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# Office of the Legislative Auditor

## Program Evaluation Division Update

# PUBLIC DEFENDER SYSTEM

December 23, 1993

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**The Board of Public Defense and its staff have made much progress toward solving many problems we identified in our 1992 report on the public defender system.**

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**T**his update summarizes the response of the Board of Public Defense and state public defender to recommendations we made in a 1992 evaluation of the state's public defender system. We examine changes in the structure and organization of the system, in the administration and oversight of district offices, and in planning and information capabilities. This update is based on interviews with selected board members, district public defenders, and the state public defender and his staff, as well as a review of

written materials. A separately published financial audit addresses the adequacy of fiscal controls in the public defender system.

### Background

Historically, public defender services in Minnesota have been organized according to judicial districts and paid for with county funds. Within this system, the ten district chief public defenders have had considerable autonomy. But in 1990, the state assumed responsibility for financing public defender services, thus increasing the state's interest in ensuring that services are delivered efficiently and equitably. The transition to a state system was marked by conflict, especially between the Board of Public Defense, which is responsible for overseeing the state system, and the Fourth District Public Defender's Office (Hennepin County), which did not support state financing and the state control that went with it. In 1991, the Legislative Audit Commission asked us to evaluate the organization and operation of the public defender system. Our evaluation, released in February 1992, found that:

- The structure of the public defender system and its administrative and management procedures provided insufficient accountability and state oversight.
- The Board of Public Defense had taken few steps to correct inequities in the system and had not done enough planning for how a statewide system should be organized and administered, especially given the rapid growth in public defender caseloads and the part-time status of eight of the ten districts.

### Structure and Organization

We recommended that the Legislature give the state public defender authority to appoint the ten district chiefs and to contract with districts that have established adequate systems of public defense and which adhere to state standards.

Today we find that while the overall structure of the public defense system remains essentially unchanged,

- **The Board of Public Defense has taken action to improve accountability within the system.**

The board still has the power to appoint the district chiefs (as well as the state public defender) but it has required signed "memorandums of understanding," which specify terms and conditions of employment, for the three district chiefs appointed since November 1992.

In addition, the Board of Public Defense has negotiated a memorandum of understanding with the Hennepin County Board to provide public defender services in the Fourth District. Under the terms of the agreement, the county will provide funding over and above the amount appropriated by the state. Hence, the state will not be fully responsible for salary costs that are determined by county policies (public defenders in Hennepin County remain county employees). Also, this agreement should help resolve conflict within the system.

### Administrative Issues

We recommended that the state public defender should develop a plan for solving the administrative and management problems in the system. These problems included: inadequate policies and procedures, using "host"

counties to administer state funds, the method of paying counties for services, the assignment of major administrative duties to part-time attorneys, confusion over who the employer was in the part-time districts, the method of contracting with part-time attorneys, and having employees in the full-time districts remain county employees while being entirely funded by the state. We have found that:

- **The board and state public defender have solved many of the system's problems.**

As of January 1993, host counties no longer administer state funds, and all financial transactions in the eight multi-county districts are handled by the board's administrative services unit using the statewide accounting system. In addition, the board and state public defender have established uniform standards for the operation of district offices, four of the eight part-time district chief positions have been made full-time, and most of the district chiefs have received some management training.

Also, in 1993 the board successfully sought legislation to clarify public defenders' legal employment status, giving part-time public defenders outside of Hennepin and Ramsey Counties the choice of becoming state em-

ployees or contract employees.<sup>1</sup> Part-time public defenders who choose to become state employees continue to be hired on a contract basis. The board now uses written contracts, consistent with our recommendations, but the contract is similar to a legal retainer with the attorney agreeing to handle all cases that arise in a particular geographical area during the coming year for a specified amount of money.

The 1993 Legislature also appropriated \$1.17 million for insurance and medical benefits for part-time public defenders (for fiscal years 1994 and 1995). The purpose was to give public defenders more equitable compensation and provide an incentive for them to become state employees.<sup>2</sup> The board has established eligibility criteria in consultation with the Department of Employee Relations, as the legislation directs.<sup>3</sup> However, part-time public defenders may continue to maintain their private law practices even if they elect to become state employees. Furthermore, the current method of hiring and paying part-time public defenders is premised on an adequate time accounting system and careful monitoring and supervision by the district chiefs. As we suggest below, the management information system has yet to produce accurate, verifiable data. Also, the part-time assistants typically do not work in the same

<sup>1</sup> *Minn. Laws* (1993), Ch. 146.

<sup>2</sup> Historically, part-time public defenders in some districts have received benefits, while those in others have not. When the state took over funding, many public defenders claimed this was unfair. *Minn. Laws* (1993) Ch. 146 directs the board to establish eligibility criteria in consultation with the commissioner of employee relations.

<sup>3</sup> The criteria adopted by the board specify that individuals working at least 910 hours per year (17 1/2 hours per week) are eligible to receive a 65 percent state contribution for benefits, and individuals working more than 1,364 hours (approximately 26 hours per week) are eligible for a 100 percent state contribution.

community as the chief, which makes supervision difficult.

There is no immediate plan for the state to contract for public defender services with Ramsey County where public defenders are county employees and have salary parity with county attorneys. As a result, Ramsey County public defenders are better paid than state public defenders and receive pay increases when the latter do not, contributing to inequitable compensation among public defenders in the state. But the level of state funding for Ramsey County may be insufficient to hire more staff to handle rising caseloads.

## Planning and Decision Making

We recommended that the board and state public defender act quickly to install a management information system, develop a strategy for allocating state dollars to achieve equity, and put into effect a strategic planning process for solving problems within the system. Of particular urgency, in our opinion, was developing alternative ways of providing public defense services in those outstate districts having difficulty recruiting part-time attorneys. We have found that:

- **The Board of Public Defense has improved its planning and decision making.**

The board has devised ways to add resources to districts that encounter sudden, unexpected demands for public defender services, including using full-time attorneys as back-ups, providing legal support from the state public defender's office, and creating a contingency fund.

Also, in 1992, the board sought funding from the Legislature to continue developing a management information system and to hire a planner, who began work in January 1993. But it is too early to assess the adequacy of the information system, which requires all public defenders to regularly submit detailed information on cases handled and time spent on each case. The new data collection forms were instituted in August 1992, and administrative staff have now trained public defenders throughout the state in how to complete the forms. However, district-level staff told us that there continue to be errors in the system that have yet to be corrected. After the board, administrative staff, and district public defenders have more experience with the system, they will be in a better position to judge whether the utility and accuracy of the information justifies the time and expense of current data collection forms and analysis procedures.

Despite these improvements, we think that:

- **The board's approach to long-range planning for the public defender system and for achieving equity may not be cost-effective for the state.**

The board's current plan for achieving equity within the public defender system involves seeking additional funding from the Legislature over three bienniums to bring all districts up to the caseload standards recommended by The Spangenberg Group in its "weighted caseload study."<sup>4</sup> However, in our 1992 study, we noted that the Spangenberg study is inadequate for the purposes of defining public defender system needs or achieving equity.<sup>5</sup> If the Spangenberg standards were followed, the state would need to spend more than twice as much as it currently does for public defender services.

Further, the "standards to maintain and operate a public defender office," adopted by the board in December 1991, presume that part-time district offices will become full-time operations when responsibility for misdemeanor and juvenile cases are added to the caseload. These standards require a minimum of five full-time staff in a full-time district office (district chief, secretary or office manager, dispositional advisor, investigator, and law clerk or paralegal). Yet, rising felony and gross misdemeanor caseloads in

<sup>4</sup> The Spangenberg Group, *Weighted Caseload Study for the State of Minnesota Board of Public Defense* (Newton, Massachusetts, January 1991).

<sup>5</sup> The Spangenberg study fails to justify the caseload standards it recommends and the standards appear inconsistent with the study's findings. Also, some public defenders have expressed concern that the standards fail to differentiate homicides from less serious felony cases and they overestimate the amount of time needed to defend misdemeanor cases relative to felonies.

several districts and the difficulty of recruiting part-time attorneys suggest there may be a more immediate need for district offices with fewer full-time personnel than the standards specify. For example, in July 1993, the board approved making the Seventh District a full-time operation even though it does not meet board standards.

In 1993, the board began a formal strategic planning process, with the assistance of the newly hired planner. But so far, it is unclear how the results of the formal planning process will be integrated into board policymaking, the day-to-day decisions made by administrative staff and district chief public defenders, and the board's current plans and strategies for the system.

## Conclusions

Overall, we think the Board of Public Defense, the state public defender, and others working in the system have made substantial progress in addressing the concerns we identified in our earlier report. The changes that have occurred have helped to reduce conflict within the system, increase accountability, improve administration, and provide better information for making future decisions. But the public defender system is subject to continuing growth pressures. We noted in our earlier report that the board and its staff need to explore alternative ways of providing quality public defender services that are also efficient and cost-effective for the state.

This might include greater use of nonlegal and paralegal personnel.

We also think that the board needs to take steps to ensure that time recording is accurate and verifiable and that district chiefs directly supervise and monitor the hours and caseloads of their assistant public defenders. The board should consider contracting with Ramsey County or making Ramsey County public defenders state employees.

In addition, the board should take steps to ensure that its long-range plans for the system and day-to-day decisions are consistent with each other. Finally, we think the board needs to reexamine its caseload standards and guidelines for district office operation to ensure that they are reasonable and realistic. The board should be prepared to demonstrate to the Legislature that it distributes the state funds it receives equitably among districts.

## Agency Response

In response to this update, State Public Defender John M. Stuart wrote on December 15, 1993:

*Thank you for the Public Defender System Update, which recognizes many of the changes made by the Board of Public Defense, Administrative Services Office, District Chiefs, and myself, over the last two years. We have tried hard to carry out your recommendations. And we will proceed with your present suggestions, which are compatible with the Board's Strategic Plan: a mix of full-time and part-*

*time staff, more paralegal and non-lawyer support staff, more development of the Management Information System. We agree with the overall goal of quality, cost-effective service.*

*I would just like to add this: the people who work in the public defense system have done a tremendous job of carrying out a vital, difficult, unpopular mission in spite of a recession, state deficits, and skyrocketing caseloads. During the period of your study, in addition to the accomplishments you describe, communications have improved greatly. Excellent training programs have emerged. All of us have committed ourselves to carrying out the recommendations of the Racial Bias in the Courts Task Force Report. Most importantly, people are working together for a unified state system of public defense, where there were 87 "systems" not long ago.*

*However, public defense is still badly stressed by lack of resources. To continue to provide the quality representation demanded by our Constitution, we will need not only constructive ideas like yours, but also a renewed commitment by our funders to support every Minnesotan's basic right to the effective assistance of counsel.*

For additional information or copies of this update or our 1992 evaluation, contact:

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