

Public Defender System

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February 1992

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

Program Evaluation Division

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Public Defender System

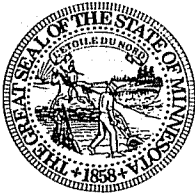
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STATE OF MINNESOTA
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JAMES R. NOBLES, LEGISLATIVE AUDITOR

February 27, 1992

Representative Ann H. Rest, Chair
Legislative Audit Commission

Dear Representative Rest:


On June 4, 1991 the Legislative Audit Commission directed us to evaluate Minnesota's statewide system for providing legal defense to those who are accused of crimes but unable to pay for an attorney. The Legislature's decision to increase the responsibility of the state to fund and oversee public defender services in 1990 had stirred controversy and opposition, particularly from local districts which had traditionally organized and paid for such services. The commission wanted a review of the status of the statewide system and recommendations on how to improve it.

We found a fragmentation of authority within the state public defender system and relatively weak accountability. We also found that, while the Board of Public Defense and the state public defender have made progress in building a statewide public defender system, some important administrative policies and procedures are not yet in place. We recommend enhancing the executive authority of the state public defender to address these problems. We also recommend steps to improve the administration of the state public defender system.

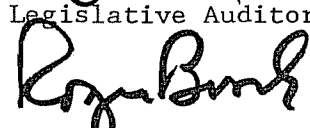
We thank the State Public Defender's Office, the Board of Public Defense, the district chief public defenders, and many others for their assistance during this project.

The report was researched and written by Marlys McPherson (project manager) and Deborah Woodworth, with assistance from Mark Baloga. Alanna Tyler and Nancy Van Maren served as part-time interns on the project.

Sincerely yours,



James Nobles
Legislative Auditor



Roger Brooks
Deputy Legislative Auditor

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THE PUBLIC DEFENDER SYSTEM

Executive Summary

In 1989, the Legislature changed the way Minnesota's court system is financed. Part of this plan involved the state assuming financial responsibility for public defender services from counties. All ten judicial districts became part of the state public defense system on July 1, 1990. In one year (fiscal year 1990 to 1991), state appropriations for public defense rose from \$2.7 million to \$19.8 million. Simultaneously, the responsibilities of the Board of Public Defense, which oversees the state system, increased.

Given the state's larger financial role and rapid growth in the criminal justice system generally, legislators requested more information about the organization and operation of the public defense system. Legislators also expressed concerns about conflicts they observed within the system and about the adequacy of changes made to its structure during the 1991 legislative session.

For these reasons, the Legislative Audit Commission asked us to study the state's public defender system. Our study addressed these questions:

- **How has Minnesota's public defender system changed since it was established in 1965? How is it organized today?**
- **How well is the system administered? Does the current organizational structure provide for sufficient accountability and financial oversight?**
- **How does Minnesota's public defender system compare with those in other states?**
- **What changes are needed to improve the public defender system?**

To answer these questions, we interviewed staff and members of the Minnesota Supreme Court, Board of Public Defense, and State Public Defender's Office, the ten chief district public defenders, and others knowledgeable about the state's system. We analyzed information on budgets, caseloads, staffing patterns, and district services. We attended board meetings and reviewed legislation, agency documents, board minutes, other states' statutes, and professional literature. We contacted national organizations and talked with public defender staff in other states.

Minnesota's public defender system is in transition.

In general, we found Minnesota's public defender system to be in transition and under stress, as it is in many other states. Caseloads are rising, financial strains are increasing, and there continue to be many difficult organizational issues to resolve. Historically, the public defender system has been locally based and public defenders have operated with considerable autonomy. Therefore, movement toward a state system has been difficult and, at times, highly contentious.

The board has been slow to develop management policies and procedures and some districts have resisted the board's efforts to establish greater state administrative control. The strongest resistance has come from Hennepin County, in part because it already has an established fulltime office that operates under the county's administrative policies and salary structure.

In spite of local resistance and the state board's past performance, we come down on the side of strengthening state control further. Our recommendations are rooted in the simple concept that by assuming greater financial responsibility for public defense, the state has a right--and an obligation--to ensure that its funds are being well managed. Our recommendations are designed to enhance the state's ability to fulfill this obligation.

We recognize, however, that changes in structure and administrative practice alone will not resolve many of the conflicts that currently exist within the public defender system. Therefore, we also hope that people in the system can find a way to come together and focus on the common purpose of providing good public defender services.

There are many aspects of the public defender system that we did not examine. We did not evaluate the quality of legal representation provided and we did not closely examine the management or cost-effectiveness of operations in any district offices. Consistent with the charge we received from the Legislative Audit Commission, we focused principally on the organization and administration of the system at the state level.

MINNESOTA IN THE NATIONAL CONTEXT

Most criminal defendants are poor and are legally entitled to a public defender.

The right to legal representation in certain criminal cases is guaranteed by the U.S. Constitution. Under Minnesota law, anyone accused of a felony, gross misdemeanor, or probation or parole violation is entitled to representation, including juveniles. Public defenders are appointed by the court to represent criminal defendants who cannot afford to pay for a private attorney. Judges determine if a defendant is indigent. According to information provided by the Supreme Court, in 1990, almost 75 percent of felony and over 50 percent of gross misdemeanor defendants in Minnesota were represented by public defenders.

The changes occurring in Minnesota's public defender system are similar to national trends. In particular,

- **Like the nation as a whole, Minnesota's public defender system is experiencing growth in caseloads and costs, with costs increasing faster than caseloads.**

Caseloads and costs are rising.

Between 1980 and 1990, public defender cases in Minnesota increased by 151 percent while costs increased by 186 percent. Because representation is legally required, the public defender system has no control over the volume of cases it must handle. Caseload size is determined by state sentencing policies, the practices of courts, prosecutors and police, and changes in crime and public opinion toward crime. While growth in caseloads is the main reason public defense costs have increased nationally, another is that compensation and private attorney rates have increased.¹

County and state governments are the two primary funding sources for public defense. Traditionally, programs were established at the local level under the auspices of the courts, which are responsible for ensuring that constitutional rights are protected. Until recently, public defense has been handled in most jurisdictions in the U.S. by the private bar through court-appointed attorneys. But the ability of the private legal profession to meet the demands placed upon it by the rapid growth in cases over the past 15 years has been severely tested.

Two additional trends are evident:

- **In Minnesota, as in other states, the public defense system has moved away from direct court control, and the state has assumed a larger role in financing public defense.**

A number of states, including Minnesota, are replacing their court-appointed counsel programs with fulltime public defender offices or contract attorneys. Also, more states are shifting from county-funded programs to fully or partially state-funded programs. In the move to state financing, many states have given administrative authority for the system to an executive branch agency, partly to avoid potential conflicts of interest caused by judicial supervision. However, there is no dominant organizational model for administering public defense because it is in transition in most states.

The state has assumed major responsibility for funding public defense.

In Minnesota, the state's assumption of financial responsibility for public defense is tied to the gradual unification of the state court system, which began in the late 1950s, and the property tax reform movement of the 1980s. At the present time, the state pays for felony and gross misdemeanor public defender services in all ten judicial districts and misdemeanor and juvenile services in three districts (the second, fourth, and eighth). As of July 1, 1992, the state will assume financial responsibility for misdemeanor and juvenile services in two more districts, the third and the sixth. The plan is for the state eventually to be responsible for public defense services in all districts.

¹ Bureau of Justice Statistics, *Bulletin*, "Criminal Defense for the Poor, 1986," 2.

Although some takeover costs were funded by new state appropriations, most of the initial costs were paid for with offsets or reductions in local government aid (LGA) and homestead and agricultural credit aid (HACA).

DESCRIPTION OF MINNESOTA'S PUBLIC DEFENDER SYSTEM

Minnesota's public defender system is described in below. Trial court public defender services are organized within ten districts that correspond with judicial district boundaries, as illustrated on the following page.

Minnesota's Public Defender System: Roles and Responsibilities

Board of Public Defense

- Has primary responsibility for overseeing the public defender system. It appoints chief public defenders and the state public defender, and allocates resources among the districts, public defense corporations, and State Public Defender's Office.
- Technically, part of the judicial branch, but not under direct control of the Supreme Court.
- Part-time board composed of seven individuals who serve staggered, four-year terms. Beginning in 1994, Governor will have three appointments and the Court four.

State Public Defender

- Traditionally, primary role has been overseeing the state's appellate public defender office, which handles appeals and provides legal services to prisoners.
- 1991 legislation makes the state public defender responsible for establishing policies and standards for the trial court public defender system and for supervising the board's administrative staff.

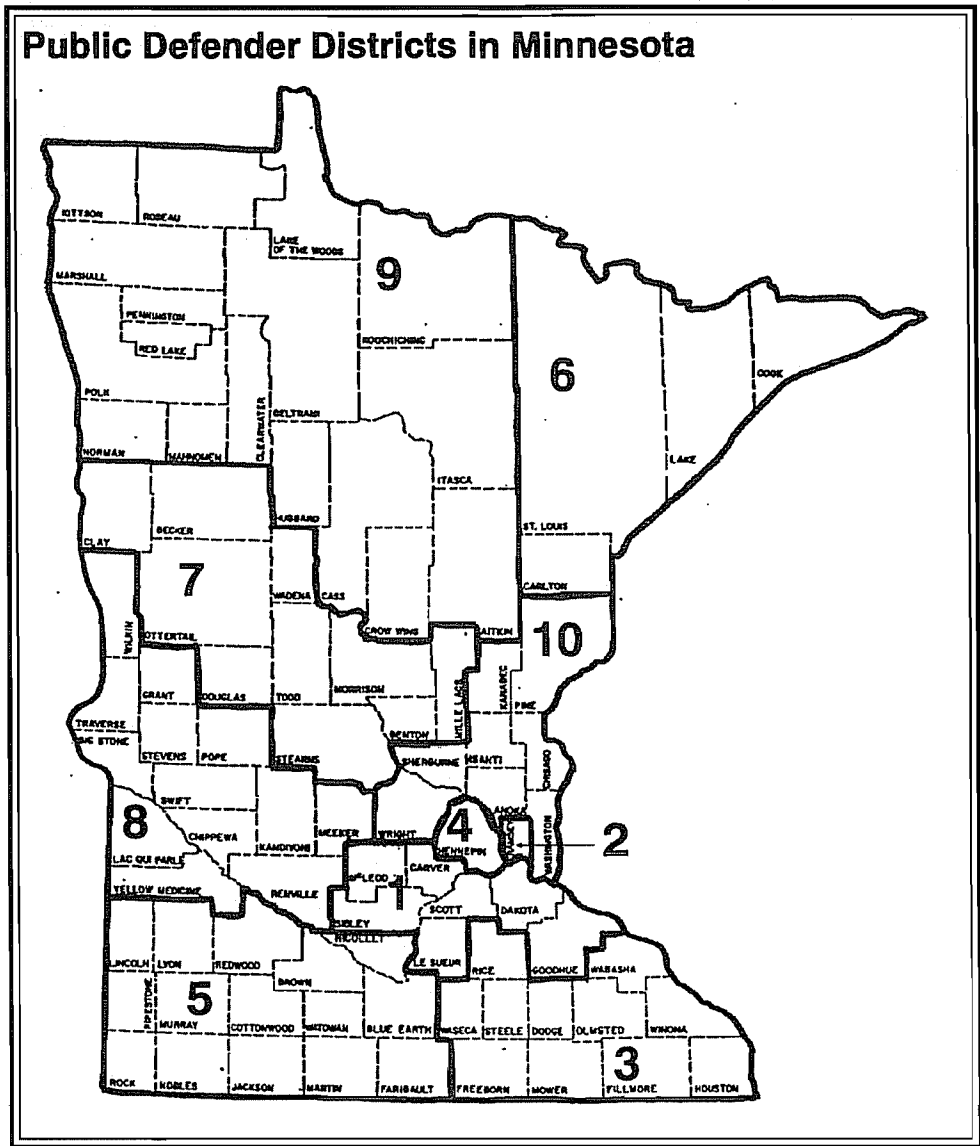
District Public Defender Offices

- Districts, which coincide with judicial district boundaries, are the primary organizational unit in the system. All trial court public defense services are provided by assistant public defenders who work at the district level.
- Eight of the ten districts are part-time operations. Ramsey and Hennepin Counties (the Second and Fourth Judicial Districts respectively) have the only fulltime public defender offices.
- The district chiefs hire and supervise their own assistant public defenders and prepare and manage their own budgets.

Public Defense Corporations

- Private, nonprofit corporations that serve minority populations primarily. Two are located in the Twin Cities metro area (Legal Rights Center and the Neighborhood Justice Center), and three serve Indian communities in northern Minnesota.
- State monies given to the public defense corporations must be matched by other funds.

Public Defender Districts in Minnesota



The nonmetro districts rely exclusively on contracts with private attorneys.

We compared districts and found that:

- In the eight part-time districts, there are no public offices for district public defenders.

Only the second (Ramsey) and fourth (Hennepin) districts have fulltime public defender offices, which employ 64 percent of the fulltime equivalent (FTE) personnel in the system. In the remaining eight multi-county districts, the chiefs and assistant public defenders are attorneys in private practice who agree to handle cases in a given geographical area. All of them work out of their own private law offices.

We also found that:

- **Districts vary in terms of the type and level of services offered, compensation and benefits provided to attorneys, caseloads, and costs.**

For example, there are significant differences among counties and judicial districts in the extent to which juveniles are represented and whether criminal defendants have legal representation at their first court appearance.²

Also, we found wide differences among districts in items covered in their budgets. The fulltime districts offer a full range of employee benefits. Among the part-time districts, however, four offer no employee benefits, and others cover limited benefits for only certain employees. Similarly, some districts receive rent allowances, but most do not.

Districts differ widely in caseloads, services, and resources.

Problems with the information on caseloads and costs make comparisons across districts difficult. Of the ten districts, only the fourth (Hennepin County) has a computerized information system for tracking cases. Data kept by Hennepin and Ramsey Counties are not compatible with information collected for the rest of the districts.³ Also, because of inconsistencies in the data submitted monthly by part-time attorneys, board staff told us it was not analyzed regularly. We estimated the accuracy of this information and determined that, while there are problems, it is similar to that kept by district chiefs and the Supreme Court.⁴

With these qualifications in mind, we found that:

- **Public defender caseloads have increased in the last ten years, but some districts were affected more than others.**

In the first, seventh, and tenth districts, which include Twin Cities suburban counties, St. Cloud, and Moorhead, caseloads have tripled since 1980. The lowest caseload increase (29 percent) occurred in the sixth district (north-eastern Minnesota), which has experienced population loss. More than 70 percent of the state's caseload originates in the Hennepin and Ramsey districts.

We compared district costs and workloads and found that:

- **Some districts are better off financially than others and are able to spend more time and money on each public defense case.**

For example, in the seven districts that provide similar services and define a case similarly, the average cost per case ranges from a low of \$245 in the tenth district to \$618 in the sixth district. In the three districts that provide additional, lower cost services, the average cost per case ranges from \$158 in the

² "Report of the Juvenile Representation Study Committee to the Minnesota Supreme Court," June 5, 1990; and Supreme Court data on type of representation in criminal cases.

³ Hennepin and Ramsey Counties keep data on cases opened during the year, while data for the rest of the state are on cases terminated.

⁴ There are some problems with the accuracy of the Court's data as well.

second district (Ramsey) to \$288 in the fourth (Hennepin). Since a felony case takes longer to conclude, a high felony caseload increases the average time attorneys spend per case. Taking this factor into account and converting part-time hours worked into FTEs, there are wide variations in caseloads and average hours spent per case across the part-time districts. Each public defender in some districts handles nearly twice as many cases as those in other districts.

There is also variation in the compensation paid to public defenders. In the fulltime districts of Hennepin and Ramsey Counties, public defenders remain county employees, are members of county bargaining units, and are paid the same compensation as county attorneys. Attorney salaries in these districts range from about \$32,000 per year for beginning attorneys to approximately \$79,000 for senior attorneys.

While compensation differs among the part-time districts, we found that:

- **The variation in attorneys' hourly rates is greater within districts than across districts.**

There are large differences in the compensation received by public defenders.

The average hourly rate (salary plus extras) ranges from just over \$38 in the sixth district to \$52 in the ninth district, a difference of about \$13. Within each district, the range in hourly rates far exceeds \$13. For example, in the ninth district the lowest paid attorney earns between \$14 to \$15 per hour, while the highest paid attorney earns \$170 per hour. We suspect these differences are a result of the contracting method used, as described below.

The differences in services, workloads, and costs that we observed are probably vestiges of the county-based funding system that existed prior to July 1, 1990. Districts entered the state system at the funding levels and with the organizational arrangements that existed at the time.

AN ASSESSMENT OF THE PUBLIC DEFENDER SYSTEM

We assessed the structure and administration of the state's public defender system to determine whether they provide for sufficient accountability and oversight by the state. Overall, we conclude that:

- **The current structure of the public defender system and its administrative procedures have not provided enough accountability to ensure that the state's monies are being well spent.**

Several factors contribute to the accountability problems we observed. First,

Other state-run public defender systems have less autonomy than Minnesota's.

- **The structure permits unusual independence, with the public defender system having more autonomy than most state agencies typically have.**

Appointments to the Board of Public Defense, which oversees the state system, are shared by the Governor and the Supreme Court. The public defense system is technically part of the judicial branch, but it is not under the Supreme Court's direct control. According to the Department of Finance, the board's spending plan also permits broader latitude and discretion than most state agencies have. Our interviews with other states suggest that most state-run programs are not permitted the high degree of autonomy found in Minnesota. State-funded public defense programs are typically placed in the executive branch or, less often, under the direct control of the Supreme Court.

Second,

- **Decision making and administrative authority are fragmented.**

The board allocates money and selects the state public defender and the ten district chief public defenders, but as of July 1, 1991, the state public defender has overall administrative responsibility for the system. Before that, the board's staff, which consists of five people headed by a chief administrator, were responsible for establishing administrative procedures. Legislation passed in 1991 moved the administrative unit under the state public defender and gave him more authority to set policies and standards to guide district operations. It is too soon to assess the effects of these changes. Under the current structure, however, the state public defender has no hiring or appointment authority over the districts. Furthermore, the board appoints chief public defenders to a four-year term, which limits the board's ability to exercise direct control over district operations.

Finally,

- **Those with oversight and management responsibilities--the board, its staff, and the district chief public defenders--have not fully exercised the authority they do possess.**

The board could have used its funding, hiring, and appointment powers to establish expectations and hold people accountable for meeting them. But neither the board, nor the chief administrator and his staff, nor most of the district chiefs have yet established the kinds of policies, procedures, and financial controls normally found in a well-run organization.

Administrative Weaknesses

We examined the administrative procedures that have been established for the public defense system and found problems that hinder accountability. These include the following:

There are administrative weaknesses that need to be corrected.

- **"Host" county administration, in which counties with no formal authority over the program disburse state monies;**
- **The method of paying host counties for administrative services, which is considerably more expensive than the previous method;**
- **Assigning major administrative duties to part-time attorneys who are not sufficiently trained in management and administration;**
- **A lack of clarity with respect to who the employer is in the part-time districts;**
- **The method of contracting with part-time attorneys, in which attorneys are not paid for hours worked or actual work performed; and**
- **Having fulltime district employees in Hennepin and Ramsey Counties remain county employees while entirely funded by the state.**

These problems stem from the hybrid administrative structure and procedures currently in place. They indicate limited progress in moving from a county-financed system to a statewide system. Since the state administrative office was established in 1988, it has provided limited fiscal oversight of the district chiefs and has developed few formal policies and procedures for them to follow.

The Part-time Status of Public Defense

All districts reported that they are experiencing personnel problems of one kind or another, which they attribute to inadequate funding. However, we found that:

- **Several outstate districts are experiencing serious turnover and recruitment problems that cannot be solved under the current approach of relying exclusively on part-time, contract attorneys.**

The more time contract attorneys spend on public defense, the less they earn per hour.

Under the contracting method used, the more hours a part-time attorney works on public defense cases, the less he or she earns per hour. On average, the part-time assistant public defenders outstate spend approximately 43 percent of their time on public defense cases and earn about \$39 per hour. However, contract attorneys who work one-quarter time or less on public defense cases earn \$46 per hour, while those working fulltime hours or more earn \$22 per hour. Nearly all of the contract attorneys pay office overhead expenses out of their earnings.

As attorneys approach fulltime hours on public defense cases, they have difficulty maintaining their private practice. The districts with the most serious personnel problems--the fifth and the seventh--are those with higher

proportions of contract attorneys working nearly fulltime hours. In the fifth district, for example, 47 percent of the assistants work three-quarters time or more on public defense, while in the seventh district, 50 percent do. Our analysis implies that the growth in public defense caseloads has exceeded the capabilities of the current service delivery system, at least in several of the eight part-time districts.

Consistency with State Goals

The one clear goal of state financing is ensuring that state monies are spent in proportion to the volume and difficulty of public defense cases. This implies that the board and its staff need to assess inequities across the ten public defender districts and make decisions to correct them. However, we found that:

- **The board has made limited progress toward developing the kind of information needed to allocate funds equitably among districts.**

In 1989, the board asked the Legislature for \$100,000 for a weighted caseload study, which was to provide information on caseloads across districts. However, we found that this study does not provide enough information to be used as the basis for allocating funds differently.

Furthermore, although the board identified the need for better information more than six years ago, it still does not have a uniform management information system that monitors cases and hours across districts.

We also conclude that:

- **It is unclear what is the best administrative structure for the public defender system.**

All states, when they create a state administrative structure for public defense, have to decide whether to organize it along the jurisdictional lines of the courts or those of prosecutors. In its hiring, the public defender system competes directly with the prosecutorial system, which continues to be organized at the county level in Minnesota. Some people argue that to get quality personnel, public defender salaries have to be equivalent to county attorney salaries. Alternatively, there are arguments in favor of a unified state salary structure, which leads to greater uniformity and is the approach adopted by the state court system. Administrative structures vary depending on the amount of local autonomy permitted. The question of how best to organize Minnesota's public defense system has yet to be resolved.

Better information is needed before inequities among districts can be corrected.

Planning and Decision Making

Overall, we found that:

- **The board and its administrative staff have not done enough systematic, long-range planning.**

Creating a statewide system out of a locally based system is a difficult undertaking, particularly when there are significant differences between urban and rural districts. We think that the board and its staff may have moved too quickly to assume responsibility for the system without first establishing adequate financial controls and administrative policies and procedures. For example, counties continue to perform financial and administrative duties, although they no longer have any formal authority over public defense. Also, some non-metro districts are informally hiring fulltime assistant public defenders. Yet the board has not formally decided whether fulltime public defenders will be county or state employees and personnel policies have not been established.

Although the board has recently begun to formalize its procedures, an informal decision-making style prevailed throughout most of its history. We also think that the board's formal responsibilities may be too great for a part-time board to handle. Furthermore, there is disagreement over which decisions should be made by the board and which by the staff. In addition, we doubt that current administrative staff, as a whole, possess all the skills needed to administer a statewide public defense system. Our interviews with other states identify the skills required by administration in a state-run public defense system. These include: high-level managerial experience, computer and analysis skills, strategic planning, human resource/personnel management, and financial management skills (budgeting, accounting, and contract compliance). Current staff possess some of these skills, but not others.

RECOMMENDATIONS

The state public defender should be given enhanced executive authority to ensure that policies are carried out.

Given the board's performance, a strong case could be made for abolishing it and giving either the Governor or the Supreme Court the authority to appoint a state public defender, who would be solely responsible for the state system. Most state programs are administered through a department with a single person at its head. However, we recommend:

- **The board should be retained with shared gubernatorial-Supreme Court appointments. But the state public defender should be given clearer administrative powers over the public defense system. The state public defender should have the authority to appoint, with the board's consent, chief public defenders and to contract with districts that establish an adequate system of public defense that operates within the state system.**

This option does not eliminate the board, but it significantly realigns responsibilities and powers within the public defender system. We think this realignment will clarify responsibilities and authority and lead to greater accountability.

Our recommendation is based on the following rationale. Public defense does not fit easily in either the executive or judicial branch. The Court has the responsibility for ensuring that constitutional rights are protected, but the public defense system also needs independence from the judiciary. If responsibility is shared, a board is necessary. Also, policy and oversight boards have certain advantages, such as representation of diverse viewpoints. And they can give an executive added independence from political pressure. Finally, our recommendation builds on the Legislature's 1991 action by further clarifying the division of responsibilities between the board and the state public defender, and by enhancing the administrative accountability of the system.

The state public defender should develop a plan for improving administration.

We also recommend that:

- **The state public defender should develop a plan for improving the administrative structure of the public defender system. The plan should be reviewed and approved by the board and presented to the 1993 Legislature.**

We reviewed several different models for how the system could be administered. Each of the following models provides for accountability, if accompanied by a formula for distributing funds equitably among districts and explicit policies, standards, and requirements:

- **State agency with centralized administration and a uniform salary structure;**
- **State agency with decentralized administration at the district level, with a state or district-level salary structure; or**
- **Grant-in-aid or contract program, with the grants or contracts awarded to counties, district agencies, and/or nonprofit legal corporations.**

Currently, an important consideration in choosing a model is how to incorporate the existing fulltime offices in Ramsey and Hennepin Counties into a state-wide system. Because these offices are at such different stages of development from the other districts, we think it would be difficult to fully incorporate them into a centrally administered state system immediately. That is why we propose giving the state public defender the authority to contract with a district that has established an adequate system of public defense. Under this approach, the state public defender could make a formal agreement with Hennepin and/or Ramsey Counties to provide public defense services using state money until these offices can be more fully incorporated into the state system.

We also think that decisions about how to administer the public defense system should be based on the outcome of a planning process that assesses the financial costs of alternative administrative arrangements. However administrative and management responsibilities are divided among the state, districts, and counties, the plan should provide for the following: appropriate training for people with management responsibilities; personnel policies and financial controls that conform with those found in state agencies; and better supervision of personnel.

As part of this plan, the state public defender should:

- **Develop an alternative approach for providing public defense services for those outstate districts encountering serious recruitment problems, which may involve the creation of some fulltime positions.**

This recommendation is based on our finding that districts with high proportions of contract attorneys working half-time or more are experiencing turnover and recruitment problems that apparently cannot be solved by relying exclusively on part-time attorneys.

We also recommend that the state public defender take the following steps to improve administration and accountability of the system:

- **Obtain an independent evaluation of required administrative skills, and restructure or retrain administrative staff to ensure that people with the appropriate skills are on board;**
- **Change the contracting method to pay attorneys for hours worked or cases handled, and implement contract monitoring procedures; and**
- **Adopt uniform budget categories and a more detailed spending plan that clearly identifies administrative costs, direct service costs, and grants or contracts.**

In order to make the board a more effective decision-making body, we recommend that the board should:

- **Continue to formalize its policies and procedures;**
- **Clarify its relationship with the state public defender and his staff; and**
- **Develop a strategy--a process and a formula--for allocating state dollars to achieve and maintain equity.**

Together, the state public defender and the board should:

- **Make the development and installation of a management information system a high priority; and**
- **Put into effect a strategic planning process to clarify goals, set priorities among issues, and develop detailed plans for solving problems.**

The board and the state public defender should be prepared to demonstrate to the 1993 Legislature that their plan for improving the administration of the public defense system is the most cost-effective approach of the alternatives considered, based on objective information.

INTRODUCTION

In 1989, the Legislature changed the way Minnesota's court system is financed. Part of this plan involved the state taking over funding of public defender services from counties. Since then, the state's financial involvement has increased rapidly: when all ten judicial districts became part of the public defender system, state appropriations for public defense went from \$2.7 million in fiscal year 1990 to \$19.8 million in 1991. Simultaneously, the responsibilities of the Board of Public Defense, which oversees the state system, have increased.

Recently, concerns were raised about the organizational arrangements for administering the public defender system. The Legislature considered proposals to reorganize it during its 1991 session. However, the tenor of the debate was especially contentious and personal, and legislators found it difficult to evaluate the merits of proposals apart from the individuals. Although they enacted changes to the public defender system, legislators' concerns continued.

In addition, there are inherent growth pressures on the public defender system. The number of people in the criminal justice system doubled during the 1980s.¹ The U.S. Supreme Court has affirmed that indigent people have a constitutional right to legal representation in criminal cases, and the majority of criminal defendants are poor. As a result, the public defender system has grown significantly.

But current pressures to cut state spending inhibit the demands for more spending on the public defender system, particularly since doubts remain about the adequacy of its structure and administration.

In this context, the Legislative Audit Commission asked for a study of the state public defender system. Our study is designed to answer the following questions:

- **How has Minnesota's public defender system changed since it was established in 1965? How is it organized today?**

¹ For a discussion of the causes of the increase, see the Program Evaluation Division's study, *Sentencing and Correctional Policies* (St. Paul: Office of the Legislative Auditor, 1991).

- **How well is the statewide system administered? Does the current organizational structure provide for sufficient accountability and financial oversight?**
- **How does Minnesota's public defender system compare with those in other states?**
- **What changes are needed to improve the public defender system?**

We used several methods to answer these questions. We interviewed members of the State Supreme Court and the Board of Public Defense, State Public Defender's Office staff, the chief district public defenders, and others with knowledge of the state's system. We collected and analyzed budgetary information and data on public defender caseloads, staffing patterns, and service levels in the ten judicial districts. We also attended meetings of the Board of Public Defense and the district chiefs, and reviewed legislation, agency documents, and board minutes. In addition, we reviewed scholarly literature, contacted national professional organizations, researched other states' statutes, and talked with public defender staff in other states.

The scope of our study is limited in the following ways. We were unable to assess systematically the quality of the state's public defender services. We used a standard interview guide to learn about the administrative practices employed in the districts. But we did not systematically assess the internal management of the districts. We looked at the services paid for with state monies only; we did not examine the services that continue to be provided by counties. We did not look at who receives public defender services because eligibility is determined by the courts, not by public defenders.²

Finally, the public defender system is rapidly changing. Our study began in June 1991, just before changes made by the 1991 Legislature took effect. Most of our interviews and data collection took place from July to September, with data analysis and report preparation occurring from October 1991 to January 1992. Hence, our study describes problems that existed at the time of our study. We do not attempt to assess the effectiveness of changes currently being implemented as a result of the 1991 legislation.

Chapter 1 of this report provides an overview of Minnesota's public defender system and how it has changed. Chapter 2 describes how the public defender system is organized today and how the ten district offices compare with each other. In Chapter 3, we assess the public defender system, its organization, administration, and decision-making capabilities. Chapter 4 is a summary of our conclusions and recommendations.

² The 1991 Legislature asked the Minnesota Supreme Court to study the process districts courts use to determine eligibility and report back in 1992.

AN OVERVIEW OF THE PUBLIC DEFENDER SYSTEM

Chapter 1

We are studying the public defender system primarily because the state's role in financing and administering it has increased substantially in recent years. Legislators have expressed an interest in learning more about the public defender system and how it operates. This chapter describes Minnesota's public defense system in a national and an historical context. To this end, we asked the following questions:

- What are the national trends affecting public defense?
- How does Minnesota's public defender system compare with national trends?
- How has Minnesota's public defender system changed since it was established in 1965?
- What are the state policies governing the public defender system?

Like other states, Minnesota has increased its financial role in public defense.

Briefly, we show that Minnesota's public defender system is undergoing changes that parallel national trends. Throughout the country, the rapid growth in caseloads has placed a strain on public defense, with service delivery systems in many states in a transition. In a growing number of states, including Minnesota, the state has assumed major financial responsibility for public defense. However, there is no dominant organizational model for administering public defense.

THE LEGAL MANDATE FOR PUBLIC DEFENSE

Public defenders provide legal representation to criminal defendants who cannot afford to pay for a private attorney. The Sixth Amendment to the U.S. Constitution guarantees that defendants accused of crimes are entitled to the "assistance of counsel," with the costs publicly paid when a defendant is indigent. This right is also implied in the due process clause of the Fourteenth Amendment, and has been extended by U.S. Supreme Court decisions. In *Gideon v. Wainwright* (1963), the Court extended the right to counsel to all

indigent defendants charged with felonies in state courts (previously applied to federal courts only). The right to counsel for juveniles charged with delinquent acts was accorded in the case of *In re Gault* (1967). In *Argersinger v. Hamlin* (1972), the Court extended the right to counsel in misdemeanor cases involving possible imprisonment.

Most criminal defendants are poor and are legally entitled to a public defender.

Under Minnesota law, anyone accused of a felony or gross misdemeanor, or of violating the conditions of probation/parole, is entitled to legal representation. If criminal defendants can demonstrate their inability to pay for an attorney, the court will appoint a public defender to represent them.¹ Individual judges determine which defendants are indigent, based on a financial statement or eligibility form completed by each defendant.²

A large proportion of criminal defendants are found to be indigent by the court, and, hence, eligible for public defender services. Table 1.1 indicates that in almost three-fourths of all felony cases in 1990 and over half of gross misdemeanor cases, a public defender represented the defendant at some stage in the court proceedings. This table also shows that judicial districts vary in the proportion of total cases represented by public defenders. It is the highest in the Second Judicial District (Ramsey County), where 90 percent of felony

Table 1.1: Use of Public Defenders in 1990 Criminal Cases by District and Type of Offense

District	Felony Cases		Gross Misdemeanor Cases		Total	
	Number of Cases	Percent of Total	Number of Cases	Percent of Total	Number of Cases	Percent of Total
First	1,021	72.5%	1,199	54.0%	2,220	61.2%
Second	1,902	89.9	1,456	65.6	3,358	77.5
Third ^a	475	47.5	477	36.9	952	41.6
Fourth	2,736	76.5	2,116	44.5	4,852	58.2
Fifth	526	69.7	515	57.3	1,041	63.0
Sixth	703	76.5	469	61.1	1,172	69.5
Seventh	976	76.4	820	54.7	1,796	64.7
Eighth ^a	284	62.6	195	42.9	479	52.7
Ninth	1,068	75.7	741	62.5	1,809	69.7
Tenth	<u>1,273</u>	<u>66.7</u>	<u>1,419</u>	<u>51.2</u>	<u>2,692</u>	<u>57.6</u>
Totals	10,964	74.0%	9,407	52.1%	20,371	61.9%

Source: Minnesota Supreme Court.

^aPublic Defender representation may be understated in these districts because they recently switched from court-appointed counsel to public defender systems. For example, in the third district, if both public defender and court-appointed counsel are included, the proportion of felony cases represented increases to 63.9 percent and the proportion of gross misdemeanors is 48.6 percent. The corresponding recalculations in the eighth district are 71.1 percent of felonies and 50.2 percent of gross misdemeanors.

1 *Minn.Stat.* §611.14-611.20.

2 Eligibility forms vary from one judicial district to another.

defendants and 65.6 percent of gross misdemeanor defendants were represented by a public defender in 1990.³

MINNESOTA IN THE NATIONAL CONTEXT

Figure 1.1 outlines major trends in public defense from a national perspective. We discuss each below, illustrating how Minnesota compares with the rest of the country.

Figure 1.1: National Trends in Public Defense

Increasing Caseloads and Costs

- The growth in public defender caseloads parallels the larger number of offenders in the criminal justice system generally.
- Costs have increased at a faster pace than caseloads.
- Rates of compensation paid to private attorneys have increased.

Greater Autonomy from the Courts

- Number of court-appointed counsel systems has declined. They have been replaced by contract or fulltime public defender systems.
- In some states, a transfer of responsibility for public defense from the judicial branch to executive agencies, and/or a sharing of responsibility with executive and legislative branches.
- Delegation of some functions--for example, setting public defender fees--to independent boards or commissions.

Larger State Role

- Shift from mainly county funding to full or partial state funding of public defender services.
- Where fully state funded, state also assumes administrative responsibility.

Sources: Bureau of Justice Statistics, *Bulletin*, "Criminal Defense for the Poor, 1986," September 1988; "If You're Defending the Poor ... What's a Reasonable Fee?" *Criminal Justice*, Summer 1988.

Increasing Caseloads and Costs

Because of the legal mandate, the public defender system has no control over the volume of cases it must handle. Caseload size is determined by external factors, such as state sentencing policies, the practices of judges, prosecutors and police, the level of reported crime, and public opinion toward crime.

³ These data may slightly understate public defender representation in some districts. District court clerks, who collect the information, told us that they are not always aware when private attorneys are acting as public defenders, and cases handled by public defense corporations are not coded consistently across districts.

Public defense costs and caseloads are growing rapidly in Minnesota and throughout the nation.

Public defense is the smallest segment of the criminal justice system, with 2.3 percent of total justice system dollars spent for it nationally in 1988. But it is subject to the same growth pressures that have affected police, prosecution, courts, and corrections over the past decade. A national survey showed that the cost of public defender services increased 60 percent in just four years (1982 to 1986), while the number of cases went up 40 percent.⁴ Almost \$1.4 billion was spent for public defender services in the U.S. in 1988, which represented a 134 percent increase over a ten-year period.⁵

The increase in costs and caseloads is partly the result of more criminal defendants being caught and prosecuted. But it is also a consequence of upgrading crimes to higher legal categories for which representation is legally mandated. In Minnesota, for example, when repeat Driving While Intoxicated (DWI) was upgraded from the misdemeanor to gross misdemeanor level, the number of defendants eligible for mandated public defender representation simultaneously went up. Crime upgrading also means that public defenders are handling a larger proportion of cases for which the penalties are more severe (e.g., felonies). The amount of time spent on each case varies by the degree of seriousness, with more serious crimes requiring more time to defend, on average.⁶

So far, we have discussed the trial court level of public defense only. However, there are similar growth pressures at the appellate level. Persons appealing a conviction for a felony or gross misdemeanor are also entitled to representation under Minnesota law.⁷ More people sentenced to prison means more people seeking appeals. In addition, individuals receiving longer sentences are more likely to appeal their cases.

Costs have risen faster than caseloads.

Figure 1.2 illustrates the growth in Minnesota's public defense costs and caseloads over the past ten years. The number of cases handled by public defenders went from 24,862 in 1980 to 62,508 in 1990, a 151 percent increase. Meanwhile, the cost of providing these services grew at a slightly faster rate, going from just over \$6.5 million in 1980 to \$18.4 million in 1990, an increase of 186 percent.⁸ These patterns are similar to those reported above for the nation as a whole, which showed costs increasing more rapidly than caseloads.

Minnesota's public defense costs are also comparable to national averages. In 1988, the national average per capita expenditure for public defense was \$4.12, compared to \$3.97 in Minnesota. However, Minnesota's total per capita criminal justice expenditures of \$170.77 were much less than the national

⁴ Bureau of Justice Statistics, *Bulletin*, "Criminal Defense for the Poor, 1986" (Washington, D.C.: U.S. Department of Justice, 1988), 1.

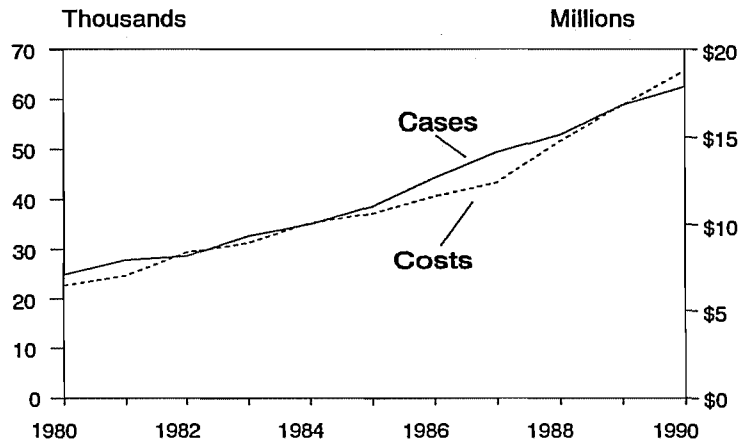
⁵ Hindelang Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics, 1990* (Washington, D.C.: U.S. Department of Justice, 1991), 2-3.

⁶ The Spangenberg Group, *Weighted Caseload Study for the State of Minnesota Board of Public Defense* (Newton, Massachusetts, January 1991).

⁷ *Minn. Stat.* §611.14.

⁸ These figures understate actual public defender costs and caseloads because they do not include court-appointed attorney costs or cases, which remain the counties' responsibility.

Figure 1.2: Public Defense Costs and Caseloads, 1980-90



Sources: State biennial budgets, Board of Public Defense, Second and Fourth District Public Defender's Offices.

The average hourly rate earned by Minnesota's contract public defenders--\$39-- is comparable to national figures.

average of \$217.72.⁹ This implies that Minnesota spent proportionately more of its criminal justice dollars on public defense.¹⁰

Although costs are increasing faster than caseloads, the average cost per case has declined over time when adjustments are made for inflation. As illustrated in Figure 1.3, in 1980 the average cost (in 1990 dollars) of each public defender-represented case in Minnesota was \$416, but this number decreased to \$300 in 1990.

While growth in caseloads is the main reason public defender costs have increased, another is that the rates of compensation paid to public defenders and private attorneys have also increased.¹¹ National studies have found wide variation in the fees paid, ranging from \$10 to \$75 per hour, although most fees are in the \$30-\$40 per hour range.¹² As we show in Chapter 2, the average hourly rates paid to Minnesota's part-time public defenders, who are compensated like contract attorneys, are in this range with a statewide average rate of \$39 per hour in fiscal year 1991.

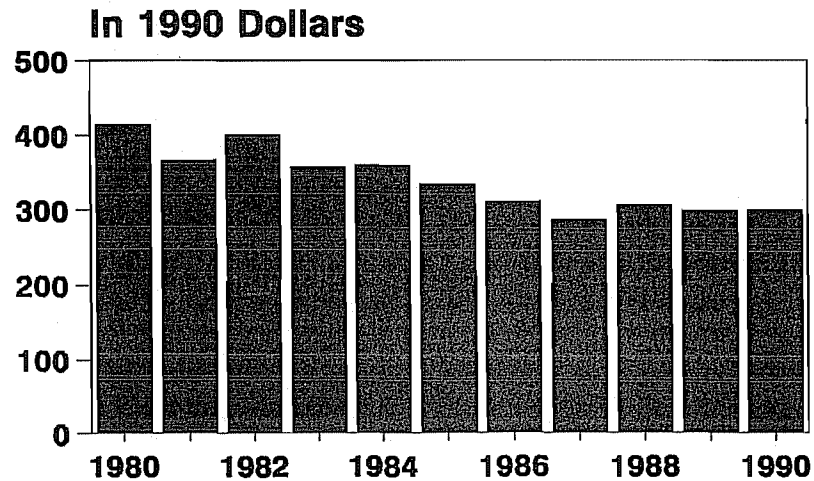
⁹ Hindelang Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics, 1990*, 5.

¹⁰ In 1988, Minnesota spent 2.1 percent of its criminal justice system payroll on public defense, compared to the national average of 1.1 percent. *Ibid.*, 24-26.

¹¹ Bureau of Justice Statistics, "Criminal Defense for the Poor, 1986," 2.

¹² Philip H. Pennypacker, "If You're Defending the Poor ... What's a Reasonable Fee?" *Criminal Justice* (Summer 1988), 15-16.

Figure 1.3: Statewide Average Costs Per Case, 1980-90



Sources: Board of Public Defense, Second and Fourth District Public Defender's Offices.

Traditionally, public defense cases were handled by private attorneys, appointed by the courts.

Greater Autonomy from the Courts

It is likely that both the increase and variation in attorney fees are related to how public defender services are delivered, as described in Figure 1.4. Public defense evolved out of the practice of pro bono, volunteer services by local attorneys. Private lawyers used to donate their time, but it is now commonplace for them to receive fees. Traditionally, these fees have been set by the courts, which are responsible for ensuring that defendants' constitutional rights are protected. Until recently, therefore, public defense has been handled in most jurisdictions by the private bar through court-appointed attorneys. But, over

Figure 1.4: Types of Public Defender Programs

Assigned Counsel	The appointing authority, usually the court, assigns local members of the bar on a case-by-case basis.
Contract Attorney	The funding source, usually the state or a county, contracts with private attorneys, private law firms, nonprofit legal aid organizations, or local bar associations to provide public defender services. Contracts cover a period of time, a geographical area, a certain number of cases, or a particular type of case (such as conflicts).
Fulltime Public Defender Office	Public defender programs have salaried staff attorneys, either part-time or fulltime. Often public defenders have no private practices and are employees of the state or county.

the past 15 years, the ability of the private legal profession to meet the demands of rapid growth in caseloads has been severely tested. Furthermore, using private attorneys to provide public defense services probably contributes to upward pressure on hourly rates because they can earn considerably more in their private practice.

Nationally, public defender systems are becoming more independent of the courts.

Most states use a combination of service delivery programs. However, within a single jurisdiction--a county or judicial district--there is usually one primary program type. The trend has been toward replacing assigned counsel systems with contract attorney programs or fulltime public defender offices. Nationally, the number of counties with assigned counsel systems declined from 60 percent to 52 percent between 1982 and 1986, while those with fulltime public defender offices increased from 34 percent to 37 percent, and contract programs went from 7 percent to 11 percent of all counties.¹³

The type of service delivery system depends on the volume of cases, which in turn depends on population and geography. Some evidence shows that a full-time office provides better and more economical public defender services than part-time systems in jurisdictions where there are a sufficient number of cases and where cases are not widely dispersed (which affects travel time).¹⁴

There is also a trend away from the court setting attorney fees in public defense cases. Most fees are now set by state statute, or the legislative branch delegates that authority to an external board or commission or to an administrative agency. This has the effect of insulating the judiciary, since there has also been an increase in litigation brought by contract and court-appointed attorneys charging that fee schedules are too low.¹⁵

There are other reasons as well for the trend toward greater autonomy from the courts. Lawyers are bound by professional codes of conduct and responsibility, which specify that their primary duty is to represent their client (regardless of financial status).¹⁶ As the National Legal Aid and Defender Association (NLADA) and others have noted, the interests of the court are not necessarily the same as those of public defense:

The integrity of public criminal defense services for the poor is not easily compatible with a system of judicial appointment. Where the [defender] owes his job to judicial tolerance, the pressure to conform to such

¹³ Bureau of Justice Statistics, "Criminal Defense for the Poor, 1986," 3.

¹⁴ The Kansas Bar Association sponsored a study in which fulltime defenders were provided in several multi-county jurisdictions. After three years of operation, total costs were less than the pre-existing assigned counsel system servicing the same counties. North Dakota instituted a fulltime regional office for ten counties on an experimental basis and found lower per capita and per case costs than in "control group" counties using part-time assigned counsel programs. Cited in Nancy Goldberg and Jay Lichtman, *Guide to Establishing a Defender System* (Washington, D.C.: U.S. Department of Justice, 1978), 28-32.

¹⁵ This places the court in a difficult situation if it established the fees in the first place. For a discussion, see Pennypacker, "If You're Defending the Poor," 17.

¹⁶ American Bar Association's (ABA) Code of Professional Responsibility, Canon 7 (1974), ABA Model of Professional Responsibility (1980), and the ABA's Model Rules of Professional Conduct (1983).

judicial goals as a fast-moving docket, brief trials and a proliferation of guilty pleas becomes not only a matter of the 'easiest course,' but potentially a matter of job survival. Clearly, the client's best interests are not likely to be served.¹⁷

Professional organizations recommend insulating public defense from political and judicial pressure.

This implies the need for some independence of the public defense system from the judiciary. Both the American Bar Association and the NLADA recommend independent administrative structures, such as a board, that insulate public defense from political influence and undue judicial supervision. These professional associations have also recommended that law enforcement, prosecutors, and judges should not be members of public defense governing boards.¹⁸ Of the 13 states we contacted, nine have state boards or commissions, and five of these prohibit judges and law enforcement personnel from membership (see Figure 3.2 and Appendix A for more detail).

The most autonomy from the judiciary is advocated by the Model Public Defender Act of the National Conference of Commissioners on Uniform State Laws, which recommends establishing an Office of the Defender General as an executive-branch state agency.¹⁹ Of the 11 states we contacted with state-wide public defender systems, seven have placed it in the executive branch. In a few jurisdictions, chief public defenders are elected, following the prosecutorial model.

Larger State Role

The two primary funding sources for public defense are county and state governments. Traditionally, public defender programs were established at the local level, probably because criminal cases originate in local courts. However, there has been a marked shift toward state financing of public defender systems. In the last national survey of these programs (1986), 20 states funded their indigent defense systems entirely with state monies, 10 entirely with county funds, and 20 with shared county-state funding. This represented an increase of three states to full state funding, three more to partial state funding, with ten additional states considering an expansion of state fiscal responsibility, compared to the first survey of public defense programs in 1982.²⁰

In the 1986 survey, Minnesota was classified as a state with shared county-state funding. Consistent with national trends, there has been an increase in the state's role in public defense, although it remains a state with shared state-county financial responsibility.

Minnesota reflects the national trend toward a larger state role in public defense.

¹⁷ National Legal Aid and Defender Association, "Guidelines for Legal Defense Systems in the U.S.," *Report of the National Study Commission on Defense Services* (Washington, D.C., 1976), 221.

¹⁸ American Bar Association, "Providing Defense Services" (Chapter 5), *Standards Relating to the Administration of Criminal Justice* (Washington, D.C., 1979); National Legal Aid and Defender Association, "Guidelines for Legal Defense Systems in the U.S.," 1976. See also Goldberg and Lichtman, *Guide to Establishing a Defender System*, and the NLADA "Draft of Assigned Counsel Administration Standards," February 15, 1989.

¹⁹ Cited in NLADA, "Guidelines for Legal Defense Systems in the U.S.," 1976, 221.

²⁰ Bureau of Justice Statistics, "Criminal Defense for the Poor, 1986," 4.

State-funded public defender systems are structured in a variety of ways.

Public defender programs that are partially or fully state-funded are usually characterized by some measure of central control or coordination. In fact, one of the advantages of state financing is that it provides leverage to regulate the quality of public defense services provided at the local level.²¹

As the previous discussion implies, however, there is no dominant organizational model for administering public defense programs. Both the literature and our survey of other states indicate considerable variation in the way such programs are structured and administered.

The move to state funding and the creation of a state administrative structure involves four key issues:

- (1) whether to locate the agency in the judicial or executive branch, which involves the degree of desired independence from the judiciary;
- (2) how much centralized control to be exercised by the state office, versus the need for local autonomy to meet differences across jurisdictions;
- (3) the extent to which the public defender system needs to be organized along congruent jurisdictional lines with other components of the criminal justice system, especially prosecutors and the courts; and
- (4) how to incorporate fully developed local public defender systems into the state system.²²

As we show in the remainder of this report, these are the main issues Minnesota has been grappling with since the Legislature decided that the state would assume financial responsibility for public defense.

THE DEVELOPMENT OF MINNESOTA'S PUBLIC DEFENDER SYSTEM

Figure 1.5 summarizes the major events in the history of Minnesota's public defender system. It illustrates how, as in most other states, the development of Minnesota's public defender system has moved away from the direct control of judges and the courts to the relatively autonomous position it occupies today. This figure also shows that arrangements for providing legal services to the poor existed in Hennepin and Ramsey Counties almost 20 years before the U.S. Supreme Court required these services to be provided to criminal defendants in state courts, and well before a state system was established.

²¹ Goldberg and Lichtman, *Guide to Establishing a Defender System*, 32.

²² For a discussion, see *Ibid.*, 36-41.

Figure 1.5: Historical Development of Minnesota's Public Defender System, 1937 to 1990

1937	State Judicial Council created to monitor and advise the judicial and legal systems.
1945-49	Part-time public defender systems begin in Hennepin and Ramsey Counties.
1956	Constitutional amendment expanding Legislature's authority to consolidate courts. Subsequently, state judicial districts consolidated into ten.
1965	Statewide public defender system established with voluntary participation by districts. Five outstate districts elect to join. First state public defender is appointed.
1974	Judicial Council begins annual budget reviews for participating districts and requires all public defenders to keep time records.
1974	Hennepin County Public Defender's Office assumes responsibility for juvenile and misdemeanor cases and becomes a fulltime office.
1975-76	Ramsey County Public Defender's Office assumes responsibility for juvenile and misdemeanor cases and becomes a fulltime office.
1981	State Board of Public Defense is established to replace the State Judicial Council. All members appointed by the Governor.
1985	Authority to appoint public defense board members is given to the Supreme Court.
1987	County courts are merged into a single state district court system.
1987	<p><i>Minn. Laws (1987), Ch. 250 passed, which:</i></p> <ul style="list-style-type: none"> - requires all districts except second (Ramsey) and fourth (Hennepin) to become part of state public defender system (but no monies appropriated); - expands authority of board to oversee the state system, approve district budgets, and require financial reporting; - establishes position of chief administrator to the board; - gives Governor authority to appoint two board members and requires one member to be a judge; - requires board, when making funding distributions, to give higher priority to districts with the most cases.
1989	<p><i>Minn. Laws (1989), Ch. 335 passed, which:</i></p> <ul style="list-style-type: none"> - requires second and fourth districts to join the state system, effective July 1, 1990; - appropriates state funds to assume stipulated district-level public defender services, effective July 1, 1990; - transfers responsibility for training from the state public defender to the board; - authorizes eighth district pilot project (state assumption of all court and public defender costs from counties in that district).
1990	On July 1, state assumes financial responsibility from counties for the following services: felony and gross misdemeanor cases in all ten districts, plus juvenile and misdemeanor cases in second, fourth, and eighth districts.

In 1965, Minnesota established a voluntary statewide system, funded by counties.

The Initial "Statewide" Public Defender System

A statewide public defender system, organized along judicial district lines, has existed in Minnesota since shortly after the Supreme Court's 1963 decision in *Gideon v. Wainwright*. However, the term "statewide" is a misnomer, since it was not financed with state monies and participation was voluntary. A district was excluded if a majority of the district judges voted not to join. Consequently, only five nonmetro districts were part of the system initially. In the remaining outstate districts, public defense remained at the discretion of judges, who appointed private attorneys on a case-by-case basis. Also in 1965, a statewide appellate public defender's office was established with the appointment of the first state public defender, who was also responsible for making recommendations to the Judicial Council for district chief appointments.²³

Only the State Public Defender's Office was funded through state appropriations. Although the Judicial Council—and subsequently its successor, the State Board of Public Defense—approved district budgets, paying the costs of public defense services was the counties' responsibility. Each county in participating districts was assessed its share of the district's budget, based on population, which it raised through property tax levies. Nonparticipating counties also were responsible for public defense costs.

Concerns about the lack of accountability led the Judicial Council to undertake reforms during the 1970s, requiring all part-time public defenders to submit monthly records on time spent and cases handled, and instituting annual budget hearings where county representatives were invited to testify. Members of the Judicial Council continued to believe, however, that they were performing a legislative function by setting and overseeing budgets and forcing counties to levy taxes. This was one reason the Judicial Council was abolished and a State Board of Public Defense created, with the initial members appointed by the Governor.²⁴

The State Takeover of Public Defense

The state's assuming financial responsibility for public defense is tied to the gradual unification of the state court system, which began in the late 1950s, and the property tax reform movement of the 1980s. The latter represents a policy change aimed at "cleaner lines of responsibility" between state and local units of government, with the state paying for services it mandates and controls.²⁵

The court system was one of the services that the Legislature determined was properly the state's responsibility. Since the state defines what is criminal, it is

²³ Memorandum from Justice Yetka to members of the Supreme Court, dated January 3, 1991.

²⁴ *Ibid.*

²⁵ Research Department of the Minnesota House of Representatives, *Minnesota's Property Tax System: Description of Changes in Minnesota's Property Tax System Beginning in 1990* (January 1991), 27.

the appropriate governmental unit to pay for court administration, and public defense is part of the court-mandated process. Furthermore, state financing should provide more equity in the system, since counties vary in their capacity to raise revenues.²⁶

The 1989 Legislature began phasing in state funding of public defense.

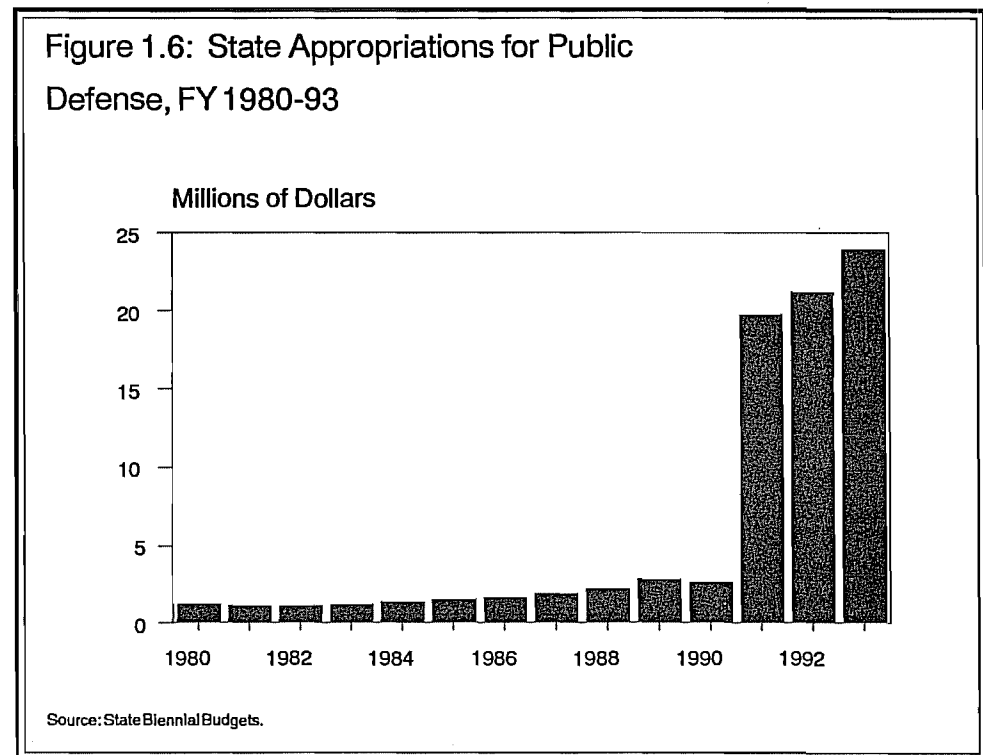
Two committees established in 1988 and 1989, one by the Governor’s Council on State and Local Relations and the other the Supreme Court State Financing Task Force, studied the funding sources for state courts. Both recommended a phased approach to the state taking over the costs of court and public defender services. The 1989 Legislature took action to implement many of the committees’ recommendations, and also established a pilot demonstration project that provided for state financing of all court system and public defender costs in the Eighth Judicial District.

As a result of this legislative action, the state assumed financial responsibility for felony and gross misdemeanor public defender services in all ten judicial districts and misdemeanor and juvenile services in three districts (the second, fourth, and eighth), effective July 1, 1990. The increase in state appropriations for public defense is illustrated in Figure 1.6. Included is a state appropriation for fiscal year 1993 to pay the costs of misdemeanor and juvenile public defender services in two additional districts, the third and sixth.

Although some takeover costs were funded by new state appropriations, most of the initial costs were paid for with offsets or reductions in local government aid (LGA) and homestead and agricultural credit aid (HACA). In addition, the

Most state takeover costs were funded by reductions in county aids.

Figure 1.6: State Appropriations for Public Defense, FY 1980-93



²⁶ *Ibid.*, 34.

Legislature raised court fees and required that county court fees be returned to the state treasury, thereby recovering part of the additional state costs.²⁷ The method of paying for the state takeover has recently become an issue because some counties claim that the amounts of aid reduction are greater than the amounts they had been spending on public defense services. At issue is whether the state takeover was designed to be revenue neutral for both the state and counties or only the state.

Changes in the Organization of the Public Defender System

The organization of the public defender system has changed several times over the past ten years.

In addition to major changes in the method and source of funding, the system itself has undergone a number of changes during the 1980s, as suggested in Figure 1.5 above. These changes, which move appointments and responsibilities back and forth, seem to indicate uncertainty about where to locate public defense structurally and how to organize and administer it. For example, since 1981, governing board appointment authority has shifted from the Supreme Court to the Governor to sharing appointments, with the Court having five and the Governor two. In 1991, legislation changed future appointing authority so that the Court will make four and the Governor three board appointments.

Similarly, over time the responsibilities of the board and the state public defender have shifted back and forth. Responsibilities that were the state public defender's, such as training, have been taken away and then returned. Prior to the state's financial takeover, 1987 legislation gave the Board of Public Defense greater authority over the state system by: 1) requiring all judicial districts except Hennepin and Ramsey Counties to join; 2) expanding its budgetary authority; 3) authorizing it to set standards for district offices and appointed counsel systems; and 4) giving it an administrative staff to help carry out its new responsibilities. Four years later, the system again underwent significant changes, as outlined in Figure 1.7. The major effect of the 1991 legislation was to strengthen the State Public Defender's Office by giving it certain board powers and staff, although the board continues to appoint the state public defender and all district chief public defenders.

SUMMARY

In this chapter, we described the changes that have been made to the state's public defender system. Viewed against the backdrop of national trends in public defense, the problems and challenges that Minnesota's system is experiencing appear typical. Throughout the country, there has been a rapid growth in public defender caseloads that traditional service delivery systems, which rely heavily on private-practicing attorneys, have found difficult to handle. As in Minnesota, the costs of providing public defender services nationally are increasing faster than caseloads.

²⁷ *Ibid.*, 35.

Figure 1.7: Summary of 1991 Legislative Changes to Minnesota's Public Defender System

Goals

- Changes goal of "economical service delivery" to "independent, competent representation of clients whose cases represent conflicts of interest."

Services and Financial Responsibility

- Transfers responsibility for juvenile and misdemeanor services in third and sixth districts from counties to the state system, beginning July 1, 1992.
- Relieves counties of financial responsibilities of state-assumed services through July 1, 1993, except makes counties responsible for costs over and above those appropriated by the Legislature.
- Limits the right to representation by state public defender to one direct post-conviction appeal.

Composition of the Board of Public Defense

- Removes the district court judge from the board, once his term is up, and prohibits future board members from being judges. Transfers this appointment from the Supreme Court to the Governor.
- Requires board appointments to include women and minority group members, and requires some representation from the nonmetro districts.

Organizational Responsibilities and Reporting Relationships

- Increases administrative autonomy of state public defender by removing requirement of board approval for personnel and other decisions.
- Transfers responsibility for hiring and supervising the chief administrator and for preparing an annual report from the board to the state public defender.
- Returns responsibility for training to the state public defender from the board.
- Makes the board and the state public defender responsible for setting standards.
- Makes the state public defender responsible for establishing policies and procedures for administering district offices.
- Requires the board to adopt a system for district reporting of hours worked by public defenders.

Source: *Minn. Laws* (1991), Ch. 345.

In Minnesota and most other states, the public defender system has moved away from direct judicial control for a variety of reasons. Yet, there is no apparent, natural organizational home for the system. States like Minnesota, which have also shifted the major source of financial responsibility from counties to the state--another national trend--have opted for different structural arrangements. Some have placed public defense in the executive branch. Others have kept it in the judicial branch but have created independent boards or commissions to oversee it, as Minnesota has. In a few states, the chief public defenders are elected. There is no dominant national pattern.

Finally, Minnesota is not alone in facing the problem of devising a statewide administrative structure that provides for adequate accountability and control, yet permits the autonomy needed to account for local differences and the independence required by public defenders in representing their clients. Nor is it the only state that must determine how to integrate fully developed local public defender systems into a statewide system. These are issues all states must address when the state's financial role is expanded.

A DESCRIPTION OF MINNESOTA'S PUBLIC DEFENDER SYSTEM

Chapter 2

In this chapter we describe Minnesota's public defender system. We examine roles and responsibilities within the system, and look at district-level differences in public defense services, workloads, and costs. The key questions we address are:

- **How is Minnesota's public defender system organized and administered?**
- **How do the state's ten public defender districts compare to each other? In what ways are they similar or different?**

To answer these questions, we interviewed the Chief Justice of the Minnesota Supreme Court and Supreme Court staff, the seven members of the State Board of Public Defense, the current and former state public defenders, and the administrative staff. We also interviewed the chief public defender in each of the ten districts using a standardized interview format (see Appendix B), ten assistant public defenders, and directors of two of the five public defense corporations.

We also examined state biennial budgets, district budget documents, and information maintained by district chief public defenders. For workload information, we analyzed data provided by fulltime districts, as well as forms submitted monthly by part-time public defenders to the State Board of Public Defense. These forms report hours worked, type of case, and case outcomes for all felony and gross misdemeanor public defense cases in the eight non-metro districts. A copy of the form is in Appendix C.¹ We discuss problems with these data below.

Public defense is in transition from a county-based to a statewide system.

Overall, we found that the organization of Minnesota's public defender system is still in flux following the state's assuming major financial responsibility in 1990 and the structural changes enacted by the 1991 Legislature. This legislation was aimed at increasing accountability and creating more statewide uniformity by centralizing authority in the Office of the State Public Defender. As yet, the success of this effort is unclear. We also found wide differences in costs, services, compensation, and workloads across the ten districts.

¹ The "Report of Trial Court Cases" form asks for information on all cases terminated during the month.

CURRENT ROLES AND RESPONSIBILITIES

As discussed in Chapter 1, Minnesota's public defender system is going through a transition from county to state funding. Simultaneously, roles and responsibilities within the system are shifting. Figure 2.1 describes the major actors in the public defense system, while Figure 2.2 is an organizational chart showing how the various components relate to each other. These descriptions reflect the changes made in the 1991 legislative session.

Figure 2.1: Minnesota's Public Defender System: Roles and Responsibilities

Board of Public Defense

- Has primary responsibility for overseeing the public defender system. Two main functions of the board: appointing chief public defenders and the state public defender, and allocating resources.
- Technically, part of the judicial branch, but not under direct control of the Supreme Court.
- Part-time board composed of seven individuals who serve staggered, four-year terms. Members are paid \$55 per diem, plus expenses. Five of the current members were appointed by the Supreme Court (must be attorneys), and the remaining two by the Governor. Beginning in 1994, Governor will have three appointments and the Court four.

State Public Defender

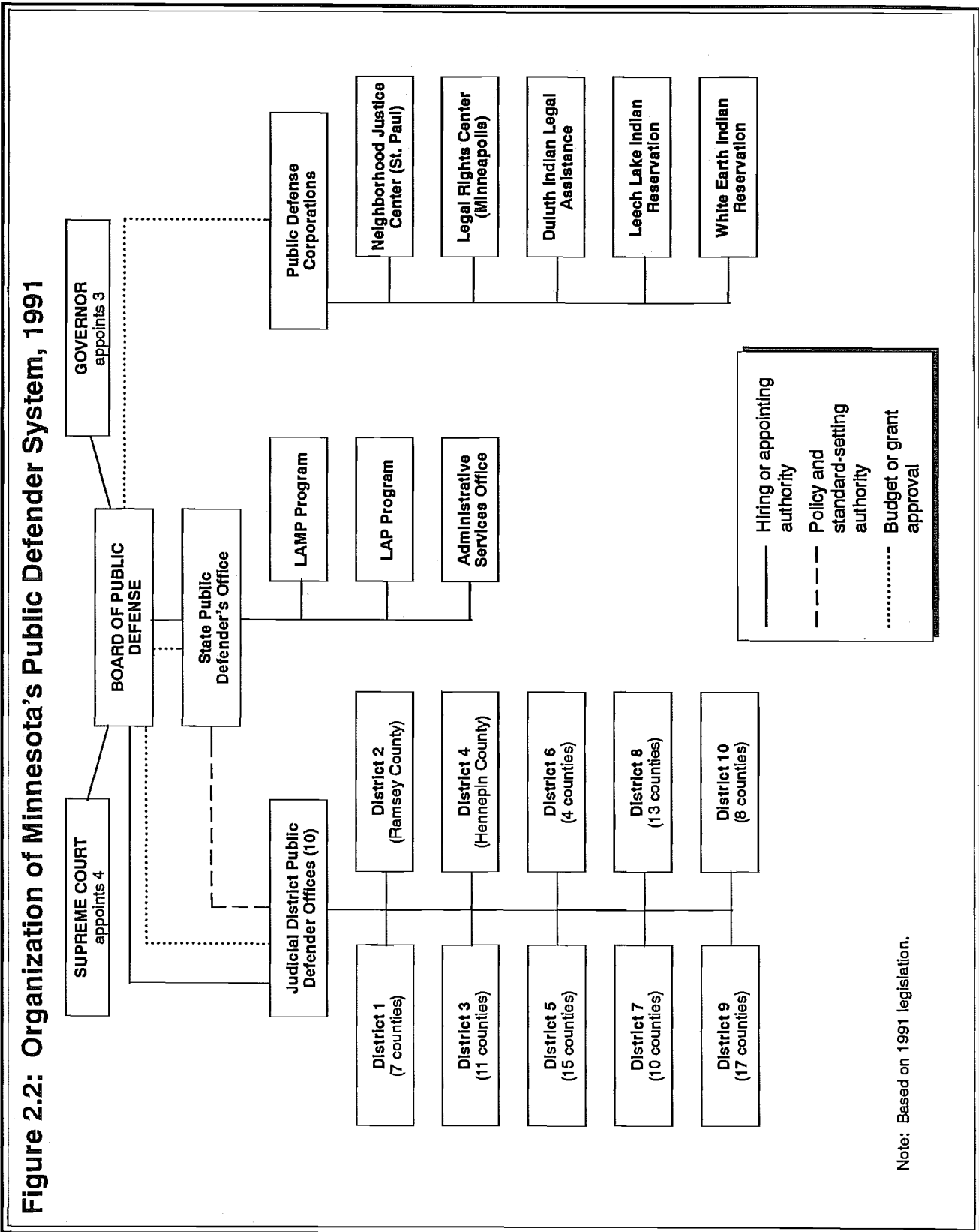
- Primary role has been overseeing the state's appellate public defender office. This office handles appeals, provides civil legal services to prisoners, and represents them at disciplinary hearings.
- 1991 legislation makes the state public defender responsible for establishing policies and standards for the trial court public defender system as well.
- As of July 1, 1991, state public defender also supervises the board's administrative staff.

District Public Defender Offices

- Districts, which coincide with judicial district boundaries, are the primary organizational unit in the system. All trial court public defense services are provided by assistant public defenders who work at the district level.
- Eight of the ten districts are part-time operations. Ramsey and Hennepin Counties (the Second and Fourth Judicial Districts respectively) have the only fulltime public defender offices.
- The district chiefs hire and supervise their own assistant public defenders and prepare and manage their own budgets.

Public Defense Corporations

- Private, nonprofit corporations that serve minority populations primarily. Two are located in the Twin Cities metro area (Legal Rights Center and the Neighborhood Justice Center), and three serve Indian communities in northern Minnesota.
- State monies given to the public defense corporations must be matched by other funds.



Minnesota's system includes fulltime offices, contracts with private attorneys, and court-appointed counsel.

Minnesota's public defender system combines all three types of programs--fulltime offices, contract attorneys, and appointed counsel--discussed in Chapter 1. The second and fourth districts (Ramsey and Hennepin Counties) have the only fulltime offices, which predate the state system. The remaining eight districts rely on part-time contracts with private attorneys to provide felony and gross misdemeanor services. In seven districts, juvenile and misdemeanor services continue to be provided by court-appointed counsel, with the costs paid by counties.² The system also includes grants to nonprofit legal services corporations.

State Board of Public Defense

The seven-member Board of Public Defense oversees the state's public defender system. It appoints the state public defender and the district chiefs, and it allocates resources among districts, public defense corporations, and the State Public Defender's Office. When appointing district chief public defenders, the board adds two members selected by the chief judge in the affected judicial district.³

The public defense board operates independently. While part of the judicial branch, the board is not under the Supreme Court's control. The board submits its budget directly to the Legislature, without recommendations by the Supreme Court or the Governor's Office (which also does not make a recommendation on the Court's budget). The Finance Department approves the board's budget for form, and the budget must conform with any state regulations and policies that apply to the Supreme Court's budget.

On the 1991 board, two members were appointed by the Governor and five by the Supreme Court. The current chair of the board is a Hennepin County judge. The 1991 Legislature made several changes that affect the composition of the board, as noted in the previous chapter. Beginning in 1994, when the chair's term is complete, the Governor will be given a third appointee and judges will no longer be eligible to serve on the board.

Office of the State Public Defender

Until recently, the state public defender headed an office that primarily handled indigents' appeals to the Minnesota Supreme Court and the Court of Appeals. In addition, the office has two units that provide legal services to prisoners: the Legal Advocacy Project (LAP) represents inmates at prison disciplinary hearings and for parole violations or revocations, while Legal

² As noted, these services will be provided by district public defenders in the third and sixth districts as of July 1, 1992.

³ The ad hoc committee used to be larger and included county officials. Because of the state funding takeover, 1991 legislation changed the committee structure.

Assistance to Minnesota Prisoners (LAMP) provides legal assistance in civil matters, such as custody and divorce.⁴

The state public defender is appointed to a four-year term. Until the 1991 legislation, the State Public Defender's Office had a fulltime staff of 28 and a fiscal year 1991 budget of just over \$2 million.

The State Public Defender's role was expanded in 1991.

In 1991, the Legislature changed the relationship between the State Public Defender's Office and the state's trial court system. Legislation expanded the role of the state public defender to include establishing trial court policies and standards. Moreover, responsibility for preparing the annual report and for statewide training was transferred from the board to the state public defender.⁵ The current state public defender conducts regular meetings with the district chiefs and on occasion assists local public defenders in trying cases when they are overloaded.

An administrative unit was established in 1988, when the board hired a chief administrator. Since then, the staff has increased to include the chief administrator, a governmental relations manager (lobbyist), a budget officer, and an administrative secretary. In addition, an accounting clerk who handles the state payroll is housed with the administrative unit. The direct operational costs of the administrative services unit were approximately \$375,000 in fiscal year 1991. Table 2.1 shows the compensation paid to the people who comprise the board's administrative unit.

Table 2.1: State Public Defender and Administrative Staff Annual Salary and Benefits

Positions	Annual Salary (as of 12/31/91)	Benefits ^a		Date Hired
		Sick Time Accrued Per Pay Period (Hours)	Vacation Accrued Per Pay Period (Hours)	
State Public Defender	\$80,931	4.0	7.5	1/22/90
Chief Administrator	68,536	4.0	9.0	1/01/88
Governmental Relations Manager	57,691	4.0	8.0	10/14/88
Budget Officer	48,233	4.0	6.0	6/04/90
Office Supervisor	30,527	4.0	4.0	6/17/91
Accounts Clerk	33,638	4.0	8.0	7/1/78

Source: Statewide Accounting System.

^aAs state employees, these individuals also receive FICA, PERA, health and dental insurance, and retirement benefits.

⁴ LAMP uses law students from the University of Minnesota and the William Mitchell College of Law, under the supervision of fulltime staff, to provide these services.

⁵ *Minn. Laws* (1991), Ch. 345, Art. 3.

Originally, the administrative staff reported directly to the board, but 1991 legislation placed the group under the supervision of the state public defender, who now has the authority to hire and fire the chief administrator.⁶ However, the two offices are housed separately.

Hennepin and Ramsey Counties have the only fulltime public defender offices.

District Public Defender Offices

Most trial court work is organized within public defense districts, which correspond with judicial district boundaries, as shown in Figure 2.3. With the exception of the second district (Ramsey County) and the fourth district (Hennepin County), judicial districts encompass multiple counties.

Each district is supervised by a chief public defender, who is appointed by the nine-member ad hoc board for a four-year term. Existing chiefs were grandfathered into the state system for the remainder of their terms, but subsequent appointments are the board's responsibility.

As Table 2.2 shows, over 60 percent of direct service personnel in the system are part-time, and the eight nonmetro districts are almost exclusively part-time. Meanwhile, more than 90 percent of the fulltime personnel, and 44 percent of all personnel, work in Ramsey and Hennepin Counties. If part-time

Table 2.2: Public Defender Direct Service Personnel, by District, 1991

District	Number of Employees ^a			Number of Fulltime Equivalents ^b
	Fulltime	Part-time	Total	
First	0	21	21	12.3
Second	31	21	52	41.5
Third	2	33	35	9.7
Fourth	85	9	94	89.5
Fifth	3	13	16	8.1
Sixth	3	23	26	7.1
Seventh	1	19	20	10.7
Eighth ^c	1	18	19	4.5
Ninth	2	20	22	9.7
Tenth	0	24	24	11.2
Total Personnel	128	201	329	204.3

Source: Program Evaluation Division analysis of data provided by the Board of Public Defense and Second and Fourth District Public Defender's Offices.

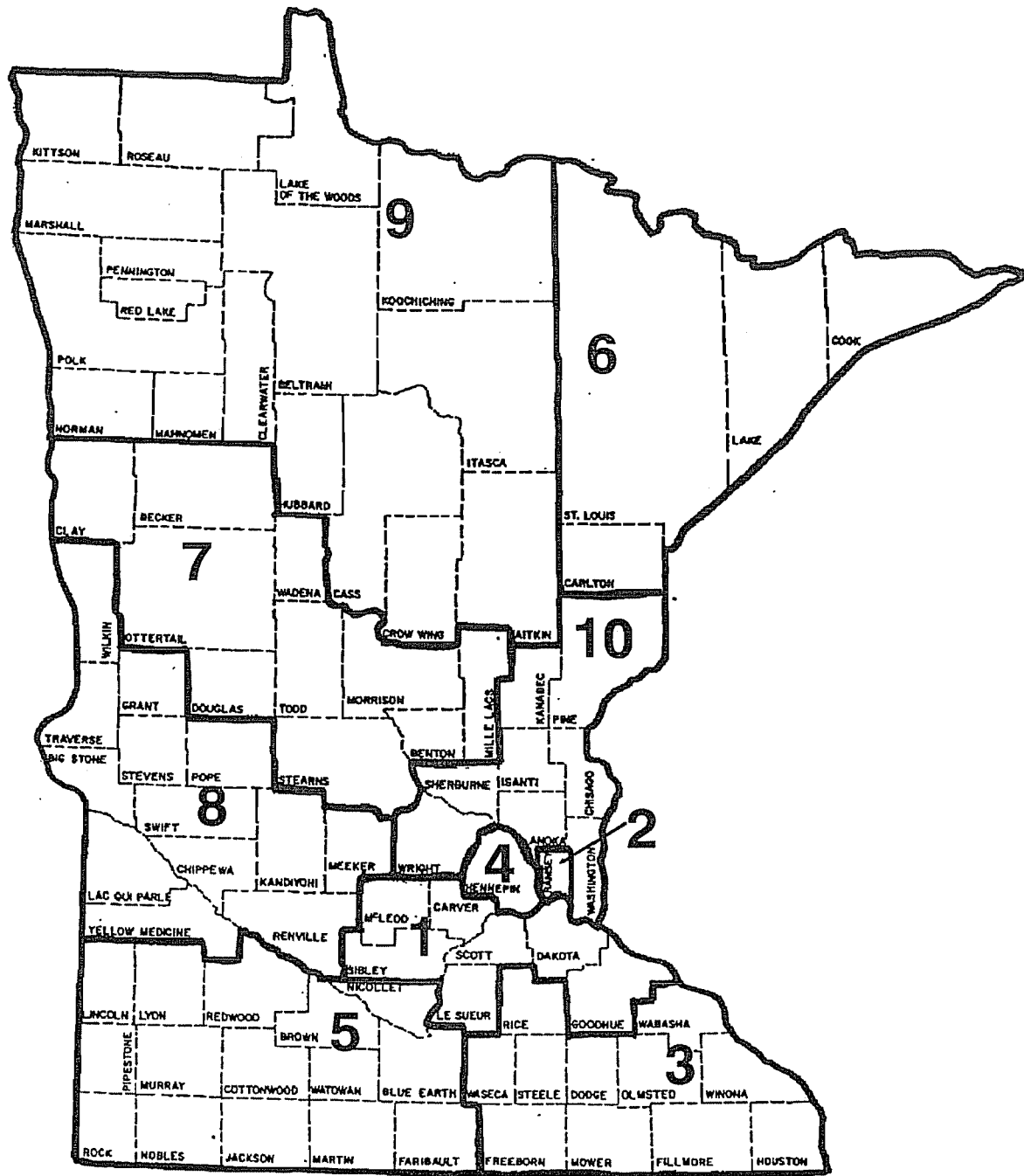
^aIncludes fulltime and part-time public defenders, investigators, sentencing advocates or dispositional advisors.

^bBased on a 40-hour work week or an annual fulltime equivalent of 1,820 hours (2,080 available hours, less 260 for holidays, vacation, and sickness).

^cThe number of fulltime equivalents for the eighth district is understated because it is based on reports submitted by the 10 assistants handling felonies and gross misdemeanors only.

Most of the people working in the public defender system are part-time.

Figure 2.3: Public Defender Districts in Minnesota



In the other districts, the chiefs and assistants are attorneys in private practice who work part-time on public defense.

A "host county" handles payroll and accounting functions in the part-time districts.

personnel are converted to fulltime equivalents, then together Hennepin County with an FTE of 89.5 and Ramsey County with an FTE of 41.5 comprise 64 percent of the 204 fulltime equivalent personnel in the state system.

We found that:

- **In the eight part-time districts, there are no public offices for district public defenders.**

In the part-time districts, the chiefs and assistant public defenders are attorneys in private practice who agree to handle cases in a given geographical area. All of them work out of their own private law offices. As we show below, some receive partial compensation for rent and overhead expenses, but most do not. In the third and sixth districts, the board intends to create fulltime positions for the chiefs. Simultaneously, district offices will be created, but these will be the first outside of the Twin Cities. In all districts, payroll, financial disbursements, and accounting functions are handled by county governments. In the eight multiple county districts, a "host county" is selected to perform these duties.

The organization of public defense is influenced by the court system because public defenders must be available to service all operating courthouses. District judges continue to hold court in county courthouses, which is where (and how) most assistant public defenders are assigned their cases. This is one reason why the outstate districts have relied on part-time, contract attorneys. Using local attorneys cuts down on travel time, which can be extensive in geographically large districts. For example, our analysis of the attorneys' monthly reports for 1990 showed that public defenders in the outstate districts spent an average of 76 hours (or 10 percent of total hours) in travel. The number of hours each attorney spent in travel time varied considerably, however, ranging from an average of 33 hours per year in the third district to 127 hours in the first district.

The organization of public defender services is also affected by the legal requirement that representation be independent. Cases with multiple defendants are referred to as "conflict cases," and each defendant is entitled to a different attorney, who may not be members of the same firm. In the part-time districts, these cases are typically handled through informal arrangements whereby an attorney regularly assigned to one area handles conflicts in a neighboring area. Conflicts are a more serious problem for the fulltime public defender offices.⁷ Ramsey County handles conflict cases by supplementing its fulltime staff with half-time attorneys in private practice. Hennepin County uses a panel of private attorneys to handle conflicts, but it is currently exploring less costly options.

⁷ A public defender office has been defined in some case law as a single law firm, although there is still disagreement over this. For one point of view, see David N. Webster, "The Public Defender, the Sixth Amendment, and the Code of Professional Responsibility: The Resolution of a Conflict of Interest," *The American Criminal Law Review*, Vol. 12 (1975).

We also found that:

- **The ten district chiefs have a great deal of autonomy to hire and supervise assistant public defenders and administer district budgets.**

The district chiefs prepare their own budgets and submit them to the state board. Once the budget is approved, it is the chief's responsibility to administer it, although the host county disburses the funds. In the fulltime districts, assistant public defenders and other staff are hired by the chief (or a designee) through the county's personnel system. In the part-time districts, the chief decides whom to contract with, and how to apportion workloads within the district. Contracts with each assistant public defender are negotiated separately for a period of one year. The assistants are placed on the host county's payroll and receive regular paychecks with employment taxes withheld. Each chief determines how the district will be managed and the assistants supervised.

Public Defense Corporations

There are five private, nonprofit groups that handle public defense cases, primarily for minority defendants. Clients may request representation by a corporation attorney, rather than a district public defender, at any stage in the court proceedings. The corporations receive state funding through the public defense board, which must be matched with funds from other sources. Several of the corporations have received state monies since the early 1970s.

The Legal Rights Center in Minneapolis, the Neighborhood Justice Center in St. Paul, and Duluth Indian Legal Assistance are fulltime agencies. The remaining two (the Leech Lake and White Earth Indian Defense Corporations) exist in name only. In both cases, the corporations were set up by Indian Reservations, which provide the required 10 percent matching funds. The reservations, in turn, contract with private attorneys to provide public defense services.

Public defense corporations are different from district offices in several ways. First, public defense corporations have greater control over their caseloads. Unlike district public defenders, corporation attorneys can refuse to accept cases. They also provide a wider variety of services than public defenders in most districts, handling juvenile and misdemeanor cases in addition to felonies and gross misdemeanors. Because the corporations receive monies from multiple sources, such as the United Way and corporate donations, they are not completely dependent on state funding like the district offices are.

The board has less control over the operation of public defense corporations since it has no appointing authority. The relationship is financial only. Public defense corporations are required to file quarterly financial reports, as are the district chiefs. In fiscal year 1991, the public defense corporations received almost \$625,000 in state monies, which represented 3.6 percent of the total spent for trial court public defender services (approximately \$17.4 million).

The state also funds private nonprofit groups, which provide some public defense services.

DISTRICT COMPARISONS

In this section, we describe differences in the services provided in the ten public defense districts and compare district budgets. We also describe the way information is collected in the districts. Although we make some comparisons of workloads and costs, the validity of our analysis is affected by limitations in the data, which are described below. According to the State Public Defender's Office, caseloads are under-reported because part-time public defenders do not send in all of their case reports.

Public Defender Services

All ten districts provide representation in felony, gross misdemeanor, probation violation and revocation, and extradition cases. Table 2.3 shows that the second (Ramsey), fourth (Hennepin), and eighth districts also provide misdemeanor and juvenile services. The eighth district is involved in a pilot study to identify the costs and problems the state may encounter in the process of taking over these services, which the counties fund in the other outstate districts.

Table 2.3: Types of State-Funded Services Provided, By District, 1991

	District									
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
Felony	X	X	X	X	X	X	X	X	X	X
Gross Misdemeanor	X	X	X	X	X	X	X	X	X	X
Misdemeanor		X		X				X		
Juvenile		X		X				X		
Probation Violation/ Revocation	X	X	X	X	X	X	X	X	X	X
Pretrial Appeals		X		X						
Paternity		X						X		
Dependency/Neglect		X ^a		X				X		
Extradition	X	X	X	X	X	X	X	X	X	X

Source: District chief public defenders.

^aProvided through a contract with Legal Services for Juveniles, Inc. Contract may not be renewed for financial reasons.

As this table also indicates, both the Hennepin and Ramsey County offices handle pretrial appeals, while the outstate districts do not. Ramsey and the eighth district also provide representation in some family court cases that Hennepin County used to handle, but which it was forced to discontinue in 1989 due to budget problems. This was prior to state funding.

There are other ways to look at access to public defense services, apart from the types of services available. One issue concerns whether everyone eligible for public defense representation actually receives it, and another concerns the timing in the court process that legal representation is provided. There is some

evidence to suggest that disparities exist. For example, the Juvenile Representation Study Committee appointed by the Minnesota Supreme Court found wide disparity across counties in the appointment of counsel for juveniles, ranging from almost 100 percent of cases to less than 5 percent.⁸ Similarly, Supreme Court information shows that the proportion of felony defendants who had no legal representation or represented themselves at their first appearance varied from 5 percent in one district to 55 percent in another. These issues require further study.

District Budgets

When we examined budget documents and talked to district personnel, we found differences among districts with respect to the items covered in their budgets. All district budgets include salaries, payroll taxes, and some funding for investigation and expert witnesses. However, as we see in Table 2.4, the differences are most apparent for employee benefits and rent allotments.

Table 2.4: Public Defender Budget Items, by District, FY 1991

	District									
	1	2	3	4	5	6	7	8	9	10
Salaries	X	X	X	X	X	X	X	X	X	X
Overhead Compensation	X ^a	X								
Payroll Taxes:										
FICA & PERA	X	X	X	X	X	X	X	X	X	X
Employee Benefits:										
Health		X	X ^b	X	X	X ^d			X	
Dental		X		X ^c		X ^d				
Life		X	X ^b	X		X ^d				
Long-Term Disability		X		X						
Other ^e				X						
Investigation	X	X	X	X	X	X	X	X	X	X
Expert Witnesses	X	X	X	X	X	X	X	X	X	X
Other Professional Services	X	X		X					X	
Rents/Leases		X	X ^b		X					
Office Supplies	X	X	X	X	X		X		X	X
Equipment	X	X	X	X	X	X				
District Service Costs ^f	X	X	X	X	X	X	X	X	X	X
"Other"		X	X	X				X	X	

Source: Board of Public Defense.

^aSix of the 17 assistant public defenders receive part of their salary as "overhead compensation" for tax purposes.

^bProvided for fulltime personnel only.

^cProvided to clerical personnel only.

^dOnly the chief public defender and fulltime staff receive benefits.

^eIncludes overtime, severance, stability pay, supplemental retirement, and workers' compensation.

^fIncludes printing and copying; fees, dues, and transcripts; phone and postage; travel and mileage; and training.

⁸ "Report of the Juvenile Representation Study Committee to the Minnesota Supreme Court," June 5, 1990, 11.

Employee benefits vary from district to district.

In the case of employee benefits, the metropolitan districts of Hennepin and Ramsey Counties cover a full range of employee benefits. Among the outstate districts, however, four offer no employee benefits; two cover benefits for certain personnel, but not for assistant public defenders; and the remaining two provide some benefits. In the ninth district, assistant public defenders receive health insurance, although some work as few as 40 to 50 hours per year. Meanwhile, in other districts, assistants work half-time or more and do not receive benefits beyond retirement (FICA and PERA).

The fifth district provides rent allowances to assistant public defenders, which vary by the amount of time worked, and fulltime employees receive compensation for rent in the third district. In the fulltime districts, Ramsey County's office rent is included as a budget item, but Hennepin County's is not.⁹

Information Systems

Of the ten districts, only the fourth (Hennepin County) has a computerized information system for tracking cases. The Fourth District Public Defender's Office is tied into Hennepin County's court processing system, called Subject in Process (SIP), which was developed before the Supreme Court's case processing system (TCIS). In addition, the assistant public defenders keep daily time records, which are summarized monthly. Ramsey County (second district) also keeps records on time spent and cases handled, but it has a manual system.

Hennepin County is the only district with a computerized information system for tracking cases.

Public defenders in outstate districts participating in the state system have been required to submit monthly reports on hours and cases since 1974. We were told by state administrative staff that there were problems and inconsistencies in the data. Consequently, they did not analyze the information on a regular basis.

Before proceeding with our analysis of workloads, therefore, we estimated the accuracy of the information in several ways. We asked the chiefs how individual questions were interpreted and about return rates of the monthly forms. We were told by the chiefs that most assistant public defenders return their forms regularly, which was confirmed by our examination of the data. We also compared the information on 1990 cases to separate data maintained by the Supreme Court. Finally, most district chiefs keep their own data on cases and hours, and we checked that data against the board's information. Overall, we found that:

- **While there are some problems with the board's data on caseloads, the information is similar to that kept by district chiefs and the Supreme Court.**

⁹ Rent is an issue of contention in the fourth district because the Public Defender's Office used to be located in the Hennepin County Government Center. In the switchover to state funding, the office was forced to relocate and now must pay rent. At issue is whether the county (through local aid reductions) or the state (through new appropriations) should bear the cost.

There was less than a 2 percent difference between the board's data on cases terminated in 1990 and similar information kept by the Supreme Court.¹⁰ The caseload data maintained by chiefs showed an 11 percent difference from the board's data.¹¹ In most cases, the board information reported fewer public defender cases than did the court or district chiefs.

Through interviews, we found that the administrative staff person who extracts information from the attorneys' case reports was instructed to delete any client name that appeared more than once on a form. It has been brought to the attention of staff that these are legitimately separate cases, but the practice persists. As a result, cases are systematically under-reported in the public defense board's data, but the effect is similar across districts.¹²

We conclude that:

- **The board's data are useful for making approximate comparisons across the eight part-time districts where the data are similar.**

Making accurate comparisons across the ten districts is more problematic, however, because we also found that:

- **The data kept by Hennepin and Ramsey Counties are not compatible with data collected for the rest of the state.**

The board keeps its data on cases terminated, while both Hennepin and Ramsey Counties maintain their information on cases opened during the year. Over time, the effects of these differences probably even out because all cases opened are eventually terminated. During a single year, however, the effect may be to overstate the number of cases in Hennepin and Ramsey compared to the rest of the state. One last difference also affects interpretation of the caseload data: Ramsey County is the only district where probation/parole revocations are not assigned a new case number, which understates cases in this district vis-a-vis the others.

Caseloads

Overall, public defender caseloads have increased in the last ten years. However, as shown in Table 2.5, some districts were affected more than others. The first, seventh, and tenth districts have experienced caseload increases higher than the state average. In these districts, caseloads have tripled over the ten-year period. The first and tenth districts include all the suburban counties

¹⁰ In three districts, however, the difference was over 10 percent.

¹¹ The difference ranged from 3 percent to 19 percent across the eight districts.

¹² We found other problems with the data maintained by the board. First, "total hours worked" may not have been interpreted consistently by all assistant public defenders. One chief (sixth district) reported that this question may have been interpreted as hours worked on closed cases, not total hours worked. Second, the category "charges dismissed" was not interpreted consistently; some counted cases in which charges were dismissed, while others counted the number of charges dismissed.

Table 2.5: Public Defender Caseloads, by District, 1980 to 1990

District ^a	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Percent Change 1980 to 1990 ^b
First	913	976	1,258	1,508	1,522	1,430	1,628	1,946	2,024	2,328	2,721	198%
Second	8,297	8,768	8,503	8,408	9,567	11,263	11,992	13,505	13,914	15,353	15,905	92
Third									963	1,364	1,586	65
Fourth	11,061	13,161	12,791	16,028	17,287	18,290	21,666	21,744	22,302	24,416	26,130	136
Fifth	697	692	1,014	936	942	1,052	1,130	1,100	1,147	1,157	1,438	106
Sixth	782	795	745	854	678	673	667	624	587	906	1,009	29
Seventh	690	810	1,058	1,368	1,246	1,713	1,465	1,582	1,957	2,030	2,358	242
Eighth									371	658	2,188	490
Ninth	964	1,079	1,236	1,363	1,345	1,587	1,406	1,490	1,527	1,837	1,957	103
Tenth	1,010	1,094	1,411	1,744	1,901	1,983	1,994	2,034	2,483	2,839	3,619	258
Totals	24,414	27,375	28,016	32,209	34,488	37,991	41,948	44,025	47,275	52,888	58,911	141%

Source: Board of Public Defense; Second and Fourth District Public Defender's Offices.

^aIncludes cases handled by district offices only; does not include cases handled by the public defense corporations. A felony case is defined as a criminal complaint in all districts. However, in the second district (Ramsey County) probation/parole revocations are not assigned a new case number as they are in the other districts. Also, in the second and fourth (Hennepin County) districts, data are for cases opened during the year, while in the other districts, the data are for cases terminated.

^bThe third and eighth districts had appointed counsel systems until 1988. Percent change is 1988 to 1990. The large increase in the eighth district in 1990 represents the assumption of juvenile and misdemeanor services from counties.

surrounding the Twin Cities metropolitan area, and the seventh district contains St. Cloud and Moorhead. The lowest caseload increase occurred in the sixth district, an area which has experienced population loss.

As Table 2.5 also shows, the Twin Cities metropolitan area accounts for the majority of public defender cases. More than 70 percent of the total district caseload originates in these two districts.

In 1990, the public defense corporations provided representation in just under 3,000 cases, or 4.8 percent of the total district caseload. The corporations in northern Minnesota, however, handled a higher proportion of the caseloads, possibly as high as 35 to 40 percent in some districts.¹³

Costs and Workloads

More serious cases take more time and cost more to defend.

Cost and workload comparisons across districts are complicated by several factors. One problem is suggested above: a "case" is not defined similarly across all districts. In addition, a district's costs and average caseload depend on the types of services offered. Costs per case tend to rise as the seriousness of the offense (and possible sanctions) increases. Felonies require more time than misdemeanors and, hence, are more costly. Murder cases, which typically go to trial, are the most time-consuming and costly to defend. In Ramsey County, which keeps cost data by type of case, felonies cost an average of \$568 per

¹³ The exact proportions cannot be determined because Duluth Indian Legal Assistance handles cases in ten counties that cross district lines.

case in 1990, compared to \$79 for misdemeanors/gross misdemeanors and \$202 per juvenile case.¹⁴

Similarly, The Spangenberg Group found that it took approximately 12 hours per case to defend felonies in Minnesota, but from 2.1 hours (urban districts) to 5.9 hours (rural districts) to defend gross misdemeanors.¹⁵

Consequently, districts that handle only felonies and gross misdemeanors are likely to have higher average costs per case than districts which provide additional, lower cost services. For example, when the eighth district assumed juvenile and misdemeanor cases, its cost per case dropped from \$587 in 1989 to \$185 in 1990.¹⁶ Overall, as we see in Table 2.6, the metropolitan and the eighth districts, which handle a broader range of services, have lower average costs per case.

Keeping in mind the problems outlined above, we think that the cost data in Table 2.6 are the best estimates currently available. Overall, this table shows that:

- **The metropolitan districts have the highest total costs and costs per capita population, but they also have the largest number of cases.**

Moreover, we found that:

- **Costs per case appear to vary widely across those districts that provide similar services.¹⁷**

Over two-thirds of the cases originate in Hennepin and Ramsey Counties.

As one would expect, the average costs per case are higher in the seven out-state districts handling only felonies and gross misdemeanors than in those districts where lower cost services are also provided. Still, in these seven districts, the average cost per case ranges from a low of \$245 in the tenth district to \$618 in the sixth district. Similarly, there is variation among those districts handling a broader range of services, ranging from \$158 in the second (Ramsey) to \$288 in the fourth (Hennepin).

Table 2.7 compares the eight part-time districts, using several alternative measures of public defender workloads for 1990. These data confirm that:

- **There are wide variations in caseloads and average hours spent per case across the part-time districts.**

As these measures are influenced by the proportion of felony cases, we have included this information for each district. Table 2.7 shows that districts with

¹⁴ Ramsey County Public Defender's Office, "1991 Report to the State Board of Public Defense." Ramsey County does not separate gross misdemeanors from other misdemeanor cases.

¹⁵ The Spangenberg Group, *Weighted Caseload Study for the State of Minnesota Board of Public Defense* (Newton, Massachusetts, January 1991).

¹⁶ Data provided by the Board of Public Defense.

¹⁷ In the eight nonmetro districts, a case is defined similarly, hence the data are comparable.

Table 2.6: Public Defender Costs and Caseloads, by District, 1990

	Total Costs ^a	Total Cases ^b	Costs Per Case	Per Capita Costs ^c
Districts Handling Felony and Gross Misdemeanor Cases Only				
First	\$909,400	2,721	\$334	\$1.85
Third	937,000	1,586	591	2.36
Fifth	646,800	1,438	450	2.28
Sixth	623,800	1,009	618	2.58
Seventh	743,700	2,358	315	1.90
Ninth	690,900	1,957	353	2.36
Tenth	887,600	3,619	245	1.50
Districts Handling Felony, Gross Misdemeanor, Misdemeanor, and Juvenile Cases				
Second	2,514,596	15,905	158	5.18
Fourth	7,516,417	26,130	288	7.28
Eighth	404,000	2,188	185	2.41
State Totals	\$15,874,213	58,911	\$269	\$3.63

Sources: Board of Public Defense; Second and Fourth District Public Defender's Offices; State Planning Agency.

^aExcludes public defense corporations. With the corporations included, the statewide costs are \$16,495,243, and the average per capita cost is \$3.77.

^bA felony case is defined as a criminal complaint in all districts. However, in the second district (Ramsey County) probation/parole revocations are not assigned a new case number as they are in the other districts. Also, in the second and fourth (Hennepin County) districts, data are for cases opened during the year, while in the other districts, the data are for cases terminated.

^cCosts divided by 1990 population.

Districts vary in terms of how much money is spent on each case.

higher proportions of felony cases (e.g., the third and the eighth) tend to spend more time per case. However, this factor alone does not explain the observed differences. For example, the sixth and ninth districts have high proportions of felony cases but spend less than the average time per case, while the opposite is true in the first district.

Table 2.7 also shows that the typical part-time public defender spent over 40 percent of his or her time annually on public defense work and handled 100 cases on the average. However:

- There are wide differences in the part-time districts in the proportion of time that contract attorneys spend on public defense work.

Public defenders in some districts have caseloads twice the size of those in other districts.

The number of contract attorneys in a district varies from 9 to 32, but this number is unrelated to the volume of cases handled and may be more related to the availability of attorneys in the area. Hence, the average part-time public defender in the first district worked nearly three-quarters time in 1990 and handled 160 cases, leaving little time for private practice. Meanwhile, in the third

Table 2.7: Measures of Public Defender Workloads for Part-Time Districts, 1990

District	Number of Public Defenders Reporting	Average Time Worked		Average Caseloads		Average Hours Per Case ^b	Total Cases	Percent Felony Cases ^c
		Hours Per Person	Percent Time ^a	Per Person	Per FTE ^a			
First	17	1,318	72.4%	160	221	8.4	2,721	34.4%
Third	32	536	29.5	50	168	10.7	1,586	43.2
Fifth	17	817	44.9	85	189	7.5	1,438	39.8
Sixth	21	496	27.3	48	176	7.2	1,009	55.7
Seventh	24	677	37.2	98	264	7.4	2,358	38.5
Eighth ^d	9	983	54.0	80	149	11.2	723	46.7
Ninth	14	1,025	56.3	140	248	7.8	1,957	43.8
Tenth	20	888	48.8	181	371	5.0	3,619	36.0
Overall	154	786	43.2%	100	232	8.1	15,411	40.0%

Source: Program Evaluation Division analysis of data provided by the Board of Public Defense.

^aBased on a 40-hour work week or an annual full time equivalent (FTE) of 1,820 hours (2,080 available hours, less 260 for holidays, vacation, and sickness). The Spangenberg Group used these figures in its *Weighted Caseload Study for the State of Minnesota Board of Public Defense* (January 1991), 63. See Appendix D for a full explanation.

^bTotal hours minus administrative hours divided by total cases handled during the year for each reporting public defender.

^cTotal cases for the district divided by number of felony cases.

^dBoth hours and cases are for felonies and gross misdemeanors only so the data are comparable to the other districts.

and sixth districts, the average contract attorney spent only 30 percent and 27 percent, respectively, on public defense work.¹⁸

When the hours worked by the part-time public defenders are converted to full-time equivalents (FTE) and then caseloads are compared across districts, significant differences are apparent. Districts that handle approximately the same proportion of felonies--e.g., the third, eighth, and ninth--have caseloads per fulltime equivalent that range from 149 to 248. Overall, public defenders in some districts are handling twice as many cases as public defenders in other districts. Again, we see that the districts with the largest caseloads per FTE are the first, seventh, tenth, and also the ninth.

Public Defender Compensation

In the fulltime districts of Hennepin and Ramsey Counties, public defenders remain county employees and are members of county bargaining units. In both districts, public defenders are paid the same compensation (salary plus benefits) as county attorneys. In these districts, attorneys' salaries range from about \$32,000 for beginning associates to approximately \$79,000 for

Public defenders in Hennepin and Ramsey remain county employees and receive the same compensation as county attorneys.

¹⁸ In the sixth district, the chief also has a county contract to provide juvenile and misdemeanor services. Hence, some public defenders may spend more time overall on public defense work. These services will be paid with state monies beginning July 1, 1992.

top-of-the-range senior attorneys.¹⁹ The salaries paid to fulltime public defense corporation attorneys tend to be lower.

Among the eight part-time districts, we compared compensation paid to the chief and assistant public defenders. We examined compensation in two ways: as salary alone and as salary plus extra items in the district's budget, such as payroll taxes, employee benefits, and rents paid directly to individuals. Since there are no district offices, contract attorneys pay their own office expenses out of compensation received from public defense work and their private practices. In some districts, the contract attorneys have negotiated to receive additional monies to cover some of these expenses. We included these extras in order to make fair comparisons across districts.

There are wide differences in the hourly rates earned by part-time public defenders.

Technically, all public defender contracts are with individual attorneys. However, in some districts, many of the contracts are effectively with law firms, not individuals. This occurs when multiple members of the same law firm are appointed public defenders, and the compensation they receive for public defense work is turned over to the firm. In these cases, data on individual hours and compensation are invalid since the person who received the paycheck is often not the same person who performed the work. Hence, we calculated the hourly rates earned by the firm and used these numbers in the analysis.

While Table 2.8 shows that compensation differs among the districts, we found that:

Table 2.8: Part-Time Public Defenders' Compensation, by District, FY 1991

	<u>Law Firm Members</u>		<u>Individual Attorneys</u>		<u>Range in Hourly Rates Lowest to Highest</u>	<u>Total Compensation (Salary Plus Extras)^b</u>	
	<u>Average Hourly Rate, Salary Only^a</u>	<u>Number</u>	<u>Average Hourly Rate, Salary Only</u>	<u>Number</u>		<u>Average Hourly Rate</u>	<u>Number</u>
First	\$29.93	9	\$48.84	8	\$27.80 to \$76.19	\$42.41	17
Third	37.38	5	41.37	33	11.71 to 74.95	46.20	38
Fifth	--	0	32.87	15	16.09 to 62.11	41.65	15
Sixth	24.67	2	34.12	21	13.79 to 49.28	38.48	23
Seventh	41.22	9	35.19	13	17.25 to 81.90	41.45	22
Eighth	--	0	44.29	10	23.27 to 70.03	49.40	10
Ninth	37.59	16	64.08	7	14.44 to 169.97	51.71	23
Tenth	<u>38.59</u>	<u>14</u>	<u>45.81</u>	<u>10</u>	<u>21.85</u> to <u>109.19</u>	<u>46.47</u>	<u>24</u>
Overall	\$36.69	55	\$40.45	117	\$11.71 to \$169.97	\$44.84	172

Source: Program Evaluation Division analysis of data provided by the Board of Public Defense.

^aFor members of law firms, rate is the average hourly rate earned by the firm, based on total annual compensation to the firm and total hours worked by all law firm members.

^bIncludes FICA and PERA, employee benefits (health, dental, life insurance), and rents where paid directly to individuals as part of compensation.

¹⁹ Minnesota County Attorneys Association, "1991 Salary Survey," St. Paul, Minnesota.

- **The variation in attorneys' hourly rates is greater within districts than across districts.**

Table 2.8 shows that the average hourly rate (salary plus extras) ranges from \$38.48 in the sixth district to \$51.71 in the ninth district, a difference of about \$13. Within each district, the range in hourly rates far exceeds \$13. The variation in individual rates is even greater if corrections are not made for law firm members. However, on the average, law firms are not compensated as well as individual practicing attorneys.

As shown in Table 2.9, among part-time district chiefs, the effective hourly rate (salary plus extras) ranges from a low of \$30.06 in the fifth district to \$46.89 in the eighth district.²⁰

Table 2.9 also indicates that:

- **The hourly rate for district chief public defenders declines as the proportion of time devoted to public defense work increases.**

On the average, the part-time chiefs work 87 percent time, although they continue to maintain their private practices to cover overhead expenses. There is considerable variation across the eight districts, however, with some chiefs

The part-time district chiefs spend, on average, 87 percent of their time on public defense cases.

Table 2.9: Part-Time District Chiefs' Compensation and Hours Worked, by District, FY 1991

District	Annual Salary	Hourly Rate, Salary Only	Hourly Rate, Salary Plus Extras ^a	Hours Worked	Percent Time ^b
First	\$56,000	\$33.27	\$41.43	1,683	92.5%
Third	46,199	33.37	44.18	1,385	76.1
Fifth	49,400	22.50	30.06	2,196	120.7
Sixth	46,548	29.10	38.72	1,600	87.9
Seventh	52,333	28.94	32.44	1,809	99.4
Eighth	48,269	41.83	46.89	1,154	63.4
Ninth	66,000	32.62	37.39	2,024	111.2
Tenth	<u>33,654</u>	<u>39.97</u>	<u>44.81</u>	<u>842</u>	<u>46.3</u>
Overall Average	\$49,800	\$32.70	\$39.49	1,587	87.1%

Source: Program Evaluation Division analysis of data provided by the Board of Public Defense.

^aIncludes FICA and PERA, employee benefits (health, dental, life insurance), and rents where paid directly to individuals as part of compensation.

^bBased on annual fulltime equivalent of 1,820 hours (2,080 available work hours, less 260 hours for holidays, vacation, and sickness).

^cSalary is for fiscal year and hours are for calendar year.

²⁰ When the law firm hourly rates (salary only) are used, the following chiefs' rates change accordingly: first district = \$29.21; ninth district = \$31.41.

putting in over 100 percent time on public defense work. The lowest hourly rates are earned by the fifth, seventh, and ninth district chiefs, who work close to or more than fulltime. In most part-time districts, the chiefs earn less per hour than the assistants. We return to the issue of compensation in the following chapter since we suspect that the variations we observed are a consequence of the way in which contracts are handled.

SUMMARY

Our description of the state's public defender system confirms what legislators thought when they initiated state financing of it: disparities exist across judicial districts in the level of services provided. Problems with the available data prevent accurate comparisons across all ten districts. But, even allowing for a 10-15 percent error rate, it is evident that some districts are financially better off than others. In these districts, public defenders carry lower caseloads and devote more time to each case. Some districts have seen the volume of public defense cases triple in the past ten years, and these districts are now experiencing higher-than-average caseloads, with less time and money spent on each one.

Perhaps the most significant difference among the districts is that only two (Hennepin and Ramsey Counties) maintain fulltime public defender offices. These two districts handle most of the cases in the state and employ the bulk of its personnel. In the remainder of the state, public defense services are provided by part-time, contract attorneys. In several districts, nonprofit public defense corporations also handle cases. But there are no "public defender offices" outside of the Twin Cities area.

The differences in services, workloads, and costs we observed are probably vestiges of the county-based funding system that existed prior to July 1, 1990. Districts entered the state system at the funding levels and with the organizational arrangements that existed at the time.

In examining the organization of the state's public defender system, we found that it is fairly autonomous. The Board of Public Defense, which oversees the system, is not under the direct control of any single person nor branch of government. Similarly, the district chiefs have considerable independence to manage their own districts as they see fit. It is too soon to assess the effects of the 1991 legislation aimed at centralizing control in the State Public Defender's Office.

AN ASSESSMENT OF THE PUBLIC DEFENDER SYSTEM

Chapter 3

In this chapter we evaluate the adequacy of the structure and administration of the state's public defender system. We compare Minnesota's system to those in other states, and assess its organization, administration, and decision making against selected management principles. Our assessment focuses on the following questions:

- **Does the current organization of the public defender system provide for sufficient accountability and oversight by the state?**
- **Are the system's organization, administrative procedures, and decision making consistent with good management practices and with state goals?**
- **Does the part-time status of outstate districts hamper their ability to recruit qualified attorneys?**

The analysis and information in this chapter come from a variety of sources. We interviewed members of the Board of Public Defense and the State Public Defender's Office, the district chief public defenders (see Appendix B for the standardized interview format), and directors of several public defense corporations. We examined state statutes and budget documents. We observed meetings of the Board of Public Defense and systematically analyzed the content of all written board minutes, which covered the period 1985 to the present.¹ In all, we examined the minutes of 70 board meetings. We also analyzed data submitted monthly by part-time public defenders.² We obtained information on salaries from the Minnesota County Attorneys Association and compared it with public defender compensation.

To learn about other public defender systems, we surveyed the national literature. We also identified states with fully or partially state-funded systems and a few with other types of systems for contrast. In all, we selected 30 states and analyzed their statutes pertaining to public defense. We obtained more detailed information about 13 of the 30 states by interviewing selected public

¹ We found references to approximately six other meetings for which there were no written minutes.

² Problems with the monthly report forms are described fully in Chapter 2, pp. 30-31.

defender personnel by telephone. For a listing of the states and survey respondents, as well as more information about the methods used, see Appendix E.

In general, we conclude that the current structure and administrative procedures do not provide for adequate oversight by the state. In certain respects, the public defender system has not established sound management systems, and we identify a number of factors that limit accountability. We found that through most of its history, the board's decision making has been informal and sometimes based on inadequate information. As a result, little progress has been made toward correcting the inequities in public defense services that existed under county financing. In reporting these findings, we recognize that the board has worked under considerable outside pressure, particularly from districts that currently enjoy considerable autonomy. This has made the board's job more difficult.

We also found that several districts are having serious problems recruiting qualified public defenders. We doubt these problems can be solved as long as the eight nonmetro districts continue to rely exclusively on part-time, contract attorneys.

ASSESSMENT CRITERIA

**Minnesota's
state-funded
public defender
system is still
forming.**

We begin from a basic premise: to be successful, an organization should have several basic characteristics, including a logical structure, rational management, strong but accountable leadership, efficient use of resources, successful goal attainment, a skilled staff, and adequate controls to prevent mistakes and abuse. More specific principles of good management, based on a review of literature on organizations, are listed in Figure 3.1. While organizations need not conform with every standard noted--some can even thrive by ignoring orthodox advice--these principles provide an idealized model that, in our view, most public organizations should emulate.

We recognize that the organization of Minnesota's public defense system under state financing is in its formative years. Hence, we did not expect to find all elements of a mature organization in place. However, we do assume that state funds must be accounted for, and that certain basic administrative procedures, employment practices, and financial controls are essential to ensure that accountability occurs.

In addition, the system's decisions and administrative procedures should be consistent with state policy objectives. The way in which the public defender system is organized, and its policies, procedures, and decisions, should contribute to the achievement of state goals.

Finally, we compared Minnesota's public defender system with systems in states that are demographically similar where the state has assumed a large

Figure 3.1: Principles of Organizational Management

The organization should:

- Have a mission that is appropriate, clearly defined, and well-understood;
- Establish goals and objectives that are consistent with its mission;
- Develop plans for achieving goals and objectives that specify the tasks to be accomplished, the resources needed, timelines, and measures to gauge progress;
- Collect and summarize information that is timely, accurate, useful, and complete; and
- Use the appropriate information to make decisions consistent with its mission and to measure progress toward goals and objectives.

The organizational structure should:

- Support the attainment of the organization's mission and objectives;
- Clearly delineate roles and responsibilities within the organization;
- Clearly align accountability, authority, and responsibility; and
- Support communication and coordination among organizational units.

The organization's administrative procedures and controls should:

- Ensure compliance with laws and regulations;
- Ensure that goals and objectives are met;
- Prevent or detect financial errors, irregularities, or noncompliance with state regulations;
- Be consistent, clear, communicated to employees, and consistently applied;
- Identify staffing needs and provide procedures for recruiting, orienting, and training qualified personnel;
- Integrate budgets with plans so that activities within the organization are coordinated; and
- Monitor and evaluate performance and progress toward goals.

Source: Adapted from Office of the State Auditor, *Management Audit Methodology* (Austin, Texas, February 1991). See Appendix F for the bibliography upon which this summary is based.

financial role. We hoped to learn from this comparison how the state's public defender system might be improved.

ACCOUNTABILITY AND OVERSIGHT

In this section, we describe problems with the organization and administration of the public defender system, which in our view limit accountability and oversight by the state.

Problems with Accountability

In our opinion,

- **The public defender system has more autonomy than most state agencies typically have.**

As shown in the previous chapter, the Board of Public Defense, which oversees the state system, is not under the direct control of the Supreme Court, although it is part of the judicial branch. Therefore, the people employed in the public defender system are not covered by the policies established by the court's administration. Since the board is not in the executive branch, it is also not covered by the rules and regulations that typically apply to state agency personnel. Only the staff in the State Public Defender's Office are unclassified state employees.

The state has limited personnel and financial oversight over the public defender system.

The principal method of oversight is through the board appointment process, which is shared by the Governor and the Supreme Court. The Governor has a minority of board appointments, diminishing his control and influence. The Supreme Court makes the majority of board appointments. It informally communicates with the board chair and the state public defender as a means of monitoring board decisions and activities. However, the Court's ability to control the system is also limited because the board elects its own chair, board members serve four-year terms, and the state public defender reports to the board rather than the Court.

Because it is in the judicial branch, the board submits its budget directly to the Legislature. The Governor's Office reviews the public defense budget, but passes it along without recommendations, as it does with the Supreme Court's budget. Since it is not under the direct control of the Supreme Court, the Court does not review the public defense budget. Consequently, the Legislature must evaluate the board's budget request based solely on the justification the board itself provides.

Once state monies are appropriated, the board's spending plan is reviewed and monitored by the Department of Finance. We found that:

- **The board's spending plan permits broader latitude and discretion than most state agencies have.**

There are separate appropriations for district public defense services and the State Public Defender's Office. But the board's direct appropriation includes monies for the public defense corporations and some direct services (juvenile and misdemeanor services in the third and sixth districts), in addition to monies for contracted services and administration. According to the Department of Finance, the board has considerable discretion over how these monies are spent and may transfer funds from one category to another without approval. The only stipulation is that expenditures must be legal.

We were unable to determine what it costs to administer the public defender system, in part because administrative costs are combined with direct service costs. An examination of the biennial budgets for public defense shows different categories from year to year, making it difficult to assess how costs have changed over time.

Accountability in Other States

Although there are various ways to organize public defense, most other state-run programs are not permitted the high degree of autonomy found in Minnesota. As Figure 3.2 indicates, a more common pattern is to place the public defender system within the executive branch. Most state-run programs do have boards. But under this model, board appointments are typically made by the Governor, sometimes with legislative approval, and the board appoints the state public defender.

Figure 3.2: Administration of Trial Court Public Defense Services in Other States

	Who Administers State Trial Court Level	Location (Branch of Government)	Appointed By	Board/Commission Appointed By
Alaska	Director of Public Defender Agency	Executive	Governor (reports to Deputy Commissioner of Administration)	No Board
Colorado	State Public Defender	Judicial	Public Defender Commis- sion	Supreme Court
Connecticut	Chief Public Defender	Judicial	Public Defender Services Commission	Chief Justice, Legislative leaders, Governor
Kansas	State Director of Indigent Defense Serv- ices	Executive	State Board of Indigent De- fense Services	Governor; Senate confirms
Kentucky	State Public Advocate	Executive	Governor; Commission rec- ommends names	Governor, Legislature; Court suggests names
Maryland	State Public Defender	Executive	Board of Trustees	Governor
New Mexico	Chief Public Defender	Executive	Governor	No Board
Ohio	Director of the Public Defender Office	"Autonomous"	Public Defender Commis- sion	Governor, Supreme Court, Senate
Oregon	Director of Indigent Services ¹	Judicial	State Court Administrator	Board not connected with trial-court level
Vermont	Defender General	Executive	Governor; Senate consents	No Board
Wisconsin	Trial Chief	Executive	State Public Defender ²	Governor; Senate confirms

Source: Phone interviews and statute analysis.

¹The State Public Defender handles only criminal appeals.

²The State Public Defender is appointed by the Public Defense Board.

Other state-run public defender systems have less autonomy than Minnesota's.

This approach provides more direct lines of accountability than shared judicial-executive appointments. As Figure 3.2 also shows, in the few cases where the public defense system remains in the judicial branch, it tends to be under the court's administration, as in Colorado and Oregon. Only Ohio and Connecticut appear to permit the degree of independence found in Minnesota. However, Ohio's public defender system is organized differently with counties having a larger financial and programmatic role (counties pay half or more of public defender costs). Connecticut's system is also different in that it is a smaller, more centralized system with more accountability measures built in (e.g., the Governor appoints the commission chair and the chief public defender has greater authority to oversee the program).

Problems with Financial Control

In order to ensure accountability, an organization's structure should clearly align authority and responsibility. However, we found that in Minnesota's public defender system:

- **The organizational unit with financial responsibility is not always the same unit that determines costs, which limits accountability.**

This problem manifests itself in several ways. In districts where public defenders work fulltime, they are classified as county employees. This resulted from a compromise plan to secure the participation of Hennepin and Ramsey Counties in the state system. In these districts, public defender salaries and benefits are paid with state monies, but negotiated between the county and the trade union. Because of this arrangement, Hennepin County requested in its proposed 1992-94 budget salary increases in excess of what state employees received.

The board is accountable for how state monies are spent. It has the authority to approve district budgets, establish policies and guidelines, and require financial reports. However, the board is not directly involved in reviewing and approving expenditures or disbursing the state's monies.

The bulk of state monies is disbursed by county governments, as directed by the district chiefs. In the multi-county districts, the "host county" that disburses the funds has no direct fiscal or management responsibilities or formal authority to oversee or operate the public defense program. It has no basis for knowing whether expenditures are legitimate or whether the goods and services paid for are actually received.

District chiefs review and approve expenditures, most of which go to assistant public defenders in the form of salaries and expenses. In the multi-county districts, the assistant public defenders typically do not work in the same community as the chiefs, which makes it difficult for the chiefs to assess the legitimacy of expenditures as well.

Financial responsibilities are fragmented.

This lack of accountability over the part-time assistant public defenders led the Judicial Council in 1974 to require monthly reporting forms documenting hours worked and cases handled. As described in the previous chapter, however, these forms are no longer used by the current board or its staff. The district chiefs vary in their use of them as a monitoring tool: some chiefs review them regularly, but others do not.

In order to be effective, an organization's administrative procedures and controls should prevent or detect financial errors, irregularities, or noncompliance with state regulations. However, since the state administrative office was established in 1988, it has provided limited fiscal oversight of the district chiefs.³ We found that:

- **The public defender system is operated financially like a grant-in-aid program.**

The district chiefs prepare and administer their own budgets, and budget categories and items are not the same across districts, as noted in Chapter 2. State administrative staff reported that they are in the process of implementing a new standardized budget format. As is typical of grant-in-aid programs, district chiefs are required to submit quarterly and year-end financial reports. Also, they may not deviate more than 10 percent from budgeted amounts without prior approval from state administrative staff.

According to state administrative staff, some district chiefs are late in filing the required financial reports and a few do not follow the guidelines. In some cases, budgeted amounts are exceeded without prior approval, and occasionally total budgets are overspent. However, overspending budget categories may occur inadvertently, especially with costs that cannot be anticipated very well in advance (e.g., investigation and travel expenses). Although it is the chiefs who submit the quarterly financial reports, they rely on figures supplied by the host county. This may be the source of some delays.

However,

- **The board and the state public defender have limited sanctions to apply when financial guidelines and requirements are not met.**

Payments cannot be withheld in cases of noncompliance because state funds are sent directly to host counties in one lump sum at the beginning of the fiscal year. This is not necessarily unusual with grant-in-aid programs. But in this case, the "grantee" (host county) has no financial stake in the program and no formal relationship to the district chief public defender who operates the program. The board is presently considering a staff proposal to replace the host county arrangement with centralized statewide accounting in the eight multi-county districts.

³ Under the 1991 legislation, the state public defender will be responsible for developing policies governing the operation of the district offices.

Currently, the district chiefs are appointed by the board for four-year terms. They can be fired only for cause. Merely filing late financial reports is probably not sufficient cause for termination, and the board has limited sanctions to apply to ensure that the district chiefs follow board policy.

As a result of this unusual state-county-district fiscal relationship, we found that:

- **It is unclear whether county or state financial guidelines should be applied and who to hold accountable for financial management.**

Current procedures make it difficult to uncover possible financial abuses.

Where assistant public defenders receive benefits, they receive them through the county. The board has allowed each district chief to establish his or her own personnel procedures and policies on travel and other reimbursements. We encountered some evidence to suggest that financial abuses may be occurring. For example, in one district a relatively new employee continued to receive paychecks while vacationing for seven weeks, at which point he was fired. No formal policy on sick leave or vacation existed for this or most other districts, and neither the county nor the district chief knew about the vacation until after the fact. In this particular instance, the employee worked in a different community than the district chief.

Recently, while conducting a county audit, the State Auditor's Office uncovered invoices for liquor that were paid from the public defense fund. The State Auditor called our office, but took no action against the county because county funds were not involved and the county had no formal authority over the public defense program. Apparently no financial audit of the public defense program by itself has been done. The last financial audit by our office covered the period prior to state assumption of district-level operations.⁴

Financial Control in Other States

We found no other example in our study of state programs where staff remained county employees after the state assumed financial responsibility. For the most part, fulltime staff in state-funded public defense programs were considered state employees. Some state-run programs contract for part-time attorney services or with established nonprofit public defender offices. Contracting is recommended as a way of integrating fully developed local programs into a state-financed system, with the contract specifying services and costs, as well as any state standards that must be complied with.⁵

Problems with Management and Administration

An organizational structure should clearly delineate roles and responsibilities. But we found that:

⁴ We audited the board and State Public Defender's Office only.

⁵ Nancy Goldberg and Jay Lichtman, *Guide to Establishing a Defender System* (Washington, D. C.: U.S. Department of Justice, 1978), 39-40.

- **Minnesota's public defender system is not administered according to any single model of administration. In some ways it is administered like a decentralized state agency, but in others it is operated like a grant-in-aid program.**

As noted earlier, financially, the state public defender system appears to be administered like a grant program. In the board's spending plan, monies initially go through the statewide accounting system as a grant line item. However, the system is managed more like a state agency with ten autonomous districts, each headed by a chief who serves for a term. The district chiefs have almost total responsibility for managing their own district operations: they develop and administer their own budgets, and hire, manage, and supervise the assistant public defenders and support personnel. The district chiefs also set salaries. Officially, there are no state employees at the district level.

To be effective, an organization's procedures should permit the identification of staffing needs and provide for the recruitment and training of personnel. However, in the public defender system we found that:

- **A number of the district chiefs need more training in administration, personnel, and financial management techniques.**

The chiefs are professionally trained as lawyers. Some of them reported to us that they resent the managerial and administrative tasks they must handle. As one district chief told us, his approach to managing was to "hire the best lawyers in the district and leave them alone." Some of the chiefs have secretaries or other assistants to whom they delegate financial reporting and other administrative responsibilities.⁶ A minority of the chiefs told us they have received formal training in administration or management. Outside of the two metro districts, in which county employment practices apply, only one district (the third) has a written personnel manual for its employees.

Supervision at the district level needs to be strengthened.

Most of the part-time chiefs told us they were able to provide only minimal supervision over the assistant public defenders. The main reason is that in addition to their administrative duties as chief, they also carry caseloads and must maintain a private law practice as well since they are technically part-time.⁷ Even chiefs interested and trained in personnel management find it difficult to oversee the activities of their assistants because they often work in different communities. One chief (third district) established a regular newsletter as a way of communicating among district personnel. Most of the part-time chiefs learn about personnel problems through complaints from judges or clients. It is also difficult for the chief to know whether the assistants complete their monthly time-and-case reporting forms honestly and thoroughly. Yet, this is the primary record certifying that work was done.

⁶ In some cases, these support personnel are partially paid with state monies, but in others they are fully compensated by the chief's law firm.

⁷ As shown in Chapter 2, the part-time chiefs work approximately 87 percent time on public defense, on average, although some put in more than 100 percent time.

In addition, an organization's procedures should be consistent, clear, and communicated to employees. However, we found that:

- **The board and its administrative staff have established few written, uniform management policies and procedures for the district chiefs to follow.**

There are few state guidelines to help district chiefs improve personnel supervision.

The only state policies that have existed until recently are informal or inconsistently applied. There is some evidence to suggest that policies may not have been clearly communicated. The district chiefs claim to be unaware of other policies that may apply to them, beyond those already mentioned.

Historically, the district chiefs have been used to a great deal of autonomy. A number of people told us that the district chiefs resent efforts to limit their independence, and our interviews with them suggest that some of them do. Some board members contend that this resentment has fueled some district opposition to the orderly creation of a statewide system. However, many of the chiefs told us they support the development of uniform policies, particularly with respect to the collection and analysis of data, financial management, and employment practices. They are simply waiting for the policies to be developed.

The degree of desired state control versus district autonomy remains an unsettled issue, however. It is unclear which policies will be uniform (developed at the state level) and which will remain at the discretion of the district chiefs. At its December 1991 meeting, the board adopted a set of "Standards to Maintain and Operate a Public Defender Office," which were developed by the state public defender.⁸ Although these standards represent a step in the right direction, most of them are quite general. For example, one standard requires that each district establish written policies governing employment, including "fair hiring practices, prohibition of sexual harassment, and other illegal harassment, compensation, job descriptions, supervision, evaluation, and expense reimbursement." Simultaneously, the board is in the midst of developing some uniform personnel policies for all the districts, e.g., covering sexual harassment and equal opportunity.

Administrative Costs

We tried to assess the costs of administering the public defender system. We were unsuccessful because:

- **Administrative duties are shared by state, district, and county officials, and current recordkeeping procedures do not permit an assessment of actual administrative costs.**

There are indications, however, that present administrative procedures may not be cost-effective for the state. Prior to state funding, host counties charged

⁸ A copy is included in Appendix G.

The way host counties are paid for their services may cost the state more than is necessary.

a 1 percent fee for administrative services rendered (payroll, bookkeeping and accounting, and paying invoices). Now, host counties receive the full amount of funding at the beginning of each fiscal year. They invest and earn interest on this money until it is disbursed, which they keep in exchange for their administrative services. We found that:

- **The way in which host counties are currently "paid" for their administrative services is equivalent to a three-fold increase in administrative costs, compared to the prior method used.**

Assuming straight-line spending and an annual 6 percent rate of return, it "costs" the state approximately \$495,000 for county administration, compared to \$165,000 if a 1 percent service charge were assessed. These figures do not include state administrative costs of about \$375,000, plus administrative expenses at the district level. The latter cannot be determined.

Management and Administration in Other States

We learned several lessons about management and administration of public defender systems from our contacts with other states. As we saw earlier, most state-run programs placed public defense in the executive branch. With some variation, programs are usually administered as a centralized state agency or as a state agency with regional administration. Typically, the state public defender is responsible for developing written policies and procedures to guide the public defender system, which are reviewed and ratified by the board if one exists. These policies usually cover hiring processes, personnel procedures, affirmative action, compensation, benefits, contracts, supervision, and record keeping.

Interviewees from other states stressed the need to supervise attorneys doing public defense work, and some states without adequate supervision reported problems. In Ohio, for example, the director of the public defender office reported that assigned counsel are not supervised, so no one can assess the quality of their work or the accuracy of the bills they turn in for payment. He believes that assigned counsel should be supervised by a fulltime public defender.

Most other state-run programs are in the executive branch, administered by a state public defender.

Other state-run programs emphasized the importance of having written policies and procedures in place. We interviewed New Mexico's former state public defender, and she provided a pertinent example.⁹ She described the administration of New Mexico's public defense system in the mid-1980s as a "mom and pop operation," with no written policies and procedures. During 1987-88, she requested and received from the Legislature large funding and staff increases to handle rising caseloads. After she quickly hired staff, the administration, in her words, "collapsed." Without policies and procedures, in particular, the administration was unable to handle rapid growth in the system. In 1989, the state public defender hired an administrative deputy who

⁹ She had been state public defender for over five years and left less than a week prior to our interview.

developed written policies and procedures, installed an accounting package, and tightened the contracting system for contract attorneys.

Problems with the Contracting Method

The standards adopted by Minnesota's Board of Public Defense in December 1991 do not address some of the personnel problems that exist in the system. First,

- **It is unclear who is the employer in the eight part-time districts, and whether the assistant public defenders are independent contractors or salaried employees.**

The employment status of public defenders in the nonmetro districts needs clarification.

Officially, there are no fulltime *state* employees at the district level. There are only a handful of fulltime employees outside of Hennepin and Ramsey Counties, all of whom are investigators, sentencing advocates, or support personnel. These employees are hired by the district chiefs, who also set their salaries and conditions of employment. However, the legal status of these districts is unclear since the district chief position is also part-time and could itself be considered a contract position.

All of the approximately 170 assistant public defenders in these eight districts are hired in a similar way, which is more like an annual retainer than a contract. These attorneys are not paid for hours worked or actual work performed (e.g., cases represented). Rather, each attorney agrees to represent all indigent defense cases that arise in a particular geographical area during the coming year for a fixed annual fee. In nearly all the districts, these agreements between the chief and each assistant are informal: they are based on a handshake with no written documents to back them up.

Once the annual fee is set, the attorney is placed on the host county's payroll and receives a regular paycheck (with FICA and PERA taxes withheld), regardless of hours worked or cases handled. About a third of the part-time assistants are law firm members. In these cases, the individuals receiving the paychecks are not necessarily the ones who do the work.¹⁰

In some part-time districts, attorneys also receive benefits through the county. The payment method, therefore, treats them like salaried employees, although it is unclear if these people would be considered employees of the county, the state, or the chief public defender's law firm.¹¹ We found no recent court

¹⁰ This is evident from the monthly report forms. In one district, several attorneys received \$11,000 a year for the past several years, while reporting between 35 to 50 annual hours, implying they earned about \$225-300 per hour. Meanwhile, other members of the same firm received \$15,000 but reported working over 1,700 hours during the year (a rate of \$8 to \$9 per hour). In reality, they may have signed their checks over to the firm and were paid by the firm. Per hour earnings to the firm were roughly \$31 an hour.

¹¹ The "Standards to Maintain and Operate a Public Defender Office," as adopted by the State Board of Public Defense on December 12, 1991, state: "where public defenders and support staff are fulltime, but not county or state employees, they are employed pursuant to the District Public Defender Personnel Policy Manual."

opinions that might clarify the employment status of the part-time public defenders, which involves such issues as legal liability and workers' compensation eligibility.¹²

Also, we think that:

- **The method of contracting in the eight part-time districts does not compensate people fairly. It probably contributes to inequities in pay and workloads.**

We observed differences in the effective hourly rates earned by the part-time assistants, as described in Chapter 2, but rates vary far more within a district than across them. In one district, for example, the hourly rates ranged from \$14 to \$170 per hour, and in another from \$22 to \$109 per hour. We suspect these inequities are a consequence of the contracting method. It is hard to predict the number and types of cases likely to arise in a given area a year in advance, and it is virtually impossible in districts experiencing rapid population growth. As a result, some attorneys whose caseloads end up being less than expected earn high hourly rates, while those who have to handle more cases than expected earn very little. The chiefs told us that when inequities occur they "try to even things out" the following year. But their ability to do that is limited, particularly if cases are increasing throughout the district.

Contracting in Other States

Many other states contract with attorneys for flat fees or specific numbers of cases.

Annual retainers are not uncommon within the private legal profession, and this method of contracting for public defense services may have been adequate before the rapid caseload growth of the 1980s. But the current professional literature is critical of it:

[Contract defense] programs that require private attorneys to handle all indigent defense cases in a jurisdiction for a fixed amount ... raise serious questions about competent representation.¹³

In addition to contributing to inequity, the incentives for the individual attorney under this contracting method are to spend as little time as possible on each case. In most public defender systems, private contract attorneys are paid by the hour or an "activity fee" or flat fee method of awarding compensation is used. For example, in San Diego County, California, attorneys receive \$400 for a nonserious felony case, \$150 for a half-day appearance, and \$200 per day for trials.¹⁴

¹² The Attorney General's Office issued an opinion, dated December 27, 1968, that counties were liable for social security and employer contributions to the Public Employees Retirement Association, but not workers' compensation. However, this opinion is dated and most likely irrelevant now that the state has assumed financial responsibility for public defense. A lawsuit filed during the study by a former assistant public defender raises some of these issues.

¹³ Robert L. Spangenberg, "We are Still Not Defending the Poor Properly," *Criminal Justice* (Fall 1989), 12.

¹⁴ Philip H. Pennypacker, "If You're Defending the Poor ... What's a Reasonable Fee?" *Criminal Justice* (Summer 1988), 16.

Our study of other states found that those using contract attorneys usually adopted a flat fee rate or contracted for a certain number of cases, with a settle-up at the end of the year. Some public defenders in Kentucky contract to handle cases in an entire county, but the state public advocate reported problems with supervising and obtaining case data from these counties. Following the administrative crisis New Mexico experienced in 1988, the state public defender told us that her office, which had given equal monthly payments to contract attorneys, switched to contracts for specific cases to increase accountability.

CONSISTENCY WITH STATE GOALS

We assessed the public defender system in relation to state goals in two ways. We tried to determine if the way in which the public defender system is organized and administered is consistent with state goals. Also, we looked at whether the decisions made by the Board of Public Defense and its administrative staff support the attainment of state policy objectives.

The Organization of Public Defense and State Goals

We found that:

- **Goals for the state's public defender system are not clearly articulated and defined.**

As discussed in Chapter 1, the state's assumption of financial responsibility for public defense is tied to the unification of the court system. The basic state policy objective in both cases is greater equity in the justice system. But "equal justice" can be defined in several ways, such as the same type or level of services, equal access to the justice system, similar workloads, and the like. In the case of the courts, it has been defined as equalizing judges' workloads and as a unified state salary structure for all court employees, which presumably leads to similar quality personnel statewide.

But in the case of the public defender system, equal justice is not as clearly defined. The objective of equalizing public defender workloads is implied in the Legislature's request for a weighted caseload study. But state statutes are ambiguous over the issue of employment and salary structures for the public defender system. Earlier, we described the changes that have been made to the public defender system over the past ten years, which seem to indicate uncertainty about how it should be organized. Since the board was created in 1981, it has included a different organizational chart with each budget request submitted to the Legislature.

There is uncertainty about the best administrative structure for public defense.

Several different administrative structures could be compatible with the goal of equalizing public defender services or caseloads, depending on the degree of local autonomy permitted. Even a grant-in-aid or contract program can provide for accountability, if properly augmented by a formula for distributing state funds equitably and uniform policies, guidelines, and requirements, which are fairly enforced.

As noted in Chapter 1, all states, when they create a state administrative structure for public defense, have to decide whether to organize it along the jurisdictional lines of the courts or those of prosecutors. In Minnesota, there are differences between the court and public defender systems that affect their respective organizations. One is that the court system is fulltime, while public defense remains a part-time system in eight of the ten judicial districts. As we show below, this has a major effect on hiring qualified attorneys because recruitment is limited to criminal lawyers already in private practice in a community.

Also, in its hiring, the public defender system competes directly with the prosecutorial system, which continues to be organized at the county level. County attorney salaries vary from one county to another; hence, there are competitive pressures for public defender salaries to vary accordingly. Some people argue that to get quality personnel, public defender salaries have to be equivalent to county attorney salaries. This is why both the Hennepin and Ramsey County Public Defender's Offices have negotiated compensation parity with their respective county attorney's offices. When the public defenders we interviewed told us their pay was too low, they made comparisons to attorneys in their own community (county attorneys, appointed counsel, and attorneys in private practice).

As suggested, however, whether public defenders should be under a unified state salary structure, a district salary structure, or be tied to county attorney salaries is an issue yet to be settled.

Progress Toward State Goals

State funding was intended to bring greater equity in public defender workloads.

Since its creation in 1981, the board has had the authority to approve district public defense budgets. Prior to state funding, when counties were assessed their proportionate shares of each district's budget, the board reviewed district budgets individually. Hearings were held in each district to receive testimony from county officials concerning each chief's budget request. Although we cannot determine from the minutes what criteria the board used to make its funding decisions, under county funding there was no need to compare budgets across districts.

With the shift to state funding, the board and its staff needed to change the way budgets were developed and funds allocated among districts. As described in Chapter 2, regardless of the measure used and even allowing for errors in available data, significant disparities in public defense services and workloads exist. It is apparent that some districts are better off financially, as

measured by public defender compensation and the time and money spent on each case. As a result, they are able to provide more services. For instance, in some districts each public defender handles twice as many cases as public defenders in other districts. In some districts, criminal defendants are routinely represented by counsel at their first court appearance, while representation is sporadic in others.

The one clear goal of state financing is ensuring that state monies are spent in proportion to the volume and difficulty of public defense cases. That is why the Legislature funded a weighted caseload study and directed the board to use the study's results when distributing funds among districts.¹⁵ In fact, ensuring that monies are spent proportionately to workloads has been a state policy objective since 1987.¹⁶ This implies that the board and its staff needed to assess inequities across the ten public defender districts and make decisions to correct them.

The board has not changed its funding process.

However, based on our examination of board minutes and interviews with board members and staff, we found that:

- **The board allocates funds to districts according to historical tradition, not based on assessments of need or to rectify inequities among districts.**

The district chiefs continue to develop their own budgets, as they have in the past. Administrative staff review district budgets and make recommendations to the board on funding levels for each one. Although the board has recognized the need to modify its decision-making approach, so far it has not adopted criteria for allocating funds differently.

The board and its staff have tried to equalize services and workloads across districts. First, they told the district chiefs to budget the same hourly rate for all part-time attorneys. But in our opinion,

- **Because of the current contracting method, budgeting identical hourly rates is unlikely to lead to either equal compensation or equal caseloads for public defenders.**

Several district chiefs used the same hourly rate for all assistant public defenders in their 1990 and 1991 budget submissions, and individual rates varied widely, as our analysis of actual earnings for fiscal year 1991 showed. The reason is that since individuals are not paid for hours worked or cases handled, the budgeted hourly rates are unrelated to actual earnings.

Second, in 1989 the board asked for \$100,000 for a "weighted caseload study," which the Legislature appropriated, to provide the data needed to distribute funds more equitably. In October 1989, the board contracted with The Spangenberg Group, a consulting firm specializing in public defense, to conduct it.

¹⁵ *Minn. Laws* (1990), Ch. 604.

¹⁶ *Minn. Laws* (1987), Ch. 250.

Its purpose was to collect baseline data on caseloads, to determine how much time is spent on different types of cases, and to develop caseload standards.¹⁷

However, our examination of the study indicates that:

- **The Spangenberg study does not provide enough information to be used as the basis for reallocating funds among public defense districts.**

The Spangenberg Group assessed how the annual caseload of the average public defender in Minnesota deviates from an ideal caseload size. The study does not contain district-level data on caseloads, yet this is the very information that would be necessary to correct inequities in workloads across districts.¹⁸

Furthermore, although the Spangenberg study recommends a set of caseload standards for Minnesota, the report does not contain an empirical or theoretical justification for those standards. They are apparently based on what the author thinks are reasonable numbers of cases that attorneys should handle during a year. The proposed standards are similar to those recommended by a national advisory group in the early 1970s.¹⁹

In addition, some of the study's data and findings appear inconsistent with the proposed standards. The study found that "in several of the outstate districts, travel time is a big problem."²⁰ The implication is that caseload size will vary by district, with some districts requiring more time per case, on average, due to more time spent traveling. Yet, the study proposes a single set of standards for all districts. Although members were aware of many of the study's inadequacies, the board voted to adopt Spangenberg's standards (with minor modifications) at its October 1991 meeting.

THE PART-TIME STATUS OF PUBLIC DEFENSE

Personnel problems were mentioned to us by all of the district chiefs. The second and fourth districts (Ramsey and Hennepin Counties) report that their public defenders are carrying excessively high caseloads, which has hampered

¹⁷ The Spangenberg Group, *Weighted Caseload Study for the State of Minnesota Board of Public Defense* (Newton, Massachusetts, January 1991).

¹⁸ The Spangenberg study design involved selecting a sample of 60 assistant public defenders and having them complete daily logs for a period of 13 weeks that documented the amount of time spent on each case. However, given the small number of assistant public defenders in Minnesota, all of them would have had to complete the forms to obtain valid estimates of caseloads by district.

¹⁹ Recommended maximum annual caseload size per attorney: 150 felonies; or 400 misdemeanors; or 200 juvenile court cases. See the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973).

²⁰ The Spangenberg Group, *Weighted Caseload Study*, Draft Report, 25.

their ability to provide quality legal representation. As we saw in Chapter 2, the suburban districts (the first and tenth) have experienced rapid population growth and are now handling three times as many cases as ten years ago. Chiefs in all of the part-time districts complained about the low hourly rates earned by their contract attorneys. They told us that rates are not competitive with rates paid to court-appointed counsels in misdemeanor and juvenile cases, which are in the \$50 to \$60 per hour range, nor with what county attorneys earn.

Several chiefs reported that contract attorneys are quitting because the pay is too low, and they are having difficulty recruiting replacements. In the fifth district, which includes the southwestern part of the state, the chief was unable to find practicing attorneys willing to take on public defense work. A similar situation was reported in the seventh district, which includes St. Cloud and Moorhead, where several attorneys recently quit and no replacements could be found.

The chiefs in both districts said they abandoned the traditional approach of contracting with local attorneys and recruited from the pool of recent law school graduates. But there are no district offices or fulltime assistant public defender positions outside of Hennepin and Ramsey Counties, and no formal structure has been established to accommodate them. Hence, these district chiefs said they were forced to hire fulltime public defenders before official personnel policies or salary and benefit structures had been established.

While we have not independently corroborated these personnel issues, these reports raise questions about the adequacy of the current service delivery system in several districts. Because the chiefs told us the main competition for qualified criminal attorneys came from county attorneys, we explored this issue by comparing respective methods and rates of compensation. Table 3.1 compares the annual salaries earned by the chiefs (public defenders and county attorneys), while Table 3.2 compares the hourly wages (salary only) paid to assistant public defenders and assistant county attorneys in each district.

Several districts are unable to recruit part-time, contract attorneys.

First, Tables 3.1 and 3.2 show there are significantly more attorneys working in the prosecutorial system, which also handles a broader range of services than the public defense system. However, Tables 3.1 and 3.2 also indicate that:

- **Most of the counties in outstate Minnesota have fulltime county attorney offices, while all of the public defenders outstate are part-time.**

Over half the counties have fulltime county attorney offices, which are staffed with one or more fulltime attorneys. In some judicial districts (e.g., the third and seventh), there are as many as eight fulltime county attorney offices (plus some part-time). Of the 271 county and assistant county attorneys in these eight districts, 186, or almost 70 percent, are fulltime. Meanwhile, officially none of the public defenders in these districts, including the chiefs, are fulltime.

Table 3.1: Comparison of Part-Time Chief Public Defenders and County Attorneys Salaries, by District, 1991

District	Part-Time Chief Public Defenders			County Attorneys						
	Average Annual Salary ^a	Number	Percent Time ^b	Fulltime		Part-Time			Overall	
				Average Annual Salary ^a	Number	Average Annual Salary ^a	Number	Percent Time ^b	Average Annual Salary ^a	Number
First	\$56,000	1	93%	\$62,938	5	\$30,980	2	66%	\$53,807	7
Third	46,199	1	76	51,764	8	34,296	3	70	47,000	11
Fifth	49,400	1	121	48,980	5	32,299	10	54	37,859	15
Sixth	46,548	1	88	59,630	4	—	0	—	59,630	4
Seventh	52,333	1	99	58,446	8	43,307	2	88	55,418	10
Eighth	48,269	1	63	45,000	1	32,924	12	54	33,853	13
Ninth	66,000	1	111	50,717	6	29,599	10	66	37,518	16
Tenth	33,654	1	46	64,385	7	44,954	1	95	61,956	8
Overall	\$49,800	8	87%	\$56,359	44	\$32,762	40	62%	\$45,122	84

Sources: Program Evaluation Division analysis of data provided by the Board of Public Defense and the Minnesota County Attorneys Association.

^aSalaries for public defenders are based on FY 1991, while those for county attorneys are calendar year 1991. Excludes data for Hennepin and Ramsey Counties. Public defenders and county attorneys are compensated differently. See text for full discussion.

^bPercent time is based on a 40-hour work week or an annual fulltime equivalent of 1,820 hours (2,080 available hours, less 260 for holidays, vacation, and sickness). County attorneys' percent time is self-reported; public defenders' percent time is based on our analysis of their monthly reports.

Table 3.2: Comparison of Assistant Public Defenders and Assistant County Attorneys Salaries, by District, 1991

District	Part-time Assistant Public Defenders		Assistant County Attorneys (Full- and Part-time)	
	Average Hourly Wage (Salary Only) ^a	Number	Average Hourly Wage (Salary Only) ^a	Number
First	\$36.93	16	\$20.50	23
Third	41.04	37	21.59	23
Fifth	33.61	14	23.18	22
Sixth	33.49	22	29.59	26
Seventh	38.07	21	19.95	29
Eighth	44.57	9	17.87	9
Ninth	46.30	22	30.88	21
Tenth	41.67	23	22.71	34
Overall	\$39.60	164	\$23.57	187

Sources: Program Evaluation Division analysis of data provided by the Board of Public Defense and the Minnesota County Attorneys Association.

^aPublic defenders' hourly rates are for FY 1991, while those for county attorneys are calendar year 1991. Excludes data for Hennepin and Ramsey Counties. Public defenders and county attorneys are compensated differently. See text for full discussion.

Tables 3.1 and 3.2 also indicate that, contrary to public defenders' contentions, they appear to be better paid than county attorneys. However, we found that:

- **There are major differences in the methods of compensating public defenders and county attorneys that make salary comparisons alone difficult to interpret.**

Because most county attorneys in nonmetro areas are fulltime employees, their salaries (and hourly wage rates) represent actual earnings. They receive fringe benefits over and above salaries, and the county pays their office expenses. We talked with several of the part-time county attorneys and found that typically they receive separate allowances for overhead expenses, in addition to salaries.

In contrast, public defenders are compensated more like independent contractors, and most of them pay overhead expenses (rent, office expenses, support personnel) and fringe benefit costs (e.g., health and life insurance) out of their salaries.²¹ Hence, their public defense "salaries" do not reflect actual earnings. At the same time, however, as independent contractors they can continue to earn money from their private practice, which fulltime employees cannot do.

However, we also found that:

- **Under the current contracting method, the lowest paid attorneys are those who work the most hours.**

As Table 3.3 shows, effective hourly rates decrease as the number of hours worked increases. This is the case for both public defenders and county attorneys. The difference is that the fulltime county attorneys are truly fulltime, and the average hourly rate translates to an annual salary of just over \$43,000. As independent contractors, the ten public defenders working fulltime hours earn an average of about \$40,500, out of which they must pay overhead expenses. They may earn additional compensation from private-paying clients, but there are few hours left to engage in private practice.

Hence, the contracting method used is disadvantageous for attorneys who work more than half-time on public defense. As they approach fulltime hours on public defense cases, whose volume they cannot control, they have difficulty maintaining their private practice. But it is their private practice, where they earn rates of \$75 an hour or more, that pays their overhead expenses. Major criminal cases, such as murder, have a similar effect. These cases require extensive, concentrated periods of time, during which the attorney must turn away private-paying clients.

We also found that:

²¹ As described in Chapter 2, public defenders in several districts receive rent allowances or fringe benefits, but most do not.

Table 3.3: Comparison of Part-Time Public Defender and County Attorney Hourly Rates, by Hours Worked, 1991

<u>Hours Worked^a</u>	<u>Public Defenders^b</u>		<u>County Attorneys</u>	
	<u>Hourly Rate^c</u>	<u>Number</u>	<u>Hourly Rate^c</u>	<u>Number</u>
Fulltime hours or more	\$22.23	10	\$23.76	186
More than three-quarters time, but less than fulltime	31.07	26	21.63	26
One-half to three-quarters time	33.83	22	26.00	34
One-quarter to one-half time	40.75	50	35.55	16
Less than one-quarter time	<u>45.92</u>	<u>64</u>	<u>69.62</u>	<u>9</u>
Overall	\$39.25	172	\$26.06	271

Sources: Program Evaluation Division analysis of data provided by the Board of Public Defense and the Minnesota County Attorneys Association.

^aBased on a 40-hour work week or an annual fulltime equivalent of 1,820 hours (2,080 available hours, less 260 for holidays, vacation, and sickness). Excludes data for Hennepin and Ramsey Counties.

^bMembers of law firms are assigned the average rate earned by the firm.

^cHourly rates for public defenders are based on FY 1991, while those for county attorneys are calendar year 1991. Public defenders and county attorneys are compensated differently. See text for full discussion.

- **The districts with the most serious personnel problems are those with higher proportions of contract attorneys working nearly fulltime hours.**

As Table 3.4 shows, overall, approximately one-third of the part-time public defenders are working half-time or more on public defense cases, with 21 percent working three-quarters time or more. However, in some districts, the numbers are much higher. In the fifth and seventh districts, which reported high turnover and recruitment problems, 47 percent and 50 percent, respectively, of the contract attorneys work half-time or more. In the first district, over 80 percent of the public defenders work half-time or more.²²

Because all nonmetro assistant public defenders are part-time, when attorneys quit they must be replaced with local attorneys already in private practice. But most established attorneys are unwilling to take on public defense caseloads that will require nearly fulltime hours. In addition to the practical recruitment problem, the part-time status of public defenders means that other goals, such as equal opportunity employment and minority recruitment, cannot be pursued.

In some districts, many contract attorneys are working nearly fulltime.

²² Most of them work for the same law firm.

Table 3.4: Number of Hours Worked by Part-Time Public Defenders, by District, FY 1991

District	Total Number Reporting	Less Than One-Quarter Time ^a		One-Quarter to One-Half Time ^a		One-Half to Three-Quarters Time ^a		More Than Three-Quarters Time ^a		Fulltime Equivalent Personnel ^a
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	
First	17	1	5.9%	2	11.8%	6	35.3%	8	47.1%	12.3
Third	38	17	44.7	20	52.6	0	0	1	2.6	9.7
Fifth	15	3	20.0	5	33.3	1	6.7	6	40.0	8.1
Sixth	23	14	60.9	4	17.4	4	17.4	1	4.3	7.1
Seventh	22	6	27.3	5	22.7	6	27.3	5	22.7	10.7
Eighth	10	2	20.0	5	50.0	1	10.0	2	20.0	4.5
Ninth	23	13	56.5	2	8.7	2	8.7	6	26.1	9.7
Tenth	24	8	33.3	7	29.2	2	8.3	7	29.2	11.2
Overall	172	64	37.2%	50	29.1%	22	12.8%	36	20.9%	73.3

Source: Program Evaluation Division analysis of data provided by the Board of Public Defense.

^aBased on a 40-hour work week or an annual fulltime equivalent (FTE) of 1,820 hours (2,080 available hours, less 260 for holidays, vacation, and sickness). Excludes data for Hennepin and Ramsey Counties. The number of FTEs for the eighth district is understated because it is based on monthly reports from the ten assistants handling felony and gross misdemeanor cases only.

Similarly, because all eight nonmetro district chief public defender positions are part-time, the board is limited in its recruitment and hiring process. It, too, must recruit from the pool of attorneys already in private practice within a district. Indirectly, therefore, the part-time status of district chief positions affects the board's ability to recruit district chiefs because in some districts there may be few eligible, interested candidates.

Therefore, we conclude that:

- **By itself, the part-time, contract method of providing public defense services is inadequate, at least in some districts.**

Our analysis implies that the growth in public defense caseloads has exceeded the capabilities of the current service delivery system in several of the eight part-time districts. Table 3.4 includes the number of fulltime public defenders that each district would need to provide the same level of services as the contract attorneys did in 1991. As this table indicates, on a statewide basis, the 172 part-time, private contractors put in hours equal to approximately 73 full-time people. The number of fulltime equivalents ranges from 4.5 in the eighth district to just over 12 in the first district.²³

²³ Data from the eighth district are incomplete because the monthly reports cover felony and gross misdemeanor cases only, and juvenile and misdemeanor services are provided in this district. Currently, there are 18 part-time public defenders in the eighth district.

Service Delivery in Other States

Most states have mixed public defense delivery systems. Due to differences in population, geography, and volume of cases, within a state, some jurisdictions need fulltime offices. In sparsely populated jurisdictions with few cases, a part-time system, such as contracts or appointed counsel, suffice. However, the literature is fairly consistent in recommending fulltime public defender offices over part-time systems if the number of cases justifies it.²⁴

Where private attorneys also engage in public defense work, there is conflict between the two practices, and both may suffer:

Legally indigent clients are disadvantaged in competing with fee paying clients for the attorney's time... Since salaries paid to part-time defenders are customarily low, and defender 'burn-out' is widespread, the attorney becomes increasingly dependent on and dedicated to his private law practice. This pattern has by now become predictable, as are its effects on the quality of representation.²⁵

Also, evaluations of part-time systems discovered problems similar to what we found in Minnesota's part-time districts: lack of adequate administrative staff, poor recordkeeping and case scheduling, and limited supervision and accountability. Regional offices are recommended for rural jurisdictions that, by themselves, are unable to support a fulltime staff.²⁶ As noted in Chapter 1, several studies found that fulltime offices serving multiple counties cost less to operate than appointed counsel systems.

Part-time systems often lack accountability.

The predominant pattern among the state-funded programs we contacted is to create fulltime offices. Typically, these offices are headed by a fulltime chief, and staffed by fulltime attorneys who handle the bulk of public defense cases. Staff attorneys may be augmented by contract attorneys or appointed counsel in sparsely populated areas and to handle conflict cases. In general, state public defenders told us they preferred fulltime offices because staff focus fully on public defense work, without competition from private practice. Typically, the state public defender selects the people who direct regional offices.

²⁴ Standards prepared by the National Legal Aid and Defender Association recommend fulltime offices--staffed by attorneys who are prohibited from engaging in private practice--as the "preferred method." Similar recommendations have been made by the National Study Commission on Defense Services, the National Advisory Commission, and the American Bar Association. For a discussion, see Goldberg and Lichtman, *Guide to Establishing a Defender System*, Chapter III.

²⁵ *Ibid.*, 28-29.

²⁶ Based on studies in Illinois, Indiana, Kansas, Louisiana, North Dakota, and Pennsylvania. See *Ibid.*, 28-32.

PLANNING AND DECISION MAKING

We compared the Board of Public Defense to what the literature on board decision making suggests are necessary conditions for boards to be effective. We have summarized several of the more important conditions for effective board decision making in Figure 3.3.

Figure 3.3: Conditions for Effective Board Decision Making

A board must:

- Be sufficiently representative of diverse interests;
- Be supported by skilled management and staff;
- Establish a clear division of responsibilities between itself and the chief executive officer; and
- Hold the chief executive officer accountable for carrying out the organization's mission.

A board should also:

- Develop its position description and ask the chief executive officer to do the same; and
- Adopt a policy on "Composition and Tenure of the Board," covering issues not already established by law, which might include board size and balance; committee structure; a rotation plan for board members, the board chair, and committee chairs; and conflicts of interest.

Source: Kenneth N. Dayton, *Governance is Governance* (Washington, D.C.: Independent Sector, September 1987), 5-7.

Through interviews and analysis of board minutes, we examined how the board and its staff have handled major issues facing the public defender system over the past few years. We looked at decisions concerning: 1) the transition from county to state funding; 2) the integration of fulltime and part-time offices into a single system; and 3) the move from part-time to fulltime offices.

Decisions about the State System

A well-run organization, whether headed by a board or a single official, needs to establish goals and objectives and develop plans for accomplishing them. Overall, we found that:

- **The board and the chief administrator have not done enough systematic, long-range planning.**

The board has not fully discussed the issues involved in establishing a statewide system.

The board has taken on a major challenge in moving from county funding to a state-financed system of public defense. The move has been complicated by the decentralized, district-based organizational structure that existed under county financing, the active opposition of some districts to absorption into a statewide system, and by the rapid growth in public defense cases. Board members told us that over the past several years, the board has focused on the need for state financing and on obtaining it. Our analysis of minutes indicates that the board has recently begun to address the issues relating to the move from county to state funding, but it did not do so before or during the process of seeking state funding. Through the November 1991 minutes, the board had not formally discussed the issue of how to integrate Hennepin and Ramsey's fulltime offices into the statewide system, nor did it discuss the implications of allowing Hennepin and Ramsey public defenders to remain county employees. Moreover, we observed tension among board members, staff, and district public defenders that is the result of unresolved problems relating to the state take-over of the districts.

Also, the board and its staff do not have adequate administrative procedures in place. For example, some nonmetro districts are informally hiring fulltime assistant public defenders before the status of these employees has been clarified and before standardized personnel procedures or salary structures have been established.

Similarly, the board and its staff have not developed a plan for assuming juvenile and misdemeanor services from counties, which is occurring in conjunction with moving part-time district chiefs to fulltime status. Recently, the board discussed establishing fulltime offices in the third and sixth districts, in conjunction with the takeover of juvenile and misdemeanor services. The chiefs in these districts are willing to become fulltime.²⁷ Other chiefs have also expressed a desire to go fulltime, however, and the decisions made so far do not appear to be based on an objective analysis of workloads or needs.

From our analysis of board minutes and interviews, we also found evidence that:

- **The board has not always been used to debate and resolve policy issues.**

For example, we found no evidence that the board ever discussed whether or why having host counties provide administrative services was preferable to using the statewide accounting system, although this decision has financial, legal, and policy implications. Also, we found examples indicating that some policy decisions were made informally, by one or two board members and staff, without discussion at a full board meeting. Several board members told us that personnel-related decisions were sometimes made without their knowledge. Evidently, some members, but not others, were contacted informally to discuss issues before board meetings took place. Recently, an outstate chief

²⁷ In the sixth district, the chief already has a county contract to provide misdemeanor and juvenile services, which was part of the rationale for his selection.

reported receiving permission "from the board" to hire fulltime attorneys. We attended the board meetings at which this decision would have been made, and we examined earlier board minutes. We found no evidence to indicate that the board as a whole had discussed this issue.

In our opinion, many of the problems identified in this chapter can be traced to the absence of planning for the changes the system is undergoing. The formation of a statewide system is not a task that could be accomplished solely by a part-time board. The board needed to have fulltime staff in place to carry out its mission and implement its policies. However, we found that the board's administrative unit has been assembled without an adequate assessment of the functions that needed to be performed and the skills required to carry out the board's mission. Based on our interviews with other states, we think the board staff should collectively possess the following knowledge and skills: high-level managerial experience, computer and analysis skills, strategic planning, human resource/personnel management, budgeting and accounting, and contract compliance. Current staff possess some of these skills, but not others.

However, we did find that the state public defender has recently developed a set of broad, long-range goals, which the board endorsed at its November 1991 meeting. These represent a good starting point. However, these goals need to be defined in specific, concrete terms that specify how they can be achieved and what organizational changes are needed to achieve them. Also, from what we observed, the board and the state public defender still need to establish a process for determining priorities among the many pressing issues facing the system.

The board is making progress toward improving its decision making.

We also found that:

- **The board has recently begun to develop a formal structure and process for making decisions.**

The board minutes reflect an informal decision-making style, especially in the mid to late 1980s. The board appeared to conduct meetings without formal rules or procedures. In the last year or two, however, the minutes show movement toward the use of parliamentary procedures and rules, such as using meeting agendas and voting on formal motions. During the April 1991 meeting, members discussed at some length the formalization of board policies and procedures. Members decided to hold regularly scheduled meetings on a monthly basis, and board meetings are now tape-recorded.²⁸ The board has formed committees at various times during its history, and currently has a personnel committee that meets often. However, the board lacks a formal, permanent committee structure and a policy on rotation of board membership and leadership positions, which are recommended for effective board decision making (see Figure 3.3).

²⁸ Prior to April 1991, meetings were held irregularly at the chair's discretion.

As Table 3.5 shows, the board has been meeting slightly more often during the past year, and most board members have attended the meetings. The majority of meetings have been held in the Twin Cities metropolitan area.²⁹

Table 3.5: Average Attendance at Public Defense Board Meetings, 1985-1991

<u>Year</u>	<u>Number of Meetings</u>	<u>Average Attendance Per Meeting</u>
1985	7	5.6
1986	5	5.6
1987	7 ^a	4.7
1988	8 ^a	5.0
1989	6 ^a	5.5
1990	8	5.4
1991	<u>9^b</u>	<u>6.2</u>
Overall Average	7.1	5.4

Source: State Board of Public Defense minutes, 1985-1991.

^aDoes not include outstate district budget hearings, at which board member attendance was often low.

^bThrough November 1991.

Board and Staff Roles

In order to be an effective decision-making body, a board must establish a clear division of responsibilities between itself and its staff, especially the chief executive officer. Our observations and analysis of board meetings, as well as interviews with board members and staff, suggest that in the case of the public defense board:

- **There is disagreement about which decisions should be made by the board and which by the staff.**

As a consequence, there are indications of tension between some board members and staff. Some board members think that staff members have made some policy decisions without the board's approval, while staff think that the board has been "micro-managing." One recent example involved creating full-time offices in the third and sixth districts. The chief administrator told us that his role involved implementing the board's decision to establish fulltime offices. Meanwhile, some board members claimed that since these were the first fulltime offices to be established outside of Hennepin and Ramsey Counties, it constituted a policy decision that the board should be making. They were concerned that the board would be held accountable for decisions with financial and legal ramifications, which they had not made.

²⁹ Some board members from outside the metro area told us they found it difficult to attend all of the meetings.

In 1991, the Legislature made changes that were intended to clarify roles and responsibilities within the public defender system. The Legislature expanded the state public defender's formal role to include the preparation of standards and policies, which are subject to approval by the board. The state public defender also hires and fires the chief administrator, and the administrative unit has been moved under his supervision. However, the board retains its power to appoint the district chiefs, while the state public defender is responsible for developing uniform standards governing district office operation.

Given the timing of our study, which began at the same time these changes took effect (July 1991), it is too soon to assess their practical effects. The board has asked the state public defender to prepare a formal description of his new role and responsibilities, which the board will review. During the time period of our interviews and observations (July-October 1991), the roles of the board, the state public defender, and the chief administrator remained blurred. But the state public defender told us he has established weekly meetings with the administrative staff and monthly meetings with the district chiefs. Most of the chiefs we interviewed saw this as a positive step that was improving communication and coordination among the districts and between the chiefs and state staff.

Roles of Boards and Staff in Other States

In our interviews with other states, reflected in Table 3.6, we found that state public defender offices and boards are set up in a variety of ways. In state-funded systems we contacted, the predominant pattern is for the board to appoint or recommend a state public defender, who is responsible for administering the program. The state public defender typically hires staff to direct regional offices. In most cases, the state public defender carries no caseload and hires deputies to handle specific areas of responsibility. The state public defender is responsible for administering the trial and appellate levels, but these functions are usually conducted by separate offices or divisions. The reason for organizational separation of the appellate and trial divisions is protection against conflicts of interest arising from claims of ineffective counsel at the trial level.³⁰

As Table 3.6 shows, the board and state public defender may share certain functions, such as policymaking. Aside from responsibility for selecting a state public defender, the board's level and type of involvement in public defense systems varies from state to state. State public defenders who share policymaking with a board said their role consists of alerting the board to the need for decisions and providing information and proposals upon which the board can base its decisions.

Most state public defense boards have fewer responsibilities than Minnesota's.

³⁰ The American Bar Association (ABA) and National Legal Aid and Defender Association (NLADA) recommend organizational independence to ensure independent representation on appeal in cases where claims of ineffective counsel at the trial level may be made. See ABA, "Providing Defense Services," *Standards Relating to the Administration of Criminal Justice* (Washington, D.C., 1979), 5-56; NLADA, *Guidelines for Legal Defense Systems in the U.S.* (1976), 514.

Table 3.6: Duties of Public Defense Boards or Commissions and State Public Defender Offices in Other States

	<u>Colorado^a</u>	<u>Connecticut</u>	<u>Kansas</u>	<u>Kentucky</u>	<u>Maryland</u>	<u>Ohio</u>	<u>Wisconsin</u>
BOARD DUTIES							
Appoint or recommend state public defender	X	X	X	X	X	X	X
Hire assistant public defenders		X	X				
Supervise state public defender office or system			X	X			
Develop or approve budget				X			X
Develop policy, procedures, rules			X			X	X
STATE PUBLIC DEFENDER DUTIES							
Develop and/or administer budget	X	X	X		X	X	X
Administer trial level	X	X	X	X	X	X ^b	X
Administer appeals function	X	X	X	X	X	X	X
Suggest policy or legislation	X	X	X	X	X		X
Hire or appoint public defenders	X		X	X	X	X	X
Collect and analyze data	X	X	X	X	X	X	X
Oversee training		X		X			X

Source: Phone interviews and statute analysis.

^aThis table includes states we interviewed which have the equivalent of a State Board of Public Defense and a State Public Defender's Office, as well as state or shared state-county funding.

^bResponsible for public defense offices, not for assigned counsel.

Information for Decision Making

Effective organizations typically collect, summarize, and use information to make better, more informed decisions. During our study, we found that:

- **Although the board identified a need for better information more than six years ago, it still does not have a uniform management information system that monitors cases and hours across districts.**

Limited progress has been made toward developing accurate information on cases and workloads.

As discussed in Chapter 2, the board's predecessor--the Judicial Council--began collecting case data from all attorneys in districts belonging to the state system in 1974. This data collection effort continues largely unchanged to this day. Our analysis of board minutes, reflected in Figure 3.4, shows that in 1985, several years before the state takeover of public defense, the board began allocating monies for statistical data collection.

Since that time, the minutes reflect periodic discussions of the need for a management information system and the hiring of consultants to help fill this need. In 1988, the board created an administrative unit, which has since expanded. In January 1989, the board established goals, including the creation of a "uniform caseflow and data collection information system."³¹ In March 1989 and again in August 1991, the chief administrator contracted with private consultants to assess the board's data collection needs. In October 1989, the board contracted with The Spangenberg Group, whose study was discussed above. Yet, from the minutes and from our interviews, it appears that little progress was made on improving information management during that period. The board still does not have a way to accurately compare caseloads and costs across districts.

The most recent consultant report, submitted to the board by KPMG Peat Marwick in September 1991, recommends obtaining access to the Supreme Court's information system (TCIS), developing standard definitions for terms, and buying time management software for attorneys.³² No cost estimates are provided in the Peat Marwick study.

The initial Peat Marwick consultant study did not tackle the problem of how to integrate those districts that already possess management information systems into a state information system.³³ In particular, Hennepin County has a long-established, computerized management information system. Ramsey County has developed its own system, which is manual. As pointed out in Chapter 2, the fact that Hennepin and Ramsey Counties define a "case" differently than the rest of the state makes accurate caseload comparisons across all ten

³¹ Board of Public Defense, Minutes of Meeting, January 28, 1989, 2.

³² KPMG Peat Marwick, "Minnesota Board of Public Defense Information Systems Study," Draft Report dated September 1991.

³³ A Peat Marwick proposal for continued MIS development, dated December 27, 1991, provides for "review of Hennepin and Ramsey County systems capabilities."

Figure 3.4: History of Management Information System Development for the Public Defender System

<u>Date</u>	<u>Recommendation or Decision</u>
1974	The Judicial Council begins collecting closed case information, using a standard form, from districts included in the state system.
July 1985	The Board of Public Defense allocates \$6,000 for a position to provide statistical data collection and compilation, and to procure a contract to implement a uniform budgeting system.
July 1988	The chief administrator advises the board of the need for a more accurate management information system (MIS).
December 1988	The public defenders recommend a management information system involving standards, uniform reporting systems, and eventual computerization.
January 1989	The board gives administration approval to implement a uniform caseload management system, a uniform data collection system, and a weighted caseload study. The board gives preliminary approval for administration to examine MIS incorporation into the 1990 budget process.
March 1989	The chief administrator reports hiring a part-time consultant to review current data collection and caseload management system and to make recommendations.
November 1990	The minutes reflect that "there was a short presentation on management information that had been collected in relation to caseload data, hours, etc." ¹
April 1991	The board approves a motion directing the administration to begin identifying the data variables needed for management and budgetary decision making.
August 1991	The chief administrator reports having contracted with Peat Marwick for a study of the board's existing data collection efforts. The contract amount is not included.
September 1991	Peat Marwick staff present findings and recommendations to the board relating to data collection.
November 1991	The board passes a motion to allocate \$5,000 to Peat Marwick for continued MIS analysis.

Source: Interviews and State Board of Public Defense minutes, 1985 to 1991.

¹Board of Public Defense, Minutes of Meeting, November 1, 1991, 1.

districts very difficult. The development of a statewide MIS will require careful planning for how best to integrate these large systems.

We also found that:

- **The information on caseloads that is collected is apparently not used in decision making.**

Historical records indicate that annual summaries of the monthly report forms completed by part-time public defenders used to be prepared by staff in the state public defender's office, and subsequently by the board's administrative staff. Current staff told us that these data on cases and hours contain inconsistencies and errors, which is the reason they are not used in decision making. As discussed in Chapter 2, we found that the terminated-case data contain some errors due to incorrect data entry and lack of consistent definition of terms. These problems can easily be corrected.³⁴

According to board minutes, available caseload information was not used in making decisions about some important issues, such as how to begin creating fulltime public defender offices or how to identify and correct inequities among districts. Without adequate information, such decisions may become subjective and, therefore, controversial.

Current staff indicated that they did not feel they could provide the expertise necessary to develop a management information system, which is why they have hired consultants. KPMG Peat Marwick provided a summary of data needs and recommendations for improving data collection. However, implementing these suggestions requires technical skills, which it is unclear that current administrative staff possess.

Information Management in Other States

Most states have computerized information systems to monitor cases and attorney hours.

Most of the state-run systems we studied maintained statewide statistics on caseloads and costs. Sometimes data is collected to monitor contract compliance in order to ensure accountability. In Oregon, for example, information on cases is collected independently from the courts as a way of verifying the time and case data submitted regularly by contract attorneys.

In 1986, the National Legal Aid and Defender Association (NLADA) studied the issue of public defender caseload/workload standards. At that time, the NLADA found that 75 percent of public defender programs had formal or informal standards in effect, with half of the programs having formal, written standards. One standard typically required attorneys to keep time records that included hours spent on individual cases. Most of these programs had developed a computerized management information system, and several had

³⁴ The Peat Marwick study pointed out the need for standard definitions of terms. But it did not mention that cases may be systematically undercounted during data entry, nor that there are coding problems in the data maintained by the Supreme Court, which would need to be solved for that data to be useful to the public defense system.

developed caseload standards as a result of their own internal time studies.³⁵ It would appear that Minnesota is behind most other states in its information management capabilities for the public defender system.

SUMMARY

In this chapter, we assessed the adequacy of the public defender system. We compared its structure, administrative procedures, and decision making with good management practices, with state goals, and with other states' public defense systems. In general, we found that good administrative practices are not always followed throughout the system. In particular, the public defender system is administratively fragmented, with unclear lines of authority and accountability. Those in authority often lack full and accurate information for decision making, and they also have not developed adequate planning procedures to ensure that goals are met.

We learned that Minnesota's public defense system has more autonomy than is typically found in other states, partly because it is not clearly under the direct control of a single official or branch of government. Also, we found that many of the administrative procedures in place do not provide adequate financial control over state monies. In most districts, financial and personnel management responsibilities continue to be handled by part-time attorneys, who are not all sufficiently trained in management, and by county governments that no longer have authority over the public defender program.

Finally, we found that the board has faced challenges that a part-time board, by itself, is not well-equipped to handle. The board has had administrative staff to help it carry out its work, but the staff needs to improve some of its skills in order to implement adequate statewide administrative procedures. We think the board's lack of an adequate information system is a major reason for the system's current shortcomings.

35 Cited in The Spangenberg Group, *Weighted Caseload Study*, 11-12.

CONCLUSIONS AND RECOMMENDATIONS

Chapter 4

In this chapter we summarize our conclusions about the public defender system and present our recommendations. We recognize that the system is in flux and that, especially over the last few months, the Board of Public Defense and the state public defender and his staff have made efforts to resolve some of the issues we identify. We draw our conclusions and recommendations from our analysis of the system during the time span of our audit. Our discussion focuses on the question:

- **What changes are needed to improve the statewide public defender system?**

Minnesota's public defense system is in transition and under stress. Caseloads are rising, financial strains are increasing, and there continue to be many difficult organizational issues to resolve. While the state has assumed a larger role in financing public defense, progress toward improving the system's overall management and accountability has been slow. We know that trying to create a statewide system from one in which districts traditionally have had a great deal of autonomy is not an easy task. But the state's public defense system needs a better administrative infrastructure, including formal personnel policies, financial controls, contract monitoring, strategic planning, and management information systems.

ACCOUNTABILITY AND OVERSIGHT

Our study looked at the organization of the public defender system to determine whether it provided for sufficient accountability and oversight by the state. We conclude that:

- **The current structure of the public defender system and its administrative procedures do not provide enough accountability to ensure that state monies are being well spent.**

Our analysis suggests there are three sources of the accountability problems we observed. First, the structure permits unusual independence and uncertainty as to what administrative practices and policies should apply. Although the argument that autonomy is necessary in the public defense system has

The statewide public defender system needs both accountability and autonomy.

**Fragmented
authority and
decision
making
diminish
accountability.**

merit, it must be balanced with the need for accountability and control. We looked at a number of other state-run programs, and few provided the degree of independence found in Minnesota's system.

Second, decision-making and administrative authority is fragmented among several actors. The board allocates money and selects district chiefs, but formerly the chief administrator and now the state public defender has overall administrative responsibility for the system. This diffusion of authority contributes to a general lack of accountability.

Finally, those with oversight and management responsibilities--the board, the chief administrator and his staff, and the district chief public defenders--have not fully exercised the authority they do possess. For example, through its oversight, funding, and hiring and appointing powers, the board has the authority to set expectations and hold the state public defender, the chief administrator, and the district chiefs accountable for meeting them. But neither the board, nor the staff, nor most of the district chiefs have yet established the kinds of policies, procedures, and financial controls normally found in a well-run organization.

Alternative Organizational Structures

We considered recommending several alternatives to the current structure, including the following:

- 1) Creation of a Department of Public Defense as a separate executive department, with the head appointed by the Governor and with authority to manage regional offices;
- 2) Creation of a separate administrative unit under the Supreme Court, with the unit head selected by the Court and with authority to manage regional offices;
- 3) Creation of a Department of Public Defense as an executive department, with a state public defender appointed by a gubernatorially appointed board; and
- 4) Strengthening the position of the state public defender, but retaining a board jointly appointed by the Governor and the Supreme Court with authority to appoint the state public defender and make policy for the system.

Given the board's performance, a strong case could be made for abolishing it and giving either the Governor or the Supreme Court the authority to appoint a state public defender, who would be solely responsible for the state system. Most state programs are administered through a department with a single person at its head. This kind of structure provides for clear lines of authority and accountability.

However, we recommend option 4:

- **The board should be retained with shared gubernatorial-Supreme Court appointments. But the state public defender should be given clearer administrative powers over the public defense system. The state public defender should have the authority, with the board's consent, to appoint and remove chief public defenders and to contract with districts that can establish adequate systems of public defense that operate within the state system.**

While this option does not eliminate the board, it significantly realigns responsibilities and powers within the public defender system. We think the realignment will clarify responsibilities and authority and lead to greater accountability.

We recommend retaining the board for three reasons. First, we think public defense needs some autonomy, and it does not fit easily in either the executive or judicial branch. The Court has the responsibility for ensuring that constitutional rights are protected, but the public defense system also needs independence from the judiciary. If responsibility is shared, a board is necessary.

Second, policy and oversight boards or commissions have certain advantages, such as representation of diverse viewpoints. Even if the system were moved under the executive branch, a board could provide valuable policy assistance. Also, a board can help insulate the state public defender from undue political pressure. Most state-funded programs we looked at have a board for these very reasons. But typically its functions are limited: it selects the state public defender and assists in policymaking.

Finally, the Legislature debated several alternative organizational arrangements for the public defender system in the 1991 session and, in the end, kept the board and enacted changes aimed at making the state public defender more accountable for the entire state system.

We think our recommendation builds on the Legislature's 1991 action by further clarifying the division of responsibilities between the board and the state public defender. In our view, the board should retain broad authority for policymaking, responsibility for setting a formula for fund allocation, and the power to appoint the state public defender. But it is expecting too much of a part-time board to appoint and hold accountable ten district chiefs as well. Therefore, we think the state public defender needs enhanced executive authority to make the system operate coherently. Most importantly, the district chiefs should be directly answerable to the state public defender. Also, the state public defender should be able, if he chooses, to contract with a district that can establish an adequate system of public defense within the overall state system. Finally, the state public defender should have the authority required to establish clear policies and procedures for operating the statewide system within the guidelines set by the board.

The state public defender needs more executive authority to ensure that policies are carried out.

Administration of a Statewide System

Beyond the problems of the system's overall structure, we identified a number of administrative problems that limit accountability, and which require attention. These include:

There are administrative weaknesses that need to be corrected.

- "host" county administration;
- the method of paying host counties for administrative services;
- assigning major administrative duties to part-time attorneys who are not sufficiently trained in management and administration;
- a lack of clarity with respect to who is the employer in the part-time districts, and whether county or state financial reimbursement policies apply;
- the method of contracting with part-time attorneys; and
- having fulltime district employees remain county employees while entirely funded by the state.

These problems stem from the hybrid administrative structure and procedures currently in place, and demonstrate that public defense in Minnesota is still in transition from a county-financed system to a statewide system. If more progress is to be made toward a state system, we think these administrative weaknesses need to be resolved.

Therefore, we recommend that:

- The state public defender should develop a plan for improving the administrative structure of the public defender system. The plan should be reviewed and approved by the board and presented to the 1993 Legislature.

The state public defender needs a plan for correcting these weaknesses.

In our consideration of how the system could be structured administratively, we reviewed several different models. They are summarized in Figure 4.1, and include the following:

- a state agency with centralized administration and a uniform salary structure;
- a state agency with decentralized administration at the district level, with a state or district-level salary structure; and
- a grant-in-aid or contract approach, with the grants or contracts awarded to counties, district agencies, and/or nonprofit legal corporations.

Figure 4.1: Comparison of Alternative Administrative Structures for a Statewide Public Defender System

TYPE	CHARACTERISTICS	ADVANTAGES/DISADVANTAGES
Centrally administered state system	<ul style="list-style-type: none"> ● Uniform state salary structure. ● Planning and creation of local or regional offices undertaken by state public defender office. ● Director of state office appoints staff to head local offices. ● Director of state office sets general policy and guidelines for the operation of local offices. ● State office monitors and evaluates the services provided by all local offices. ● Daily administration of local offices handled by local staff. 	<p>ADVANTAGES:</p> <ul style="list-style-type: none"> ● Uniform legal representation among local jurisdictions. ● Professional independence of individual public defenders. <p>DISADVANTAGES:</p> <ul style="list-style-type: none"> ● Fails to account for local differences affecting public defense services. ● Public defender compensation may not remain competitive with local attorney rates in all jurisdictions in the state.
State system with semi-autonomous regional offices	<ul style="list-style-type: none"> ● Regional salary structure. ● Statewide standards and regulations are promulgated to govern the organization and operation of regional public defender programs. ● Budgets and staffing levels of regional offices determined by statewide assessments of caseloads and other factors (e.g., geography, operation of the courts). ● Compensation, office management, operations, and administration are handled by regional chief public defenders. 	<p>ADVANTAGES:</p> <ul style="list-style-type: none"> ● Uniform quality of defender services, while protecting the independence of the regional office. ● Permits regional variations to satisfy unique local concerns and differences. <p>DISADVANTAGES:</p> <ul style="list-style-type: none"> ● Some duplication of efforts (e.g., budgeting, development of office procedures, training). ● Although more responsive to local differences than centrally administered system, less responsive than autonomous local programs.
State-funded system with grants or contracts to autonomous local programs	<ul style="list-style-type: none"> ● Local salary structure. ● State funds allocated among local units according to a funding formula. ● Statewide standards and regulations are promulgated that grantees or contractors must follow. ● Local programs submit plans and budget requests, which are approved by state staff. ● Grant or contract award stipulates state standards or conditions that must be complied with. ● Grantee or contractor held accountable through financial and progress reports. ● Directors of local programs typically have considerable autonomy to design and operate public defense programs. ● Grants may require matching funds from local units of government or other local source. 	<p>ADVANTAGES:</p> <ul style="list-style-type: none"> ● Responsive to local differences and concerns affecting public defense services. ● Permits public defense compensation to remain competitive with local attorney rates. <p>DISADVANTAGES:</p> <ul style="list-style-type: none"> ● Least cost-effective of the three models, if used statewide, because of duplication of efforts. ● Not appropriate for sparsely populated jurisdictions because of insufficient number of cases. ● Differences in service levels across jurisdictions may occur if local jurisdictions also help pay for services.

Source: Adapted from Nancy Goldberg and Jay Lichtman, *Guide to Establishing a Defender System* (Washington, D.C.: U.S. Department of Justice, 1978), Chapter III.

In the short run, the state public defender could choose to contract with districts that can meet state requirements.

Each of these models can provide for accountability, if accompanied by a formula for distributing funds equitably among districts, as well as explicit policies, standards, requirements, and mechanisms of enforcement. They vary principally on the degree of local autonomy permitted.

Currently, an important consideration in choosing a model is how to incorporate the existing fulltime offices in Ramsey and Hennepin Counties into a statewide system. Because Ramsey and Hennepin Counties are at such different stages of development from the other districts, we think it would be difficult to immediately incorporate them into a centrally administered, uniform system. That is why we propose giving the state public defender the authority to contract with a district that has established an adequate system of public defense. We think this authority could be used to incorporate the Ramsey and Hennepin districts into a state system in a way that accommodates the fact that they are significantly different from the other eight districts. We think this approach has merit, at least until the rest of the public defense system develops the kind of administrative structures and procedures that it needs.

In the long run, it may be desirable to incorporate these districts into the state system in the same manner as the others. However, we think that constructing a truly statewide system of public defense will require considerable planning and more time to resolve the difficult issues involved. A phased approach may be more likely to succeed in the long run. In our opinion, that is a decision that should rest with the state public defender. In the short-run, the system needs to reach an accommodation that permits people to come together and focus on the job of providing public defender services.

In other areas that need administrative improvement, we recommend that the state public defender:

- **Assess the financial costs of alternative administrative arrangements, including the costs of needed equipment, office expenses, staff, and training;**
- **Determine which policies require uniform state guidelines and which should remain at the discretion of the district chiefs; and**
- **Delineate the steps to be taken, a timetable, and associated costs.**

Decisions about how to administer the public defender system should be based on the outcome of this planning process, particularly the analysis of costs. However administrative and management responsibilities are divided between the state, districts, and counties, the plan should provide for the following:

- **Appropriate training for individuals with financial, management, and supervisory responsibilities;**
- **Personnel policies and financial control procedures that conform with those found in state agencies; and**

In the long run, the most cost-effective approach for administering the system should be chosen.

- **Better supervision of part-time and fulltime personnel.**

In order to be successful, the administrative staff needs the requisite knowledge and skills. We recommend that the state public defender:

- **Obtain an independent analysis and evaluation of required administrative positions, and their respective job skills and salary structures, by the Department of Administration or the Department of Employee Relations; and**
- **Either restructure or retrain administrative staff to ensure that people with the appropriate skills are on board.**

We found that the current procedures for contracting with part-time attorneys do not provide for sufficient accountability. While we recognize the financial pressures created by increasing caseloads, we recommend that the state public defender, in conjunction with the district chiefs:

- **Change the contracting method so that part-time contract attorneys are paid for either hours worked or cases handled;**
- **Prepare formal written contracts; and**
- **Develop and implement contract management procedures that ensure better monitoring of contract attorneys.**

Other Recommendations to Improve Accountability

Under our recommendations, the public defense system would continue to operate fairly independently. It still would not be subject to the policies, rules, and procedures of either executive agencies or the Supreme Court. Hence, in order to increase accountability and oversight, we recommend that the state public defender should:

- **Adopt uniform, specific budget categories for the districts and the state public defender's office that permit less discretion and an analysis of costs over time; and**
- **Establish a more detailed spending plan that clearly identifies total administrative costs, direct service costs, and grants or contracts.**

We also recommend that:

- **The Supreme Court and/or the Department of Finance should review the public defender budget before it is sent to the Legislature.**

Given the shared responsibility between the executive and judicial branches for appointing the board, it is reasonable that both be given an opportunity to review and comment on the budget for the public defense system. Also, such reviews would provide the Legislature with some assurance that proposed expenditures are in accordance with state policy and procedures.

Improving the Board of Public Defense

If the board continues to have policy and oversight responsibilities, we recommend that, to be more effective:

- **The board should continue to formalize its policies and procedures by establishing a committee structure and a policy on rotation for board members, committee members, and the chair; and**
- **It should clarify its relationship with the state public defender and his staff by defining responsibilities (sample position descriptions are included in Appendix H).**

PLANNING AND DECISION MAKING

The move to statewide funding was intended to correct inequities in resources and service levels that characterized Minnesota's county-based public defender system. To accomplish this goal, some fundamental issues need to be tackled.

Better Information

The most basic of these is the need for accurate, consistent information from all districts about services, hours worked by public defenders, and actual caseloads. This information is needed for two purposes: to make funding allocation decisions, and to monitor the activities of assistant public defenders. The board and its staff need to act quickly to develop the internal capacity to maintain and analyze such data so that the board can use it to allocate state monies more equitably.

We recommend that:

- **The state public defender and the board should make the development and installation of a management information system a high priority.**

Any plan for a statewide management information system must recognize that Hennepin County already has a computerized system in place. Information generated from both the state and Hennepin County must be compatible. Further, data on caseloads from both Hennepin and Ramsey Counties must be

The board and state public defender need to move quickly to develop a management information system.

compatible with information from the rest of the state. If Supreme Court data on cases are part of the information system plan, its purpose should be to verify data submitted by public defenders. Funding requests to install a state management information system should include details on how the system will be implemented, who will be responsible for oversight, and what kinds of data and reports will be generated.

We also recommend that:

- **The board should develop a strategy--a process and a formula--for allocating state dollars to achieve and maintain equity.**

As this report shows, there are large differences across districts in services, caseloads, costs per case, hours spent per case, compensation paid to public defenders, and other resources available. The board must begin to rectify these inequities through its authority to make fund allocation decisions. Although it needs accurate information to do so, the board can begin by ensuring that problems in the information already available are corrected and by determining how to change its allocation process in the future.

Better Planning

The state has already taken over funding for felonies and gross misdemeanors in all ten districts and juvenile and misdemeanor cases in three districts. It is in the process of assuming responsibility for juvenile and misdemeanor cases in an additional two districts. Given the administrative weaknesses that require attention and the more immediate problems that need to be resolved, our overall recommendation is that:

- **The Legislature should review and approve the state public defender's plan for addressing the problems in the system before new requests are made to take over additional services from counties.**

The state public defender and the board need to improve their planning and decision-making capacity in several ways before seeking to expand the state system. We recommend that the board, the state public defender and his staff, and the district chiefs (regardless of who they report to), take the following step:

- **Put into effect a strategic planning process so that goals are clarified, priorities among issues are set, and detailed plans for solving problems are developed.**

In addition to a plan for administration of the system, better planning is needed for the establishment of fulltime or partially fulltime district offices in the part-time districts, and the assumption of juvenile and misdemeanor services in districts where these services continue to be provided by counties.

We conclude that relying only on part-time contracts with private attorneys in the nonmetro districts is no longer a viable method for delivering public defender services. In addition to the part-time chiefs having major management and administrative responsibilities, it is apparent that in some districts there are not enough practicing attorneys willing to take on public defense cases. This is a particular problem where contract attorneys are spending more than half-time on public defense cases. Therefore, we recommend that:

- **The state public defender should begin developing alternative approaches for providing public defense services in the outstate districts, which may involve the creation of some fulltime positions.**

The system may need some fulltime public defenders, augmented by contracts, in the outstate districts.

We reviewed some evidence, cited in Chapter 1, which suggests that an efficient model for delivering public defender services in nonmetropolitan areas consists of a district office, staffed with a small number of fulltime attorneys and support staff, and augmented by contracts with private attorneys. The relative mix of fulltime and contract employees will depend on the number and geographical distribution of cases. There may be other approaches with merit as well, such as the strategic development of fulltime state staff to handle certain types of cases.

Planning for the creation of fulltime positions needs to be done in conjunction with changing the administrative structure, since it involves deciding who will be the employer and whether there will be a statewide or district salary structure. Also, we think that decisions to create fulltime positions or district offices should be based on workloads of the assistant public defenders and coincide with the expiration of current chiefs' terms. Independent assessments of the costs of establishing offices should be made.

These plans should be detailed enough to clarify what, when, and by whom activities will be accomplished. They should also include dollar estimates (budgets), which demonstrate that the chosen approach is the most cost effective, based on objective information.

Appendix A: Characteristics of Public Defense Boards in Other States and Recommendations of Professional Organizations

<u>State</u>	<u>Appointed By</u>	<u>Size</u>	<u>Term Length (Years)</u>	<u>Excluded Categories</u>	<u>Required Categories</u>
Colorado ¹	Supreme Court	5	N/A	Judges, prosecutors, public defender, law enforcement	3 lawyers, 2 nonlawyers
Connecticut	Chief Justice, Legislative Leaders, Governor	7	3	Public defenders, more than 3 from one political party	2 judges, 2 nonlawyers
Hawaii	Governor	5	N/A	N/A	1 from each county
Kansas	Governor; Senate confirms	9	3	Judges, law enforcement	5 lawyers, 4 nonlawyers, also based on population of area
Kentucky	Governor; Legislature; Court suggests names	9 + 3 ex-officio	4	Law enforcement, prosecutors	N/A
Maryland	Governor	3	3	N/A	2 lawyers
Missouri	Governor; Senate confirms	7	6	More than 4 from one political party	4 lawyers
North Dakota	Chief Justice; Several groups suggest names	7	3	N/A	1 judge
Ohio	Governor, Supreme Court, Senate	9	4	Judges, prosecutors, law enforcement	5 lawyers, 4 from each political party
Oklahoma	Governor; Senate confirms	5	5	More than 1 from a Congressional district	3 criminal lawyers
Virginia	Speaker of the House	9	3	N/A	3 judges, 3 lawyers, 3 nonlawyers
Wisconsin	Governor; Senate confirms	9	2	Judiciary, law enforcement, D.A., corporation counsel, State Public Defender	N/A
NLADA	N/A	N/A	N/A	Judges, prosecutors	Lawyers
ABA	N/A	N/A	N/A	Judges, prosecutors	Lawyers, client representatives ²
Model State Defender Act	N/A	9	3	Judges, prosecutors, law enforcement	Representatives of community groups, lawyers

Sources: Phone interviews; statute analysis; *NLADA Guidelines for Legal Defense Systems in the United States* (1976); American Bar Association, "Providing Defense Services," *Standards Relating to the Administration of Criminal Justice* (1978); National Study Commission on Defense Services, *Model State Defender Act*.

¹This table includes states we interviewed or whose statutes we examined which have the equivalent of a Board of Public Defense, as well as full or partial state funding. Indiana is excluded from this listing because it depends primarily on county funding.

²Clients representatives would "reflect the racial, ethnic, and sexual composition of the community." (New York State Defenders Association, Inc., *A Compilation of National Standards for Public Defense Services Draft* (1978), 6.)

INTERVIEW WITH CHIEF PUBLIC DEFENDERS

Appendix B

LIST OF TOPICS

1. Background Information

- History of the public defender system in the district; when public defender services first offered; how the system has changed over time
- Type of public defender system currently in existence; number of people who work in it, and how they are employed

2. Organization of the district office

- What public defender services are offered
- How is the office organized? Where do people work? How and what are people paid?
- Who runs the office? Who handles budget development? payroll and accounting? employee-related tasks (hiring, personnel supervision, training)? How are these tasks accomplished?
- What expenses does the budget cover? What doesn't it cover?
- How are cases assigned? How are cases managed? Any policies or procedures governing the handling of cases?
- What data exist to document case outcomes (guilty pleas to lesser charges? charges dropped? trial rate? acquittal rate? other measures?)
- What could be done to improve administration of the district office?

3. Staffing and caseloads

- How have the type and level of public defender staff changed over time?
- Full-time versus part-time staff: how does this issue affect your office?

- Staff turnover: to what extent is it a problem? How much of it has occurred over past 8-10 years?
- Level of experience of public defenders in the district: what is it? what information exists to describe it over time?
- What data exist (and how maintained) to document caseloads? How is a "case" defined?
- What are the most important needs facing the district?

4. District-Board-State Public Defender's Office relationships

- How would you describe the relationship between your office and the Board of Public Defense? between your office and the administrative staff of the Board? between your office and the State Public Defender's Office?
- Centralization versus decentralization: what functions should be centralized (and in what office)? which should remain at the district office level?
- Your opinions regarding the changes made to the public defender system in 1989? in the past legislative session?
- Your opinions regarding the structure and the division of responsibilities within the public defender system: is the current division of labor, responsibilities, and authority appropriate? What changes should be made to the current structural arrangements?

5. Issues facing the public defender system in Minnesota

- What do you see as the major issues facing the state's system? What can/should be done about them?
- Your opinions regarding the "quality" and "efficiency" of Minnesota's public defender system
- How can the system be made more effective? more efficient?

6. Eligibility criteria

- We realize it is the court's responsibility to screen and verify defendants' eligibility for public defender services, but we would like your opinions about how well the process works in your district
- From your experiences, do you believe that public defender services are being provided to individuals who are not in need of them? In what proportion of the cases?
- What could be done to improve the process by which eligibility screening is handled and reimbursement fees are collected?

HOURS USED TO CALCULATE FULLTIME EQUIVALENTS (FTEs)

Appendix D

The following breakdown is drawn from Spangenberg's *Weighted Caseload Study* (1991, 63). For our calculation of FTEs, we included the 120 training and administration hours (i.e., total hours = 1,820), since we needed to know the hours spent on work relating to the public defender system. Training and administration hours are reported on the monthly terminated case forms submitted by public defenders. For analyses of caseloads, we subtracted training and administration hours because they do not represent time available for representing cases.

Annual Billable Hours

Annual Hours - 40 hour workweek		2,080
<u>Days</u>	<u>Leave</u>	<u>Hours</u>
10	Holidays	80
1	Floating Holiday	8
15	Vacation	120
6.5	Sick Leave	52
15	Training and Administration	<u>120</u>
Subtotal		380
TOTAL ANNUAL HOURS		1,700



STATUTE ANALYSIS AND TELEPHONE INTERVIEWS WITH OTHER STATES

Appendix E

<u>State</u>	<u>Interviewee</u>	<u>Position</u>
Alaska	John Salemi	Director of the Public Defender Agency
Colorado	David Vela	State Public Defender
Connecticut	Joseph Shortall	Chief Public Defender
Indiana	Bruce Kotzan Larry Landis	State Court Administrator Director of the Public Defender Council
Kansas	R. G. Henley Ron Miles	Office of the Judicial Administrator State Director of Indigent Defense Services
Kentucky	Paul Issacs	State Public Advocate
Maryland	Stephen Harris	State Public Defender
New Mexico	Jacquelyn Robins	Former State Public Defender ^a
Ohio	Randy Dana	Director of the Public Defender Office
Oregon	Ann Christian	Director of Indigent Defense Services
Vermont	Bud Allen	Defender General
Washington	Bob Boruchowitz	King County Public Defender
Wisconsin	Ellen Berz	Chief of the Trial Division, Office of the State Public Defender

^aShe had left the State Public Defender position only a few days before the interview.

STATUTE ANALYSIS ONLY

Delaware
Hawaii
Idaho
Iowa
Maine
Missouri
Nebraska
Nevada
New Hampshire

New Jersey
North Dakota
Oklahoma
Rhode Island
Utah
Virginia
West Virginia
Wyoming

PUBLIC DEFENDER SYSTEM

Statute Information from Other States

State _____

Statute year _____

NOTE: If a statute doesn't mention an item at all, use NA for Not Available.

1. How is the public defender system organized to provide trial court representation? (e.g., by counties, districts, etc.)
2. How is the system funded?
3. Is there a State Public Defender Office?
 - Yes
 - No
- 3a. Does the state public defender have appellate responsibilities only? Or appellate and trial court responsibilities?
- 3b. How is the state public defender selected?
- 3c. What are the duties and responsibilities of the state public defender?
- 3d. Does the state public defender have a limited term?

Yes

No

How long?

3e. Are there any limitations on the number of terms?

Yes

No

How many terms are allowed?

3f. To whom does the state public defender report?

3g. Who reports to the state public defender?

3h. Anything else of interest about the state public defender?

4. Is there a group such as a board of public defense or commission?

Yes

No

4a. What is it named?

4b. At what level does it function? (e.g., county, state, both--explain)

4c. How are members selected?

4d. Are certain membership categories required?

4e. Are certain membership categories excluded? (e.g., judges)

4f. What are the duties and responsibilities of the board?

4g. Who reports to the board?

- 4h. To whom does the board report?
- 4i. Do the members have limited terms? How long are terms?
- 4j. Are members required to rotate off the board after so many terms? How many?
- 4k. How is the chair selected? Must the chair rotate, or can one person serve indefinitely as chair?
- 4l. Does the board have an administrative staff? (This may not be mentioned in the statute. If it isn't, just put NA for Not Available. If it is, we'd like a short description, like how large, required training, etc.)
- 4m. Anything else?
5. Is there a separate appellate function at the state level? How is it organized? (Especially, who selects staff, what is its role, to whom does it report...)
6. How is the public defender system organized at the local level? In particular, are there local public defenders? What are they called? How are they selected? What are their powers and responsibilities? To whom do they report and who reports to them?
7. Are there any provisions in the statute for differences in the system based on size of the local entity? (E.g., A fulltime public defense system for urban areas exceeding a certain population size.)
8. Are there other organizations involved in delivering public defense services? (e.g., Minnesota has Public Defense Corporations) Who do they serve? How are they funded? To whom are they accountable?
9. Who or what group creates budget(s) for the system, and at what level? (e.g., state level, local level) Who administers the budget(s)?
10. How does the state determine whether defendants are eligible for public defender services?
11. What procedures does the state have for handling "conflict" cases?
12. Anything else of interest?

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APPENDIX G

Standards to Maintain and
Operate a Public Defender Office

As adopted by the
State Board of Public Defense
December 12, 1991

INTRODUCTION

These Standards have been proposed and adopted at a time when Minnesota's indigent defense system is desperately in need of additional resources. The Standards reflect, in addition to national norms for a public defense system, the views of the Board, State Public Defender, and District Chief Public Defenders as to how public defender offices in Minnesota should operate. We all realize that the implementation of some of these standards will depend on increased funding. To that extent, they are aspirational, but they represent the kinds of aspirations we are required to have, if all Minnesota's citizens are to receive due process of law.

John Stuart
Minnesota State Public Defender

1. Standards to maintain and operate an office.

a. Personnel.

(1) The employment of all public defender staff in Minnesota should be regulated by written policies, approved by the appropriate authority, and accessible to the employees.

COMMENT: This standard is meant to establish that every employee should be able to refer to written descriptions of conditions of employment. For example:

- where public defenders and support staff are full-time, unionized, county employees, they have access to county personnel policies and collective bargaining agreements.

- where public defenders and support staff are full-time, but not county or state employees, they are employed pursuant to the District Public Defender Personnel Policy Manual.

- where public defenders and support staff are employed by the State of Minnesota, they have access to the Board of Public Defense Personnel Manual.

- where public defenders and support staff are part-time, they should be employed pursuant to written contracts, and/or district personnel policies.

Minimum contents for personnel policies include: fair hiring practices, prohibition of sexual harassment, and other illegal harassment, compensation, job descriptions, supervision, evaluation, and expense reimbursement. For full-time employees, these policies should also include vacation, holidays, sick leave, and termination, at a minimum. Policies should include provisions for appeal, or grievance procedures, or similar means for an employee to seek review of an adverse decision.

b. Compensation.

Public defense attorneys and staff should receive fair compensation, taking into account:

- whether or not they receive benefits in addition to salary;
- in the case of part-time public defenders, their overhead;
- their training and experience;
- their caseloads; and/or supervisory and administrative responsibilities;
- compensation of prosecuting attorneys and staff in their district; and
- compensation of public defense attorneys and staff in other districts, and, in the case of the state office, the attorney general.

COMMENT: This standard provides six factors for determining appropriate compensation for an individual. Compensation should be comparable to that of prosecutors handling similar cases in the district.

FURTHER REFERENCE: See, for comparison:

(1) A.B.A. Standards, Providing Defense Services, § 5-3.1:

"The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices."

(2) Washington Defender Association, Standards for Public Defense Services, Standard One.

(3) National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, § 13.11:

"Salaries through the first five years of service for public defender staff attorneys should be comparable to those of attorney associates in local private law firms."

See also, § 13.7 (chief defender's salary to be not less than that of a district court judge.)

c. Budget Administration.

GENERAL STANDARD ON BUDGET MANAGEMENT

Budgets should be designed and implemented in such a manner as to ensure accountability to the resource provider, provide an audit trail, ensure timely and accurate reporting, and assist the chief public defender to maximize services while staying within budget. At the same time the budget system should allow for flexibility to allow the chief to manage the resource at the local level. The implementation of the budget should provide for the accurate recording of expenses of the district to specific line items and timely reporting to the central office. The use of standard definitions in line items, recording of expenses, and reporting of hours should be maximized to the extent possible.

Specific standards on budgets:

(1) Where a line-item budget has been approved by the Board, no state money can be transferred from one budget category to another in amounts greater than 10%, without the approval of the Chief Administrator. Upon disapproval, the district chief may appeal to the State Public Defender.

COMMENT: This standard assumes that the Board continues its plan to simplify, standardize, and reduce the number of line items. The standard is meant to apply to the budget line items presented to, and funded by, the Board.

(2) District chiefs in multi-county districts should distribute state-funded resources, to the best of their ability, equitably among the counties of the district.

COMMENT: The "equitable distribution of resources" standard does not mean that all resources must be divided equally among the counties, regardless of caseload or size. Rather it means that a good-faith attempt should be made to distribute state-funded services fairly among the counties, so that no counties are systematically disadvantaged nor are the assistant public defenders disadvantaged in any county within a district.

(3) In funding investigation and expert witness expenses, Minn. Stat. § 611.21 shall be used only for unanticipated expenses, or when state money for the district has been spent or committed.

COMMENT: The Board adopted this standard on August 30, 1991. However, we will need to discuss further what constitutes an "unanticipated" expense. If caseloads in a district are running as projected, expenses like serving subpoenas and taking witness statements would not be "unanticipated." However, these routine services might be "unanticipated" in a given case, in a district where there is an "unanticipated" flood of serious cases. Unique

services required in a given case - for example, D.N.A. expert - might be "unanticipated" even if overall district caseload is normal.

(4) Whenever a district chief seeks funding from a source other than the State Board of Public Defense, the Chief Administrator must be informed of the request and its resolution.

(d) Training.

(1) New staff should receive appropriate orientation from the district chief public defender, or her or his designee.

(2) Intermediate attorney training should be provided to all public defenders by the combined efforts of the district chief public defender, and the state public defender.

(3) Management training should be provided to district chief public defenders and other supervisors by the state public defender or his/her designee.

COMMENT: "Orientation" includes topics such as applicable personnel policies, district policies as to how services such as investigation are obtained, and local rules of court. The state public defender may assist in this training if requested.

"Intermediate attorney training" includes such activities as the Bemidji Trial School, Criminal Justice Institute, and annual training events provided by the office of the state public defender. District chiefs are encouraged to conduct "in-house" training, and to make use of national events sponsored by organizations such as N.L.A.D.A.

FURTHER REFERENCE: See, for comparison:

(1) A.B.A. Standards, Providing Defense Services, § 5-1.4:

"The plan should . . . provide for the effective training of defenders and assigned counsel."

(2) N.L.A.D.A., Report of the National Study Commission on Defense Services, § 5.7:

"The training of defenders should be systematic, comprehensive and at least equal in scope to that received by prosecutors. Every defender office should provide an orientation program for new staff attorneys. Intensive entry-level training should be provided at the state or local level"

"In-service training programs for defender attorneys should be provided at the state and local level so that all attorneys are kept abreast of developments in criminal law, criminal procedure and the forensic sciences."

e. Economic Conflicts of Interest.

(1) Gift policy. (Insert Board's Gift policy.)

(2) Disclosure of potential conflicts: A public defender who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the defender's financial interests, so as to create a potential or actual conflict of interest, shall take the following actions:

(a) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;

(b) deliver a copy of the statement to the Chief Administrator of the State Board of Public Defense; and

(c) follow the course of action directed by the Chief Administrator in consultation with the State Public Defender, or, in the alternative, submit the issue to the State Board of Public Defense at its next regular meeting.

COMMENT: This Standard is drawn substantially from Minn. Stat. § 10A.07.



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**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

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BOARD OF PUBLIC DEFENSE

GIFT POLICY

Description and Scope:

All employees under the jurisdiction of the Board of Public Defense in the course or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the State of Minnesota, for any activity related to the duties of the employee unless otherwise provided by law.

Provisions:

The acceptance of any of the following shall not be deemed as a violation of the Board's Gift Policy:

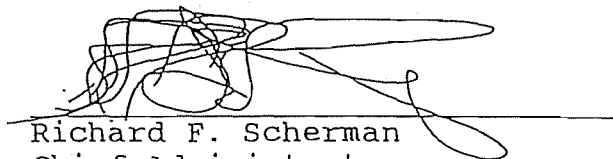
1. Gifts of nominal value - \$25 or less.
2. Plaques or similar mementos recognizing individual services in a field of specialty or to a charitable cause.
3. Payment of reimbursement expenses for travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the State of Minnesota and which have been approved in advance by the appointing authority as part of the work assignment.
4. Honoraria or expenses paid for papers, talks, demonstrations, or appearances made by employees on their own time for which they are not compensated for by the State.

Limitations:

1. There shall be no cash gifts accepted.
2. Each employee under the jurisdiction of the Board of Public Defense shall report annually to their appointing authority the amount and nature of each honorarium, gift,

loan, item, or benefit equal in value to \$25 or more, received by the employee. The report shall include the name and address of each person from whom an honorarium, gift, loan, item or benefit was received and the date it was received.

Approved as to Execution
Board Meeting August 30, 1991



Richard F. Scherman
Chief Administrator

EXAMPLES OF POSITION DESCRIPTIONS

Appendix H

POSITION DESCRIPTION OF BOARD OF TRUSTEES

Function

As representatives of the public, be the primary force pressing the Institution to the realization of its opportunities for service and the fulfillment of its obligations to all its constituencies.

Duties

1. Planning

Approve the Institution's philosophy and review management's performance in achieving it.

Annually assess the ever-changing environment and approve the Institution's strategy in relation to it.

Annually review and approve the Institution's plan for funding its strategy.

Review and approve the Institution's five-year financial goals.

Annually review and approve the Institution's budget.

Approve major policies.

2. Organizations

Elect, monitor, appraise, advise, stimulate, support, reward and, if deemed necessary or desirable, change top management. Regularly discuss with the CEO matters that are of concern to him/her or to the Board.

Be assured that management succession is properly being provided.

Be assured that the status of organizational strength and manpower planning is equal to the requirements of the long-range goals.

Approve appropriate compensation and benefit policies and practices.

Propose a slate of directors to members and fill vacancies as needed.

Annually approve the Performance Review of the CEO and establish his/her compensation based on recommendations of the Personnel Committee and Chairman of the Board.

Determine eligibility for and appoint Board Committees in response to recommendations of the Nominating Committee.

Annually review the performance of the Board and take steps (including its composition, organization, and responsibilities) to improve its performance.

3. Operations

Review the results achieved by management as compared with the Institution's philosophy, annual and long-range goals, and the performance of similar institutions.

Be certain that the financial structure of the Institution is adequate for its current needs and its long-range strategy.

Provide candid and constructive criticism, advice and comments.

Approve major actions of the Institution, such as:

Capital expenditures on all projects over authorized limits and major changes in programs and services.

4. Audit

Be assured that the Board and its committees are adequately and currently informed--through reports and other methods--of the condition of the Institution and its operations.

Be assured that published reports properly reflect the operating results and financial condition of the Institution.

Ascertain that management has established appropriate policies to define and identify conflicts of interest throughout the Institution, and is diligently administering and enforcing those policies.

Appoint independent auditors subject to approval by members.

Review compliance with relevant material laws affecting the Institution.

POSITION DESCRIPTION OF CHAIRMAN OF THE BOARD

Function

1. As Chairman of the Board, assure that the Board of Trustees fulfills its responsibilities for the governance of the Institution.
2. Be a partner to the CEO, helping him/her to achieve the mission of the Institution.
3. Optimize the relationship between the Board and management.

Responsibilities

1. Chair meetings of the Board. See that it functions effectively, interacts with management optimally, and fulfills all of its duties. With the CEO develop agendas.

2. With the CEO recommend composition of the Board committees. Recommend committee chairmen with an eye to future succession.
3. Assist the CEO in recruiting Board and other talent for whatever volunteer assignments are needed.
4. Reflect any concerns management has in regard to the role of the Board of Trustees and other constituencies.
5. Present to the Board an evaluation of the pace, direction, and organizational strength of the Institution.
6. Prepare a review of the CEO and recommend salary for consideration by the appropriate committee.
7. Annually focus the Board's attention on matters of institutional governance that relate to its own structure, role, and relationship to management. Be assured that the Board is satisfied it has fulfilled all of its responsibilities.
8. Act as additional set of eyes and ears.
9. Serve as an alternate spokesperson.
10. Fulfill such other assignments as the Chairman and CEO agree are appropriate and desirable for the Chairman to perform.

POSITION DESCRIPTION OF PRESIDENT AND CEO

Function

1. Serve as Chief Executive Office of the Institution, reporting to the Board of Trustees, accepting responsibility for the success or failure of the enterprise.
2. With the Chairman of the Board, enable the Board of Trustees to fulfill its governance function, and facilitate the optimum interaction between management and the Board of Trustees.
3. Give direction to the formulation and leadership to the achievement of the Institution's philosophy, mission, and strategy, and to its annual objectives and goals.

Responsibilities

Board of Trustees

1. With the Chairman of the Board, develop agendas for meetings, so that the Board can fulfill all its responsibilities effectively. Develop an annual calendar to cover all crucial issues in a timely fashion.
2. See that the Board and the Chairman are kept fully informed on the condition of the Institution on all important factors influencing it.
3. Get the best thinking and involvement of each Board member. Stimulate each one to give his/her best.
4. Work with the Chairman to make the committee structure of the Board function effectively.
5. With the Chairman, recommend the composition of the Board and its committees.

6. Annually evaluate the performance of the Chairman of the Board for the appropriate committee.
7. Be responsible to and report to the Board of Trustees.

Chief Executive Officer

1. Be responsible for the Institution's consistent achievement of its mission and financial objectives.
2. Make certain that the Institution's philosophy and mission statements are pertinent and practiced throughout the organization.
3. Assure that the Institution has a long-range strategy that achieves its mission, and toward which it makes consistent and timely progress.
4. Make certain that the flow of funds permits the Institution to make steady progress towards the achievement of its mission and that those funds are allocated properly to reflect present needs and future potential.
5. See that there is an effective management team, with provision for succession.
6. Ensure the development and implementation of personnel training and development plans and programs that will provide the human resources necessary for the achievement of the Institution's mission.
7. Maintain a climate that attracts, keeps and motivates top quality people--both professional and volunteer.
8. Formulate and administer all major policies.
9. Serve as the chief spokesman for the Institution, and thereby see that the Institution is properly presented to its various publics.

Source: Kenneth N. Dayton, *Governance is Governance*, Oakleaf Foundation (September 1987).



STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE

Richard F. Scherman
Chief Administrator

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February 20, 1992

Mr. James R. Nobles
Legislative Auditor
Centennial Building
St. Paul, Minnesota 55155

Dear Mr. Nobles:

On behalf of the State Board of Public Defense, thank you for your report. You have provided us, in a coherent form, with a statement of many of the goals the Board has been working toward over the last five years.

As you have reported, the development of a state system has been difficult and at times acrimonious. I am convinced that we are slowly but surely making progress on overcoming the resistance to this policy initiative of the legislature.

The process has been accelerating while your report was being written. As a result, we have completed some of the tasks you want to see us accomplish, including:

- (1) Board by-laws, committees, processes and meetings;
- (2) administrative reorganization of the State Public Defender's Office;
- (3) statewide standards, proposed by the state public defender;
- (4) uniform policies on equal employment opportunity and sexual harassment; and
- (5) a comprehensive statewide training program.

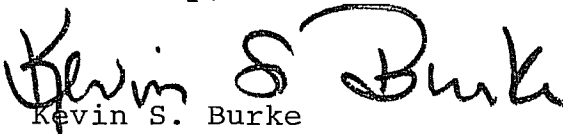
Some of these achievements have only been possible since July 1, 1991, when last year's reorganization bill went

Mr. James R. Nobles
Page Two
February 20, 1992

into effect. This new statute has clarified our organizational relationships greatly. While there is not unanimity on our Board with respect to your recommendations for further reorganization, there is consensus in the need for planning and accountability.

Despite the overwhelming caseload we currently face, I believe that with the cooperation of almost everyone involved, we have achieved the most productive, cooperative working atmosphere that Minnesota's public defender system has had since I was appointed to the Board in 1984. With the help of your report, and the assistance of the legislature, we are ready to make further progress in the specific areas your report cites.

Sincerely,


Kevin S. Burke

KSB/cf

STATE OF MINNESOTA
OFFICE OF THE STATE PUBLIC DEFENDER

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February 20, 1992

Mr. James R. Nobles
Legislative Auditor
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St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for the chance to review the final draft of your report on the public defender system. It is clear that you took into account many ideas from the 300 pages of materials we submitted in response to the first draft.

The result is a report which I believe will be very useful in continuing to build a system of public defense to serve poor people accused of crimes throughout Minnesota. In particular, I strongly endorse your recommendations that we:

- continue to place a high priority on developing a Management Information System;
- continue to revise contract procedures, to achieve state-wide pay equity;
- continue working to clarify the employment status of part-time defenders; and
- accelerate the development of new strategies to deliver services to the clients, and to provide better training and supervision to all of Minnesota's public defenders.

Mr. James R. Nobles
February 20, 1992
Page 2

Of course, some of these recommendations require increased funding. For example, I would like to try to develop your idea that some full-time regional offices be created, to provide some of the services in Greater Minnesota. But, as you recognize, part-time public defenders currently subsidize the system by paying their own overhead. To accomplish this particular improvement we will need resources for overhead, and to pay administrative time for the district chiefs. We will also need to add to our professional administrative staff -- currently 3 people, as compared with 14 in Wisconsin - to accomplish some of the tasks you recommend.

On the whole, though, your report does envision a fair, equitable, state-wide system, providing the best possible services to the client, in a cost-effective manner. This is a goal which the Chief Administrator and I warmly support.

Sincerely,



John M. Stuart
Minnesota State Public Defender

JMS/pmw

Recent Program Evaluations

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<i>Tax Increment Financing</i> , January 1986	86-02
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<i>Deinstitutionalization of Mentally Ill People</i> , February 1986	86-04
<i>Deinstitutionalization of Mentally Retarded People</i> , February 1986	86-05
<i>Management of Public Employee Pension Funds</i> , May 1986	86-06
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<i>Public Defender System</i> , February 1992	92-03
<i>Administrative Spending for Higher Education</i> , forthcoming	
<i>Regional Transit Planning</i> , forthcoming	

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