

	PAGE
Transmittal Letter	2
Agency Profile	3
Agency Fiscal Page (Gov Rec)	4
Change Summary	5
Agency Change Items	
↻ Operating And Grants Reduction	6
Programs	
Appellate Office	
Program Narrative.....	7
Program Summary.....	9
Administrative Services Office	
Program Narrative.....	10
Program Summary.....	11
District Public Defense	
Program Narrative.....	12
Program Summary.....	15
Appendix	
Agency Revenue Summary Fiscal Page.....	16
Judicial Branch Transmittal Letter (Agency Request)	17
Change Items	
↻ Public Defender Viability	22

↻ Designates that this item is a change item



January 27, 2009

To the 2009 Legislature:

I respectfully submit for your consideration the Governor's FY 2010-11 budget proposals for the judicial branch agencies, including the Supreme Court, the Court of Appeals, the Trial Courts, the Legal Professions Boards, and the Board of Public Defense. The Governor respects the separation of powers and the desire of constitutional officers and officials in the judicial and legislative branches to independently present their budget requests directly to the legislature without specific recommendations for the Governor. However, since the Governor is required by law to submit a balanced budget to the legislature, it is necessary to identify funding for those offices as part of preparing a complete budget.

The Governor's general recommendations for the judicial and legislative branches and other constitutional officers reflect his concern with the magnitude of the projected budget shortfall and the desire to protect core government functions. As with the executive branch, the Governor suggests that these offices and institutions individually redesign their operations to increase efficiencies while minimizing the disruption of public services as much as possible.

For the Supreme Court, Court of Appeals, Trial Courts, and the Board of Public Defense, the Governor recommends a general 5% reduction in appropriations for the FY 2010-11 biennium. For the Trial Courts, the Governor also recommends \$5.586 million for increased costs for mandated services. The Legal Profession Boards are fully funded by fees collected under court rules, so no further actions are required on their budgets. The Governor makes no other recommendation regarding specific initiatives put forward by these agencies.

Sincerely,

A handwritten signature in cursive script that reads "Tom J. Hanson".

Tom J. Hanson
Commissioner

Agency Purpose

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. Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and being a full partner in the justice system.

The public defense system is the largest customer of the courts, and public defenders provide service in every courthouse in Minnesota, handling over 179,000 cases per year.

Core Functions

The Judicial District Public Defender Offices provide quality trial court criminal defense services to indigent clients charged with crimes in felony, gross misdemeanor, misdemeanor, and juvenile cases. The Appellate Office provides services to indigent clients who appeal their convictions; post conviction proceedings; individuals subject to supervised release/parole revocations; and individuals subject to community notification hearings.

Operations

The ten Judicial District Public Defender Offices provide quality criminal defense services to indigent persons in felonies, gross misdemeanors, misdemeanors, juvenile delinquency, and children over ten years of age in Children In Need of Protective Services (CHIPS) cases. This is accomplished through a system that relies heavily on part-time attorneys (50%). During FY 2007 the districts provided service for 179,000 cases. This program also includes partial funding for four nonprofit public defense corporations. The corporations provide high quality, independent criminal, and juvenile defense services primarily to minority indigents, who otherwise would need public defense services. The four corporations are the Neighborhood Justice Corporation (St. Paul); Legal Rights Center (Minneapolis), Duluth Indian Legal, and the Regional Native Public Defense Corporation which serves the communities of Leech Lake and White Earth Reservations.

The Appellate Office provides services to indigent clients in state prisons who appeal their criminal cases to the Minnesota Court of Appeals and Supreme Court; or who pursue post conviction proceedings in the District Courts throughout the state; defendants in supervised release/parole revocation proceedings, and individuals subject to community notification.

Budget

During FY 2008-2009 the agency budget totals \$134 million. The entire agency is funded through the General Fund.

At A Glance**Two Year State Budget:**

- ◆ \$134 million - General Fund

Annual Caseloads

- ◆ 179,000 District Public Defense Cases
- ◆ 3,356 Parole Revocation Hearings
- ◆ 841 Appellate Files Opened
- ◆ 709 Community Notification Hearings

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Dollars in Thousands

	Current		Governor Recomm.		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	66,348	68,028	68,028	68,028	136,056
Recommended	66,348	68,028	64,627	64,627	129,254
Change		0	(3,401)	(3,401)	(6,802)
% Biennial Change from 2008-09					-3.8%
<u>Expenditures by Fund</u>					
Carry Forward					
Miscellaneous Special Revenue	47	0	0	0	0
Direct Appropriations					
General	66,061	68,315	64,627	64,627	129,254
Statutory Appropriations					
General	600	565	450	450	900
Gift	167	221	180	180	360
Total	66,875	69,101	65,257	65,257	130,514
<u>Expenditures by Category</u>					
Total Compensation	47,884	45,305	42,540	42,515	85,055
Other Operating Expenses	5,890	10,353	9,893	9,918	19,811
Local Assistance	13,101	13,443	12,824	12,824	25,648
Total	66,875	69,101	65,257	65,257	130,514
<u>Expenditures by Program</u>					
Appellate Office	4,528	4,627	4,373	4,373	8,746
Administrative Services Office	1,639	2,071	1,950	1,950	3,900
District Public Defense	60,708	62,403	58,934	58,934	117,868
Total	66,875	69,101	65,257	65,257	130,514
Full-Time Equivalent (FTE)	640.1	527.5	501.5	487.3	

<i>Dollars in Thousands</i>				
	FY2009	Governor's Recomm.		Biennium
		FY2010	FY2011	2010-11
Fund: GENERAL				
FY 2009 Appropriations	68,028	68,028	68,028	136,056
Subtotal - Forecast Base	68,028	68,028	68,028	136,056
Change Items				
Operating and Grants Reduction	0	(3,401)	(3,401)	(6,802)
Total Governor's Recommendations	68,028	64,627	64,627	129,254
Fund: GENERAL				
Planned Statutory Spending	565	450	450	900
Total Governor's Recommendations	565	450	450	900
Fund: GIFT				
Planned Statutory Spending	221	180	180	360
Total Governor's Recommendations	221	180	180	360

PUBLIC DEFENSE BOARD

Change Item: Operating and Grants Reduction

Fiscal Impact (\$000s)	FY 2010	FY 2011	FY 2012	FY 2013
General Fund				
Expenditures	\$(3,401)	\$(3,401)	\$(3,401)	\$(3,401)
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$(3,401)	\$(3,401)	\$(3,401)	\$(3,401)

Recommendation

The Governor recommends a 5% reduction in the agency's base budget, to be distributed proportionately between operating costs and grants. The Governor makes no specific recommendations on the agency's change request.

Background

The Governor respects the separation of powers and the desire of officials in the judicial and legislative branches and other constitutional officers to independently present their budget requests directly to the legislature without specific recommendations from the Governor. However, since the Governor is required by law to submit a balanced budget to the legislature, it is necessary to identify funding for those offices as part of preparing a complete and balanced budget.

The Governor's general recommendations for the judicial and legislative branches and other constitutional officers reflect his concern with the magnitude of the projected budget shortfall and the desire to protect core government functions. As with the executive branch, the Governor suggests that these offices and institutions individually redesign their operations to increase efficiencies while minimizing the disruption to public services as much as possible.

Relationship to Base Budget

This reduction represents 5% of the base funding for the FY 2010-11 biennium.

Statutory Change: Not Applicable

Program Description

The Appellate Office provides services to indigent clients in criminal appeals, post conviction proceedings in the District Courts, sex offender community notification and review hearings, and supervised release/parole revocation proceedings.

Program at a Glance

- ◆ 948 Appellate cases opened in FY 2007
- ◆ 3,356 Parole revocation hearings FY 2007
- ◆ 709 Sex offender notification hearings

Population Served

In recent years, there has been a major legislative effort to increase penalties for existing crimes. In addition, new statutory penalties have been enacted to deal with specific populations or issues. Increased penalties and stronger enforcement have resulted in a significant increase in the population of the state's prisons and jails. The Minnesota Department of Corrections (DOC) records indicate that as of 1-1-08 there were 9,270 inmates in the state's correctional facilities, a 22% increase in the last four years. This population is the client base for the Appellate Office.

Parole revocations have increased more than 10% in one year, and 22% in the last three years. After years of double digit growth, the number of appellate files opened has returned to 2004 levels.

In 1996, the legislature enacted the community notification law for sex offenders. The law requires a review process for classifying sex offenders. Indigent offenders have the right to representation by the Appellate Office. Caseloads in this area grew 80% between FY 2004 and FY 2008. During the same time, appeals of these decisions increased by 78%.

Services Provided

The Appellate Office provides services to indigent prisoners who appeal their criminal cases to the Minnesota Court of Appeals and Supreme Court; or who pursue post conviction proceedings in the District Courts throughout the state; to defendants in supervised release/parole revocation proceedings and to individuals subject to community notification.

Historical Perspective

There is a constitutional right to counsel at public expense for indigent prisoners' appeals and parole revocation hearings. As sentence lengths increase, prisoners have more motivation to go through the appellate process, which takes about a year. They also have longer periods of supervised release, leading to more parole revocation hearings.

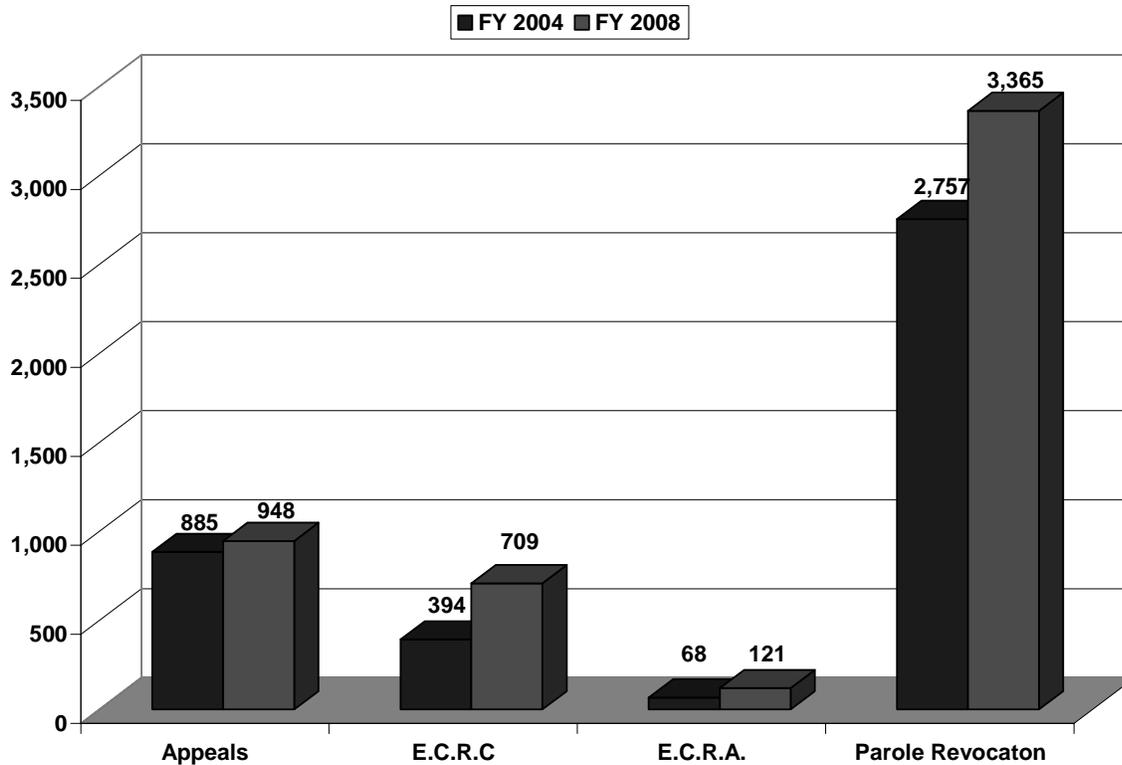
Faced with a \$3.8 million deficit for 2008/2009, the Board adopted a budget plan that included a reduction of three FTE attorneys from the Appellate Office.

This will mean that in fiscal year 2009, as many as 42 appeals in tried cases will not be assigned to a lawyer but will be placed on a waiting list. This is roughly 11% of these cases. The average time that appellate court(s) will have to wait until counsel is assigned will be approximately six months.

Delays will also occur in the post-conviction unit. This group handles all appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release), all the parole/supervised release hearings in the state, and all the community notification cases for sex offenders.

Finally, in the past the office has staffed ECRC (End of Confinement Review Committee) hearings on behalf of sexual offenders facing placement on the community notification scale as a level 2 or 3. Due to reduced staffing, the office has shifted remaining resources from appearing at the ECRC level to providing statutorily-required representation of individuals who seek review of an ECRC decision if the individual wishes to challenge being ranked as a level 2 or 3 sex offender.

Board of Public Defense Appellate Office Cases FY 2004 & 2008



Key Program Goals

Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and partnership in the justice system. For the Appellate Office, this includes:

- ◆ Providing excellent representation to clients in criminal appeals, post conviction proceedings in the District Courts, sex offender community notification and review hearings, and supervised release/parole revocation proceedings, and;
- ◆ Meeting court imposed deadlines for filing of appeals and other case matters.

Key Program Measures

- ◆ Community notification hearings are estimated to increase 80% from FY 2004 to CY 2008.
- ◆ Parole revocation hearings increased 22% from FY 2005 to FY 2007.

Program Funding

The Appellate Office has attempted to keep up with the ever-increasing caseload within its limited resources. The office has a budget of approximately \$4.6 million, \$300,000 of which is used to pay for the cost of trial transcripts. The increasing caseloads continue to make it difficult for the office to provide constitutionally mandated services, and to meet court-imposed deadlines for appellate matters.

Contact

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PUBLIC DEFENSE BOARD
 Program: APPELLATE OFFICE

Program Summary

<i>Dollars in Thousands</i>					
	Current		Governor Recomm.		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	4,352	4,603	4,603	4,603	9,206
Subtotal - Forecast Base	4,352	4,603	4,603	4,603	9,206
Governor's Recommendations					
Operating and Grants Reduction		0	(230)	(230)	(460)
Total	4,352	4,603	4,373	4,373	8,746
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	4,528	4,627	4,373	4,373	8,746
Total	4,528	4,627	4,373	4,373	8,746
<u>Expenditures by Category</u>					
Total Compensation	3,581	3,420	3,044	2,976	6,020
Other Operating Expenses	947	1,207	1,329	1,397	2,726
Total	4,528	4,627	4,373	4,373	8,746
<u>Expenditures by Activity</u>					
State Public Defender	4,528	4,627	4,373	4,373	8,746
Total	4,528	4,627	4,373	4,373	8,746
Full-Time Equivalent (FTE)	44.0	38.0	36.8	36.8	

Program Description

The Board's Administrative Services Office under the direction of the State Public Defender and Chief Administrator provides policy implementation for the agency's programs, and overall management of its activities.

Population Served

The Administrative Services Office provides staff support to all public defender units.

Services Provided

The Administrative Services Office provides staff support to all public defender units, and implements the Board's policies. In addition, it is responsible for management of the agency systems related to caseloads, budget, personnel, and information systems. It accomplishes this with a small administrative staff. The Administrative Services Office operates on 3% of the agency's budget.

Program at a Glance

- ◆ Budget, information systems, policy and human resources work for 500+ state employees and 200 county employees.
- ◆ Sets standards and policies for provision of public defense services statewide.
- ◆ Information system support for 29 regional offices around the state.
- ◆ Budget support for 10 district offices, appellate office and four public defense corporations.

The Board has developed and implemented policies covering personnel, compensation, budgeting, training, conflict cases, and management information systems. Caseload standards have also been adopted. The Board has also completed work on a strategic plan, a training plan, an information systems plan, and revision of personnel and office policies and is going about the task of implementing these plans. The Board is also implementing a change in the status of personnel in the Second and Fourth Judicial District Public Defender Offices. All new hires in these Judicial Districts as of January 1, 1999, are state employees.

The Information Systems (IS) Office designs, implements, and maintains systems in 12 main offices and 16 satellite offices. They are currently accomplishing this with six staff people. Significant time and effort is dedicated to maintaining and enhancing existing systems. Currently, most of the IS team's time is spent replacing the Board's time and case management system which is 12 years old and runs on software no longer supported by the developer. This updated system will also integrate with the Minnesota Court Information System (MNCIS).

Key Program Goals

Throughout its history the Board has established goals and principles to aid the agency in carrying out its mission. Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and being a full partner in the justice system.

The Board's Administrative Services Office provides the district public defenders and appellate defenders with the resources they need to provide high quality legal assistance to indigent Minnesotans.

Key Measures

- ◆ 12 main offices and 16 regional offices supported by six Information Technology (IT) staff.
- ◆ A staff of 12 and 3% of the budget supports the public defender system.

Program Funding

The Board is accomplishing its mission and supporting district and appellate public defender programs with a minimal staff. Currently, 3% of the agency's budget is expended on central administration and information systems.

Contact

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PUBLIC DEFENSE BOARD

Program: ADMINISTRATIVE SERVICES OFFICE

Program Summary

<i>Dollars in Thousands</i>					
	Current		Governor Recomm.		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	2,142	2,052	2,052	2,052	4,104
Subtotal - Forecast Base	2,142	2,052	2,052	2,052	4,104
Governor's Recommendations					
Operating and Grants Reduction		0	(102)	(102)	(204)
Total	2,142	2,052	1,950	1,950	3,900
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	1,639	2,071	1,950	1,950	3,900
Total	1,639	2,071	1,950	1,950	3,900
<u>Expenditures by Category</u>					
Total Compensation	1,248	1,325	1,216	1,219	2,435
Other Operating Expenses	391	746	734	731	1,465
Total	1,639	2,071	1,950	1,950	3,900
<u>Expenditures by Activity</u>					
Public Defense Board	1,639	2,071	1,950	1,950	3,900
Total	1,639	2,071	1,950	1,950	3,900
Full-Time Equivalent (FTE)	12.0	12.0	11.4	11.4	

Program Description

The ten Judicial District Public Defender Offices provide quality criminal defense services to indigent persons in felony, gross misdemeanor, misdemeanor, juvenile delinquency, and Children in Need of Protective Services (CHIPS) cases. Under Minnesota law, all individuals accused of a felony, gross misdemeanor, misdemeanor or juvenile crime are entitled to be represented by an attorney. If an individual who is accused in one of the above proceedings cannot afford the services of a private attorney, the court will appoint a public defender to represent that individual. This is accomplished through a system that relies on a mix of full-time and part-time attorneys (50 %), as well as support staff. During fiscal year 2007, the districts provided service in 179,000 cases.

Program at a Glance

- ◆ 179,000 cases opened in 2007
- ◆ Largest user of the court system
- ◆ Caseloads nearly double American Bar Association Standards.
- ◆ 40,000 uncompensated part-time public defender hours

Population Served

Trial level public defense serves the attorney needs of indigent Minnesotans.

Services Provided

The public defender system provides trial level representation in criminal defense cases. This includes investigation, expert witnesses, and support services. This program also includes part of the cost of four nonprofit public defense corporations. The corporations provide high quality, independent criminal and juvenile defense services primarily to minority indigent defendants, who otherwise would need public defense services.

Historical Perspective

Over the last several years increased enforcement of complicated felony cases, the implementation of the Children's Justice Initiative statutory changes, and changes in court proceedings have all combined to push the public defender system in an unsustainable direction. Without action by the Board to reduce non-mandatory services, caseloads would have exceeded 810 case units per FTE defender. (A case unit is approximately equal to a misdemeanor). This is more than double the A.B.A. and Board standards. Annually over the last several years part-time defenders have provided approximately 40,000 uncompensated hours in order to handle the increased number and complexity of cases and to keep the court system operating.

The 2007 Public Safety Finance Bill mandated that most of the new funding provided to the Board be allocated to the hiring of new staff. The Board in an attempt to comply with this language began hiring in the Judicial Districts with the highest caseloads. With this funding tied to new positions, in order to fund the projected deficit the Board was facing at the beginning of 2008/2009 and the increased personnel costs for 2008/2009, savings would need to be generated through attrition and salary savings. Higher than expected salary settlements and lower than expected savings from salary savings and attrition contributed to a \$3.8 million deficit for 2008/2009.

In order to address the deficit, the Board adopted a budget for fiscal year 2009 that included an estimated reduction of fifty (50) FTE attorney positions on the district level. This is approximately 100,000 hours of attorney time. The reduction in positions was achieved through attrition, a series of voluntary separation policies, and finally layoffs.

Faced with these challenges, the Board implemented a service plan based on a set of principles which it adopted in 2003 and service delivery priorities it adopted in 2005. On the trial level these service principles include:

- ◆ Prioritize service to clients in custody;
- ◆ Evaluate the staffing of specialty courts; and
- ◆ Eliminate representation in non- mandatory cases.

The Board's service delivery priorities include:

- ◆ Constitutionally mandated criminal defense services for in-custody clients;
- ◆ Statutorily mandated criminal defense services for in-custody clients;
- ◆ Constitutionally mandated criminal defense services for out-of-custody clients;

PUBLIC DEFENSE BOARD

Program: DISTRICT PUBLIC DEFENSE

Narrative

- ◆ Statutorily mandated criminal defense services for out-of-custody clients;
- ◆ Other statutorily mandated services; and
- ◆ Other services as approved by the Board of Public Defense.

Following these principles and priorities, the Board voted to eliminate non-mandated services, namely representation of parents in child protection cases (CHIPS), and appearances at post-adjudication drug courts.

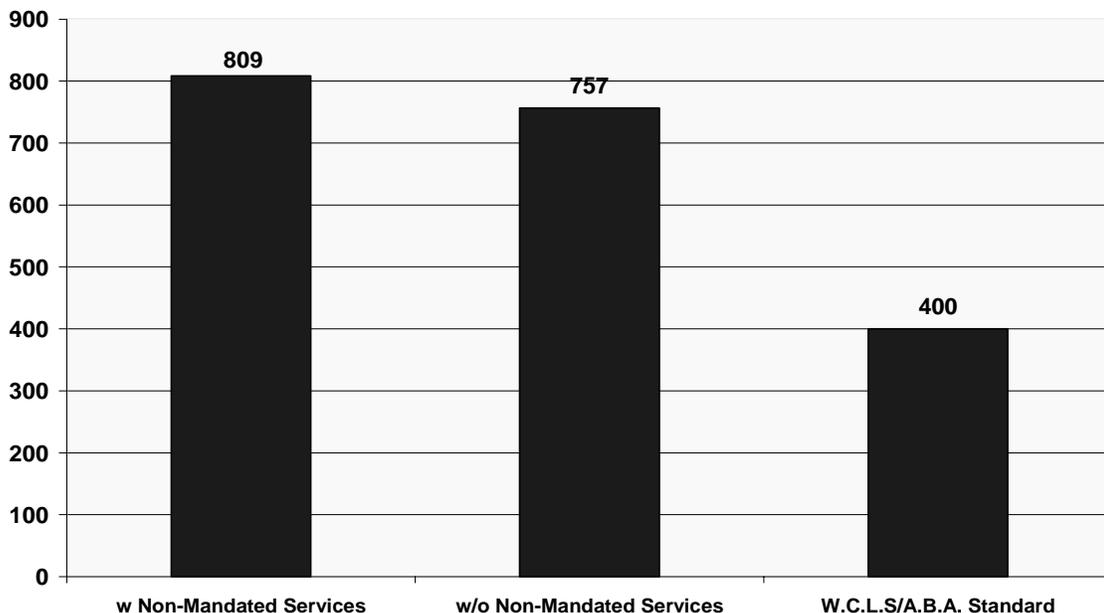
The representation of parents in child protection cases is not a mandated service for public defenders, although this service has been provided in the past. Representation of parents is statutorily a county function (M.S. 260C.331 Subdivision 3(d)). Public defenders continue to represent children over ten years of age in these proceedings. (M.S. 611.14).

There are 33 drug courts operating around the state. Drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. This results in extensive time commitments for all those involved in drug court including public defenders. Participant contacts with the public defenders are frequent and on-going and occur at each status hearing. The establishment of drug court and the requirements of the court dictate that staff be assigned specifically to that court. This places a burden on the public defender system since a defender is taken out of the regular court, thereby reducing the "economy of scale" in the regular court and putting an extra burden on the remaining defenders.

Except for probation revocation, appeal, and release (parole) revocation cases, the constitutional right to counsel ends when the sentencing hearing ends. Thus "post-adjudication" services in the trial courts, with the exceptions noted are not mandated services. Clients in these "post-adjudication" courts are in the same status as clients who have been convicted and sentenced to probation: they have a right to counsel if they are accused of a violation, but not the constant attention of counsel while probation is going smoothly.

Even with the elimination of non-mandated cases the average caseload is expected to increase to approximately 760 case units per FTE attorney. This again assumes no increase in the overall caseload.

STATE OF MINNESOTA BOARD OF PUBLIC DEFENSE CASE UNITS PER F.T.E. ATTORNEY w CY 2007 CASELOADS



Over the past ten years, 26 new judgeships have been created. With each of these judgeships comes another calendar (court room) where public defenders must appear. These new judgeships were created without a corresponding increase in public defender staff.

The board is the largest user of the state court system. Caseload increases, changes in court procedures, calendaring of cases, statutory changes, and changes in prosecution directly impact the board's ability to provide quality legal services to its clients. The efficiency and integrity of the judicial system are dependent on the public defender system's ability to provide quality legal services. If it cannot provide these services, court cases are continued, jails sit filled, and appeals and complaints rise. In short, the criminal justice system stops.

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as: local government decisions that increase police and prosecution, new constitutional mandates, Supreme Court Rules, sentencing guideline changes, statutory changes, and judicial calendaring changes. Among the new challenges are the increased emphasis on prosecution of sex offenders, methamphetamine, and child protection cases.

Key Program Goals

Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals:

- ◆ Client centered representation
- ◆ Creative advocacy
- ◆ Continual training for all staff
- ◆ Recruitment and retention of excellent staff
- ◆ Full partner in the justice system

Key Measures

- ◆ 179,000 cases were opened in FY 2007.
- ◆ Countless resources are lost as judges, court staff, prosecutors, victims and witnesses wait due to a lack of public defenders.
- ◆ 33 drug courts are operating statewide.
- ◆ District public defenders carry caseloads that average nearly twice the recommended standards.
- ◆ Prosecutors outnumber defenders by more than 2 to 1 statewide.
- ◆ Part time public defenders provided in excess of 40,000 uncompensated hours in FY 2007.

Program Funding

The current appropriation for this program is approximately \$55 million annually. Increased personnel costs as well as costs related to insurance and retirement have strained district budgets. A lack of public defenders and increased caseloads and time demands mean that the court system often has to sit idle and wait for public defenders to become available. The result is a weakened court and a criminal justice system which experiences major delays and often must stop the processing of defendants.

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PUBLIC DEFENSE BOARD

Program: DISTRICT PUBLIC DEFENSE

Program Summary

<i>Dollars in Thousands</i>					
	Current		Governor Recomm.		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	59,854	61,373	61,373	61,373	122,746
Subtotal - Forecast Base	59,854	61,373	61,373	61,373	122,746
Governor's Recommendations					
Operating and Grants Reduction		0	(3,069)	(3,069)	(6,138)
Total	59,854	61,373	58,304	58,304	116,608
<u>Expenditures by Fund</u>					
Carry Forward					
Miscellaneous Special Revenue	47	0	0	0	0
Direct Appropriations					
General	59,894	61,617	58,304	58,304	116,608
Statutory Appropriations					
General	600	565	450	450	900
Gift	167	221	180	180	360
Total	60,708	62,403	58,934	58,934	117,868
<u>Expenditures by Category</u>					
Total Compensation	43,055	40,560	38,280	38,320	76,600
Other Operating Expenses	4,552	8,400	7,830	7,790	15,620
Local Assistance	13,101	13,443	12,824	12,824	25,648
Total	60,708	62,403	58,934	58,934	117,868
<u>Expenditures by Activity</u>					
District Public Defense	60,708	62,403	58,934	58,934	117,868
Total	60,708	62,403	58,934	58,934	117,868
Full-Time Equivalent (FTE)	584.1	477.5	453.3	439.1	

PUBLIC DEFENSE BOARD

Agency Revenue Summary

Dollars in Thousands

	Actual FY2008	Budgeted FY2009	Governor's Recomm. FY2010 FY2011		Biennium 2010-11
<u>Non Dedicated Revenue:</u>					
Total Non-Dedicated Receipts	0	0	0	0	0
<u>Dedicated Receipts:</u>					
Grants:					
Gift	178	178	178	178	356
Other Revenues:					
Gift	2	2	2	2	4
Total Dedicated Receipts	180	180	180	180	360
Agency Total Revenue	180	180	180	180	360

Memo

To: Governor Pawlenty, Commissioner Tom Hanson

Cc: Jim King, Executive Budget Officer

From: Kevin Kajer, Chief Administrator

Date: 10/6/2008

Re: 2010-2011 Assessment

Background and Mission

In 1961 Clarence Earl Gideon (an innocent man) was charged in a Florida state court with a felony for breaking and entering. He lacked funds and was unable to hire a lawyer to prepare his defense. When he requested the court to appoint an attorney for him, the court refused, stating that it was only obligated to appoint counsel to indigent defendants in capital cases. Gideon defended himself in the trial; he was convicted by a jury and the court sentenced him to five years in a state prison.

In a unanimous opinion, the United States Supreme Court held that Gideon had a right to be represented by a court-appointed attorney. In this case the Court found that the Sixth Amendment's guarantee of counsel was a fundamental right, essential to a fair trial. Justice Black called it an "obvious truth" that a fair trial for a poor defendant could not be guaranteed without the assistance of counsel. Those familiar with the American system of justice, commented Black, recognized that **"lawyers in criminal courts are necessities, not luxuries."**

The mission of the Board of Public Defense is to provide quality criminal defense services to indigent defendants in the state of Minnesota through a cost-effective and efficient public defender system. Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals, client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and full partnership in the justice system.

The public defense system is the largest customer of the courts. Public defenders provide service in every courthouse in Minnesota, handling over 179,000 cases per year. It is estimated that public defenders provide service in 85-90% of the serious criminal cases in the state, and over 90% of the juvenile delinquency cases.

The Board does not and cannot control its caseload. The Board must provide the services specified in statute. In addition, the Minnesota State Supreme Court (Dzubiak v Mott) has recognized that a public defender “may not reject a client, but is obligated to represent whoever is assigned to her or him...” At the same time public defenders are held to the same ethical standards as private attorneys in regard to the handling of cases, as they should be.

Strategies

The Board has been committed to a cost effective model of representation, namely a combination of full time and part-time defenders. As opposed to paying by the hour or case, the Board’s model is not only cost effective but costs tend to be more stable. The use of part-time defenders provides more flexibility especially where there are conflicts in representation. This has also allowed the Board to limit the number of full-time offices because the part-time defenders cover much of their own overhead.

Over the last several years the Board has implemented an extensive training program for attorneys and support staff. Attorneys are provided with a full range of Continuing Legal Education Credits. A trial school has been developed at one-half the cost of sending employees to a school outside of the agency. Support staff training has included certification of investigators as well as a paralegal institute and sentencing advocacy programs. All of these have been done within the budget and with mostly internal resources.

The Board is committed to keeping administrative costs in check. Approximately 97% of the Board’s budget is direct service to clients.

Where funding has allowed the Board has added support staff to provide services in lieu of attorney time. The Board has adopted technology to improve efficiency. It has completed an on line brief bank system where attorneys can share legal research. It is currently retooling its time and case management system to capture data that is already being entered in MNCIS (Minnesota Court Information System). This will eliminate redundant entry of data and save attorney time.

Programs and Priorities

A “perfect storm” of an ongoing deficit, higher than expected personnel cost increases, lower than expected attrition and salary savings rates, and a legislatively imposed budget reduction presented the Board with a significant budget deficit for fiscal year 2009 and threatens to undermine the mission and goals of the Board.

Managing attorney positions have been established but these attorneys have excessive caseloads which take away from supervision, training, and mentoring of younger lawyers. Specialized juvenile divisions have emerged but lack the resources to provide adequate service. Finally, there has been a chronic shortage of support staff positions. As of June of this year there were ten (10) lawyers for every investigator, and eighteen (18) attorneys for every paralegal and sentencing advocate. This is more than double the standards recommended by the American Bar Association.

Faced with a reduction in its attorney staff, caseloads in excess of double ABA standards, and 44,000 uncompensated part-time public defender hours, the Board implemented a service plan based on the principles which it adopted in 2003 and service delivery priorities it adopted in 2005. Following these principles and priorities, the Board voted to eliminate non-mandated services. However, even with the elimination of non-mandated cases the average public defender caseload is expected to increase to more than 750 case units per F.T.E attorney, or approximately 180% of the caseload standards. **This assumes no increase in the overall caseload and no return to providing non-mandated services.**

On the appellate level staff reductions have meant that as many as 11% of the appeals in tried cases will not be assigned to a lawyer. The average time that appellate court(s) will have to wait until counsel is assigned

will be approximately six months. By fiscal year 2010 the wait could reach one year. All of this assumes that case growth remains flat.

In the post conviction unit (appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release, parole revocation) delays will also occur. At some point, the delay in appellate services could eventually lead to the courts ordering the release of prisoners who have been on the waiting list too long. In addition, it would also seriously affect the ability of the unit to meet its statewide obligations in parole revocation cases where there is a constitutional right to counsel because it would not be possible to cover all hearings scheduled by the Department of Corrections.

Finally, staff reductions will also reduce the unit's ability to provide statutorily required representation in community notification cases.

In order to meet the priorities or goals of the Board within the base budget further service changes may be necessary. The top priority would be to provide service to persons in custody, accused of felonies. Cases involving misdemeanors, less serious felonies and out of custody cases would be greatly delayed. The speedy trial rights and the courts' timelines for timely case processing would not be met. All of this would adversely impact victims, other justice agencies and the general public.

Trends and Outside Influences

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as: local government decisions that increase police and prosecution, new constitutional mandates, Supreme Court Rules, sentencing guideline changes, statutory changes, and judicial calendaring changes.

No one is arguing the merits of these decisions, but they do come with a cost.

Over the past ten years, twenty-six (26) new judgeships have been created. With each of these judgeships comes another calendar (court room) where public defenders must appear.

Counties and cities have increased staffing of prosecutors and police. A recent survey by District Chief Public Defenders indicates that there are twice as many prosecutors across the state as there are public defenders.

There are thirty-three (33) drug courts operating around the state. In addition there are mental health courts, DWI courts, and domestic abuse courts. Drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. This results in extensive time commitments for all those involved in drug court including public defenders. These courts are beneficial to society, but also very labor intensive.

Since 2000 the Supreme Court has implemented the Children's' Justice Initiative (CJI). The "CJI," emphasizes the urgency of responding to child welfare cases much more quickly, and with much better standards of practice. It includes a best practices guide for child protection (CHIPS) cases. The challenge for the Board has been to find the resources to provide the services that the CJI requires.

Over the last several years several changes have been made in the criminal justice system. While many of these changes have resulted in efficiencies and savings to parts of the judicial system, some have increased the costs for other judicial system partners. The elimination of mandatory transcripts by the Supreme Court saved the court over \$1 million. However, this change added costs to the public defender system. What was a matter of pulling a transcript out of the court file is now a request for a transcript that must be produced by a court reporter and paid for.

The establishment of regional jails has decreased costs and travel times for local units of government. However, it has increased the time commitments and travel costs of the public defender system when attorneys and staff must travel greater distances to meet with clients.

In the area of technology the use of interactive television (ITV) and electronic discovery are two areas which while providing some efficiencies have the potential to shift costs to the public defender system.

With respect to the use of ITV, Supreme Court Rules mandate that the prosecutor can not be alone in the courtroom with the judge and the defense lawyer must be with the client. In these instances it may be necessary to have a public defender in the courtroom with the prosecutor and the judge, at the same time that there is a public defender in the jail (regional jail?). This also may create logistical problems, for example, if the same lawyer has 3 clients "in person" in the courtroom and 3 more "ITV" clients being broadcast from the jail.

In the area of e-discovery there are hundreds of jurisdictions which all make their own decisions on software. In some instances the discovery includes material from proprietary systems that are outside of government control the codes to which the Board does not have access to. The transmittal of photos and videotapes via e-mail has the potential to shut down the e-mail system. Finally, approximately one-half of public defenders are part-time. The Board does not provide support to or regulate the equipment or internet connections of these defenders. In some parts of the state there is a lack of high speed internet connection. In many instances the volume of the discovery material would overwhelm a part-time defender's ability to receive the data as well as manage it. While the Board is trying to adapt to electronic discovery. To date this has proved difficult due to a shortage of technology resources as well as the issues mentioned above.

Conclusion

Even with the changes mentioned above, it must be noted that they cannot replace the 6th Amendment guarantee of the right to counsel.

Without an adequate number of public defenders the court system must slow down the processing of cases, which creates larger and larger court calendars; this means more time in court for lawyers, judges, court personnel and others, much of which can be idle time waiting for the case to be called. The result of this is an increase in the cost of processing cases, for the state and the counties. In addition, due to the fact that court calendars are overcrowded and time consuming, the court time available for the resolution, by trial or hearing of civil cases may be delayed at a substantial cost to everyone involved.

Often public defenders are scheduled in two different court rooms (many times in two different counties) at the same time. This brings the court system to a halt. In these instances victims, witnesses, law enforcement and court personnel sit idle waiting for public defenders. In some instances public defenders have been threatened with contempt for not appearing in a court room even when they are scheduled and appearing in another court room or county.

In most parts of the state there are not enough public defenders to represent clients at first appearance. This includes making bail arguments. The lack of public defenders increases the costs of incarceration of individuals in the already overcrowded county jails. As of May 2008, county jails were at 105% of capacity. These costs include but are not limited to jail staff and facility expense but also medical and dental expense as well.

Without additional funding the agency will not be able to meet its mission and goals during in the 2010-2011 biennium. In 2003, faced with a significant budget reduction the Board of Public Defense approved a set of budget and service principles to guide any future budget decisions. On the trial level these **budget principles** included:

1. Minimize negative impacts on clients
2. Maintain a statewide public defender system
3. Minimize impact on staff and infrastructure
4. Place a priority on services mandated by statute or constitution

The **service principles** include:

1. Prioritize service to clients in custody,
2. Evaluate the staffing of specialty courts
3. Eliminate representation in non- mandatory cases

Again facing a major budget deficit in FY 2005, the Board developed a service delivery plan based on the 2003 case priorities. The Board's **service delivery priorities** include:

- Constitutionally mandated criminal defense services for in-custody clients
- Statutorily mandated criminal defense services for in-custody clients
- Constitutionally mandated criminal defense services for out-of-custody clients
- Statutorily mandated criminal defense services for out-of-custody clients
- Other statutorily mandated services
- Other services as approved by the Board of Public Defense

The Board's service priorities also include a provision that attorneys will be provided with a reasonable balance of "in-court" and "out-of-court" hours. The Board is cognizant of the needs of the defenders, both full and part time. Out-of-court time is critical to prepare their clients' cases, time to meet and consult with their clients, and in the case of part-time defenders, time to be diligent in the representation of not only their public defender clients but equally so, their private clients. This will result in further limiting public defender availability for in-court hours, and may result in additional prioritization of cases. (In custody) If this occurs the court system will be further impacted and may come to a complete stop in some areas of the state. This will have ramifications not only for the courts, but county jails, law enforcement, prosecutors and the general public.

In short, the Board continues to be committed to its mission; however its reduced staff has already slowed down the entire justice system and required both other justice agencies and the public to wait for our lawyers to provide their mandated services.

PUBLIC DEFENSE BOARD

Change Item: Public Defender Viability

Fiscal Impact (\$000s)	FY 2010	FY 2011	FY 2012	FY 2013
General Fund				
Expenditures	\$7,818	\$11,887	\$11,887	\$11,887
Revenues	0	0	0	0
Other Fund				
Expenditures				
Revenues	0	0	0	0
Net Fiscal Impact	\$7,818	\$11,887	\$11,887	\$11,887

Request

The Board of Public Defense requests \$7.818 million in FY 2010 and \$11.887 million in FY 2011 in an attempt to put the public defender system on financially solid ground for the biennium. The request would fund: 53 positions lost during FY 2009 and associated support staff, projected cost increases for 2010/2011 that if not funded would serve to reduce staffing, and an adjustment in funding for the public defense corporations which serve thousands of clients that otherwise would be public defender clients. This assumes the Board will not be providing services in non-mandated cases.

Background

The Board does not and cannot control its caseload. The Board must provide the services specified in statute. The Minnesota State Supreme Court in the case (*Dzubiak v Mott*) has recognized that a public defender “may not reject a client...”

Faced with a “perfect storm” of an ongoing deficit, higher than expected personnel cost increases, lower than expected attrition and salary savings rates, and a budget reduction, the Board was forced to a budget for FY 2009 that included a reduction of fifty-three (53) FTE attorney positions. This was approximately 12% of the attorney staff, and equates to 100,000 hours of attorney time.

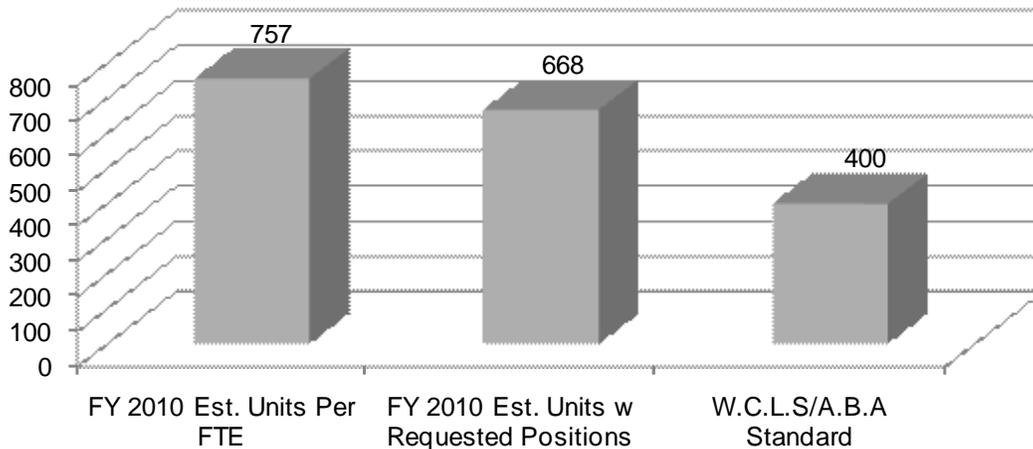
With the staff losses, caseloads in excess of double American Bar Association (ABA) standards, and 44,000 uncompensated part-time public defender hours, the Board implemented a service plan based on principles it adopted in 2003. This plan included the elimination of non-mandated services and district service plans that prioritize services to in-custody clients, and with a reasonable balance of in-court and out of court hours.

Even with the elimination of non-mandated cases the average caseload is expected to increase to 757 case units (a case unit is approximately equal to a misdemeanor) or 180% of the caseload standards. **This assumes no increase in the overall caseload or service in non-mandated cases.** The unpaid hours of part-time public defenders are the equivalent of 24 FTE attorneys. The lack of public defenders has had and will continue to have a major impact on the criminal justice system, delaying the ability of the justice agencies to function in a timely manner, and eroding the public’s confidence in the judicial system.

If funding is provided to rehire the positions the average caseload will still be 160% of the caseload standard. This will not address the issue of unpaid part-time public defender hours.

The request would also fund estimated personnel cost increases for the 2010-2011 biennium. This includes mandated costs of a COLA, steps, insurance and retirement contributions. Mandated non-personnel cost increases include the costs of trial transcripts, mileage and rent. Over the last five years expenditures on transcripts have averaged \$676,000 per year (budget is \$300,000). The request would fund the difference between the budgeted amount and the five year average expenditure. The Internal Revenue Service (IRS) rate for mileage has increased to 58.5 cents per mile. During a typical year public defenders and staff will travel approximately 1.4 million miles. The request would fund the difference between current costs and the estimated cost based on the new IRS rate. Office rents have typically increased 3% per year. If these costs are not funded, it will directly impact the number of attorneys that the Board will have available for the biennium.

**Board of Public Defense FY 2010 Estimated Caseloads w Requested Positions
(Assumes no growth in caseloads)**



In addition to not being able to control intake, the volume of cases is controlled by external circumstances, such as: local government decisions that increase police and prosecution, sentencing guideline changes, statutory changes, and judicial calendaring changes. No one is arguing the merits of these decisions, but they do come with a cost.

For example, according to the DOC from 1987-2005 the legislature created 86 sentencing enhancements which have imposed mandatory sentences or lengthened penalties. Local units of government have increased prosecution resources. A recent survey by Chief District Public Defenders indicated that there are twice as many prosecutors across the state as public defenders. Over the past ten years, twenty-six (26) new judgeships have been created. With each of these judgeships comes another calendar (court room) where public defenders must appear.

There are thirty-three (33) drug courts operating around the state. These courts are beneficial to society, but also very labor intensive. Drug courts include monitoring and continuing care for a year or more.

Without an adequate number of public defenders the court system must slow down the processing of cases. This creates larger court calendars; this means more time in court for lawyers, judges, court personnel and others, much of which can be idle time waiting for the case to be called. The result of this is an increase in the cost of processing cases, for the state and the counties. In addition, due to the fact that court calendars are overcrowded, civil cases are delayed at a substantial cost to everyone involved.

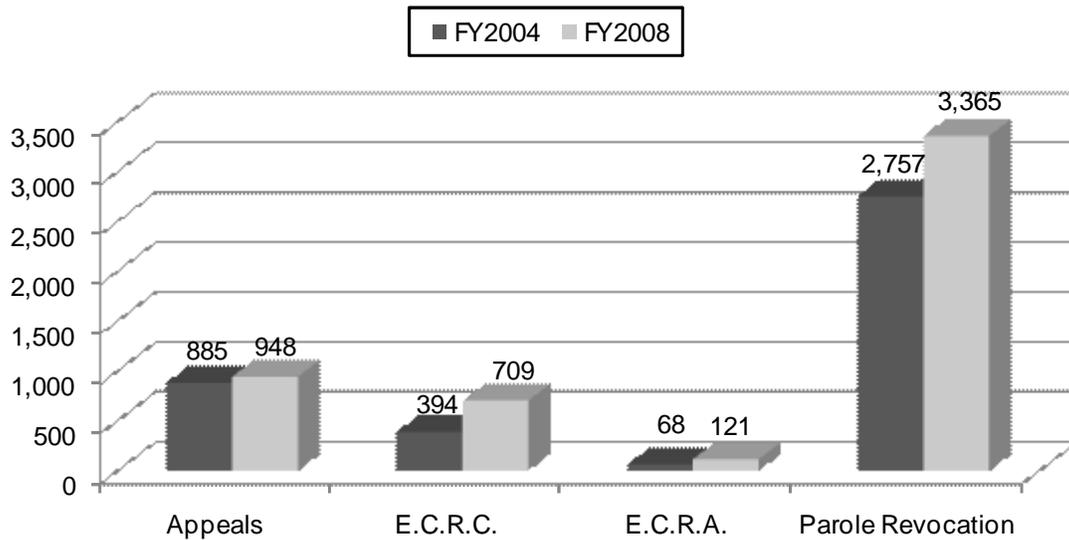
Often public defenders are scheduled in two different court rooms (many times in two different counties) at the same time. This brings the court system to a halt. In these instances victims, witnesses, law enforcement and court personnel sit idle waiting for public defenders. Not only is this not efficient, it is patently unfair to the other people who use the courts. In some instances public defenders have been threatened with contempt for not appearing in a court room even when they are scheduled and appearing in another court room or county.

In most parts of the state there are not enough public defenders to represent clients at first appearance. This includes making bail arguments. This impacts county jail space which as of May 2008 was at 105% of capacity.

On the appellate level staff reductions have meant significant delays in the state's appellate courts. In FY 2009 11% of appeals in tried cases will be placed on a waiting list. For each case the Court of Appeals or Supreme Court will have to stay the appeal timelines until counsel can be assigned. The average time that appellate court(s) will have to wait until counsel is assigned will be approximately six months. By fiscal year 2010 the wait could reach one year. All of this assumes that case growth remains flat.

Delays have also occurred in the post-conviction unit (guilty plea withdrawal, sentencing, conditional release, parole/supervised release hearings and community notification cases). At some point, the delay in appellate services could eventually lead to the courts ordering the release of prisoners who have been on the waiting list too long. The office's ability to staff parole revocation hearings has also been impacted, because it is not possible to cover all hearings scheduled by the Department of Corrections. Cases of this type have increased 22% over the last three years. Staff reductions will also reduce the unit's ability to provide statutorily required representation in community notification cases (ECRC). Cases of this type have increased 80% in the last four years. The office anticipates a significant increase in administrative court cases because they are unable to address issues in the ECRC process. Caseloads in this area have increased 78% in the last four years.

Board of Public Defense Appellate Office Cases FY 2004 & 2008



The four public defense corporations provide cost-effective quality legal defense services primarily to the state's minority communities. These cases (4,700) would otherwise be public defender cases. The request would provide funding to maintain current staff, by providing an adjustment on the corporations' grant amounts.

Relationship to Base Budget

The base budget for District and Appellate Defense is approximately \$66 million. This represents 97% of the Board's budget.

Key Goals and Measures

Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and full partnership in the justice system.

The lack of public defenders has had a negative impact on all of these goals. High caseloads and time commitments often do not allow for client centered representation or creative advocacy. As mentioned there are too few defenders in many parts of the state to be at first appearances. Often time public defenders are meeting clients for the first time in the court room. Overwhelming time commitments means there is often little time for motion practice. A lack of support staff often keeps cases from being investigated, or sentencing alternatives from being presented.

- ◆ Criminal justice system delayed or stopped- lack of confidence in the system
- ◆ No early entry into cases and in many parts of the state there are no public defenders at first appearance.
- ◆ Caseloads almost double Board and ABA standards.
- ◆ Loss of 53 FTE attorney positions and more than 100,000 annual attorney hours.
- ◆ Part time public defenders providing 44,000 hours of uncompensated time.

Alternatives Considered

Where funding has allowed, the Board has added support staff to provide services in lieu of attorney time. The Board has adopted technology to improve efficiency. It is currently retooling its time and case management system to capture data that is already being entered in the Minnesota Court Information System (MNCIS). This will eliminate redundant entry of data and save attorney time. The Board is also trying to adapt to electronic discovery. To date this has proved difficult due to a shortage of technology resources. Even with these changes, it must be noted that they cannot replace the 6th Amendment guarantee of the right to counsel.

Statutory Change: Not Applicable.