



Public Defender System

Major Findings:

- Public defender workloads are too high, resulting in public defenders spending limited time with clients, difficulties preparing cases, and scheduling problems that hinder the efficient operation of criminal courts.
- Staff reductions in 2008 are the most immediate cause of high workloads, but case complexity and other factors add to the time required per case.
- Minnesota's heavy reliance on part-time public defenders presents risks that need to be addressed, but the public defender's office has few staff resources available for planning, research, and policy-development activities.
- The Minnesota Board of Public Defense has strengthened accountability in the state's public defender system but could do more to measure and supervise the quality of public defender services.
- Standards for determining eligibility for a public defender are not clearly defined in state law, and district court judges reported wide differences in how they weigh eligibility factors.
- District court judges reported having little confidence in the accuracy of information they use to assess defendants' financial circumstances, but it appears that

the vast majority of applicants cannot afford a private attorney.

- State law requires defendants with some financial means to reimburse the state for a portion of their public defender costs, but these reimbursements are inconsistently ordered and collected.

Key Recommendations:

- The Board of Public Defense should improve management practices for the supervision of public defenders and for measuring performance of the public defender system as a whole.
- The Board of Public Defense should study long-range staffing needs, the proper balance of full-time and part-time public defenders, and the merits of establishing additional full-time offices.
- The Legislature should enact fixed income standards for public defender eligibility and define circumstances warranting a judicial waiver of the standards.
- The Legislature should enact a single standard governing which clients should contribute toward the cost of their public defenders and how much they should pay.
- The Legislature should strengthen statutory procedures granting recipients of public assistance automatic eligibility for a public defender.

High public defender workloads have created significant challenges for Minnesota's criminal justice system.

Caseloads of supervisors limit the time they can spend monitoring the performance of assistant public defenders.

Report Summary

In 1963, the U.S. Supreme Court ruled that the assistance of counsel in criminal prosecutions was essential to fair trials and a fundamental right under the Constitution. Minnesota state government employs attorneys, called public defenders, to represent persons unable to afford an attorney.

The Minnesota Board of Public Defense oversees the public defender system. The system is administered by the state public defender, district chiefs in each of the state's ten judicial districts, a chief appellate public defender, and a chief administrator. About 450 full- and part-time assistant public defenders represent clients.

Resources for the public defender system have fluctuated along with the state's fiscal condition.

Public defender system expenditures totaled \$136 million in the fiscal year 2008-09 biennium, with staffing of about 528 full-time-equivalent staff. About 95 percent of the office's fiscal year 2009 budget went to personnel, lease, and other mandatory costs.

Budget deficits resulted in staff reductions affecting fiscal years 2003 through 2005. The Legislature provided funding for additional staff in fiscal years 2006 and 2007, but budget challenges again resulted in staff reductions in the next biennium.

The Board of Public Defense has taken important steps to improve accountability.

About 20 years ago, Minnesota state government assumed responsibility for public defender services, shifting from a patchwork of local public defense systems. Since then, the Board of Public Defense has established a clear chain of accountability from assistant public defenders in the field to the board, and it has adopted systemwide

policies, procedures, and compensation systems. The state public defender has established training programs for public defenders and procedures for assessing their performance.

The supervision of public defenders needs to be strengthened.

We found weaknesses in day-to-day supervision of assistant public defenders. For example, 43 percent of public defenders responding to our survey said their supervisors in the past year had not reviewed any of their cases in the context of assessing performance. Several district chiefs told us they were seriously concerned about the performance of some part-time public defenders, particularly those that often work alone and with limited supervision.

One problem is that supervisors also represent individual clients. Officials from around the state told us that supervisors' caseloads limit the time they can spend monitoring and coaching assistant public defenders. This also hinders their ability to handle performance problems before they become serious. Public defense officials said they want to increase the ratio of supervisors to assistant public defenders, but have been stymied by budget constraints.

Minnesota may need to reconsider its heavy reliance on part-time public defenders.

As of July 2009, about half of the state's 450 public defenders (and 65 percent of public defenders outside the Twin Cities) worked on a part-time basis. Many of them worked without the benefit of a local public defender office housing support staff and district managers. District chief public defenders said that without access to a public defender office, part-time defenders may not request investigative or support services when needed. They also have less opportunity to interact

High workloads limit the time public defenders have to meet with clients and prepare cases.

with other public defenders in brainstorming sessions, mentoring, and support.

The public defender's office has had problems accurately quantifying public defender workloads.

Minnesota has a system for measuring caseloads that weights cases based on the level of defense effort required. However, the methodology used to develop the weighting system in 1991 was flawed. Weighting standards do not reflect regional differences affecting the time needed to defend cases. For example, in sparsely populated but geographically large districts, public defenders spend much more time driving to see clients or attend court.

The weighting standards also do not reflect the changes in criminal law and procedure that have taken place over the past 20 years. For example, cases involving sex crimes are now more time-intensive.

Public defender workloads are high, exceeding state and national standards.

State and national standards call for public defenders to carry no more than 400 case units per year. In 2009, Minnesota public defenders carried an average weighted caseload of 779 case units.

During our site visits, we observed public defenders working under severe time pressures. Roughly 60 percent of public defenders, public defender staff, and district court judges responding to our surveys reported that public defenders' workloads were much higher in 2009 than 2002.

Heavy workloads have hurt public defenders' ability to represent clients as well as court efficiency.

Those we interviewed and surveyed agreed that public defenders were, on

the whole, excellent criminal defense attorneys. However, stakeholders also reported that workloads were having a noticeable impact on public defenders' ability to adequately and ethically represent their clients.

Public defenders responding to our survey felt strongly that they were not spending enough time with clients. This has made it difficult for them to build trust, explain the system and charges, and make decisions with their clients regarding their defense.

Time pressures have made it more difficult for public defenders to prepare their cases. In order to effectively represent their clients, attorneys need sufficient time to interview clients and witnesses, perform legal research, draft motions, request investigative and expert services, and otherwise prepare for hearings and trials.

About 50 percent of district court judges responding to our survey said that criminal cases in their courtrooms progressed too slowly or much too slowly toward disposition. Judges and court administrators responding to our surveys reported that problems scheduling public defenders for hearings and trials was the most significant cause of delays relative to other factors, such as a general increase in the number of criminal cases or availability of prosecutors.

Judges' considerations when appointing a public defender vary widely.

State law establishes two general standards controlling eligibility for a public defender. Recipients of means-tested public assistance should be automatically granted eligibility. However, we found that this did not always happen.

The second standard for eligibility is a judge's determination that the defendant cannot afford private counsel. When

Lack of preparation by public defenders can affect court efficiency.

District court judges told us they determine eligibility to be represented by a public defender very quickly and without sufficient evidence.

evaluating an applicant's financial circumstances, judges are to consider income, assets, and local costs for a private attorney.

District court judges weigh these eligibility factors differently. In our survey, 63 percent of judges responding said they adjusted income based on household expenses; 28 percent did not. When considering assets, 27 percent of judges said they placed little or no weight on ownership of a primary residence. And contrary to requirements in state law, 24 percent of district judges reported that they did not consider the local cost of private counsel.

Absent good information on applicants' financial circumstances, judges often rely on "gut instinct."

We asked district court judges how confident they were in the accuracy of the information they use to determine eligibility. Only half of judges responding to our survey thought they had an accurate picture of applicants' earned income. Judges felt even less confident in the accuracy of information on unearned income or the availability of assets that could be converted to cash or used to secure a loan.

Judges stated they must make eligibility decisions very quickly and without

sufficient evidence. In practice, judges told us they rely on their "gut feelings" and a belief that most applicants would not ask for a public defender if they could afford a private attorney.

We reviewed about 100 public defender applications, comparing information provided by applicants with state public assistance and unemployment data. While the evidence is limited, it appears that the vast majority of applicants are very low income and likely cannot afford an attorney.

State law requires clients with some financial means to contribute to the cost of their defense, but these payments are inconsistently ordered and collected.

By law, judges must order reimbursements from employed defendants and others who can afford to make partial payment toward the cost of their defense. These reimbursements are inconsistently ordered. In our survey, 30 percent of judges responding said they rarely if ever order defendants to make any reimbursement. Data for fiscal years 2007 to 2009 from the state court information system confirm that judges in some districts were far more likely to order reimbursements from defendants than their peers in other districts.

Summary of Agency Response

In a letter dated February 1, 2010, State Public Defender John Stuart, Board of Public Defense Chair Laura Budd, and Chief Administrator Kevin Kajer said the report's findings were presented "clearly and fairly" and reflected "a deep understanding of our situation." They said "the Board of Public Defense has made client service its top priority.... Yet, it has a drastic shortage of resources." They agreed that "the mentoring and supervision of assistant public defenders could be improved" and said they have begun a long range planning process that will address issues related to the balance of part-time and full-time public defenders. They added, however, that devoting additional resources to management and administration "can't be done within our budget without taking resources from client service, where 97 percent of the Board's funding goes."

The full evaluation report, *Public Defender System*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2010/pubdef.htm