

PUBLIC DEFENDER SYSTEM

Board of Public Defense and State & District Public Defenders

***SELECTED SCOPE FINANCIAL AUDIT**

JULY 1, 1990 - APRIL 30, 1993

DECEMBER 1993

***See description of this new
report style in the following
Note to Report Readers.**

**Financial Audit Division
Office of the Legislative Auditor
State of Minnesota**

93-60

Centennial Office Building, Saint Paul, MN 55155 • 612/296-4708

BOARD OF PUBLIC DEFENSE

SELECTED SCOPE FINANCIAL AUDIT FOR THE PERIOD JULY 1, 1990 - APRIL 30, 1993

Public Release Date: December 23, 1993

No. 93-60

AGENCY BACKGROUND

Minnesota's public defender system is comprised of the Board of Public Defense, the Office of the State Public Defender, ten district public defender operations, and five public defense corporations. The Board of Public Defense is part of the judicial branch and is primarily responsible for overseeing the state's public defender system and allocating state funds to the state public defender, the ten district public defender operations, and to five public defense corporations. Effective July 1, 1990, the state, through the board, assumed primary financial responsibility for district public defender operations.

SELECTED AUDIT AREAS

♦ *Payroll and Grants to Public Defense Corporations*

The board appropriately processed and recorded its payroll transactions for the Administrative Services Office and the Office of the State Public Defender for the period July 1, 1990 through April 30, 1993. The board also appropriately processed grants to public defense corporations.

♦ *District Public Defense*

The board and its Administrative Services Office (ASO) converted the eight multi county district public defender operations onto the state's centralized payroll and accounting systems as of January 1, 1993. The board and the ASO are now in a much better position to oversee and monitor district public defender operations. We found that administrative expenditures of the first and tenth districts for the period July 1, 1990 through December 31, 1992, were proper and were adequately supported.

However, we found that the board and the ASO accepted final settlement payments from the host counties without verifying the accuracy of the settlement amounts. In addition, the ASO did not follow statewide accounting procedures for establishing encumbrances.

Contact the Financial Audit Division for additional information.
296-1730

FINANCIAL AUDIT DIVISION



STATE OF MINNESOTA

OFFICE OF THE LEGISLATIVE AUDITOR

CENTENNIAL BUILDING, ST. PAUL, MN 55155 • 612/296-4708

JAMES R. NOBLES, LEGISLATIVE AUDITOR

Senator Phil Riveness, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

R. Peter Madel, Chair
Board of Public Defense

Members of the Board of Public Defense

John Stuart, State Public Defender
Office of the State Public Defender

Audit Scope

We have conducted a financial related audit of selected aspects of the Board of Public Defense, including the Office of the State Public Defender and the first and tenth judicial district public defender offices for the period July 1, 1990 through April 30, 1993. Chapter 1 provides a description of the Board of Public Defense's activities and finances. Chapters 2 and 3 discuss the results of our audit.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial activities attributable to the transactions of the Board of Public Defense are free of material misstatements.

We performed tests of the Board of Public Defense's transactions to obtain reasonable assurance that the board had, in all material respects, administered its programs in compliance with applicable laws and regulations. However, our objective was not to provide an opinion on overall compliance with such provisions.

Management Responsibilities

The management of the Board of Public Defense is responsible for establishing and maintaining an internal control structure. This responsibility includes compliance with applicable laws, regulations, contracts, and grants. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that:

- assets are safeguarded against loss from unauthorized use or disposition;
- transactions are executed in accordance with applicable legal and regulatory provisions, as well as management's authorization; and
- transactions are recorded properly on the statewide accounting system in accordance with Department of Finance policies and procedures.

Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

Internal Control Structure

For purposes of this report, we have classified the significant internal control structure policies and procedures in the following categories:

- Board of Public Defense
 - payroll,
 - public defense corporation grants, and
 - district public defender expenditures, including payroll, for all multi county districts from January 1, 1993 through April 30, 1993.
- Office of the State Public Defender
 - payroll.
- District Public Defenders
 - administrative expenditures of the first and tenth district.

For all of the internal control structure categories listed above, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation. Our review was more limited than would be necessary to express an opinion on the Board of Public Defense's system of internal accounting control taken as a whole. We also considered whether the Board of Public Defense's financial activities were conducted in a reasonable manner for a public entity. To achieve this objective, we reviewed selected policies and practices in effect during the audit period and as of the time of our fieldwork in April 1993.

Senator Phil Riveness, Chair
Members of the Legislative Audit Commission
R. Peter Madel, Chair
Members of the Board of Public Defense
John Stuart, State Public Defender
Page 3

Conclusions

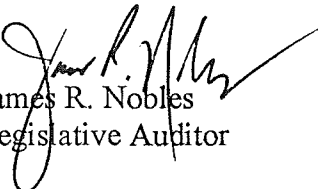
Our study and evaluation disclosed the conditions discussed in Chapter 3, findings 1 and 2, involving the internal control structure of the Board of Public Defense. We consider these conditions to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the entity's ability to record, process, summarize, and report financial data.

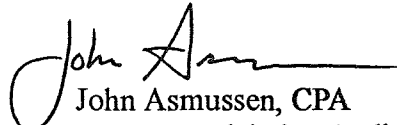
A material weakness is a reportable condition in which the design or operation of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial activities being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We believe none of the reportable conditions described above are material weaknesses.

The results of our tests indicate that, with respect to the items tested, the Board of Public Defense complied, in all material respects, with the provisions referred to in the audit scope paragraphs. With respect to items not tested, nothing came to our attention that caused us to believe that the Board of Public Defense had not complied, in all material respects, with those provisions.

This report is intended for the information of the Legislative Audit Commission and management of the Board of Public Defense. This restriction is not intended to limit the distribution of this report, which was released as a public document on December 23, 1993.

We thank the staff of the Board of Public Defense, the Office of the State Public Defender and the chief public defenders of the first and tenth districts for their cooperation during this audit.


James R. Nobles
Legislative Auditor


John Asmussen, CPA
Deputy Legislative Auditor

End of Fieldwork: June 25, 1993

Report Signed On: December 15, 1993

Board of Public Defense

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Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

John Asmussen, CPA	Deputy Legislative Auditor
Tom Donahue, CPA	Audit Manager
Tony Toscano	Auditor-in-Charge
Sonya Hill, CPA	Auditor
Joan Haskin, CPA	Auditor

Exit Conference

The issues in this report were discussed with the following staff of the Board of Public Defense on December 1, 1993:

John Stuart	State Public Defender
R. Peter Madel	Chair, Board of Public Defense
Dick Scherman	Chief Administrator
Kevin Kajer	Fiscal Director

Board of Public Defense

Chapter 1. Introduction

Minnesota's public defender system is comprised of the Board of Public Defense, the Office of the State Public Defender, ten district public defender operations and five public defense corporations.

The Board of Public Defense is part of the judicial branch of state government. However, it is not subject to the administrative control of the Supreme Court. The board is primarily responsible for overseeing the state's public defender system. The board is also responsible for allocating funds to the state public defender, the ten district public defender operations and to five public defense corporations that primarily serve minority populations.

The board membership consists of seven appointees. The Supreme Court appoints four members and the Governor appoints three. The board appoints the state public defender and the chief public defenders in each of the ten judicial districts. The judicial districts cover multiple counties except for the second district (Ramsey County) and the fourth district (Hennepin County).

The state public defender heads the Office of the State Public Defender which is responsible for handling indigents' appeals to the Supreme Court and the Court of Appeals. The office also provides legal services to prisoners through the Legal Advocacy Project (LAP), and the Legal Assistance to Minnesota Prisoners (LAMP) programs. The LAP program handles disciplinary hearings and parole violations or revocations, while the LAMP program provides legal assistance in matters such as custody and divorce.

A chief public defender for each of the ten districts is responsible for hiring and supervising the assistant public defenders in the district. They are responsible for providing all trial court public defender services within their districts.

The public defender corporations are nonprofit organizations that primarily represent minority defendants. The board allocates state funds to each of the corporations under a grant agreement, which must be partially matched with funds from other sources.

Effective July 1, 1990, the state, through the board, assumed primary financial responsibility for district public defender operations. As a result, board expenditures for public defense services increased from \$2.7 million in fiscal year 1990, to \$19.8 million and \$21.3 million in fiscal years ended June 30, 1991 and 1992 respectively. Table 1-1 shows expenditures of the public defender system made during fiscal years 1991 and 1992.

Board of Public Defense

Table 1-1
Board of Public Defense Expenditures
Fiscal Year Ended June 30

	Fiscal Year	
	1991	1992
Grants:		
District Public Defense	\$16,719,070	\$18,022,000
Public Defense Corporations	680,657	776,995
Payroll	1,778,071	1,901,324
Other Expenditures	628,193	604,563
	<u>\$19,805,991</u>	<u>\$21,304,882</u>

Source: Statewide Accounting System.

State appropriations fund the costs incurred for public defender services in representing indigent felony and gross misdemeanor cases. In the second, fourth and eighth judicial districts, the state also began funding juvenile and misdemeanor cases. The board allocates and distributes the state appropriation to the ten district public defender offices. The board allocated \$16,719,070, \$18,022,000 and \$20,288,217 for district public defender operations for fiscal years 1991, 1992 and 1993 respectively.

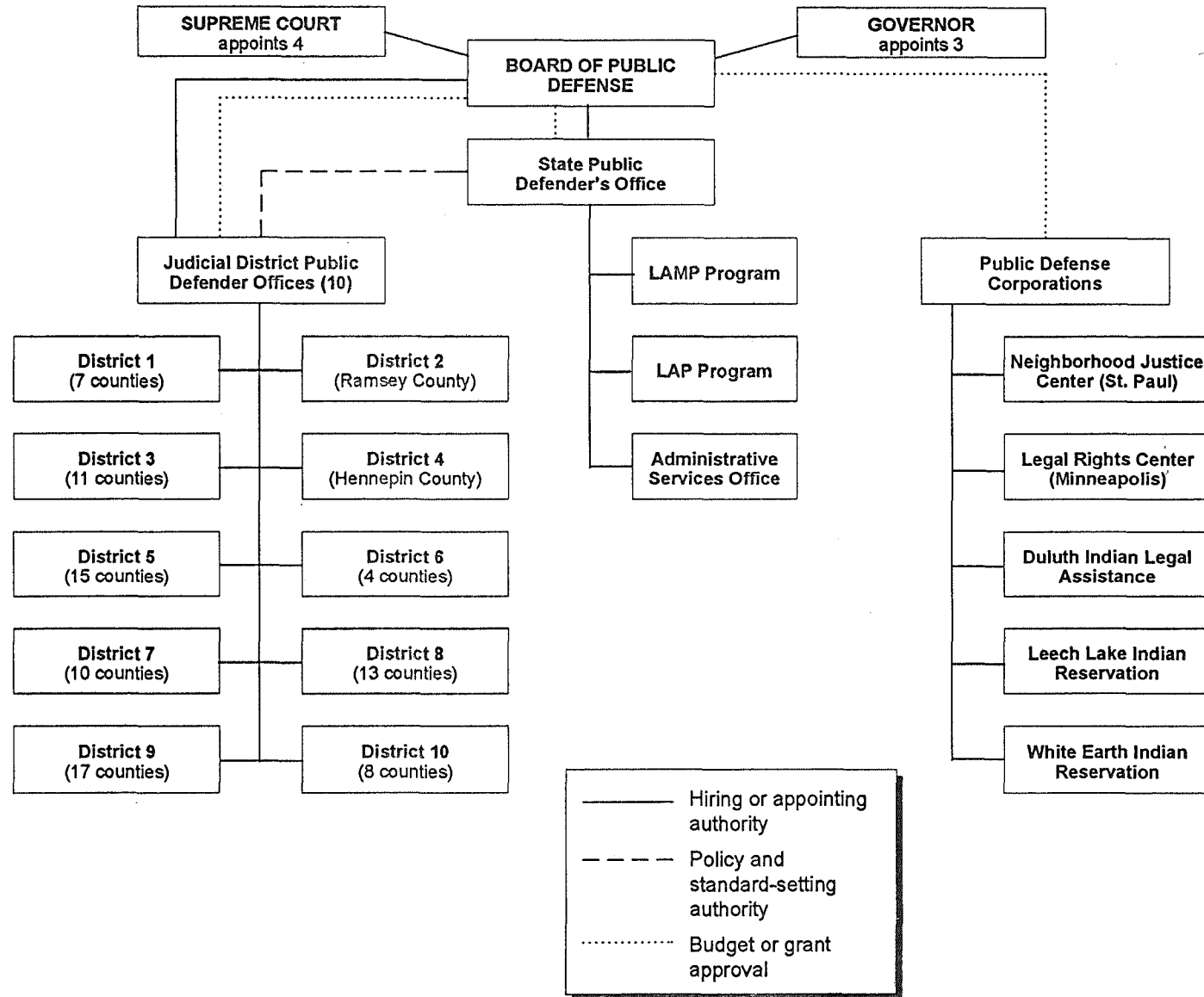
Although the board allocates state appropriations to finance the second and fourth district public defender operations, each continues to function under their respective county government structures. Additionally, public defender employees of the second and the fourth districts are county employees. At the time of our fieldwork, the board was negotiating a contract agreement with the fourth district (Hennepin County) for services. Currently, no contract arrangements exist between the board and the second district (Ramsey County).

Until January 1, 1993, the eight multi county districts obtained administrative support from a host county. The host counties processed the payroll, financial disbursements, and accounting functions of the district public defenders. The host county received the district allocation from the board in a lump sum payment at the beginning of the fiscal year. The county invested and earned interest on the money until it disbursed the funds as directed by the chief public defender. The interest income was in exchange for the host county's administrative services.

Effective July 1, 1992, the board began replacing the host county system for the eight multi county districts with the state's centralized accounting and payroll systems. Initially, the boards Administrative Services Office (ASO) assumed responsibility for the payroll function for the third, sixth and eighth districts. On January 1, 1993, the ASO assumed full responsibility for the payroll and disbursement functions for each of the multi county districts. The second and fourth districts, Ramsey and Hennepin counties respectively, remain part of the county system.

Minnesota's public defender system has undergone many changes in the past several years. Figure 1-1 shows the current organization of the public defender system, while Figure 1-2 describes the roles of the various components of the public defender system.

Figure 1-1: Organization of Minnesota's Public Defender System



Board of Public Defense

Figure 1-2 Component Roles Within the Public Defender System

Board of Public Defense

- Has primary responsibility for overseeing the public defender system.
- Appoints the state public defender and chief public defenders.
- Allocates resources among the districts and public defense corporations.

State Public Defender

- Handles appeals in the public defender system.
- Provides civil legal services to prisoners, and represents them at disciplinary hearings.
- Supervises the board's administrative staff.

District Public Defender Offices

- Provide all trial court public defense services.
- 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 defendants.
- Receives state grants which require a partially match.

For purposes of the audit we divided the public defender system into three component areas; the Board of Public Defense and its Administrative Services Office, the Office of the State Public Defender, and the eight multi county district public defender operations. We reviewed two multi county district public defender operations under the host county system through December 31, 1992. We reviewed selected payroll and administrative expenditures from the eight multi county district public defender operations as recorded on the state's centralized systems for the period January 1, 1993 through April 30, 1993.

We reviewed the following selected areas of the state's public defender system activities, as shown below, for the period July 1, 1990 through April 30, 1993.

Board of Public Defense/Administrative Services Office

- Payroll
- Grants to public defense corporations
- Final settlement with the districts at December 31, 1992
- Centralized budget system (January 1, 1993 through April 30, 1993) including:
 - district payroll; and,
 - current procedures and controls for processing district public defender expenditures.

Office of the State Public Defender

- Payroll

Board of Public Defense

District Public Defenders

- Administrative expenditures under the host county system in the 1st and 10th districts (July 1, 1990 through December 31, 1992)

Figure 1-3 shows an overview of board expenditures for the two fiscal years ended June 30, 1992. In Chapter 2, we discuss our audit coverage of the two expanded segments of Figure 1-3.

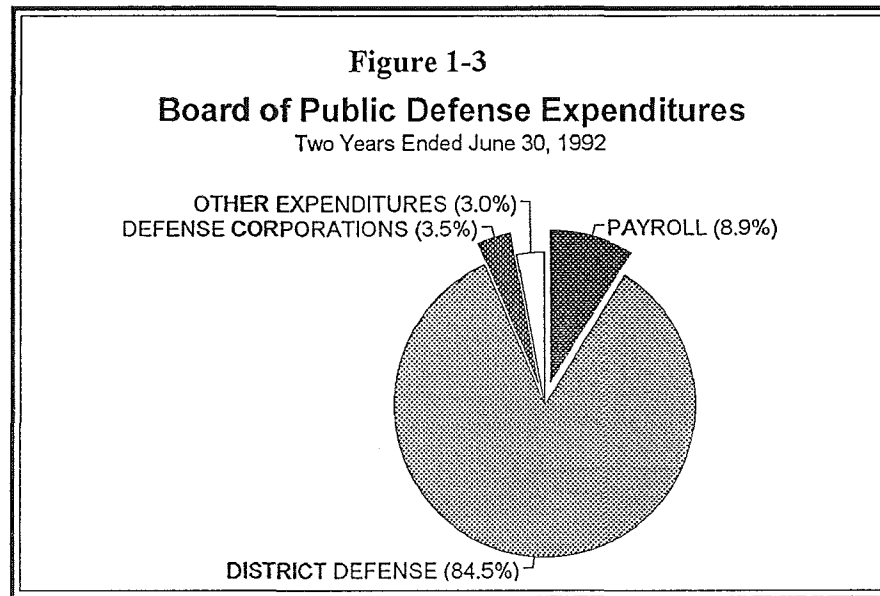
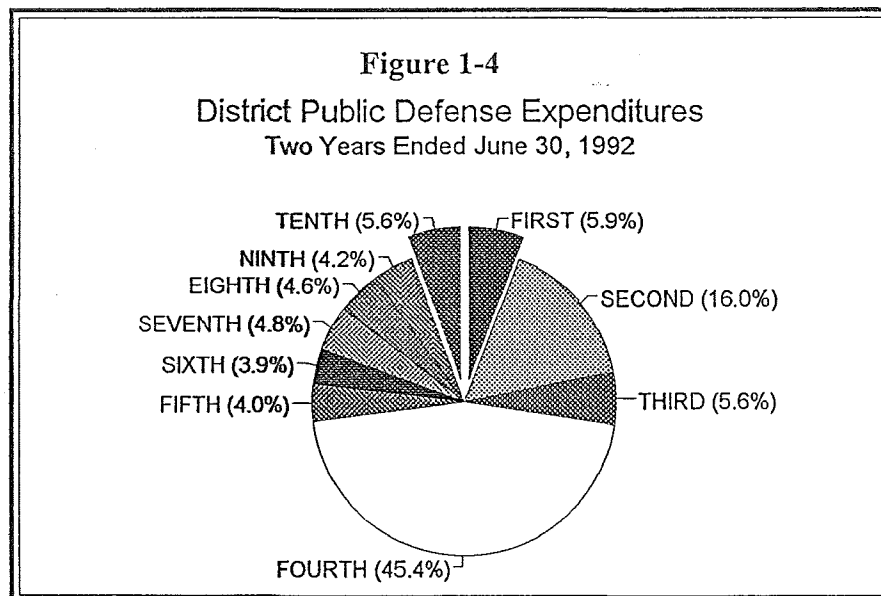


Figure 1-4 shows a further breakdown of district public defender expenditures. As discussed in Chapter 3, we more closely examined the expenditures of the first and tenth districts.



Board of Public Defense

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Chapter 2. Payroll and Grants to Public Defense Corporations

Chapter Conclusions

The board appropriately processed and recorded its payroll transactions for the Administrative Services Offices and the Office of the State Public Defender for the period July 1, 1990 through April 30, 1993. The board also appropriately processed grants to public defense corporations.

Payroll

During the audit period, the Board's Administrative Services Office (ASO) was responsible for processing the payroll for the board office and the Office of the State Public Defender. Payroll expenditures for the Administrative Services Office and the Office of the State Public Defender totaled \$1,778,071 for fiscal year 1991 and \$1,901,324 for fiscal year 1992. Based on our testing we concluded that controls over payroll were adequate. Payroll payments were properly processed and posted to the proper accounts in the statewide accounting system. Also, leave was accurately accrued and recorded at the proper rates.

On July 1, 1992, the ASO assumed responsibility for processing payroll for the third, sixth and eighth districts. On January 1, 1993, the ASO also assumed responsibility for processing payroll for the five remaining multi county district public defender operations. Currently, the ASO processes payroll transactions for the public defender system, with the exception of the second and fourth districts. Payroll transactions processed by the ASO are recorded on the state's centralized payroll system. Chapter 3 contains a discussion of district payroll.

Public Defense Corporations

The Board of Public Defense has established procedures for Minnesota public defense corporations to apply for state grants. In Minnesota there are five nonprofit public defense corporations that primarily provide legal services to indigent minority defendants. Each year the corporations submit budget requests to the Board's Administrative Services Office (ASO) for review. The board considers the ASO's recommendations when determining funding levels. The board then includes within its budget request to the legislature, funding for the public defense corporations.

Minn. Stat. Section 611.216 requires the public defense corporations to provide a match equal to 10 percent of the state funding. This match must be provided through non state sources, such as federal, private, or local agencies, and can be in the form of either money or in-kind contributions. The corporations are also required to submit quarterly financial reports to the Administrative Services Office.

Board of Public Defense

Table 2-1 shows the total amount of grant funds the board disbursed to public defense corporation during the audit period.

Table 2-1			
Grants to Public Defense Corporations			
Fiscal Years Ending June 30			
	<u>Fiscal Year</u>		
	<u>1991</u>	<u>1992</u>	<u>1993</u>
Neighborhood Justice Center	\$184,899	\$209,999	\$220,000
Duluth Indian Legal Assistance	169,448	190,999	191,000
Legal Right Center	138,096	161,999	207,000
Leech Lake Indian Reservation	94,107	106,999	107,000
White Earth Indian Reservation	<u>94,107</u>	<u>106,999</u>	<u>107,000</u>
	<u>\$680,657</u>	<u>\$776,995</u>	<u>\$832,000</u>
Source: Statewide Accounting System.			

We found that the board maintained effective controls over grants to public defense corporations. All grant agreements were on file and were reviewed. Payments were made in compliance with the grant agreements.

Chapter 3. District Public Defense

Chapter Conclusions

The board and its Administrative Services Office converted the eight multi-county district public defender operations onto the state's centralized payroll and accounting systems as of January 1, 1993. The board and the ASO are now in a much better position to oversee and monitor district public defender operations. However, the board needs to verify the final accounting it received from the host counties. The board must strengthen its procedures for encumbering district public defender administrative expenditures.

Effective July 1, 1990, the state assumed financial responsibility for felony and gross misdemeanor public defender services in all ten judicial districts and for misdemeanor and juvenile services in the second, fourth and eighth districts. On July 1, 1991, the state also assumed financial responsibility for misdemeanor and juvenile services in the third and sixth districts. Table 3-1 shows the amounts the board allocated to the districts since the state assumed financial responsibility for district public defender operations.

Table 3-1
District Public Defender Allocations

	Fiscal Year		
	1991	1992	1993
Districts:			
Multi County:			
First	\$ 1,014,857	\$ 1,030,000	\$ 1,052,370
Third	964,861	979,000	2,272,783
Fifth	689,311	699,000	677,417
Sixth	664,318	674,000	1,443,731
Seventh	826,905	834,000	866,835
Eighth	451,421	1,133,000	1,078,388
Ninth	732,380	743,000	768,000
Tenth	<u>972,720</u>	<u>988,000</u>	<u>1,011,693</u>
Subtotal	<u>\$ 6,316,773</u>	<u>\$ 7,080,000</u>	<u>\$ 9,171,217</u>
Single County:			
Second	\$ 2,718,713	\$ 2,838,000	\$ 3,013,000
Fourth	<u>7,683,584</u>	<u>8,104,000</u>	<u>8,104,000</u>
Subtotal	<u>\$10,402,297</u>	<u>\$10,942,000</u>	<u>\$11,117,000</u>
Total	<u>\$16,719,070</u>	<u>\$18,022,000</u>	<u>\$20,288,217</u>

Source: Statewide Accounting System.

Board of Public Defense

The board requires the chief public defenders of each judicial district to submit budget requests to the Administrative Services Office for its review. The ASO reviews the district budgets and makes its allocation recommendations to the board. The board makes its allocation decisions based on ASO recommendations, chief public defender presentations and board discussions.

First and Tenth District Expenditures Under the Host County System

During the period from July 1, 1990 through December 31, 1992, district public defender expenditures were processed through a host county. The chief public defenders were responsible for reviewing and approving the payment vouchers for their district. The vouchers were then submitted to the host counties for payment. Under this structure, host counties for the multi county districts received \$6,316,773 in fiscal year 1991, \$7,080,000 in fiscal year 1992, and \$4,238,577 for the first six months of fiscal year 1993 for district public defender operations.

We reviewed a random sample of expenditures from the first and tenth districts for the period July 1, 1990 through December 31, 1992. During this period the first and tenth districts received \$2,604,857 and \$2,477,220 respectively. Based on our testing we concluded that administrative expenditures of the first and tenth districts for the period from July 1, 1990 through December 31, 1992 were proper and were adequately supported.

Transition to State System

The transition from the eight host county systems to the state centralized accounting and payroll systems transferred the processing and disbursement functions to the Board's Administrative Services Office. The state systems will allow the board to exercise greater budgetary control over the district public defender operations.

Under the host county system the chief public defenders reviewed and approved all invoices for payment, including payment vouchers submitted by the assistant public defenders. The chief public defenders prepared payment vouchers and forwarded them to the host county for payment. The chief public defenders retained the supporting documentation. The host county paid the vouchers as directed and provided the chief public defender with a monthly accounting report comparing expenditures to budget. The host county exercised no oversight over the expenditures.

On January 1, 1993, the Board's ASO replaced the host county function. As a result, the board assumed substantial oversight and financial control over district public defender operations. The district chief public defenders retained their responsibility for reviewing and approving invoices, including payment vouchers submitted by assistant public defenders. However, the chief public defenders now must submit invoices and supporting documentation to the Board's ASO for review, input into the statewide accounting system, and payment.

Board of Public Defense

Because of the elimination of the host county system midway through fiscal year 1993, the host counties received only partial distribution of the districts allocation. Table 3-2 below provides a comparison of district allocations for fiscal year 1993 to what was actually distributed to the host counties through December 31, 1992. The second and fourth districts continue to receive their respective allocations at the beginning of the fiscal year.

Table 3-2
District Public Defender
Allocation Compared to Distribution to Host County

<u>Districts</u>	<u>District Allocation</u>	<u>Distribution to Host County</u>	<u>Retained in State Treasury</u>
First	\$1,052,370	\$ 560,000	\$ 492,370
Third	2,272,783	963,131	1,309,652
Fifth	677,417	349,500	327,917
Sixth	1,443,731	545,614	898,117
Seventh	866,835	439,500	427,335
Eighth	1,078,388	467,832	610,556
Ninth	768,000	396,500	371,500
Tenth	<u>1,011,693</u>	<u>516,500</u>	<u>495,193</u>
Total	<u>\$9,171,217</u>	<u>\$4,238,577</u>	<u>\$4,932,640</u>

Source: Statewide Accounting System.

Currently, the board maintains district allocation funds in the state treasury, with the exception of the second and fourth districts.

Final Settlements

The Administrative Services Office required each of the eight multi county districts to prepare a final accounting of district public defender operations prior to January 1, 1993. The host counties prepared the final accounting reports as of December 31, 1992, and submitted them along with any remaining funds to the ASO. The board accepted the host county reports as submitted but failed to verify the accuracy of the reports and the final settlement amounts.

- 1. The final settlements did not agree with the host counties detailed accounting reports in five of eight districts.**

In five of eight districts we were unable to verify or reconcile the amounts reported in the settlement reports to the detail shown in the host county accounting reports. The eighth district reported in its final settlement that it spent \$149,397 more than what was actually recorded on the

Board of Public Defense

host county's accounting system. Four other districts reported on their final settlements that less had been spent than shown by the host county accounting records. We were able to verify the accuracy of the settlement amounts reported by three districts: the fifth, sixth, and tenth.

We reviewed the summary reports and requested additional detailed expenditure reports from each of the host counties. In five of the eight districts, we were unable to verify the amounts reported in the settlement reports to the detail shown in the host county accounting reports. We calculated an underpayment in the eighth district of \$149,397 and four district overpayments ranging from \$7,057 to \$86,799.

Our review in this area was based solely on the comparison of expenditures as shown on detailed county reports to the expenditures reported in the final settlement report. We could not determine whether the actual settlement amounts were correct.

Without verifying the accuracy of the final settlement reports, the ASO is not assured that an appropriate settlement was made. As a result, the cost for district public defense operations may be over or understated in a particular district.

Recommendation

- *The board should request information from the host counties to support the accuracy of the final settlements made.*

During our review of the four month period following the transition from the host county systems to the state centralized accounting system, we noted a control deficiency in the ASO's procedures for processing administrative expenditures.

2. The Administrative Services Office did not follow statewide accounting procedures for establishing encumbrances.

The accounting officer sometimes did not establish encumbrances for expenditures before district public defenders incurred obligations. The ASO processed approximately \$105,500 in multi county district administrative expenditures from January 1, 1993 through April 30, 1993. In 11 of 44 items we tested, the ASO incorrectly coded the expenditures on the statewide accounting system. The accounting officer incorrectly charged some expenditures to existing encumbrances and object codes. For example, expenditures for employee service plaques, a copy machine, and employment advertisements were charged to the encumbrance for office supplies. This action circumvents the budgetary controls of the statewide accounting system. When unanticipated expenses arise, the ASO should follow statewide accounting procedures to establish appropriate encumbrances before the districts incur obligations. In addition, the ASO classified several expenditures incorrectly on the statewide accounting system.

Board of Public Defense

Recommendation

- *The board should establish proper encumbrances prior to incurring expenditures. Expenditure should be classified correctly.*

District Payroll

Prior to July 1, 1992 for the third, sixth and eighth districts and January 1, 1993, for the first, fifth, seventh, ninth and tenth districts, the ASO did not process district public defender payroll. Instead, host counties, through their respective county payroll systems, processed and paid public defender salaries. The second and fourth districts, even though primarily state funded, continue to pay public defender salaries through their respective county payroll systems.

As of April 30, 1993, the Board's ASO had processed \$2,405,022 in payroll for the eight multi county districts. Despite the short period of time since the ASO assumed the responsibility for processing multi county district payroll, we wanted to review current procedures in place. The payroll for the eight multi county districts is processed in the same way as it is for the Office of the State Public Defender and the Board's ASO.

We noted that only full time district public defender employees received benefits, including vacation, sick leave and health insurance. Part time individuals providing public defender services do not receive any benefits. However, 1993 legislation directed the board to establish eligibility criteria for providing health benefits to part time public defenders in consultation with the Commissioner of Employee Relations.

In an effort to ensure that public defender services are available in the multi county districts the board has established agreements with individuals to provide services for public defense on an as needed basis. For example, an attorney may agree to provide part time services as an assistant public defender. That agreement basically states that, for an annual amount, the part time assistant public defender will provide "appropriate representation at the trial level in cases assigned by the court or the chief public defender of the district" during the year. The annual salaries, called stipends, of part time assistant public defenders are based on projected caseloads in the district for the year. The ASO accounts for these arrangements by paying the part time public defenders 1/26th of their annual salary amount during each two week pay period.

Because current caseload information such as actual cases handled, time spent preparing for cases and court time was not immediately available, we did not assess, during this audit, whether the boards current practice of funding part time assistant public defenders through a stipend arrangement represents a reasonable level of compensation.

Board of Public Defense

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**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

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December 10, 1993

Thomas Donahue, CPA
Audit Manager
Office of the Legislative Auditor
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St. Paul, MN 55155

RE: Audit Report
July 1, 1990 - April 30, 1993

Dear Mr. Donahue:

The purpose of this correspondence is to provide an Agency Response to the financial audit of the Legislative Auditor's Office relating to the Board of Public Defense, Administrative Services Office. The following outline is intended to provide the Administrative Services Office clarification regarding certain issues.

Page 4 - Figure 1-2 - Board of Public Defense

- A. Under Board of Public Defense, the third bullet should reflect that it allocates resources to the State Public Defender's Office as well as Districts and Public Defense Corporations.
- B. Under State Public Defender, the third bullet should reflect that the State Public Defender supervises all District Public Defender Offices, in addition to the Board's Administrative staff.

Page 11 & 12 - **Final Settlements**

In reviewing the narrative under Final Settlements, there are several clarifications that the Administrative Services Office feels are relevant to the Auditor's findings.

The recommendation contained in Final Settlements states that "the board should request information from the host counties to support the accuracy of the Final Settlements made."

The Auditor's review of host county expenditure reports used in the final settlements was based on "detailed county reports," the same as those used by the Board, and yet, they "could not determine whether the actual settlement amounts were correct." The Board has less resources than the Auditor's Office and at the time of those final settlements, only had one experienced financial staff member. Since the exit interview with the Auditor's staff, the board has reviewed its internal records and now feels that it has reconciled and substantiated the final settlements in two more Districts - five out of eight. In two of the remaining three Districts, it has now been determined that a payroll for public defender staff, paid in July, 1992, may have been counted in the total expenditures, when in fact those payables were for the period ending in June, before the State assumed financial responsibility. Finally, there is a detailed financial summary document for the remaining District and it is being scrutinized at present for further discussion with that District's (county) personnel.

In concluding the Administrative Services Office remarks regarding the first recommendation of the Legislative Auditor's Report, it should be noted that the Final Settlement obtained by the Board of Public Defense during 1992 from the eight host counties, resulted in an approximate \$126,000 credit for the State of Minnesota's Board of Public Defense, which decreased the need for additional state appropriations.

In regard to the second recommendation "the board should establish proper encumbrances prior to incurring expenditures. Expenditures should be classified correctly," the Administrative Office agrees. Several points of clarification, however, are necessary as to why some of the noted encumbrances were not immediately established.

The existing statewide (county) accounting and payroll system for public defense in Minnesota was not a new function, and in fact, had been in existence for over ten years. The Administrative Services Office did not have the luxury of stopping a \$24,000,000 budget for a period of time to implement a state accounting and payroll system. The time period identified in the Auditor's Report, January, 1993 to April, 1993 was a transitory one in which the Administrative Services Office took eight different based accounting systems and placed them under the State's accounting and payroll system. It was not possible in all cases to set up encumbrances before obligations were incurred. For example, in order to properly encumber payroll for attorneys in a law firm located in the Tenth Judicial District (Anoka County), the Administrative Services Office would have had to delay their paychecks, but would have expected them to continue to provide representation services to the indigent. If they would not have been paid and refused to provide services, it would have had a

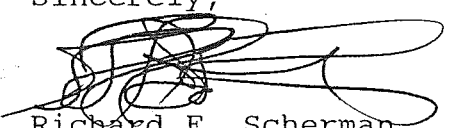
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significant negative effect on the criminal justice system in that County. From an accounting procedural standpoint, the Auditor's Office is correct in stating that the Administrative Services Office did not properly set up an encumbered account for this payroll situation. From a management standpoint, the Administrative Services Office made the decision to honor this payroll obligation and correct that encumbrance problem during the upcoming month, which was done.

All of the identified areas relating to encumbrances, noted by the Auditor's Report, have now been or will be corrected.

In summary of this Agency's Response, the Administrative Services Office feels that the Legislative Auditor's Report, on its accounting and payroll system, was helpful and constructive. During an extremely difficult period of time from both a management and budgetary perspective, the Administrative Services Office is encouraged to note that it accomplished all of its major goals that were noted by the Auditor's Report, except for two areas, which we feel have already been addressed or are near completion.

Sincerely,



Richard F. Scherman
Chief Administrator
Administrative Services Office

RFS:pf

cc: John Stuart - State Public Defender