."

The 1988 Legislature created two committees, the State and Local Services/Fiscal Responsibility Study Committee instituted by the Governor's Council on State and Local Relations, and the Supreme Court State Financing Task Force created by Chapter 582, Section 2, which examined the existing funding of public defender systems statewide. The primary issue they examined was whether or not Counties should continue to pay for mandated public defender programs. Both of these committees recommended that the State should begin a process of funding Judicial District Public Defender Offices in order to unify the provision of defense counsel to poor people in Minnesota.

The 1989 Minnesota Legislative Session made a number of sweeping changes in regard to public defender programs. Most importantly, it adopted the basic principle of the Committees' recommendations and began a phased approach to State financing of the costs of the trial court public defender system. The Legislature 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 as well as representation of juveniles and misdemeanants in Hennepin and Ramsey Counties. These funds became available for distribution to the Judicial Districts on July 1, 1990. With the exception of the Second, Fourth, and Eighth Judicial Districts, the responsibility for misdemeanor, juvenile and other cases requiring appointment of counsel remained with individual counties. 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.

The public defender system in Minnesota is comprised of four basic organizational entities: State Public Defender's Office; ten Judicial District Public Defender Offices; five Public Defense Corporations; and eighty-seven local appointed counsel systems. Although the primary goal of all these offices and corporations is to provide quality legal services to indigent people, the make-up of their staff and administrative services is quite diverse.

For example, the State Public Defender's Office operates primarily at the appellate level, handling direct appeals of felony and gross misdemeanor convictions, sentencing appeals, parole revocation and restructuring hearings. In addition to appellate services, the State Public Defender's Office also offers civil legal services to indigent prison inmates. The ten Judicial District Public Defender Offices function mostly at the trial court level and handle all indigent felony, gross misdemeanor, extradition, and probation violation cases. Three of the ten Judicial District Public Defender Offices (Second, Fourth and Eighth) also defend juvenile and misdemeanor cases. The five Public Defense Corporations



specialize in serving minority indigents in Minneapolis, St. Paul, and native American Indian Reservations in northern Minnesota.

The State Public Defender's Office and the Second (Ramsey) and Fourth (Hennepin) Judicial District Public Defender Offices employ predominantly full time attorneys to provide public defender services. In contrast, the eight other Judicial District Public Defender Offices rely on agreements with private attorneys to serve on a part time basis as public defenders. The five Public Defense Corporations employ attorneys and support staff through their status as non-profit corporations.

Some public defender organizations were instituted years ago and thus have stable and experienced staff, while the inception of other offices is relatively recent (e.g., the Third and Eighth Judicial District Public Defender Offices, created in 1987). To insure the quality of public defense services statewide, the Board of Public Defense was developed to provide public defender organizations with policy standards for effective and competent representation of indigent defendants. Although the Board has administrative and jurisdictional oversight of all public defense organizations in the State, its purpose is not to replace local offices with a centralized bureaucracy; e.g., it is not involved in intraoffice hiring or issuing employee paychecks.

## BOARD OF PUBLIC DEFENSE

### Mission Statement

The Board of Public Defense is a Judicial Branch agency whose purpose is to provide quality criminal defense services to indigent defendants in the State of Minnesota through a cost effective and efficient public defender system.

The statutory duties of the Board are contained in Minnesota Statutes §611.215 through 611.27. The responsibilities of the Board include: appointing the State Public Defender, who supervises the appellate office of the public defender system; selecting a Chief District Public Defender in each of the ten Judicial Districts; and hiring a Chief Administrator to the Board to implement its policies. As a state agency, the Board receives and distributes an appropriation from the Legislature to pay for the costs of the State Public Defender's Office, ten Judicial District Public Defender offices, the Board's Administrative Services Office, and five Public Defense Corporations which serve minority clients in the Twin Cities and northern Minnesota. In addition, the Board sets standards for the operation of all the public defender offices under its jurisdiction. These standards apply as well to the county-based appointed counsel systems which otherwise do not fall under the supervision of the Board.

### Board Membership

The Board of Public Defense was created by the Legislature in 1981 and consists of 7 members: 4 lawyers and 1 district court judge appointed by the Supreme Court and 2 public members appointed by the Governor. Terms of office for each appointee are four years. The Board's Chairman is elected by Board members from among its membership for a term of two years.

Judge Kevin Burke, Chairman  
1051 C Government Center  
Minneapolis, MN 55487

Judge Kevin Burke is a graduate of the University of Minnesota, B.A., J.D.; Adjunct Faculty, University of Minnesota Law School (1986 - present); Adjunct Faculty, William Mitchell College of Law (1977 - present); appointed as Hennepin County District Court Judge, 1984; member of the Board of Public Defense since 1982 and appointed as its Chairman since July, 1984.



Richard Beens, Attorney  
403 Jackson Street #301  
Anoka, Minnesota 55303

Dick Beens is a graduate of St. Thomas College, B.A.; University of Minnesota, J.D.,; served as a Peace Corps Volunteer from 1962-1964 in West Pakistan; Metropolitan Waste Control Commission member for nine years; Vice-Chairman, Metropolitan Airport Adequacy Task Force; Past Chairman, District Ethics Committee; Senior Partner, lawfirm of Steffan & Munstenteiger, P.A., Anoka. Member of the Board of Public Defense since 1987.

Paul Benshoof, Attorney  
P.O. Box 1390  
Bemidji, MN 56001

Paul Benshoof is a graduate of Carleton College, Magna Cum Laude, B.A.; University of Minnesota, J.D., Cum Laude; Past Director of Bemidji Chamber of Commerce; Civil Trial Specialist; Current partner in lawfirm of Carpenter, Benshoof, and Klein, P.A., in Bemidji. Member of the Board of Public Defense since 1988.

Harry Burns, Attorney  
111 9th Avenue North  
St. Cloud, MN 56301

Harry Burns is a graduate of St. John's University, B.A.; William Mitchell College of Law, J.D.; Board of Directors, Central Minnesota Red Cross; Workers Compensation Advisory Council; Litigation, Criminal Defense, Workers Compensation, Burns Law Office, partner. Member of the Board of Public Defense since 1984.

Walter Duffy, Jr., Attorney  
90 South Seventh Street #2400  
Minneapolis, MN 55402

Walter Duffy is a partner in the lawfirm of Faegre & Benson. Member of the Board of Public Defense as of August, 1990.

Lee Luebbe, Public Member  
1009 W. Howard  
Winona, MN 55987

Lee Luebbe is a graduate of Marymount College, Salina, Kansas, B.S., Magna Cum Laude; Chair, Winona City Planning Commission (1976-1978); Winona County Commissioner (1978 - 1991); Association of Minnesota Counties, Achievement of Excellence Award, 1986; Trustee, St. Mary's College, Winona (1981 -present); Member of Board of Public Defense since 1988.

Jesse Overton, Public Member  
8108 W. 103rd Street  
Bloomington, MN 55438

Jesse Overton is President and CEO of Sky Tech, Inc., based in Shakopee, Minnesota. Member of Board of Public Defense as of March, 1990.



## PUBLIC DEFENDER PROGRAMS

In 1988, an Administrative Services Office was created to carry out the Board's duties and responsibilities as well as provide support services to the organizations under its jurisdiction. The following descriptive narratives are intended to give a brief overview of the various organizational components comprising the indigent public defense services available throughout the State, as well as their primary duties, functions, and responsibilities.

### ADMINISTRATIVE SERVICES

In 1987, the Legislature expanded the Board of Public Defense's statutory and administrative authority (Minnesota Statutes §611.215 - 611.27). In January, 1988, the Office of Administrative Services was implemented and a Chief Administrator for the Agency was employed. At that time, the Board's Administrative Secretary's employment status changed from part time to full time. The 1988 Legislature authorized the position of Governmental Relations Manager for the agency. In 1989, the Legislative Advisory Commission authorized the position of Fiscal Director to review the budgets for the State Public Defender's Office, Judicial District Public Defender Offices, Public Defense Corporations, and its own Administrative budget. The employees currently serving in the Administrative Office's four full time positions are: Richard Scherman, Chief Administrator; Bob Ellingson, Governmental Relations Manager, Kevin Kajer, Fiscal Director, and Kathleen Levinski, Administrative Secretary.

The Administrative Services Office provides policy direction and guidance for the Board's programs and overall management of its activities. It establishes procedures for the distribution of state funding to the State and District Public Defender Offices, and the Public Defense Corporations. In addition, it is responsible for the management information systems relating to the Board's budget, data, and personnel. The office also directs and coordinates all Board relationships with the Legislature, other State agencies and local governments.

### STATE PUBLIC DEFENDER OFFICE

**New State Public Defender:** John M. Stuart was appointed by the Board of Public Defense to the position of State Public Defender and assumed office in January, 1990. His past professional employment has included teaching English, Reading, and Afro-American Literature in inner city schools in Philadelphia and Buffalo. In 1973, he returned to school to obtain a law degree from State University of New York at Buffalo, from which he graduated Magna Cum Laude. During the time he was attending law school, he also worked as a volunteer law clerk for the Attica



Prison rebellion defendants. Prior to his appointment as the State Public Defender, Mr. Stuart was a trial attorney in the Hennepin County Public Defender's Office for twelve years. During this time, he represented that office at the Minnesota Sentencing Guidelines Commission hearings, served on the Juvenile Code Revision Task Force, and taught as an adjunct professor at William Mitchell College of Law.

In his first year as the State Public Defender, Mr. Stuart initiated and oversaw the development of new client intake procedures for the office, worked with staff in rewriting the office's personnel manual, and consolidated several logistical and supervisory tasks into the new position of Office Manager. He also sponsored a series of talks on "The Future of Minnesota's Justice System," featuring Chief Justices Keith and Popovich, and key legislators. His direct involvement with prison inmates over the last year has included: speaking frequently to prison groups, observing prison discipline cases, representing an inmate in a prison stabbing case, and answering over 200 letters from inmates. In his work with the statewide public defender system, he has chaired eight meetings of the Judicial District Chief Public Defenders, visited public defender staff in eight of the ten Judicial Districts, and worked on specific criminal cases in the Second, Fourth, and Tenth Judicial Districts. During 1990, Mr. Stuart represented public defenders on the Supreme Court Juvenile Representation Task Force and the Racial Bias Committee of the Court's Task Force. In addition, he has appeared frequently before the Legislature in recent months to testify on criminal law bills and meet individually with numerous legislators concerning public defender budget and substantive law issues. For the Minnesota State Bar Association, he taught two Continuing Legal Education courses for the Criminal Law Section, helped organize a symposium on juvenile representation for the Committee for Children, served on the Government Lawyers' Task Force, and helped to plan volunteer pro bono service programs for indigent defense.

The State Public Defender's Office, as required by the United States and Minnesota Constitutions, statutes, and laws is responsible for the provision of legal services to indigent persons appealing their criminal and civil convictions or sentences to the Court of Appeals and Supreme Court of Minnesota. The office also responds to requests for review of an indigent's conviction, including sentencing relief by means of post-conviction proceedings in the District Courts when the time to appeal has expired or when facts not contained in the trial court record must be obtained by testimony.

Further services are offered by two programs operated by the State Public Defender's Office. With the assistance of supervised law students, the Legal Advocacy Project (LAP) provides representation for inmates in prison disciplinary hearings. Moreover, the program



represents convicted indigents in parole violations, revocations and restructuring proceedings before personnel of the Department of Corrections. The Legal Assistance to Minnesota Prisoners (LAMP) program, with the assistance of supervised law students in a clinical educational setting, screens requests for civil legal assistance and represents persons in custody with a wide variety of civil legal programs. Approximately 100 students are assigned to that office each under LAP and LAMP.

The State Public Defender's Office assists District Public Defenders in several ways. The office gives District Public Defenders the following kinds of pre-trial assistance: a) responses to appeals by the state, e.g., when the trial court has suppressed prosecution evidence; b) initiation of appeals before trial where this is required by law, e.g., to challenge grand jury misconduct; c) preparation of writs (responses to certified questions of law) and extradition appeals. The office also supplies general trial and support assistance to many part-time District Public Defenders in greater Minnesota. Items such as Westlaw and memos from the brief bank can be made available for assistance with their cases.

The State Public Defender's Office, in conjunction with the Minnesota County Attorneys Association and Attorney General's Office, sponsors and administers the Bemidji Joint Trial Advocacy School, which offers an eight-day intensive trial skills course to prosecutorial and defense attorneys every summer. In conjunction with the County Attorneys Association, Attorney General's Office, Office of Continuing Legal Education for state court personnel of the Minnesota Supreme Court, and the Bureau of Criminal Apprehension, the State Public Defenders Office is a sponsor of the Criminal Justice Institute which serves approximately 700 defense counsel, prosecutors, police, judges, and probation officers. Joint training in parole revocation hearing proceedings and prison disciplinary hearings are sponsored and administered by the Minnesota Department of Corrections and the State Public Defender's Office. Finally, the office works as well with the Board of Public Defense to prepare specialized statewide training for public defenders.

In 1990, the State Public Defender's Office conducted a study to determine how much the brief bank (one of the services offered to District Public Defenders) was used. The study concluded that the brief bank receives approximately 450 calls per year and sends out approximately 1,500 pages of material annually.



## Statistics:

<u>Criminal Law Areas:</u>	<u>Fiscal Year 1990</u>
Direct Appeals	178
Post Conviction Appeals	13
Sentencing Appeals	15
Respondent's Briefs	16
Total Briefs:	222
Total files opened	552
<u>Civil Legal Areas:</u>	<u>Fiscal Year 1990</u>
Responses in writing to misc. inquires	107
No. of Files Opened	342
No. of Legal Problems opened	434
Files Closed	314
No. of problems closed	391
Open files being worked on at beginning of Fiscal Year	376

The State Public Defender's Office has not received an increase in its complement of staff since February, 1986, yet during the last five years, it has experienced a significant caseload increase. A comparison of F.Y. 1990 and F.Y. 1986 statistics readily demonstrates this increase. In F.Y. 90, the office opened 552 appellate/post-conviction files, whereas in F.Y. 86, the number opened was 457. This represents an increase of more than 20%. In F.Y. 90, 222 appellate briefs were filed, compared to 152 in F.Y. 86, which is an increase of 45%. The Legal Advocacy Project (LAP) handled almost 18% more disciplinary hearings in F.Y. 90 (2,024) than in F.Y. 86 (1,749). Further, as of July, 1989, LAP began handling all parole, supervised release, and intensive supervision revocation hearings that are the responsibility of the State Public Defender's Office. Including these revocation hearings (606), LAP handled 50% more hearings in F.Y. 90 than in F.Y. 86. Civil cases handled by the office through its Legal Assistance to Minnesota Prisoners (LAMP) program has also grown substantially. LAMP handled 59% more new problems and client inquiries in F.Y. 90 (671) than in F.Y. 86 (421).

## JUDICIAL DISTRICT PUBLIC DEFENDER OFFICES

There are ten Judicial District Public Defender offices in the State of Minnesota. They are statutorily responsible for providing legal services to indigents charged with felony and gross misdemeanor offenses, as well as representation of indigent defendants in extradition hearings and probation violations. The Second (Ramsey), Fourth (Hennepin), and Eighth Judicial District Public Defender offices also provide legal services to indigents



in misdemeanor and juvenile cases. (1989 legislation funded a pilot project in the Eighth District, expanding public defender services to misdemeanor and juvenile cases. This pilot project is now operational.)

The State Board of Public Defense appoints a Chief District Public Defender in each of the ten Judicial Districts for a period of four years. Chief District Public Defenders are then authorized to appoint Assistant Public Defenders to assist them in the provision of public defense services throughout the district. In the out-state districts, the Chief District Public Defenders and Assistant Public Defenders are mostly private attorneys who perform their defense roles on a part-time basis. During 1990, ten Chief District Public Defenders employed or contracted 265 Assistant Public Defenders, serving under the jurisdiction of the State Board of Public Defense.

<u>District</u>	<u>Chief Public Defender</u>	<u># of Assistant Public Defenders</u>
First	Rick Mattox	16
Second	Bill Falvey	38*
Third	Candace Rasmussen	30
Fourth	Bill Kennedy	77*
Fifth	Calvin Johnson	15
Sixth	Fred Friedman	19
Seventh	John Moosbrugger	21
Eighth	Dick Hilleren	9
Ninth	Paul Kief	21
Tenth	Jon Erickson	<u>19</u>
		265

\* Includes full time and part time public defenders.

Statistics: In Calendar Year 1989, Judicial District Public Defender Offices terminated 32,039 felony, gross misdemeanor, extradition and parole violation cases. The following statistics are for cases closed in C.Y. 1989. Statistics for C.Y. 1990 will be compiled by March, 1990.

<u>District</u>	<u>Felony</u>	<u>G.M.</u>	<u>Parole</u>	<u>Misc.</u>	<u>Juv.</u>	<u>Total</u>
First	900	912	433	90		2,335
Second	1,699	10,591*			2,994	15,284
Third	659	521	171	50		1,401
Fourth	4,024	16,088*			4,130	24,242
Fifth	493	448	179	37		1,157



<u>District</u>	<u>Felony</u>	<u>G.M.</u>	<u>Parole</u>	<u>Misc.</u>	<u>Juv.</u>	<u>Total</u>
Sixth	532	250	84	20		886
Seventh	823	798	373	36		2,030
Eighth	340	240	66	22		668
Ninth	841	617	331	45		1,834
Tenth	<u>1,218</u>	<u>1,047</u>	<u>544</u>	<u>44</u>	<u>      </u>	<u>2,853</u>
Total:	11,529	31,512	2,181	344	7,124	52,690

The Judicial District Public Defender offices, like the State Public Defender's Office, have experienced a rapid growth in caseload. Across the ten Judicial Districts, there was a 30% increase in felony and gross misdemeanor cases from 1986 to 1989. In Hennepin County, the largest Judicial District, there was a 79% increase in felonies and a 33% increase for all cases. Ramsey County underwent an increase of approximately 43% in felonies and 36% overall. There are no indications that such increases will abate.

PUBLIC DEFENSE CORPORATIONS: The primary purpose of Public Defense Corporations is to provide criminal and juvenile legal defense services to indigent American Indians, Hispanics, Southeast Asians, and Blacks through community based legal service entities.

State funding for Public Defense Corporations was originated and authorized by the 1978 Minnesota Legislature. Funds appropriated for these Corporations are allocated by the Board of Public Defense under Minnesota Statutes §611.216. To ensure broad support, each Corporation funded by the State must provide either matching money or in-kind contributions from federal agencies, local governments, private agencies, and community groups equal to 10% of its State appropriation.

There are five Public Defense Corporations currently receiving State funds for the defense of indigents charged with criminal offenses.

<u>Corporation</u>	<u>Counties/Reservations</u>	<u>Judicial District</u>
Neighborhood Justice Center	Dakota, Ramsey, and Washington Counties	First Second, Tenth
Legal Rights Center	Hennepin County	Fourth



<u>Corporation</u>	<u>Counties/Reservations</u>	<u>Judicial District</u>
Indian Legal Assistance	St. Louis, Carlton, Cook, Lake, Itasca, Aitkin, Crow Wing, Kanabec, and Pine Counties; (Boise Forte, Fond Du Lac, and Mille Lacs Reservations)	Sixth, Seventh, Ninth
White Earth	Becker, Mahnomen, Clearwater, and Hubbard Counties; (Red Lake, Leech and White Earth Reservations)	Seventh, Ninth
Leech Lake	Cass, Beltrami, Itasca, and Hubbard Counties; (Red Lake, Leech, and White Earth Reservations)	Ninth

The two largest Corporations, Legal Rights Center (Minneapolis) and Neighborhood Justice Center (St. Paul) generally receive 50% to 75% of their budgets from sources other than the State of Minnesota. The three Public Defense Corporations serving predominantly American Indian Reservations in northern Minnesota are primarily funded with State appropriations. Total State funding for these Corporations is approximately 80% of their budgets.

If Public Defense Corporations were not in existence, their clients would be eligible for public defender services from the District Public Defender Office serving the Judicial District listed in the third column. Current Judicial District Public Defender budgets would then need to be increased to accomodate those clients.

#### Statistics:

Public Defense Corporation cases terminated in Calendar Year 1989 totaled 2,988. The following are categories of criminal offenses that were closed by the Public Defense Corporations in C.Y. 1989:

<u>Corporation</u>	<u>Felony</u>	<u>G.M.</u>	<u>Misdem.</u>	<u>Juv.</u>	<u>P.R.</u>	<u>Total</u>
Legal Rights	70	39	310	3	47	469
Neighborhood Justice Ctr.	195	94	481	99	18	887
Duluth Indian Legal	73	78	551	105	170	977
Leech Lake	97	29	94	76	34	330
White Earth	32	28	145	67	53	325
Total:	467	268	1581	350	322	2988



## 1989/1990 LEGISLATIVE CHANGES

A number of changes were made in the 1989 Legislative Session significantly affecting public defense services in the State of Minnesota. These changes were primarily associated with the State's effort to assume the costs of the trial court public defender system. The following statutory changes that occurred in 1989 required implementation in calendar year 1990.

**Funding & Budgeting:** Prior to July 1, 1990, the majority of trial court costs and public defender services were paid by local County government. The Board of Public Defense's previous duties in the funding process for public defense services statewide had entailed reviewing and approving 8 of 10 Judicial District Public Defender budgets. The Board also had statutory authority to direct Counties within particular Judicial Districts to levy taxes to pay for its Judicial District Public Defender budget. In addition, the Board reviewed and approved budgets for the State Public Defender's Office and Public Defense Corporations. Appropriations allocated by the Legislature were disbursed by the Board to the State Public Defender's Office and five Public Defense Corporations.

Changes by the 1989 Legislature as a result of Policy Committee recommendations, began a process in which the State allocated monies for certain public defense services, rather than having the counties continue levying taxes for them. On January 1, 1990, the State began a pilot project in the Eighth Judicial District to pay for all of the costs of trial court system, including appointed counsel for indigent defendants in misdemeanor and juvenile cases. On July 1, 1990, the offices of the public defender in Ramsey and Hennepin Counties (Second and Fourth Judicial Districts) came under the jurisdiction of the State Board of Public Defense for purposes of budgeting and appointment of the Chief Public Defender, consistent with the existing practice in the other eight Judicial Districts. The State now pays for the entire cost of public defender services in these two Districts, that is, for felony, gross misdemeanor, misdemeanor, and juvenile cases. At this time, an allocation appropriated by the 1990 Legislature approximates \$20,000,000 in state funds to pay for the above services. In implementing these new fiscal responsibilities, the Board requested of the Legislative Advisory Commission permission to fund the position of a Fiscal Director. This request was granted and the position was filled in June, 1990.

**Public Defender Training:** Beginning July 1, 1989, the Legislature transferred authority for the training of public defenders from the State Public Defender's Office to the Board of Public Defense. There are two training programs in the state in which public defenders have historically participated. One is the Bemidji Joint Trial Advocacy School, which offers an eight-day intensive



trial skills course to prosecutorial and defense attorneys each summer. The other is the Criminal Justice Institute which serves approximately 700 defense counsel, prosecutors, police, judges, and probation officers.

The Board of Public Defense surveyed all public defenders in the state for the purpose of identifying training needs that would be of assistance to them in providing services to the indigent. Upon compilation of that information, the Board decided to begin implementation of specific defense-orientated training programs for the future. In the fall of 1989, the Board of Public Defense held several Child Sexual Abuse Training Programs in Duluth, Rochester, and St. Paul as part of an effort to establish a statewide training program for public defenders. These training programs were successful, both in public defender attendance as well as evaluations of the coursework. As a result of state budget cuts, however, in 1990, no further implementation of this training initiative was feasible. During 1990, \$10,000 from the Office of Drug Policy was appropriated to the Board to develop drug training programs for public defenders. Coursework is currently being developed and drug training programs will be presented during the first six months of 1991.

Weighted Caseload Study: In 1989, the Minnesota Legislature appropriated funds for the Board of Public Defense to conduct a "Weighted Caseload Study" for Judicial District Public Defender Offices. The purpose of this study was to develop reliable caseload standards throughout the State and further, substantiate appropriations to the Judicial District Public Defender programs under the jurisdiction of the Board of Public Defense. A similar study had been conducted for the Judicial Branch in Minnesota in 1986.

In October of 1989, the Board of Public Defense contracted with The Spangenberg Group of Newton, Massachusetts, to conduct the Weighted Caseload Study. The contract further provided that the Spangenberg Group would develop a management information system for the Board to use as a permanent record keeping mechanism. The Spangenberg Group is a nationally recognized private law and justice research firm that has conducted similar studies in the past two years for the California State Public Defender, the New York Legal Aid Society's Criminal Division, and the Wisconsin State Public Defender. Members of The Spangenberg Group have spent a majority of their time during the past decade conducting research and providing technical assistance in the area of indigent defense delivery in virtually every state in the country.

The basic design of the Weighted Caseload Study is to determine the estimated time that it takes the average public defender in the State of Minnesota to perform various case related and non-case related activities. 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 practices and procedures. The results of the study will provide 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.

The Board's Administrative Service Office has monitored the study at all phases, including approving Spangenberg Group staff assignments, approving expenses and creating a Steering Committee consisting of the State Public Defender and ten Chief Judicial District Public Defenders. During the early months of 1990, the Spangenberg Group and selected expert consultants spent over 40 days visiting each public defender office in the State. The research team designed a Daily Activity Log to collect the requisite information for caseweightings. Sixty attorneys then participated in the time-recording phase from May 7, 1990, through August 6, 1990. The sample of attorneys was stratified according to district, geographic designation (urban, suburban, rural), experience level, and the type of cases handled. A final draft of The Spangenberg Group's Study is currently being reviewed by the Board and is expected to be presented to the 1991 Legislature in February.

Preliminary results of the Weighted Caseload Study indicate that current caseloads for Judicial District Public Defenders statewide greatly exceed identified standards. The final draft report emphasizes that "public defenders in Minnesota, with few exceptions, are working substantially above capacity with insufficient time to devote to their cases and their clients." The report notes that several factors have combined to exacerbate this problem:

1. In recent years there has been a substantial increase in criminal and juvenile filings throughout the state.
2. In that same period, there has also been a substantial increase in the number of serious violent cases.
3. Again, in the same period, drug filings have increased around the state dramatically.
4. The most serious cases, homicides, have been on the rise in the last two to three years.
5. The Legislature has in recent years created more crimes resulting in more criminal filings and more public defender cases.



The final draft of the Weighted Caseload Study points out that the discrepancy between actual and acceptable public defender caseloads is reaching potential crisis proportions. Increasingly high public defender caseloads have precipitated a potential conflict between a public defender's constitutional mandate to serve those clients eligible for services and an attorney's ethical responsibility to "represent a client competently." (ABA Model Code of Professional Responsibility, Disciplinary Rule 6-101).

**Host County - Decentralization of Administration:**

The Host County concept for distributing Judicial District Public Defender budgets was developed by the Board as a cost saving measure. This initiative entailed negotiation of contracts with a Host County in each Judicial District to administer the state funding. By paying the Host Counties the full amount of their state allocation at the beginning of the fiscal year, they are able to earn enough interest to cover their administrative costs. This arrangement eliminated the need for the Board to employ additional staff to audit vouchers and make payments. In addition to significant cost savings to the State, the Host County contracts ensured continued local health insurance benefits for eligible public defenders.

**Office Space:** The Board's Administrative Services Office moved its office to a new location in August, 1990. The move culminated a year's work of examining alternatives, cost factors, and meeting with Legislative leaders. The new location now allows for adequate office space for each employee, as well as expansion for the future.

**Chief Public Defender Appointment Process:** As a result of recent legislation, the Board is now required to appoint two Judicial District Chief Public Defenders each year on a proscribed statutory basis. In 1990, the Board appointed Chief Public Defenders in the Sixth and Seventh Judicial Districts. A formal application, as well as a time table for the appointment process was developed. This process involves communication with the Judges and County Commissioners within a Judicial District regarding appointment to the Board's Ad Hoc Selection Committee. In addition, proper notice of vacancies must be given to the District Court Administrators, Local Bar Associations, and necessary publications. The standardized process will be used in all future appointments.

**Administrative Committees:** There are committees created each year for specific purposes. Ongoing committees at present include the Chief Public Defenders' Committee, Personnel Committee, Weighted Caseload Steering Committee, Budget Committee, and the Affirmative Action and Minority Recruitment Committee. The Chief Public Defenders' Committee meets approximately once a month, for the purpose of sharing information and identifying issues for Board consideration. The Weighted Caseload Steering Committee has met



throughout 1990 and early 1991 for the purposes of reviewing the weighted caseload study. The Personnel Committee of the Board has been reviewing employment descriptions, salary ranges, and is in the process of approving a Personnel Plan for Board and State Public Defender Office employees. Finally, the Affirmative Action and Minority Recruitment Committee is in the process of developing an Affirmative Action Plan. It is also working on developing a Grant to encourage minority recruitment.

1992\93 Biennium Budget Request: The Board of Public Defense completed and approved its 1992/93 Biennium Budget Request to the Legislature on November 1, 1990. This request reflects the need to address the pressure of increasing caseloads in the public defender system. It also recognizes the recommendations of two State Policy Committees. One is the Juvenile Representation Task Force, which is recommending instituting an appellate team in the State Public Defender's Office to process all juvenile appeals. The second is the Supreme Court Financing Task Force, which is recommending continuance of the State takeover of public defense services by assuming misdemeanor and juvenile public defender costs statewide. This Committee has recommended that the Third and Sixth Judicial District Public Defender Offices, currently under County funding for its juvenile and misdemeanor services, now be funded by the State. The Board of Public Defense has identified alternative funding sources to offset some of the rising costs of public defender services and they are in the process of being presented to the 1991 Legislature.



## BOARD OF PUBLIC DEFENSE GOALS

The primary goal of the Board of Public Defense for 1991 is to address the growing problem of providing effective and competent representation to public defender clients in the face of increasing caseloads and decreasing revenues.

In recent years, there has been a significant emphasis on both the local and national level to increase the penalties on existing crimes. In addition, there have been many new statutory penalties that have been enacted to deal with an increased awareness of crimes against vulnerable people in areas such as sex abuse, child abuse, crimes against women, etc. Stiffer penalties and stricter enforcement have resulted in a significant increase in the population of our jails and prisons.

In the past several years, there have been significant influxes of monies to local prosecutors and police on both a local, state and national level to combat crime. There has not been the same funding balance accorded to the public defense field. There also have been new judges and prosecutors added to process those defendants accused of committing crimes. There has been no increase within the same time period for public defender staff.

Currently, the Board is examining strategies to deal with the imbalance of prosecution and defense funding. The Board is requesting additional funds from the State for the 1992-93 funding cycle, and is investigating alternative funding sources.

If, however, adequate monies cannot be secured to ensure that the public defender programs under the Board's purview are able to effectively and competently provide constitutionally mandated services to indigent defendants, then the Board may be forced to examine alternatives which may result in either court action or a conscious decision not to accept new cases which may jeopardize an attorney's license to practice law. Two of the Board's goals for the upcoming year fall under the rubric of its primary goal to procure sufficient funding for public defender services in the State of Minnesota:

- \* Continuation of the State's efforts in assimilation of public defense functions currently not under the Board's jurisdiction.

- \* Implementation of the Weighted Caseload Study.

Corollary goals pertain to fair compensation for public defenders. Thus, the Board will:

- \* Seek a change in current State practices which would allow



for increases in public defender salaries to be included in the State's salary supplement appropriation.

- \* Seek insurance benefits for Judicial District Public Defenders.

- \* Seek allowances for Judicial District Public Defender Offices to be included within the State's current practice of adjustments to base budgets.

- \* Seek salary equalization for all Judicial District Public Defenders.

In addition to the above, the Board expects to adopt the Personnel Plan developed during 1990; to develop and adopt an Affirmative Action Plan and a Minority Recruitment Plan, and to develop and implement a statewide training program for public defenders.