

Table of Contents

Board of Public Defense

<i>Agency Profile</i>	1
Agency Expenditure Overview	3
Agency Financing by Fund	4
Agency Change Summary	6
<u>Change Item(s)</u>	7
<i>Meeting Challenges Facing Public Defense</i>	7
<u>Program</u>	11
Appellate Office	11
<i>Program Narrative</i>	11
Program Expenditure Overview	12
Program Financing by Fund	13
<u>Program</u>	14
Administrative Services Office	14
<i>Program Narrative</i>	14
Program Expenditure Overview	16
Program Financing by Fund	17
<u>Program</u>	18
District Public Defense	18
<i>Program Narrative</i>	18
Program Expenditure Overview	21
Program Financing by Fund	22
<u>Additional Documents</u>	24
<i>Federal Funds Summary</i>	24

<https://www.pubdef.state.mn.us/>

AT A GLANCE

- Largest user of Minnesota Courts- provides mandated criminal defense services at the trial and appellate court level.
- 150,000 trial court cases opened annually.
- 4,000 appellate cases opened annually.

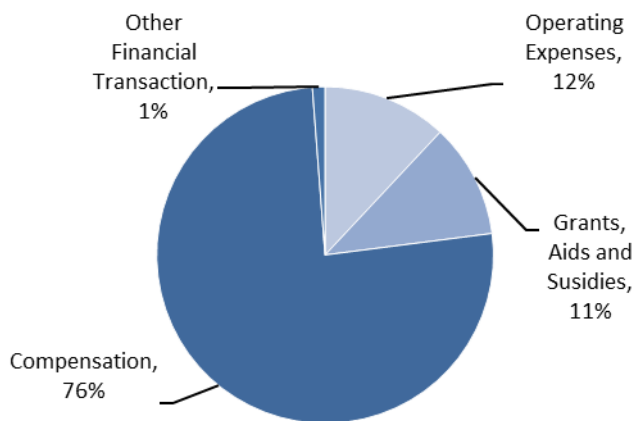
PURPOSE

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

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. A well-funded and functioning public defender system ensures that the constitutional rights of the indigent are protected. This helps to protect the rights of all of our citizens. It also helps to make sure that the work of the court system continues uninterrupted which helps ensure that people in Minnesota are safe. Public defender services are almost exclusively financed by the general fund. In Hennepin County (the 4th Judicial District) there is a cost sharing between the State of Minnesota and Hennepin County.

BUDGET

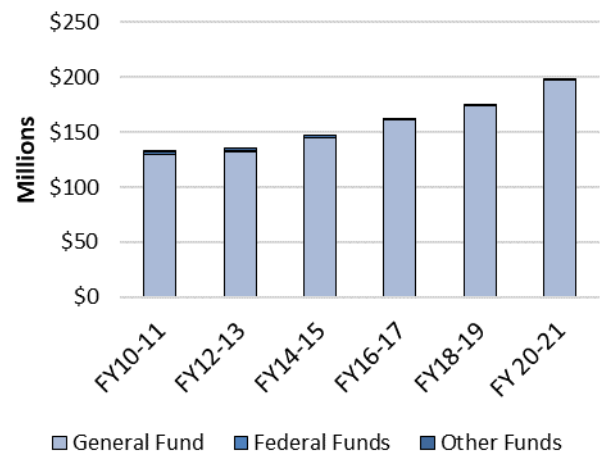
**Spending by Category
FY 2021 Actual**



Source: Budget Planning & Analysis System (BPAS)

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

Historical Spending



Source: Consolidated Fund Statement

STRATEGIES

The board has developed various tools to further our mission and goals and to provide effective and efficient service delivery. These include:

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

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

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base		Governor's Recommendation	
					FY24	FY25	FY24	FY25
<u>Expenditures by Fund</u>								
1000 - General	93,152	103,840	102,347	116,244	111,909	111,909	154,634	164,860
2000 - Restrict Misc Special Revenue	435	280	420	712	350	350	350	350
2403 - Gift	47	106	414	424	100	100	100	100
3015 - ARP-State Fiscal Recovery			674	3,271				
Total	93,634	104,226	103,855	120,651	112,359	112,359	155,084	165,310
Biennial Change				26,647		212		95,888
Biennial % Change				13		0		43
Governor's Change from Base								95,676
Governor's % Change from Base								43

Expenditures by Program

Appellate Office	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200
Administrative Services Office	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823
District Public Defense	84,896	94,508	93,870	110,073	102,336	102,336	145,061	155,287
Total	93,634	104,226	103,855	120,651	112,359	112,359	155,084	165,310

Expenditures by Category

Compensation	75,156	78,963	84,439	97,963	91,267	91,267	131,336	142,273
Operating Expenses	8,751	12,441	12,215	12,950	11,354	11,354	13,454	12,654
Grants, Aids and Subsidies	8,959	11,443	6,567	8,595	8,595	8,595	9,151	9,240
Capital Outlay-Real Property	188		3					
Other Financial Transaction	579	1,378	632	1,143	1,143	1,143	1,143	1,143
Total	93,634	104,226	103,855	120,651	112,359	112,359	155,084	165,310

Full-Time Equivalent

	756.67	755.03	791.49	791.49	790.87	790.87	890.87	996.87
--	---------------	---------------	---------------	---------------	---------------	---------------	---------------	---------------

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base		Governor's Recommendation	
					FY24	FY25	FY24	FY25
1000 - General								
Balance Forward In		3,429		4,335				
Direct Appropriation	96,374	101,178	106,381	111,409	111,409	111,409	154,134	164,360
Transfers In		843	880	1,000	500	500	500	500
Transfers Out		843	380	500				
Cancellations		767	199					
Balance Forward Out	3,222		4,335					
Expenditures	93,152	103,840	102,347	116,244	111,909	111,909	154,634	164,860
Biennial Change in Expenditures				21,599		5,227		100,903
Biennial % Change in Expenditures				11		2		46
Governor's Change from Base								95,676
Governor's % Change from Base								43
Full-Time Equivalents	756.00	754.91	790.74	790.74	790.74	790.74	890.74	996.74

2000 - Restrict Misc Special Revenue

Balance Forward In	455	402	452	362				
Transfers In	382	331	329	350	350	350	350	350
Balance Forward Out	402	452	362					
Expenditures	435	280	420	712	350	350	350	350
Biennial Change in Expenditures				417		(432)		(432)
Biennial % Change in Expenditures				58		(38)		(38)
Governor's Change from Base								0
Governor's % Change from Base								0
Full-Time Equivalents		0.04	0.04	0.04	0.04	0.04	0.04	0.04

2403 - Gift

Balance Forward In	113	224	303	324				
Receipts	138	185	434	100	100	100	100	100
Balance Forward Out	205	303	324					
Expenditures	47	106	414	424	100	100	100	100
Biennial Change in Expenditures				685		(638)		(638)
Biennial % Change in Expenditures				449		(76)		(76)
Governor's Change from Base								0
Governor's % Change from Base								0

(Dollars in Thousands)

	Actual	Actual	Actual	Estimate	Forecast Base		Governor's Recommendation	
	FY20	FY21	FY22	FY23	FY24	FY25	FY24	FY25
Full-Time Equivalents	0.67	0.08	0.09	0.09	0.09	0.09	0.09	0.09

3015 - ARP-State Fiscal Recovery

Balance Forward In				3,271				
Direct Appropriation			3,945					
Balance Forward Out			3,271					
Expenditures			674	3,271				
Biennial Change in Expenditures				3,945		(3,945)		(3,945)
Biennial % Change in Expenditures						(100)		(100)
Governor's Change from Base								0
Governor's % Change from Base								
Full-Time Equivalents			0.62	0.62				

(Dollars in Thousands)

	FY23	FY24	FY25	Biennium 2024-25
Direct				
Fund: 1000 - General				
FY2023 Appropriations	111,409	111,409	111,409	222,818
Forecast Base	111,409	111,409	111,409	222,818
Change Items				
Meeting Challenges Facing Public Defense		42,725	52,951	95,676
Total Governor's Recommendations	111,409	154,134	164,360	318,494
Dedicated				
Fund: 2000 - Restrict Misc Special Revenue				
Planned Spending	712	350	350	700
Forecast Base	712	350	350	700
Total Governor's Recommendations	712	350	350	700
Fund: 2403 - Gift				
Planned Spending	424	100	100	200
Forecast Base	424	100	100	200
Total Governor's Recommendations	424	100	100	200
Revenue Change Summary				
Dedicated				
Fund: 2403 - Gift				
Forecast Revenues	100	100	100	200
Total Governor's Recommendations	100	100	100	200

Board of Public Defense

FY 2024-25 Biennial Budget Change Item

Change Item Title: Meeting Challenges Facing Public Defense

Fiscal Impact (\$000s)	FY 2024	FY 2025	FY 2026	FY 2027
General Fund				
Expenditures	42,725	52,951	52,951	52,951
Revenues	0	0	0	0
Other Funds				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact = (Expenditures – Revenues)	42,725	52,951	52,951	52,951
FTEs	100	206	206	206

Recommendation:

The Governor’s recommendation is an attempt to meet the challenges facing public defense workloads, recruitment, and retention in a time of great uncertainty. The recommendation provides much of the staffing necessary to meet the Weighted Caseload Standards for staffing, and to meet the challenges of recruitment and retention by increasing salaries to the level of prosecutors in some of the largest counties in the state.

Rationale/Background:

The uncertainty created by the COVID-19 pandemic has impacted the criminal justice system. During the early months of the pandemic, the Trial Courts suspended several thousand cases. Courthouses have been reconfigured to meet MDH and CDC Guidelines. The county jails have had to make changes as well to meet the MDH and CDC Guidelines. All of these changes have added to the time that it takes to resolve cases.

The Minnesota Supreme Court reported that as of August of 2021 there still are more than 9,000 felony and gross misdemeanor cases pending. This does not include the increase in cases that has occurred over the last several months.

In addition to the issues surrounding COVID-19, Assistant Public Defenders have been weighed down with additional administrative responsibilities. This has been the result of the introduction of the Court’s e-file and e-service as well as the prosecutors’ move to providing disclosure in electronic formats. This has also forced the Board to invest and create its own Electronic Content Management System (ECM). Again, while these moves have made the agency more efficient in documenting, filing, and retrieving information, it has increased administrative responsibilities for Assistant Public Defenders.

The Court’s move to remote appearance (in some instances) has been a benefit to clients in many ways. It has also increased the time it takes to hold hearings and resolve cases. In many cases double the time (or more).

The responsibilities and time commitments for case preparation will continue to grow with the increased use of body cameras by police. The increased use of video (body, dashboard, business, and government) in criminal proceedings has been and will continue to be a major demand on time and resources. The video must be viewed by the attorneys and must be stored. In 2021 the board received 43 terabytes of data from counties. To put this in perspective this is the equivalent of more than 4,800 hours of high-definition movies, 8 million photos or 6¼ million songs. In the first six months of 2022 that total reached 61 terabytes.

Salaries continue to lag behind prosecutors, making it more difficult to recruit and retain qualified employees. In 2021 nearly 12% of all defenders resigned their position. Between 2017 and 2021 nearly 40% of defenders resigned their position. More than 1/3 of these individuals went to work for another public agency. In 2022, these numbers have increased.

In the first six months of 2022, the number of applicants for Assistant Public Defender positions was down anywhere from 50% to 75% from the average of the four-year period pre COVID-19. This continues a trend that started in 2020/2021. Currently, 50% of the open attorney positions are averaging 3 or fewer applicants. This makes it extremely difficult fill positions or attract a diverse pool of applicants.

The board has for some time experienced salary compression. The salary of the State Public Defender is limited by M.S. 611.23. With the recent collective bargaining agreements and corresponding changes, there are five individuals whose salaries exceed that of the State Public Defender. Under the proposal that number could rise to twenty-seven or more.

Approximately ninety percent (90%) of the Board's budget is personnel, with another six percent (6%) contractually obligated. Because public defenders cannot refuse cases, failure to fund increases in personnel costs is the equivalent of a staffing reduction. This jeopardizes the Board's ability to have counsel at first appearances and also puts the Board at a competitive disadvantage with other public employers.

The Board's *Quality Representation Best Practices (Best Practices)* for trial level defenders sets forth the expectations that are client-centered and most likely to lead to effective attorney-client relationships, based on trust. Inherent in the Best Practices is a responsibility for providing representation at first appearance. Accordingly, a major emphasis of the Board's recent budget requests has been to increase attorney staffing to have attorneys at first appearances throughout the state. The current budget supported attorney staffing levels (75% of state and national standards) such that public defenders are able to appear with clients at first appearances for in-custody cases in seventy-seven (77) counties, and in seventy-two (72) counties for out of custody cases.

The four public defense corporations provide legal defense services primarily to the state's minority communities. These cases would otherwise be public defender cases. The state provides approximately \$1.8 million per year through the Board for the public defense corporations. This represents roughly one-half of their funding.

Proposal:

The proposal seeks to meet the challenges the public defender system is facing by providing the staffing necessary to keep up with rising caseloads, the COVID-19 related case backlog and to maintain and stabilize its work force in the face of competition from other public agencies.

Workloads and the inability of the Board to meet the salaries of other public agencies has led to a significant turnover of staff in the last few years and loss of valuable experience among defenders. This has resulted in the inability to handle certain case types in an efficient and effective manner; aggravation of jail overcrowding; postponement of trial settings, which are already far enough out to impinge on the right to a speedy trial; deterioration in the quality of fact-finding, as witnesses become unavailable; increased strain on all the other participants in the justice system. During the 2022 Legislative Session, both the House and Senate voted overwhelmingly for public safety bills that included funding for the Board to address the caseload and salary challenges.

Public defenders cannot refuse cases (*Dzubiak v Mott*). Since 90% of the Board's budget is personnel and another five percent (5%) is contractually obligated, failure to fund salary and benefit increases for existing staff would require a reduction in staffing and would result in a reduction in services.

The Board is requesting funding to largely meet the existing state and national standards for staffing. In order to recruit and retain staff, the request includes funding to provide salaries comparable to those of the larger county attorney offices in the state, as well as to fund the estimated insurance cost increases during the biennium. Finally, the request includes funding to cover the projected ongoing deficit from the 2022-2023 collective bargaining settlements.

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

Impact on Children and Families:

The budget request is an attempt to meet the challenges facing the public defender system in a very uncertain time. Pre COVID-19, public defenders represented clients in 150,000 cases. Many of these clients have families with children. The Board has the resources to have public defenders at first appearances in almost all counties in the state (if it can fill the vacancies). Many times, the first appearance includes arguments on reducing or eliminating bail for clients. For every client that is not kept in jail due to failure to afford bail, a job can be saved, and children provided for.

Along with protecting the constitutional rights of clients, in many of these cases public defenders work hard to find alternatives to incarceration. These alternatives include drug and alcohol treatment and mental health care. For every person that is not incarcerated, not only is there a savings to the county or state, but many times clients can remain employed or can seek employment.

Pre COVID, public defenders represented almost 9,500 juveniles in juvenile court, and 2,000 children, 10 and over, in child protection proceedings. In these cases, the work of public defenders often means a second chance for juvenile offenders, and, in the child protection area, an opportunity to keep families together.

Tribal Consultation:

Does this proposal have a substantial direct effect on one or more of the Minnesota Tribal governments?

- Yes
- No

Equity and Inclusion:

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

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

Results:

High workloads combined with salaries that are significantly lower than prosecutors in counties where most of the cases have led to an inability to recruit new staff and retain experienced staff. Workloads and caseloads continue to hamper the ability of public defenders to represent clients, and to be a functioning partner in the criminal justice system.

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Current Value</i>	<i>Date</i>	<i>Projected Value (without)</i>	<i>Projected Value (with)</i>	<i>Date</i>
Quantity	Weighted Case Unit Per Attorney	594	October 2022	675-700	400	June 2024
Quality	Attorneys at First Appearance- In Custody	77	October 2022	22-25 (pre-2019 levels)	77	July 2023
Turnover	Resignation Rate	12%	2021	?	5% (goal)	January 2024

IT Related Proposals:

N/A

Statutory Change(s):

M.S. 611.23

Program: Appellate Office

<http://www.pubdef.state.mn.us/>

AT A GLANCE

- Largest user of Appellate and Minnesota Supreme Court
- Provide service in every District Court

PURPOSE AND CONTEXT

The Appellate Office provides services to indigent clients in criminal appeals, post-conviction proceedings in the District Courts, and supervised release/parole revocation proceedings.

The goal for the Appellate Office is to provide excellent client-centered representation to clients in criminal appeals, post-conviction proceedings in the District courts, and supervised release/parole revocation hearings. The Appellate Office is dedicated to the principle that all clients are entitled to equal access to justice, and quality representation.

By providing quality representation, the Appellate Office helps ensure that legislation and court decisions are based on sound constitutional and legal principles, thereby ensuring that the rights of all citizens are protected.

With the District Courts reducing service during the COVID-19 pandemic the number of cases declined during 2020, those cases are now increasing as the courts have returned to full operation. With the several thousand case backlog the case numbers will increase dramatically.

SERVICES PROVIDED

The Appellate Office provides mandated 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; and to defendants in supervised release/parole revocation proceedings.

RESULTS

The practice of criminal law does not readily lend itself to numerical results. However, the Appellate Office has incorporated quality representation guidelines into its attorney practice. During the COVID-19 pandemic there were fewer trials and appeals. With the Court now addressing the backlog, these numbers are now increasing and with short timelines for post-conviction relief cases there is even greater pressure to get these cases resolved.

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Previous</i>	<i>Current</i>	<i>Dates</i>
Quantity	Appellate Files Opened	4,110	3,234	2019 v 2020
Quality	Briefs Filed	597	621	2019 v 2020
Quantity	Parole Revocation Hearings	4,268	3,695	2018 v 2020
Quantity	Post-Conviction Proceedings	479	461	2019 v 2020

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

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base		Governor's Recommendation	
					FY24	FY25	FY24	FY25
<u>Expenditures by Fund</u>								
1000 - General	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200
Total	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200
Biennial Change				1,685		(617)		(617)
Biennial % Change				13		(4)		(4)
Governor's Change from Base								0
Governor's % Change from Base								0

Expenditures by Activity

State Public Defender	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200
Total	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200

Expenditures by Category

Compensation	5,388	5,669	5,970	6,209	5,946	5,946	5,946	5,946
Operating Expenses	1,173	1,101	1,329	1,509	1,254	1,254	1,254	1,254
Other Financial Transaction		0						
Total	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200

Full-Time Equivalent

	48.66	48.16	50.67	50.67	50.67	50.67	50.67	50.67
--	-------	-------	-------	-------	-------	-------	-------	-------

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base FY24 FY25		Governor's Recommendation FY24 FY25	
1000 - General								
Balance Forward In		633		18				
Direct Appropriation	7,194	6,603	6,937	7,200	7,200	7,200	7,200	7,200
Transfers In			380	500				
Transfers Out		436						
Cancellations		30						
Balance Forward Out	633		18					
Expenditures	6,561	6,771	7,299	7,718	7,200	7,200	7,200	7,200
Biennial Change in Expenditures				1,685		(617)		(617)
Biennial % Change in Expenditures				13		(4)		(4)
Governor's Change from Base								0
Governor's % Change from Base								0
Full-Time Equivalents	48.66	48.16	50.67	50.67	50.67	50.67	50.67	50.67

Program: Administrative Services Office (ASO)

<https://www.pubdef.state.mn.us/>

AT A GLANCE

- Launching an electronic content management system to accept, store and retrieve documents, audio, and video files
- HR, payroll, technology, and administrative functions for 800+ employees

PURPOSE AND CONTEXT

The Administrative Services Office provides district and appellate defenders and staff with the resources they need to be successful in providing high quality legal assistance to indigent Minnesotans, and to do so in a cost effective manner.

The office implements board policies and provide staff support and training for all public defense functions statewide. In addition, the office has developed and manages agency systems in the areas of caseloads, budget, personnel, and agency assets.

The office has developed an Electronic Content Management system (ECM). The ECM will allow for the transmission, review, and storage of electronic records that flow to and from our justice partners. We are currently working with justice partners to accept video records.

Over 800 people work in the board's 29 offices, our part-time lawyers' offices and Public Defense Corporation offices rely on our technology staff for hardware and software assistance and the management of accounts used to access agency systems that are needed in the representation of clients.

SERVICES PROVIDED

- Implement COVID-19 business plan, and leave plan to help ensure employee safety and continuation of services.
- Working with justice partners to develop plans to maintain court functions during pandemic.
- Developed and implemented policies covering personnel, compensation, budgeting, training, conflict cases, internal controls, and management information systems.
- Implemented quality representation guidelines, and an internal resource allocation policy to better target attorney resources.
- Developed and implemented a new class of full time attorney to provide more flexibility in the provision of services and to address the coming retirements of "baby boomer" part time defenders.
- Implemented a model and training for handling cases involving DNA and other scientific evidence.
- Developed an upgraded "defender dashboard" on the case management system to allow defenders to more effectively use additional features of the case management system.
- Worked with the Court to provide automatic scheduling and scheduling updates.
- Developing an electronic content management system to integrate with the Courts E-court project and prosecutors statewide. Working on plans to accept and store video content.
- Streamlined entry of case opening data and shifted it away from attorney staff.

RESULTS

The office has also continued work in meeting the goals set out by the Board.

- Recruitment and retention of diverse work force- 57% women and 13% people of color.
- 2021 approximately 275 hours of CLE credit opportunities for attorneys in both on demand, in person, and webinar formats.
- 2021-28 statewide/district training sessions.
- 816 technology requests for assistance per month with initial response time always within one business day.
- 99% up-time on internal systems.
- Maintenance of 313 servers/appliances, 960 laptop/desktop computers.
- Management of 580 phones.

Work continues with our justice partners to improve and increase the effectiveness of the criminal justice system. This work includes regular meetings with county attorneys and working with district chief public defenders and county attorneys to develop a systematic approach to the use of electronic disclosure in criminal cases. These contributions help to improve efficiency and maintain a capable and reliable justice system.

M.S. 611 (<https://www.revisor.mn.gov/statutes/cite/611>) provides the authority for this program.

Administrative Services Office

Program Expenditure Overview

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base		Governor's Recommendation	
					FY24	FY25	FY24	FY25
<u>Expenditures by Fund</u>								
1000 - General	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823
Total	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823
Biennial Change				423		100		100
Biennial % Change				8		2		2
Governor's Change from Base								0
Governor's % Change from Base								0

Expenditures by Activity

Administrative Services Office	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823
Total	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823

Expenditures by Category

Compensation	1,812	2,104	2,342	2,522	2,485	2,485	2,485	2,485
Operating Expenses	363	818	327	335	335	335	335	335
Grants, Aids and Subsidies	0							
Other Financial Transaction	0	25	17	3	3	3	3	3
Total	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823

Full-Time Equivalents

	12.60	14.05	15.00	15.00	15.00	15.00	15.00	15.00
--	-------	-------	-------	-------	-------	-------	-------	-------

Administrative Services Office

Program Financing by Fund

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base FY24 FY25		Governor's Recommendation FY24 FY25	
1000 - General								
Balance Forward In		542		37				
Direct Appropriation	2,712	2,712	2,723	2,823	2,823	2,823	2,823	2,823
Transfers Out		230						
Cancellations		77						
Balance Forward Out	536		37					
Expenditures	2,176	2,947	2,686	2,860	2,823	2,823	2,823	2,823
Biennial Change in Expenditures				423		100		100
Biennial % Change in Expenditures				8		2		2
Governor's Change from Base								0
Governor's % Change from Base								0
Full-Time Equivalents	12.60	14.05	15.00	15.00	15.00	15.00	15.00	15.00

Program: District Public Defense

<http://www.pubdef.state.mn.us/>

AT A GLANCE

- 150,000 + cases opened annually 9,000+ case backlog in the Courts
- Largest user of the trial court system
- Increased complexity of cases with scientific evidence and collateral consequences
- Caseloads far in excess of State and American Bar Association standards

PURPOSE AND CONTEXT

The District Public Defense Program provides legal services required by the Constitution and state statutes to indigent persons in Minnesota’s trial courts. This is accomplished through a system that relies on a mix of full-time and part-time attorneys as well as support staff. Trial level public defenders provide service in approximately 150,000 cases per year (80%-90% of all criminal cases), as well as several thousand felony and gross misdemeanor cases pending as a result of the impact of the COVID-19 pandemic on the Court. This program also includes statutory (M.S. 611.215) (<https://www.revisor.mn.gov/statutes/cite/611.215>) funding for four nonprofit public defense corporations. The corporations provide criminal and juvenile defense services primarily to minority indigent defendants, who otherwise would need public defense services.

SERVICES PROVIDED

Under Minnesota law, all individuals accused of a felony, gross misdemeanor, misdemeanor or juvenile crime are entitled to be represented by an attorney. The District Defense Program provides quality mandated criminal defense services to indigent persons in these cases. The program also provides representation to children under ten (10) years of age in Children in Need of Protective Services (CHIPS) cases.

The public defense corporations are nonprofit corporations that provide criminal and juvenile defense services primarily to minority indigent defendants, who otherwise would need public defense services. The four corporations are the Neighborhood Justice Center (St. Paul); Legal Rights Center (Minneapolis), Duluth Indian Legal, and the Regional Native Public Defense Corporation (serving Leech Lake and White Earth).

RESULTS

“High public defender workloads have created significant challenges for Minnesota’s criminal justice system.”¹ Due to time pressures public defenders often had about 10 minutes to meet each client for the first time to evaluate the case, explain the client’s options and the consequences of a conviction or plea, to discuss a possible deal with the prosecuting attorney, and allow the client to make a decision on how to proceed. Compare this to state and national standards which recommend four hours of work for the same cases.²

The public defender system is operating with approximately 75% of the attorney support staff that American Bar Association and Board of Public Defense Weighted Caseload Standards recommend. The Board continues to experience significant employee turnover with a corresponding loss of experience. Over the last five years (2017-2021) nearly 40% of public defenders resigned, with almost 12% resigning in 2021 alone. That trend is continuing

¹ Office of Legislative Auditor 2010 Program Evaluation Public Defender System.

² OLA field visits versus American Bar Association Recommendations and State Board of Public Defense Weighted Caseload Standards.

in 2022. The average experience for those employees who resigned to take other positions was almost six (6) years.

High workloads, time demands and court imposed deadlines for resolving cases continue to hamper efforts to provide quality representation. Client trust is essential in providing quality representation and ensuring efficient resolution of cases. This is especially true in cases where there is a plea agreement, which is the vast majority (99%) of cases.

High workloads combined with salaries that are significantly lower than prosecutors in counties where most of the cases are has led to an inability to recruit new staff and retain experienced staff.

The OLA report described several factors that make settlement of cases more difficult and time consuming. These include legislation that has increased the severity of consequences for certain crimes, criminal charges or convictions that have civil consequences, additional hearings mandated by new legal requirements, language and cultural barriers, and more clients with mental illness and chemical dependency.

Two other factors that have served to increase the workload for public defenders are recent U.S. Supreme Court decisions (*Missouri v. Frye* and *Lafler v. Cooper*-, criminal defendants have a Sixth Amendment right to effective assistance of counsel during plea negotiations, and *Padilla v Kentucky*-immigration consequences of a guilty plea are an integral part of a criminal conviction and thus are within the scope of the Sixth Amendment's right to counsel).

The increased use of video(body, dashboard, business, and government) in criminal proceedings has been and will continue to be a major demand on time and resources. The video must be viewed by the attorneys and must be stored. In 2021 the board received 43 terabytes of data from counties. To put this in perspective this is the equivalent of more than 4,800 hours of high definition movies, 8 million photos or 6¼ million songs. In the first six months of 2022 that total reached 61 terabytes.

The increased use of scientific evidence has made the practice of law much more complicated over the last several years. Such evidence must be analyzed for its validity, and the ways in which this evidence is collected, processed, analyzed, and reported. This includes computer forensics, drug analysis, fingerprint analysis, DNA, ballistics, arson reports, and other forensic evidence.

Finally, the criminal justice system as a whole has also had to serve an increased number of defendants who suffer from mental illness and/or drug and alcohol addiction. It is estimated that approximately 50% of inmates in county jails suffer from some form of mental illness, and alcohol/drug abuse is a factor in 80%-90% of Minnesota's criminal cases.

These factors have become more acute with the onset of the COVID-19 pandemic. The limited ability to meet with clients in person, and the length of time needed to deal with and resolve cases has placed additional burdens on public defense staff. In addition, while several thousand court cases have been delayed due to the virus, these cases will need to be heard and resolved by the courts. This backlog will put additional pressure on staff. The loss of experienced attorneys and staff compounds these factors.

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Previous</i>	<i>Current</i>	<i>Dates</i>
Quality	Counties with public defender at first appearance (in custody cases)	89%	89%	FY 2018 & FY 2021
Quantity	Pending Felony and Gross Mis. Cases	14,000	9,000+	2021 v 2022
Quantity	Video Transmitted- Ramsey County-3 months.	16 Terabytes	61 Terabytes	6months 2020 v 6 months 2022
Quality	Counties with public defender at first appearance (out of custody cases)	60%	85%	FY 2018 & FY 2021

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

District Public Defense

Program Expenditure Overview

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base		Governor's Recommendation	
					FY24	FY25	FY24	FY25
<u>Expenditures by Fund</u>								
1000 - General	84,414	94,122	92,362	105,666	101,886	101,886	144,611	154,837
2000 - Restrict Misc Special Revenue	435	280	420	712	350	350	350	350
2403 - Gift	47	106	414	424	100	100	100	100
3015 - ARP-State Fiscal Recovery			674	3,271				
Total	84,896	94,508	93,870	110,073	102,336	102,336	145,061	155,287
Biennial Change				24,538		729		96,405
Biennial % Change				14		0		47
Governor's Change from Base								95,676
Governor's % Change from Base								47

Expenditures by Activity

District Public Defense	84,896	94,508	93,870	110,073	102,336	102,336	145,061	155,287
Total	84,896	94,508	93,870	110,073	102,336	102,336	145,061	155,287

Expenditures by Category

Compensation	67,956	71,190	76,127	89,232	82,836	82,836	122,905	133,842
Operating Expenses	7,214	10,522	10,559	11,106	9,765	9,765	11,865	11,065
Grants, Aids and Subsidies	8,959	11,443	6,567	8,595	8,595	8,595	9,151	9,240
Capital Outlay-Real Property	188		3					
Other Financial Transaction	579	1,352	615	1,140	1,140	1,140	1,140	1,140
Total	84,896	94,508	93,870	110,073	102,336	102,336	145,061	155,287

Full-Time Equivalent

	695.41	692.82	725.82	725.82	725.20	725.20	825.20	931.20
--	--------	--------	--------	--------	--------	--------	--------	--------

District Public Defense

Program Financing by Fund

(Dollars in Thousands)

	Actual FY20	Actual FY21	Actual FY22	Estimate FY23	Forecast Base		Governor's Recommendation	
					FY24	FY25	FY24	FY25
1000 - General								
Balance Forward In		2,254		4,280				
Direct Appropriation	86,468	91,863	96,721	101,386	101,386	101,386	144,111	154,337
Transfers In		843	500	500	500	500	500	500
Transfers Out		177	380	500				
Cancellations		661	199					
Balance Forward Out	2,053		4,280					
Expenditures	84,414	94,122	92,362	105,666	101,886	101,886	144,611	154,837
Biennial Change in Expenditures				19,491		5,744		101,420
Biennial % Change in Expenditures				11		3		51
Governor's Change from Base								95,676
Governor's % Change from Base								47
Full-Time Equivalents	694.74	692.70	725.07	725.07	725.07	725.07	825.07	931.07

2000 - Restrict Misc Special Revenue

Balance Forward In	455	402	452	362				
Transfers In	382	331	329	350	350	350	350	350
Balance Forward Out	402	452	362					
Expenditures	435	280	420	712	350	350	350	350
Biennial Change in Expenditures				417		(432)		(432)
Biennial % Change in Expenditures				58		(38)		(38)
Governor's Change from Base								0
Governor's % Change from Base								0
Full-Time Equivalents		0.04	0.04	0.04	0.04	0.04	0.04	0.04

2403 - Gift

Balance Forward In	113	224	303	324				
Receipts	138	185	434	100	100	100	100	100
Balance Forward Out	205	303	324					
Expenditures	47	106	414	424	100	100	100	100
Biennial Change in Expenditures				685		(638)		(638)
Biennial % Change in Expenditures				449		(76)		(76)
Governor's Change from Base								0
Governor's % Change from Base								0

District Public Defense

Program Financing by Fund

(Dollars in Thousands)

	Actual	Actual	Actual	Estimate	Forecast Base		Governor's Recommendation	
	FY20	FY21	FY22	FY23	FY24	FY25	FY24	FY25
Full-Time Equivalents	0.67	0.08	0.09	0.09	0.09	0.09	0.09	0.09

3015 - ARP-State Fiscal Recovery

Balance Forward In				3,271				
Direct Appropriation			3,945					
Balance Forward Out			3,271					
Expenditures			674	3,271				
Biennial Change in Expenditures				3,945		(3,945)		(3,945)
Biennial % Change in Expenditures						(100)		(100)
Governor's Change from Base								0
Governor's % Change from Base								
Full-Time Equivalents			0.62	0.62				

Board of Public Defense

Federal Funds Summary

(Dollars in Thousands)

Federal Agency and CFDA #	Federal Award Name and Brief Purpose	FY 2022 Actual	FY 2023 Budget	FY 2024 Base	FY 2025 Base	Required State Match or MOE?	FTEs
US Department of the Treasury CFDA 21.027	American Rescue Plan State Fiscal Recovery: COVID-19 Caseload Backlog	\$ 674	\$ 3,271	\$ -	\$ -	No	-
	ARP-State Fiscal Recovery [3015 Fund] Agency Total	\$ 674	\$ 3,271	\$ -	\$ -		-

Narrative

The Board of Public Defense is using the \$3.945 million to hire attorneys to address the significant case backlog that has resulted the COVID-19 pandemic and to meet the speedy trial demands of public defender clients.