

STATE OF MINNESOTA

IN SUPREME COURT

C1-81-1206

OFFICE OF  
APPELLATE COURTS

JUN 11 2009

FILED

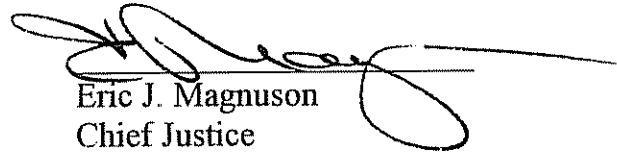
**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS  
ON PROPOSED AMENDMENTS TO THE RULES OF THE SUPREME  
COURT ON LAWYER REGISTRATION**

The Board of Public Defense (BOPD) and the Legal Services Planning Committee (LSPC) have filed petitions with this court recommending amendments to the Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration. The BOPD seeks to increase the lawyer registration fee by \$75.00 per year and to allocate this additional money to the BOPD to help fund constitutionally mandated services to its clients. The LSPC seeks to increase the lawyer registration fee by \$25.00 per year to raise the amount allocated to the Legal Services Advisory Committee (LSAC) from \$50.00 to \$75.00 per year. The LSAC distributes these funds for civil legal services for low income and disadvantaged Minnesotans. This court will consider the proposed amendments without a hearing after soliciting and reviewing comments on the petition. Copies of the petitions are annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendment shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of Appellate Courts, 25 Dr. Rev. Martin Luther King Jr. Blvd, St. Paul, Minnesota 55155, no later than July 13, 2009.

Dated: June 11, 2009

BY THE COURT:



Eric J. Magnuson  
Chief Justice



**STATE OF MINNESOTA  
STATE PUBLIC DEFENDER**

**John M. Stuart**  
State Public Defender

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OFFICE OF  
APPELLATE COURTS  
h MAY 27 2009  
FILED  
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May 27, 2009

Mr. Frederick K. Grittner  
Clerk of the Appellate Courts  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
St Paul, MN 55155

RE: Petition of the Board of Public Defense

Dear Mr. Grittner:

Accompanying this letter is the Board's petition for an increase in the Registration Fee, with attachments, one original and 11 copies. Thank you for your assistance. Please call if we need to submit anything further.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Stuart", with a long horizontal line extending to the right.

John Stuart  
Attorney for Petitioner

No.

STATE OF MINNESOTA  
IN SUPREME COURT

—————  
C 9-81-1206

OFFICE OF  
APPELLATE COURTS

MAY 27 2009

FILED

In re:

Petition to Increase the Attorney Registration Fee  
to Provide Funding for Public Defense

—————  
PETITION OF BOARD OF PUBLIC DEFENSE  
—————

**Board of Public Defense**

John Stuart, State Public Defender  
Attorney License #0106756  
331 Second Ave. S.  
Minneapolis, Minnesota 55401  
(612) 349-2565

**Board of Public Defense**

Kevin Kajer, Chief Administrator  
331 Second Ave. S.  
Minneapolis, Minnesota 55401  
(612) 349-2565

*Attorney for Petitioner*

No. C 9-81-1206

**STATE OF MINNESOTA  
IN SUPREME COURT**

In re:

Proposed Amendment of Minnesota Rules  
on Lawyer Registration

**PETITION OF MINNESOTA BOARD OF PUBLIC DEFENSE**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota Board of Public Defense (“BOPD”) respectfully submits this petition asking this Honorable Court to increase the attorney registration fee charged to Minnesota lawyers and judges by \$75.00 per year and to allocate that additional money to the BOPD. This proposed change is intended to permit the BOPD to fund quality constitutionally mandated services to its clients. This change is proposed in response to authorization by the Minnesota Legislature, in Laws 2009, Chapter 83, Article 2, Section 49. See Attachment A for the text of this authorizing law.

In support of this petition, the BOPD would show that this Honorable Court has the exclusive power to regulate the legal profession, including the imposition of a Registration Fee on lawyers and judges; that the funding of the Board of Public Defense is an appropriate use of the revenue from this fee; and that the creation of a “public defender fund” with the revenue from the Registration Fee increase is necessary to the proper and efficient administration of justice.

**I. The Supreme Court is Empowered to Impose an Attorney Registration Fee to Provide for the Proper Administration of Justice.**

1. This Honorable Court has and exercises the exclusive and inherent power to regulate the legal profession in the interest of the public good and the efficient administration of justice. The Minnesota legislature has expressly recognized this power. See Minn. Stat. §§ 480.05, 481.01 (2006).
2. In the exercise of that power, this Court requires the annual payment of a Registration Fee by all licensed attorneys and judges in Minnesota. See Rules of the Supreme Court on Lawyer Registration 2 (A).
3. The Court may designate that a portion of the Registration Fee, in this case \$75, be placed in a special fund in the state treasury to be appropriated annually to the BOPD. See Attachment A.

**II The Board of Public Defense is an Appropriate Recipient of Attorney Registration Fee Revenue.**

4. The Minnesota Board of Public Defense was created by statute to implement the constitutional right to counsel enunciated in Gideon v. Wainwright, 372 U.S. 335 (1963) and its progeny. See Minn. Stat. 611.215.

5. The mission of the Board of Public Defense is to provide quality criminal defense services to indigent defendants and juvenile respondents, in every county of Minnesota. See Minn. Stat. 611.14.
6. Public defenders employed by the BOPD represent indigent clients in approximately 170,00 cases each year. It is estimated that public defenders represent about 85% of persons accused of felonies in Minnesota, and about 95% of juveniles accused of acts of delinquency, among their other cases.
7. A public defender may not reject a case, but must accept all the clients assigned to her or him. Dziubak v. Mott, 503 N.W.2<sup>nd</sup> 771 (Minn.1993.) This means that neither the BOPD, its Chief Public Defenders, or the staff attorneys can control their caseloads.
8. A consequence of uncontrollable public defender caseloads is that frequently courtrooms—each with a presiding judge, court staff, prosecutors, probation officers, victim/witness assistants, victims, witnesses, family members and the public—are unable to conduct business in a timely manner because the public defenders needed for the resolution of cases are tied up elsewhere.

**III. The Creation of a Public Defender Fund with the Revenue from a \$75 Attorney Registration Fee Increase Is Necessary to the Administration of Justice.**

9. The Board of Public Defense has set caseload standards, in compliance with Min. Stat. 611.215, subd. 2 (c ) (2). Following a weighted caseload study in 1991, the Board determined to adhere to caseload standards recognized by the A.B.A. since 1975, attempting to limit one year's work for an attorney to:

- 150 felony cases, or
- 275 gross misdemeanor cases, or
- 400 misdemeanor cases, or
- 175 juvenile delinquency cases, or
- 80 CHIPS/TPR cases, or
- 200 other cases, or
- some proportional combined number of cases of these types.

To achieve proportionality the Board designated a misdemeanor as a "case unit," so that, for example, a felony would count as 2 and 2/3 "units." Thus the Board/A.B.A. Standard would be 400 "units" of mixed caseload.

10. In FY09, the budget shortfall led to the loss of 53 public defender positions statewide, 12% of the attorney staff. (50 from Districts, 3 appellate.)
11. In FY 09, the individual public defender average caseload was 715 units.



12. Part-time assistant public defenders are required to work set numbers of hours in order to qualify for state-funded benefits. In FY 09, the part-time assistant public defenders worked, over and above these required numbers, 44,000 hours for which they were not compensated.
13. In the 2009 Legislative Session the BOPD's budget was reduced by \$2 million per year, from a base of \$68 million.
14. If it were not partially offset by the proposed \$75 Registration Fee increase, this cut would necessitate a staff reduction of roughly 35 lawyers  
  
If it were not partially offset by the proposed \$75 Registration Fee increase, the staff reduction based on the \$2 million cut would lead to individual average public defender caseloads over 800 case units, more than double the Board/A.B.A. Standard.
15. Even with the projected revenue from the proposed Registration Fee increase, the BOPD will lose 10 lawyer positions and the average individual caseload will grow from 715 units to 743.

16. Besides the obvious detriment to indigent accused Minnesotans, and the obvious distress to public defender staff, there are several predictable hardships to the administration of justice which would result if the BOPD were required to take the full \$ 2 million cut and reduce staff accordingly:

- exacerbation of courtroom delays;
- inability to handle certain case types in anything like a timely manner;
- aggravation of jail overcrowding, which was reported as a statewide aggregate of 105% of capacity a year ago;
- postponement of trial settings, which are already far enough out to impinge on the right to a speedy trial;
- deterioration in the quality of fact-finding, as witnesses become unavailable; and
- increased strain on all the other participants in the justice system.

### **Conclusion**

To assist the Court in its consideration of this Petition, the BOPD submits with the Petition the following documents:

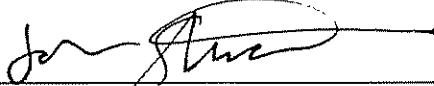
- a. Minnesota Laws, 2009, Chapter 83, Article 2, Section 49.
- b. A copy of the BOPD biennial budget proposal.

- c. A copy of the 2010-2011 Activities Assessment Letter to Governor Pawlenty and Finance Commissioner Tom Hanson.
- d. A copy of the 2009 BOPD Budget Presentation to the House Public Safety Finance Division

Petitioner BOPD therefore respectfully requests that this Honorable Court grant its petition, increase the Attorney Registration Fee by \$75.00, and allocate that additional \$75.00 to the BOPD. The BOPD stands ready to address any comments or questions the Court may have concerning the proposal in whatever forum may be most convenient to the Court.

Dated: May 21, 2009

Respectfully submitted,  
BOARD OF PUBLIC DEFENSE

BY 

John Stuart  
Attorney for Petitioner, #0106756  
State Public Defender  
331 Second Avenue. S. Suite 900  
Minneapolis, MN 55401  
(612) 349-2563

And

BY 

Kevin Kajer  
Chief Administrator,  
Board of Public Defense  
331 Second Avenue. S. Suite 900  
Minneapolis, MN 55401  
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Minnesota Session Laws

2009 Regular Session

CHAPTER 83--S.F.No. 802

Sec. 49. **PUBLIC DEFENDER FEE.**

Subdivision 1. **Authorization.** (a) The Supreme Court, through the lawyer registration office, may assess a public defender fee on each licensed attorney in the state. If imposed, the fee must not be more than \$75 or less than the civil legal service fee established by the Supreme Court in 1997 that licensed attorneys are required to pay pursuant to the rules of the supreme court on lawyer registration.

(b) The fee described in paragraph (a) may apply only to attorneys actively engaged in the practice of law.

Subd. 2. **Creation of account.** The public defender fee account is created in the special revenue fund. The state court administrator shall forward fees collected under subdivision 1 to the commissioner of finance who shall deposit them in the state treasury and credit them to this account. Money in the account is appropriated to the Board of Public Defense.

**Agency Purpose**

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

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

**Core Functions**

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

**Operations**

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

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

**Budget**

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

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

- ◆ \$134 million - General Fund

**Annual Caseloads**

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

**Contact**

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Kevin Kajer, Chief Administrator  
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Dollars in Thousands

	Current		Forecast Base		Biennium 2010-11
	FY2008	FY2009	FY2010	FY2011	
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	66,348	68,028	68,028	68,028	136,056
Forecast Base	66,348	68,028	68,028	68,028	136,056
Change		0	0	0	0
% Biennial Change from 2008-09					1.3%
<b><u>Expenditures by Fund</u></b>					
<b>Carry Forward</b>					
Miscellaneous Special Revenue	47	0	0	0	0
<b>Direct Appropriations</b>					
General	66,061	68,315	68,028	68,028	136,056
<b>Statutory Appropriations</b>					
General	600	565	450	450	900
Gift	167	221	180	180	360
<b>Total</b>	<b>66,875</b>	<b>69,101</b>	<b>68,658</b>	<b>68,658</b>	<b>137,316</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	47,884	45,305	44,755	44,730	89,485
Other Operating Expenses	5,890	10,353	10,460	10,485	20,945
Local Assistance	13,101	13,443	13,443	13,443	26,886
<b>Total</b>	<b>66,875</b>	<b>69,101</b>	<b>68,658</b>	<b>68,658</b>	<b>137,316</b>
<b><u>Expenditures by Program</u></b>					
Appellate Office	4,528	4,627	4,603	4,603	9,206
Administrative Services Office	1,639	2,071	2,052	2,052	4,104
District Public Defense	60,708	62,403	62,003	62,003	124,006
<b>Total</b>	<b>66,875</b>	<b>69,101</b>	<b>68,658</b>	<b>68,658</b>	<b>137,316</b>
<b>Full-Time Equivalent (FTE)</b>	<b>640.1</b>	<b>527.5</b>	<b>527.5</b>	<b>512.5</b>	

### **Program Description**

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

### **Program at a Glance**

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

### **Population Served**

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

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

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

### **Services Provided**

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

### **Historical Perspective**

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

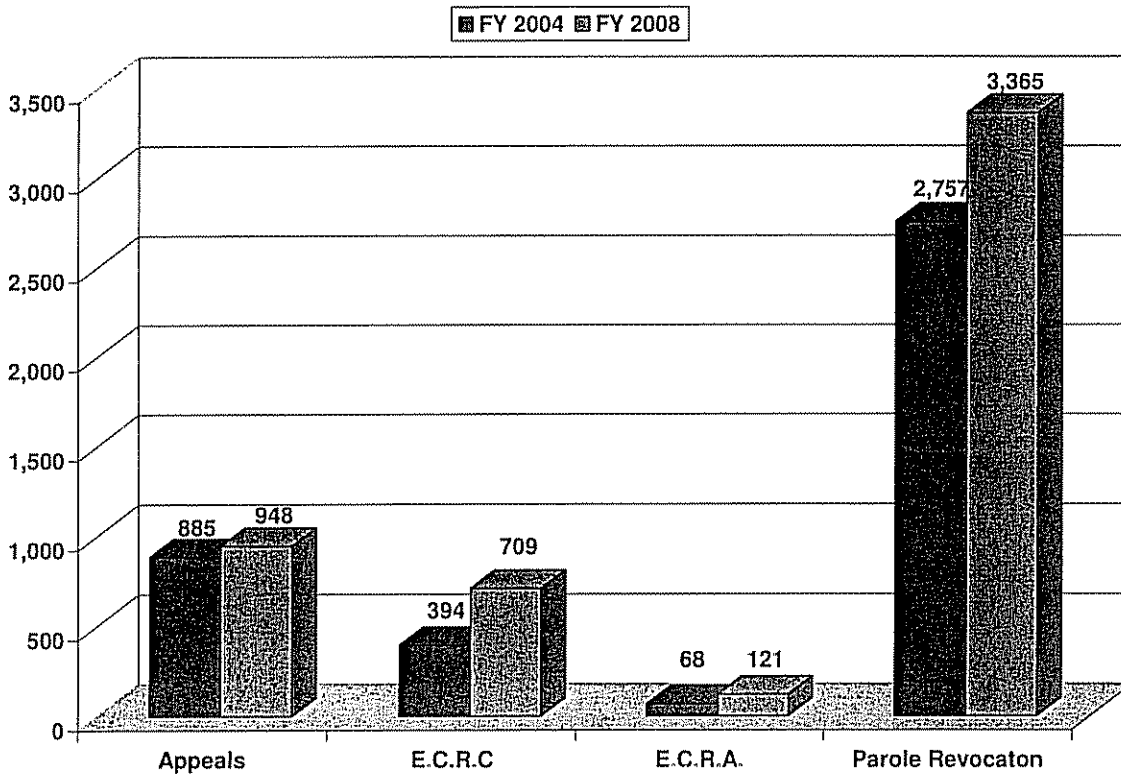
Faced with a \$3.8 million deficit for 2008/2009, the Board adopted a budget plan that included a reduction of three FTE attorneys from the Appellate Office.

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

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

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

Board of Public Defense Appellate Office Cases FY 2004 & 2008



**Key Program Goals**

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

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

**Key Program Measures**

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

**Program Funding**

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

**Contact**

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Web site: www.pubdef.state.mn.us



**PUBLIC DEFENSE BOARD**

Program: APPELLATE OFFICE

Program Summary

<i>Dollars in Thousands</i>					
	Current		Forecast Base		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	4,352	4,603	4,603	4,603	9,206
Forecast Base	4,352	4,603	4,603	4,603	9,206
<b><u>Expenditures by Fund</u></b>					
<b>Direct Appropriations</b>					
General	4,528	4,627	4,603	4,603	9,206
<b>Total</b>	<b>4,528</b>	<b>4,627</b>	<b>4,603</b>	<b>4,603</b>	<b>9,206</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	3,581	3,420	3,180	3,112	6,292
Other Operating Expenses	947	1,207	1,423	1,491	2,914
<b>Total</b>	<b>4,528</b>	<b>4,627</b>	<b>4,603</b>	<b>4,603</b>	<b>9,206</b>
<b><u>Expenditures by Activity</u></b>					
State Public Defender	4,528	4,627	4,603	4,603	9,206
<b>Total</b>	<b>4,528</b>	<b>4,627</b>	<b>4,603</b>	<b>4,603</b>	<b>9,206</b>
<b>Full-Time Equivalent (FTE)</b>	<b>44.0</b>	<b>38.0</b>	<b>38.0</b>	<b>38.0</b>	

**Program Description**

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

**Population Served**

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

**Services Provided**

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

**Program at a Glance**

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

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

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

**Key Program Goals**

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

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

**Key Measures**

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

**Program Funding**

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

**Contact**

Kevin Kajer

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

**PUBLIC DEFENSE BOARD**

Program: ADMINISTRATIVE SERVICES OFFICE

Program Summary

*Dollars in Thousands*

	Current		Forecast Base		Biennium 2010-11
	FY2008	FY2009	FY2010	FY2011	
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	2,142	2,052	2,052	2,052	4,104
<b>Forecast Base</b>	<b>2,142</b>	<b>2,052</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b><u>Expenditures by Fund</u></b>					
<b>Direct Appropriations</b>					
General	1,639	2,071	2,052	2,052	4,104
<b>Total</b>	<b>1,639</b>	<b>2,071</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	1,248	1,325	1,283	1,286	2,569
Other Operating Expenses	391	746	769	766	1,535
<b>Total</b>	<b>1,639</b>	<b>2,071</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b><u>Expenditures by Activity</u></b>					
Public Defense Board	1,639	2,071	2,052	2,052	4,104
<b>Total</b>	<b>1,639</b>	<b>2,071</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b>Full-Time Equivalent (FTE)</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	

### **Program Description**

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

#### **Program at a Glance**

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

### **Population Served**

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

### **Services Provided**

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

### **Historical Perspective**

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

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

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

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

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

The Board's service delivery priorities include:

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

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

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

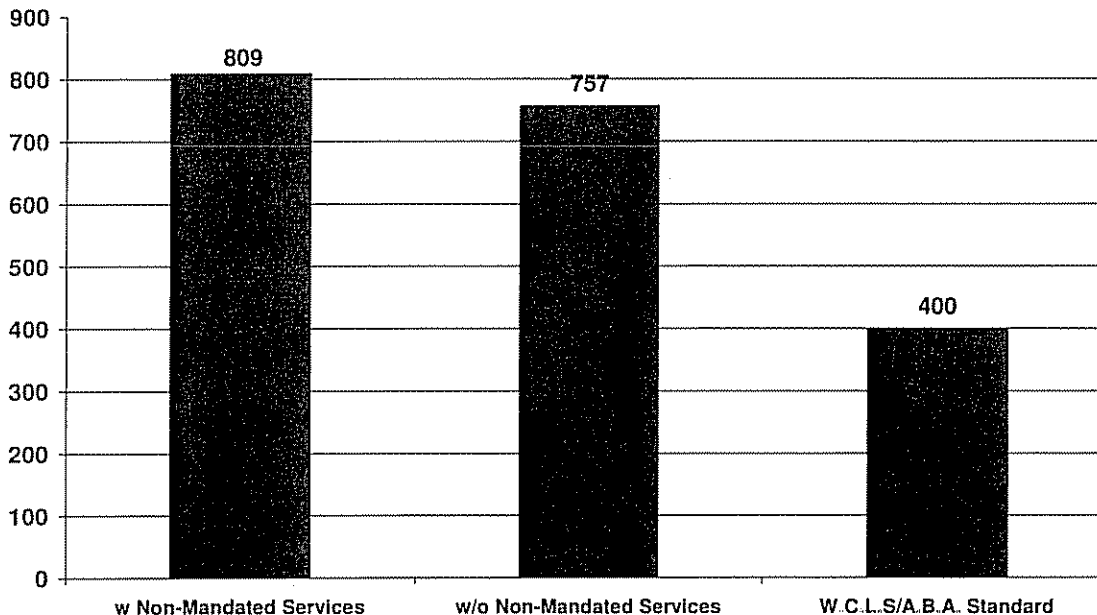
The representation of parents in child protection cases is not a mandated service for public defenders, although this service has been provided in the past. Representation of parents is statutorily a county function (M.S. 260C.331 Subdivision 3(d)). Public defenders continue to represent children over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

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

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

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

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



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

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

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

### **Key Program Goals**

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

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

### **Key Measures**

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

### **Program Funding**

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

### **Contact**

Kevin Kajer

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Website: www.pubdef.state.mn.us

**PUBLIC DEFENSE BOARD**

Program: DISTRICT PUBLIC DEFENSE

Program Summary

*Dollars in Thousands*

	Current		Forecast Base		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	59,854	61,373	61,373	61,373	122,746
<b>Forecast Base</b>	<b>59,854</b>	<b>61,373</b>	<b>61,373</b>	<b>61,373</b>	<b>122,746</b>
<b><u>Expenditures by Fund</u></b>					
<b>Carry Forward</b>					
Miscellaneous Special Revenue	47	0	0	0	0
<b>Direct Appropriations</b>					
General	59,894	61,617	61,373	61,373	122,746
<b>Statutory Appropriations</b>					
General	600	565	450	450	900
Gift	167	221	180	180	360
<b>Total</b>	<b>60,708</b>	<b>62,403</b>	<b>62,003</b>	<b>62,003</b>	<b>124,006</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	43,055	40,560	40,292	40,332	80,624
Other Operating Expenses	4,552	8,400	8,268	8,228	16,496
Local Assistance	13,101	13,443	13,443	13,443	26,886
<b>Total</b>	<b>60,708</b>	<b>62,403</b>	<b>62,003</b>	<b>62,003</b>	<b>124,006</b>
<b><u>Expenditures by Activity</u></b>					
District Public Defense	60,708	62,403	62,003	62,003	124,006
<b>Total</b>	<b>60,708</b>	<b>62,403</b>	<b>62,003</b>	<b>62,003</b>	<b>124,006</b>
<b>Full-Time Equivalent (FTE)</b>	<b>584.1</b>	<b>477.5</b>	<b>477.5</b>	<b>462.5</b>	

*Dollars in Thousands*

	Actual FY2008	Budgeted FY2009	Current Law		Biennium 2010-11
			FY2010	FY2011	
<b><i>Non Dedicated Revenue:</i></b>					
<b>Total Non-Dedicated Receipts</b>	0	0	0	0	0
<b><i>Dedicated Receipts:</i></b>					
Grants:					
Gift	178	178	178	178	356
Other Revenues:					
Gift	2	2	2	2	4
<b>Total Dedicated Receipts</b>	<b>180</b>	<b>180</b>	<b>180</b>	<b>180</b>	<b>360</b>
<b>Agency Total Revenue</b>	<b>180</b>	<b>180</b>	<b>180</b>	<b>180</b>	<b>360</b>



**STATE OF MINNESOTA  
BOARD OF PUBLIC DEFENSE  
331 SECOND AVE S. NO. 900  
PH. 612-349-2565  
FAX 612-349-2568**

# Memo

**To:** Governor Pawlenty, Commissioner Tom Hanson

**Cc:** Jim King, Executive Budget Officer

**From:** Kevin Kajer, Chief Administrator

**Date:** 10/6/2008

**Re:** 2010-2011 Assessment

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## Background and Mission

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

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

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

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

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

## **Strategies**

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

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

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

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

## **Programs and Priorities**

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

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

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

On the appellate level staff reductions have meant that as many as 11% of the appeals in tried cases will not be assigned to a lawyer. The average time that appellate court(s) will have to wait until counsel is assigned will be approximately six months. By fiscal year 2010 the wait could reach one year. All of this assumes that case growth remains flat.

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

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

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

### **Trends and Outside Influences**

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

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

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

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

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

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

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

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

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

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

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

## Conclusion

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

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

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

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

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

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

The **service principles** include:

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

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

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

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

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

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



**STATE OF MINNESOTA  
BOARD OF PUBLIC DEFENSE  
HOUSE PUBLIC SAFETY FINANCE DIVISION  
2009**

# **BUDGET AND SERVICE** **PRIORITIES**

## **Budget Principles:**

- **Minimize negative impacts on clients.**
- **Maintain a statewide public defender system.**
- **Minimize impact on staff and infrastructure.**
- **Place a priority on mandated services.**

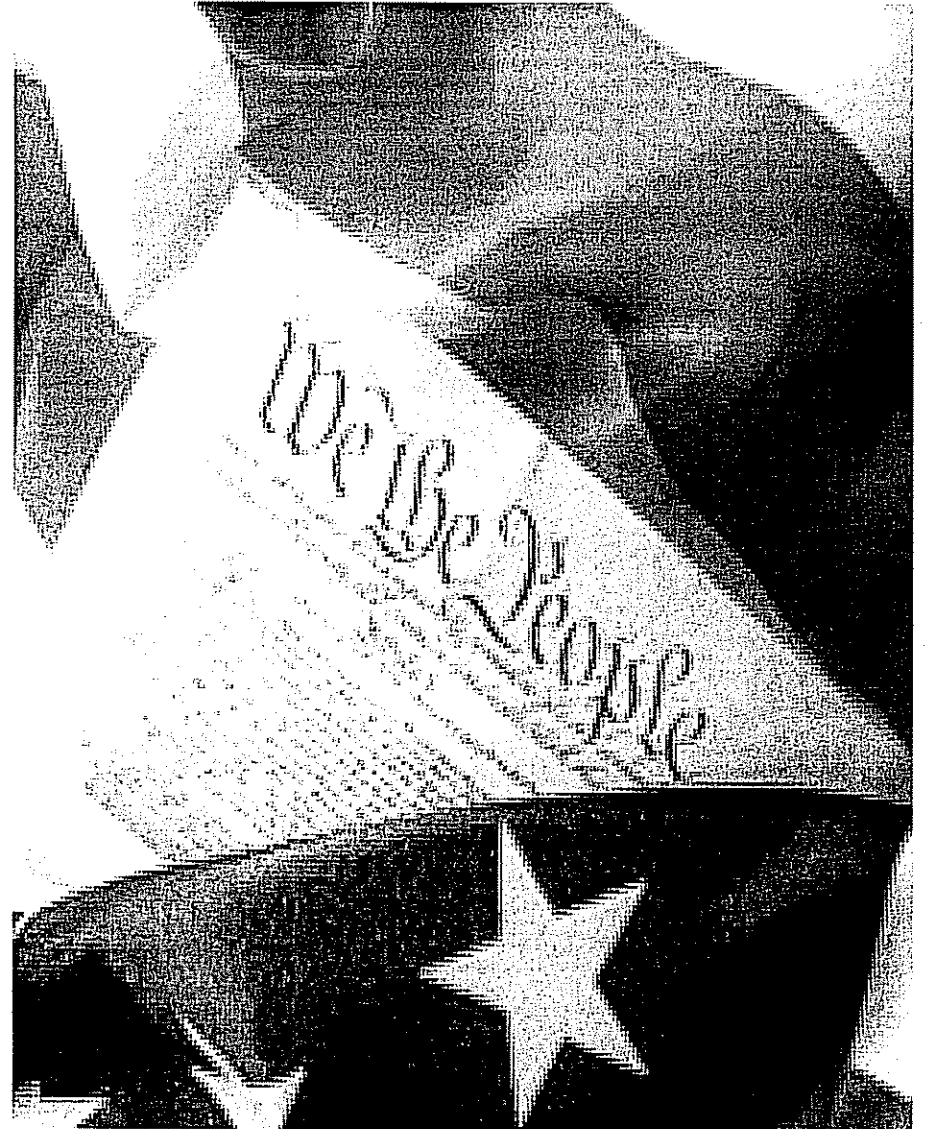
## **Service Priorities:**

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

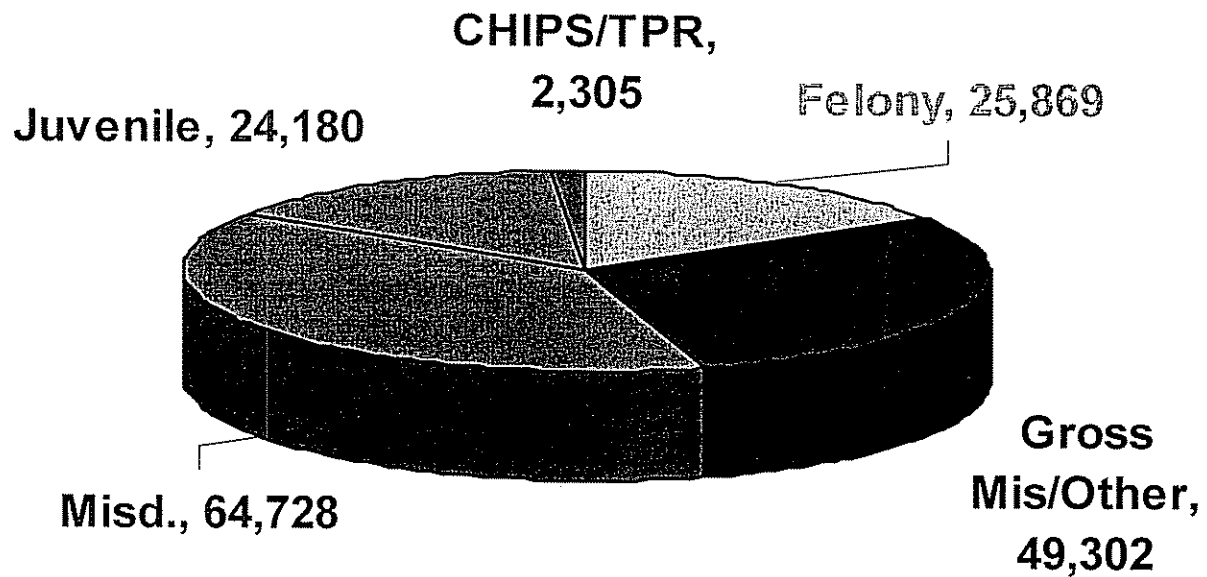


# BOARD OF PUBLIC DEFENSE

- Largest User of Courts
- Provide Service in Every County/Courtroom
- Quality Control for the Criminal Justice System
- Caseloads controlled by outside factors
- Time commitments controlled by outside factors

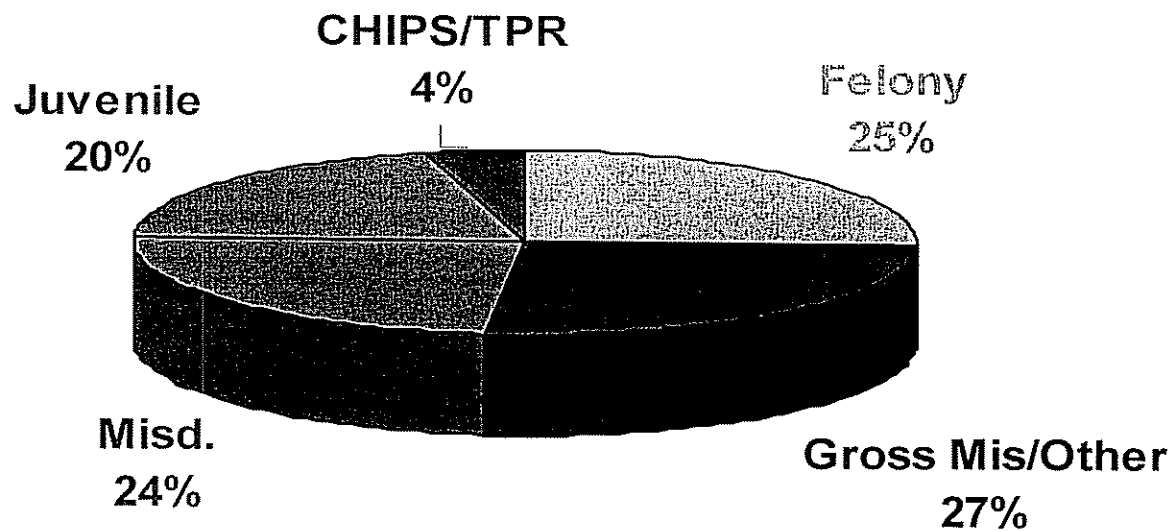


# ESTIMATED F.Y. 2009 CASES BY CASE TYPE (Based on July-Oct)

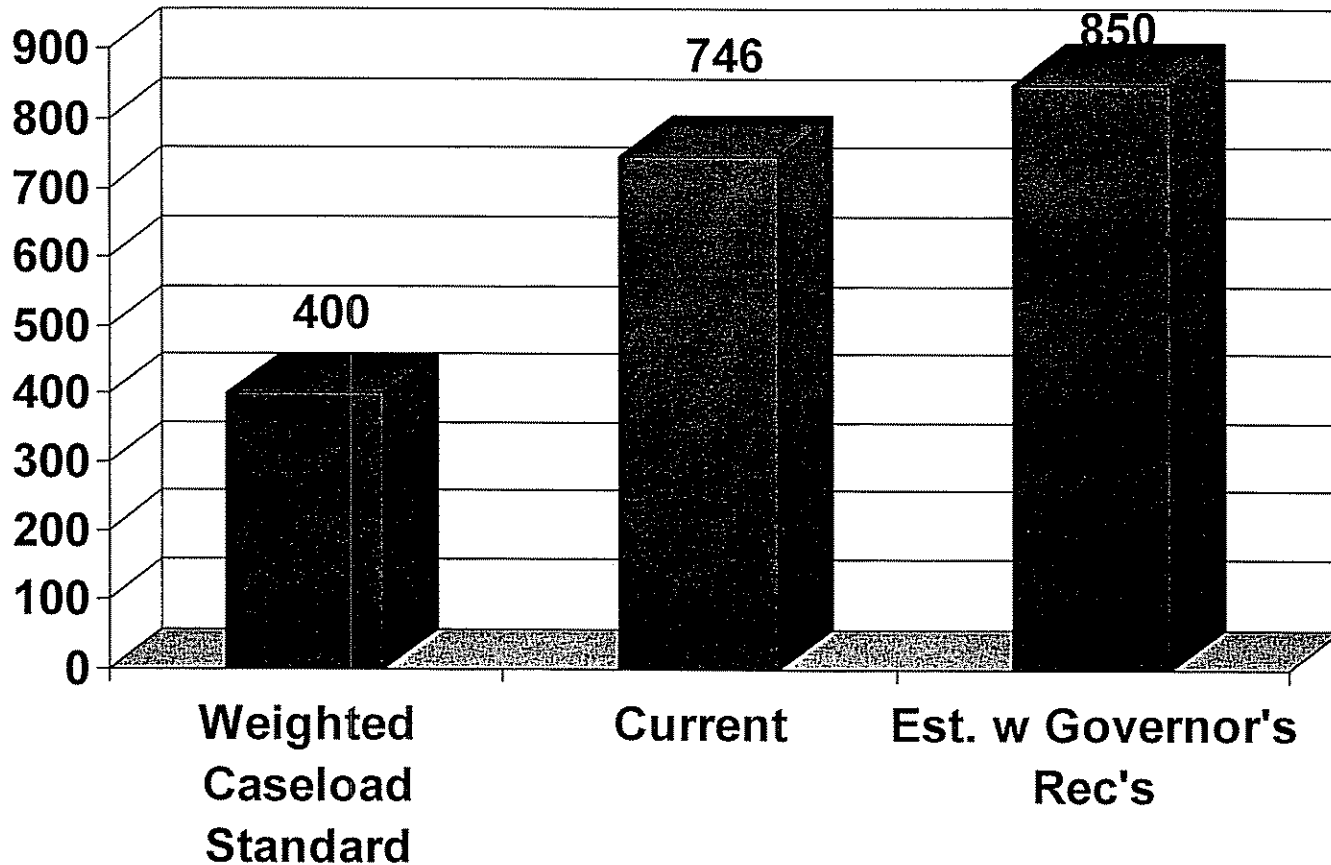


# ESTIMATED F.Y.2009 CASE UNITS BY TYPE

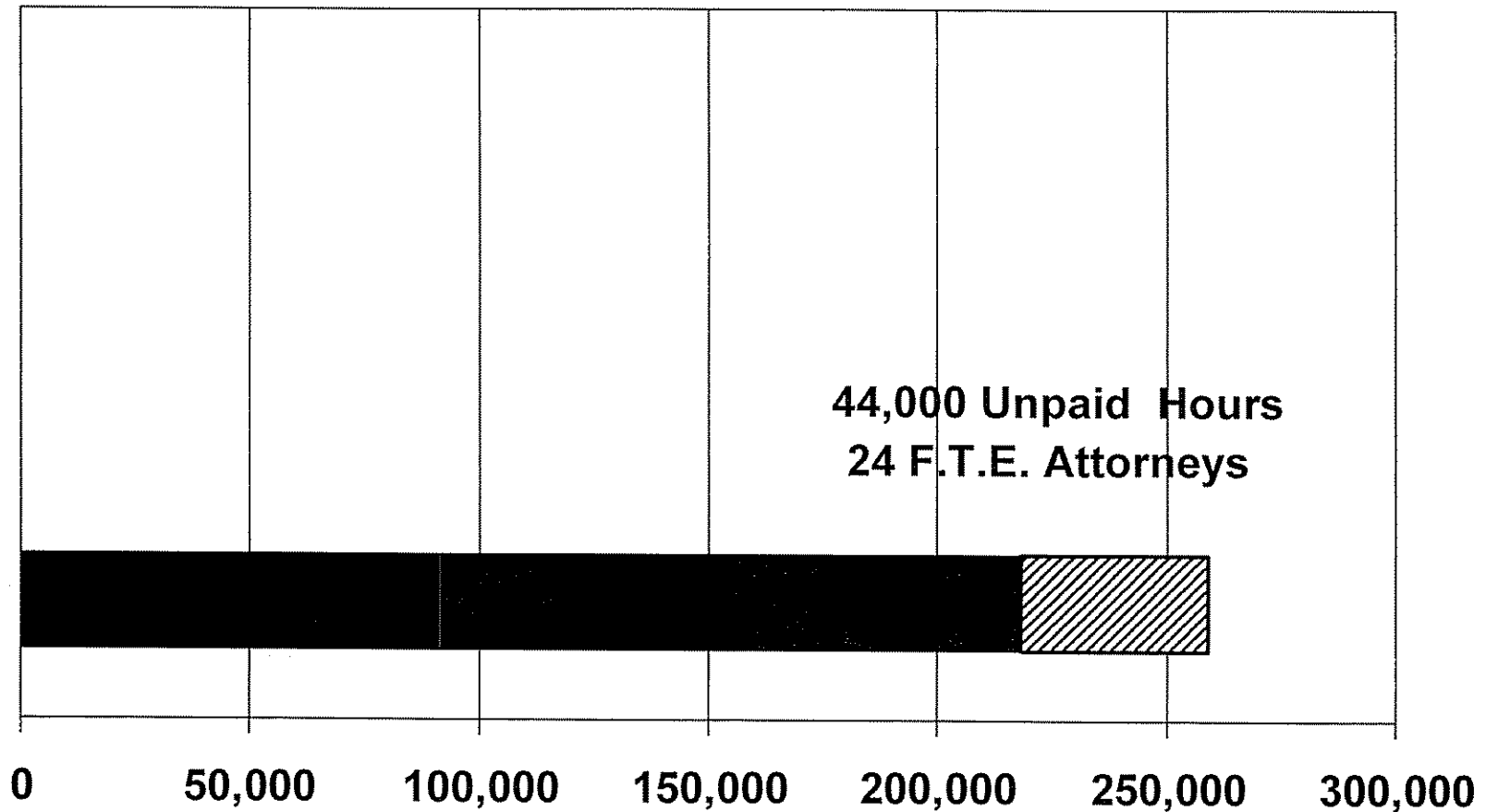
(Case unit is approx. = to a misdemeanor)



# Estimated Case Units Per F.T.E. Attorney



**BOARD OF PUBLIC DEFENSE PART-**  
**TIME PUBLIC DEFENDER UNPAID**  
**HOURS F.Y.2008**



# **CASELOADS/TIME** **COMMITMENTS**

- **The Board does not and cannot control caseloads or workloads.**
- **These are controlled by external factors: increases in police and prosecution, legislative changes, constitutional mandates, Supreme Court Rules, sentencing guideline changes, and judicial calendaring changes.**

# **EXAMPLES OF OUTSIDE FACTORS**

- 1987-2005, the Legislature created 86 sentencing enhancements.
- Statewide prosecutors outnumber defenders 2 to 1.
- 1998-2008, 26 new judgeships were created, each with a court room needing services.
- 33 drug courts operating- very labor-intensive
- Stearns County awarded \$300,000 for a Domestic Violence Court.
- Hennepin County Sheriff awarded a \$500,000 federal grant for DNA testing to help reduce a backlog of “thousands” of cold cases.
- State Patrol received \$175,000 for Holiday DWI Enforcement.
- Travel- (Calendar coverage)
- Sting Operations ( I.e. Roseau, MN)
- 2000-Present Supreme Court implements Children’s Justice Initiative (CJI) In Child Protection Cases.

# **Board Of Public Defense Fiscal** **Year 2009 Budget**

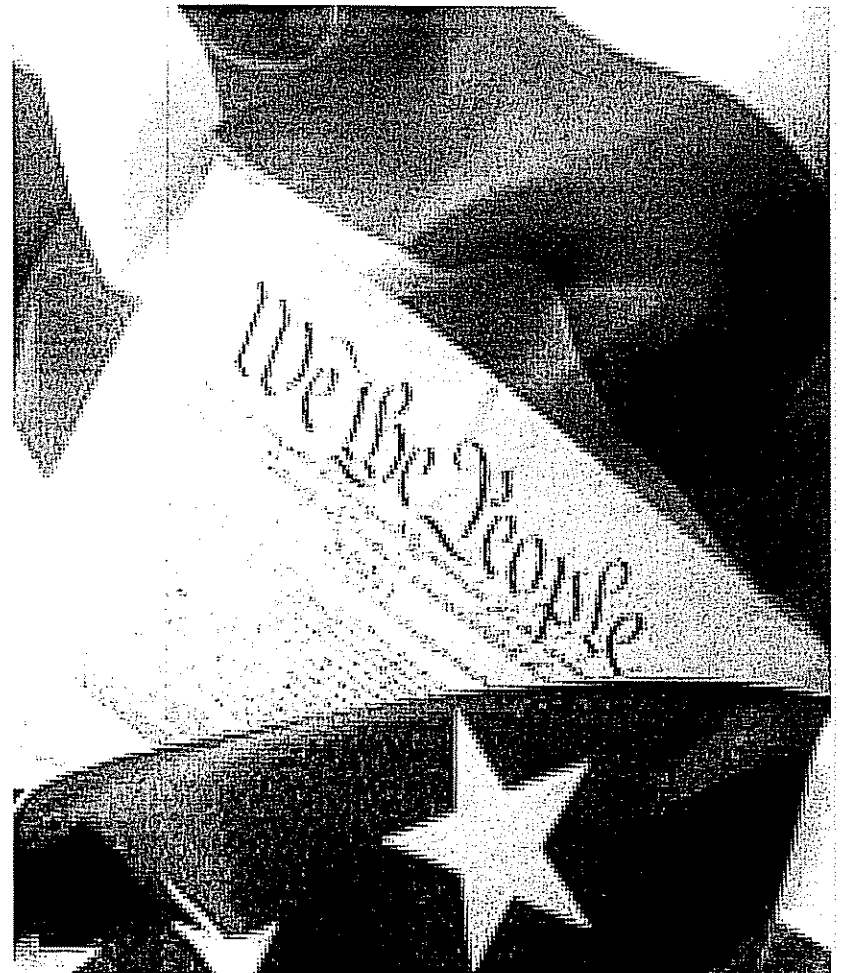
- Loss of 50 F.T.E. attorney positions on the district level.
- Loss of 3 attorney positions on the appellate level.
- Total loss of 12% of the attorney staff.
- Loss of 100,000 hours of attorney time.
- 19 other positions went unfilled.



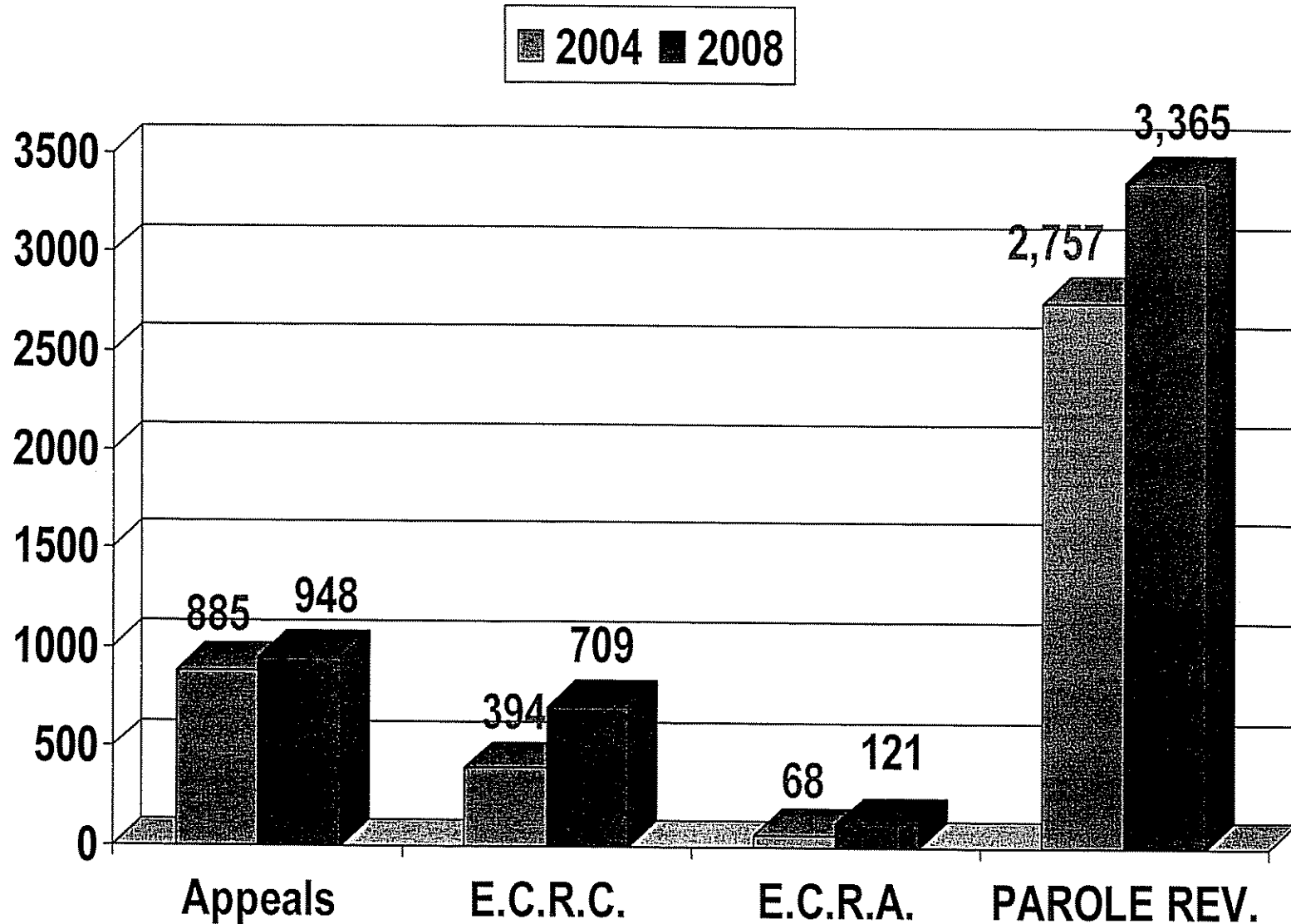
# APPELLATE OFFICE

Provides constitutionally mandated services in:

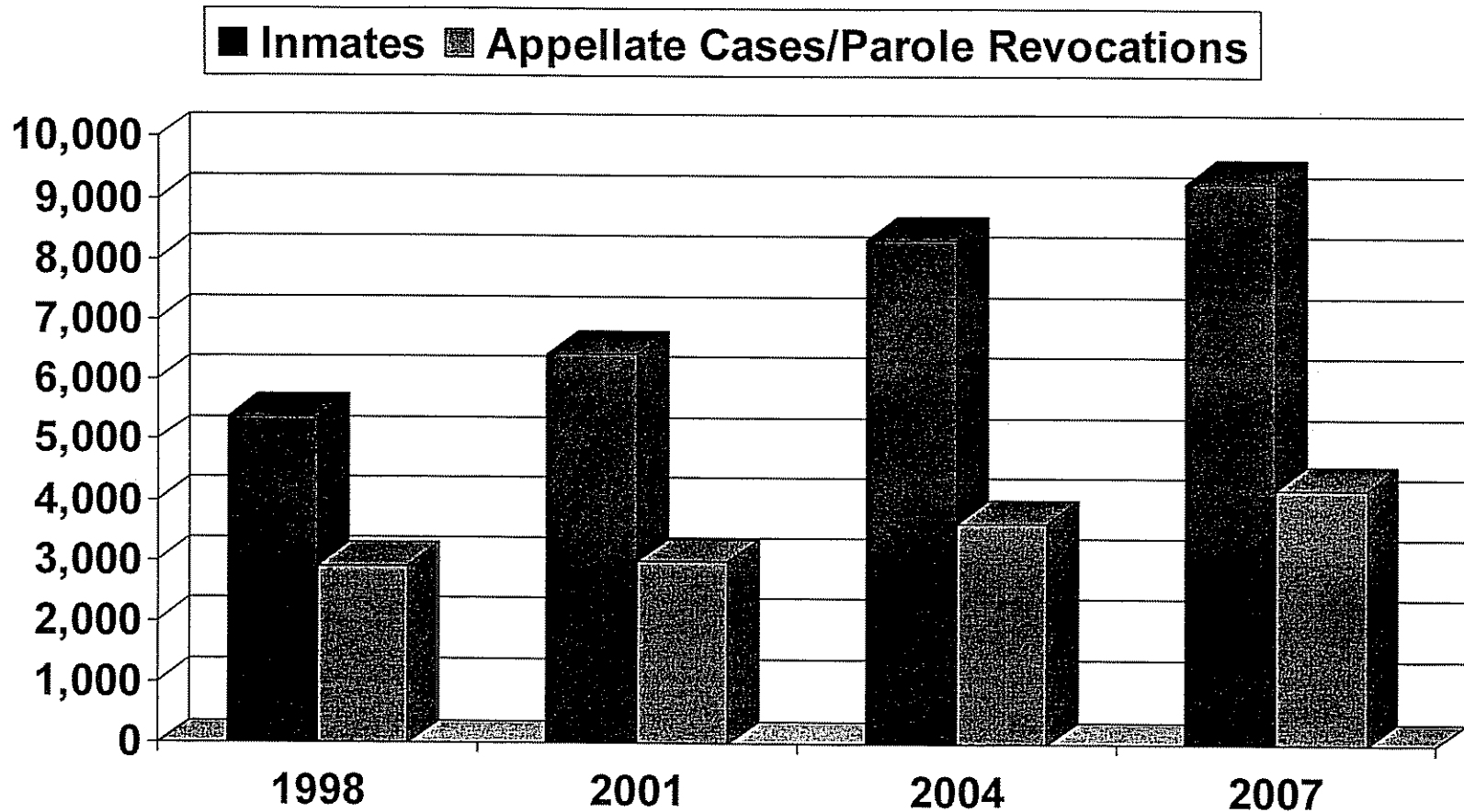
- Criminal appeals
- Post conviction proceedings
- Supervised release proceedings
- Sex offender community notification (ECRC) and
- review hearings (ECRA)



# APPELLATE CASELOADS 2004 and 2008

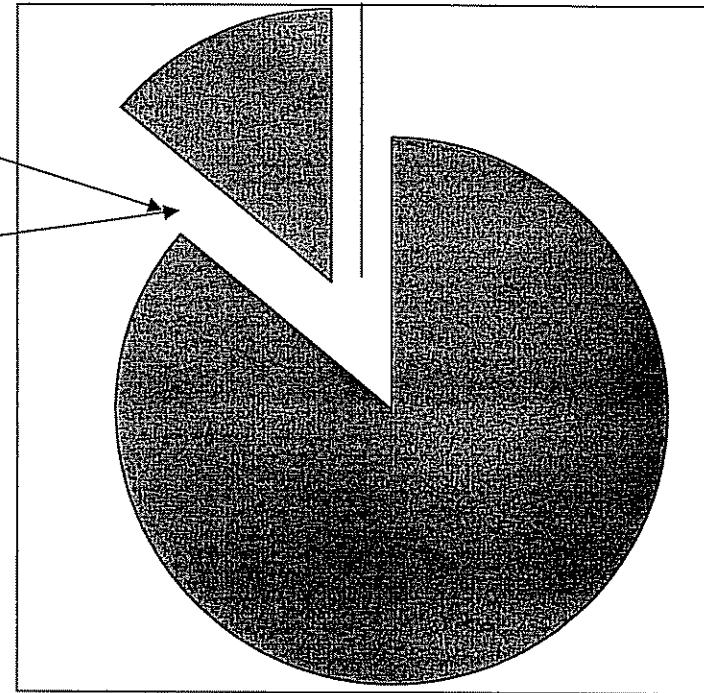


# D.O.C. INMATES v APPELLATE CASES OPENED & PAROLE REVOCATION CASES 1998-2007



# Governor's Recommendation Staffing

- **5% Reduction**
- **Equates to 50+ (Est.)  
F.T.E. Attorneys**
- **14% of the Staff**
- **100,000 Hours of  
Attorney Time**



# **Potential Impacts**

- **No out of custody cases. (Major delays)**
- **Case and time limits established.**
- **Defendants will be out of custody longer increasing risks to public safety.**
- **The integrity of the judicial system and the rule of law will be questioned.**
- **In Greater Minnesota there will be counties without public defenders.**

# Potential Impacts

- **Limited appearances- Courts will have limited access to public defenders.**
- **There will be counties without public defenders.**
- **In the more urban counties the number of calendars that can be staffed will be reduced, essentially idling many court rooms.**
- **Often public defenders are scheduled in two different court rooms; this brings the court system to a halt.**
- **Part Time Public Defender Hours- ??????????**
- **The speedy trial rights and the courts' timelines for timely case processing will not be met.**
- **Jail Overcrowding**

# **Potential Impacts**

## **Appellate Level**

- **The average time that appellate courts will have to wait until counsel is assigned could increase to a year or more.**
- **Sentencing errors not rectified could lead to people staying in prison too long at a cost to themselves and the Department of Corrections.**
- **The Court of Appeals will be unable to decide cases in a just and timely manner.**
- **In the post conviction unit (appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release, parole revocation) further delays will also occur.**
- **At some point, the delay in appellate services could lead to the courts ordering the release of prisoners who have been on the waiting list too long.**
- **Community notification hearings could be delayed or stopped altogether. This could jeopardize the state's ability to continue to properly supervise sexually dangerous persons.**

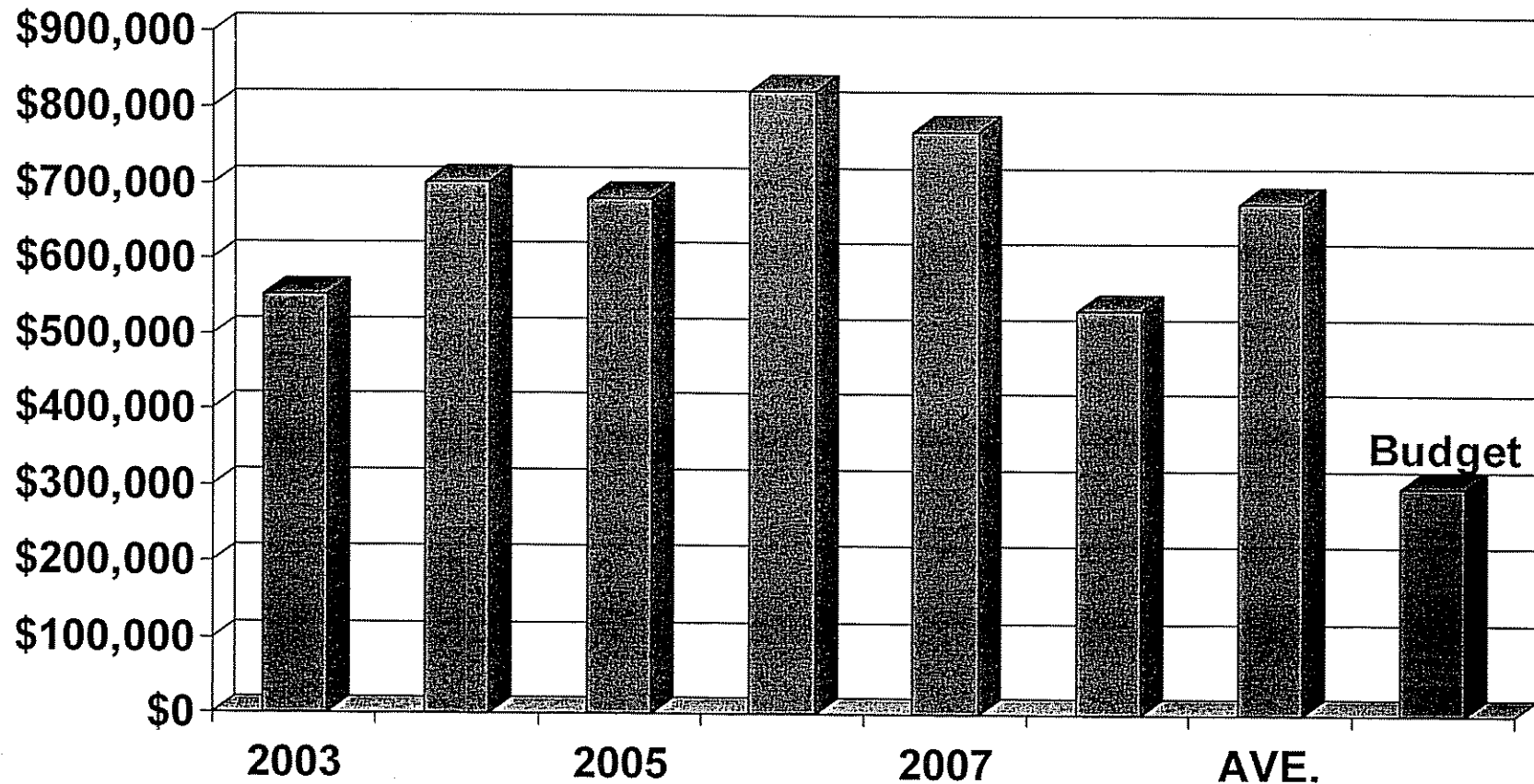
# Board of Public Defense 2010-2011 Budget Request (\$000)

	<u>FY 2010</u>	<u>FY 2011</u>
• Deficit(53 F.T.E.s)	\$3,701	\$3,914
• 2010/2011 Personnel	\$2,838	\$6,499
• Support Staff	\$610	\$645
• Mandated Costs*	\$582	\$650
• PD Corporations	\$87	\$179
<b>TOTAL</b>	<b>\$7,818</b>	<b>\$11,887</b>

\* Transcripts, Mileage, Rent



# Board of Public Defense Appellate Transcript Costs F.Y. 2003-2008



**Agency Purpose**

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

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

**Core Functions**

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

**Operations**

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

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

**Budget**

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

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

- ◆ \$134 million - General Fund

**Annual Caseloads**

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

**Contact**

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Dollars in Thousands

	Current		Forecast Base		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	66,348	68,028	68,028	68,028	136,056
<b>Forecast Base</b>	<b>66,348</b>	<b>68,028</b>	<b>68,028</b>	<b>68,028</b>	<b>136,056</b>
Change		0	0	0	0
% Biennial Change from 2008-09					1.3%
<b><u>Expenditures by Fund</u></b>					
<b>Carry Forward</b>					
Miscellaneous Special Revenue	47	0	0	0	0
<b>Direct Appropriations</b>					
General	66,061	68,315	68,028	68,028	136,056
<b>Statutory Appropriations</b>					
General	600	565	450	450	900
Gift	167	221	180	180	360
<b>Total</b>	<b>66,875</b>	<b>69,101</b>	<b>68,658</b>	<b>68,658</b>	<b>137,316</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	47,884	45,305	44,755	44,730	89,485
Other Operating Expenses	5,890	10,353	10,460	10,485	20,945
Local Assistance	13,101	13,443	13,443	13,443	26,886
<b>Total</b>	<b>66,875</b>	<b>69,101</b>	<b>68,658</b>	<b>68,658</b>	<b>137,316</b>
<b><u>Expenditures by Program</u></b>					
Appellate Office	4,528	4,627	4,603	4,603	9,206
Administrative Services Office	1,639	2,071	2,052	2,052	4,104
District Public Defense	60,708	62,403	62,003	62,003	124,006
<b>Total</b>	<b>66,875</b>	<b>69,101</b>	<b>68,658</b>	<b>68,658</b>	<b>137,316</b>
<b>Full-Time Equivalents (FTE)</b>	<b>640.1</b>	<b>527.5</b>	<b>527.5</b>	<b>512.5</b>	

**Program Description**

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

**Program at a Glance**

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

**Population Served**

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

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

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

**Services Provided**

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

**Historical Perspective**

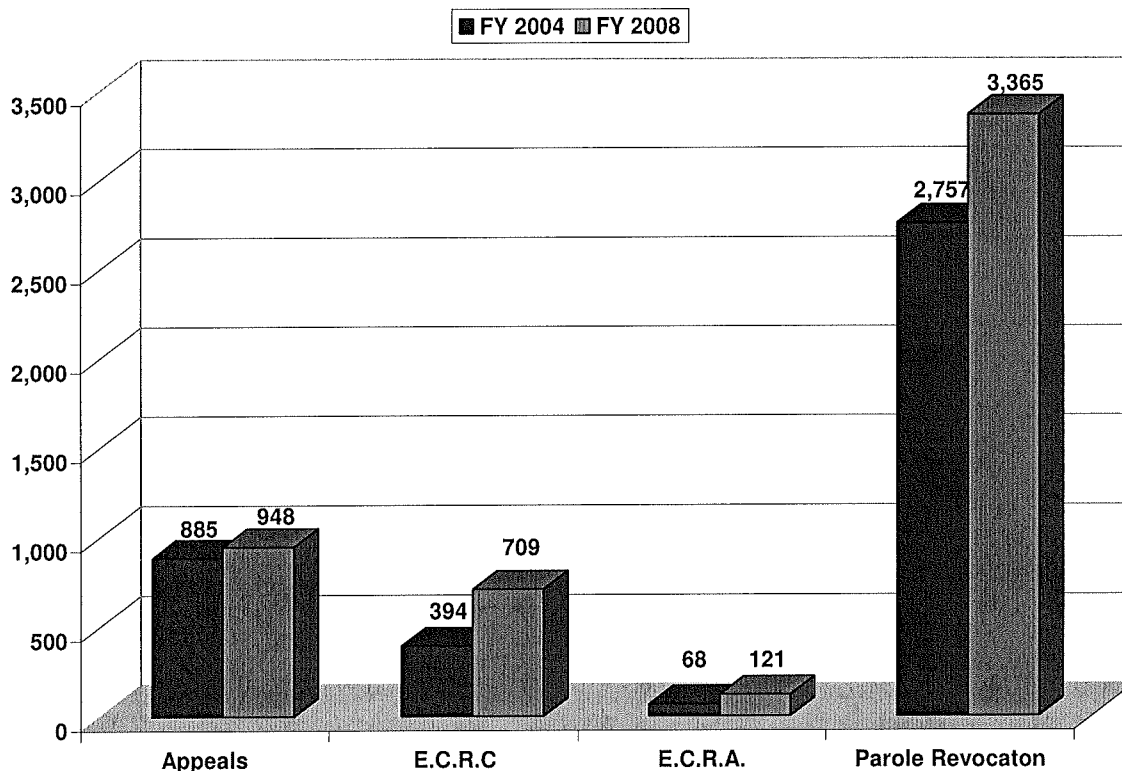
There is a constitutional right to counsel at public expense for indigent prisoners' appeals and parole revocation hearings. As sentence lengths increase, prisoners have more motivation to go through the appellate process, which takes about a year. They also have longer periods of supervised release,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

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

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

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

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

Board of Public Defense Appellate Office Cases FY 2004 & 2008**Key Program Goals**

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

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

**Key Program Measures**

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

**Program Funding**

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

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**PUBLIC DEFENSE BOARD**

Program: APPELLATE OFFICE

Program Summary

<i>Dollars in Thousands</i>					
	Current		Forecast Base		Biennium 2010-11
	FY2008	FY2009	FY2010	FY2011	
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	4,352	4,603	4,603	4,603	9,206
Forecast Base	4,352	4,603	4,603	4,603	9,206
<b><u>Expenditures by Fund</u></b>					
<b>Direct Appropriations</b>					
General	4,528	4,627	4,603	4,603	9,206
<b>Total</b>	<b>4,528</b>	<b>4,627</b>	<b>4,603</b>	<b>4,603</b>	<b>9,206</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	3,581	3,420	3,180	3,112	6,292
Other Operating Expenses	947	1,207	1,423	1,491	2,914
<b>Total</b>	<b>4,528</b>	<b>4,627</b>	<b>4,603</b>	<b>4,603</b>	<b>9,206</b>
<b><u>Expenditures by Activity</u></b>					
State Public Defender	4,528	4,627	4,603	4,603	9,206
<b>Total</b>	<b>4,528</b>	<b>4,627</b>	<b>4,603</b>	<b>4,603</b>	<b>9,206</b>
<b>Full-Time Equivalents (FTE)</b>	<b>44.0</b>	<b>38.0</b>	<b>38.0</b>	<b>38.0</b>	

**Program Description**

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

**Population Served**

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

**Services Provided**

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

**Program at a Glance**

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

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

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

**Key Program Goals**

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

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

**Key Measures**

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

**Program Funding**

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

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**PUBLIC DEFENSE BOARD**

Program: ADMINISTRATIVE SERVICES OFFICE

Program Summary

*Dollars in Thousands*

	Current		Forecast Base		Biennium
	FY2008	FY2009	FY2010	FY2011	2010-11
<b><u>Direct Appropriations by Fund</u></b>					
General					
Current Appropriation	2,142	2,052	2,052	2,052	4,104
Forecast Base	2,142	2,052	2,052	2,052	4,104
<b><u>Expenditures by Fund</u></b>					
Direct Appropriations					
General	1,639	2,071	2,052	2,052	4,104
<b>Total</b>	<b>1,639</b>	<b>2,071</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	1,248	1,325	1,283	1,286	2,569
Other Operating Expenses	391	746	769	766	1,535
<b>Total</b>	<b>1,639</b>	<b>2,071</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b><u>Expenditures by Activity</u></b>					
Public Defense Board	1,639	2,071	2,052	2,052	4,104
<b>Total</b>	<b>1,639</b>	<b>2,071</b>	<b>2,052</b>	<b>2,052</b>	<b>4,104</b>
<b>Full-Time Equivalent (FTE)</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	



**Program Description**

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

**Program at a Glance**

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

**Population Served**

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

**Services Provided**

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

**Historical Perspective**

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

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

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

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

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

The Board's service delivery priorities include:

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

# PUBLIC DEFENSE BOARD

Program: DISTRICT PUBLIC DEFENSE

Narrative

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

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

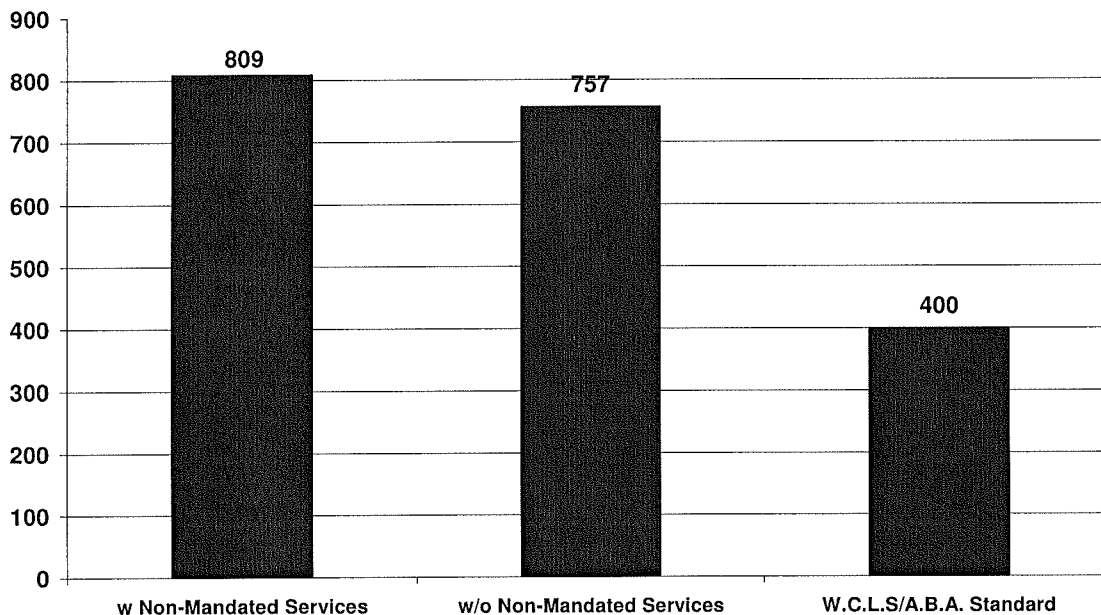
The representation of parents in child protection cases is not a mandated service for public defenders, although this service has been provided in the past. Representation of parents is statutorily a county function (M.S. 260C.331 Subdivision 3(d)). Public defenders continue to represent children over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

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

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

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

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



# PUBLIC DEFENSE BOARD

Program: DISTRICT PUBLIC DEFENSE

Narrative

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

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

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

## Key Program Goals

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

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

## Key Measures

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

## Program Funding

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

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**PUBLIC DEFENSE BOARD**

Program: DISTRICT PUBLIC DEFENSE

Program Summary

*Dollars in Thousands*

	Current		Forecast Base		Biennium 2010-11
	FY2008	FY2009	FY2010	FY2011	
<b><u>Direct Appropriations by Fund</u></b>					
<b>General</b>					
Current Appropriation	59,854	61,373	61,373	61,373	122,746
<b>Forecast Base</b>	<b>59,854</b>	<b>61,373</b>	<b>61,373</b>	<b>61,373</b>	<b>122,746</b>
<b><u>Expenditures by Fund</u></b>					
<b>Carry Forward</b>					
Miscellaneous Special Revenue	47	0	0	0	0
<b>Direct Appropriations</b>					
General	59,894	61,617	61,373	61,373	122,746
<b>Statutory Appropriations</b>					
General	600	565	450	450	900
Gift	167	221	180	180	360
<b>Total</b>	<b>60,708</b>	<b>62,403</b>	<b>62,003</b>	<b>62,003</b>	<b>124,006</b>
<b><u>Expenditures by Category</u></b>					
Total Compensation	43,055	40,560	40,292	40,332	80,624
Other Operating Expenses	4,552	8,400	8,268	8,228	16,496
Local Assistance	13,101	13,443	13,443	13,443	26,886
<b>Total</b>	<b>60,708</b>	<b>62,403</b>	<b>62,003</b>	<b>62,003</b>	<b>124,006</b>
<b><u>Expenditures by Activity</u></b>					
District Public Defense	60,708	62,403	62,003	62,003	124,006
<b>Total</b>	<b>60,708</b>	<b>62,403</b>	<b>62,003</b>	<b>62,003</b>	<b>124,006</b>
<b>Full-Time Equivalents (FTE)</b>	<b>584.1</b>	<b>477.5</b>	<b>477.5</b>	<b>462.5</b>	

**PUBLIC DEFENSE BOARD**

Agency Revenue Summary

*Dollars in Thousands*

	Actual FY2008	Budgeted FY2009	Current Law		Biennium 2010-11
			FY2010	FY2011	
<b><i>Non Dedicated Revenue:</i></b>					
<b>Total Non-Dedicated Receipts</b>	0	0	0	0	0
<b><i>Dedicated Receipts:</i></b>					
<b>Grants:</b>					
Gift	178	178	178	178	356
<b>Other Revenues:</b>					
Gift	2	2	2	2	4
<b>Total Dedicated Receipts</b>	180	180	180	180	360
<b>Agency Total Revenue</b>	180	180	180	180	360

**STATE OF MINNESOTA  
BOARD OF PUBLIC DEFENSE  
331 SECOND AVE S. NO. 900  
PH. 612-349-2565  
FAX 612-349-2568**

# Memo

**To:** Governor Pawlenty, Commissioner Tom Hanson

**Cc:** Jim King, Executive Budget Officer

**From:** Kevin Kajer, Chief Administrator

**Date:** 10/6/2008

**Re:** 2010-2011 Assessment

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## Background and Mission

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

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

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

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

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

## **Strategies**

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

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

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

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

## **Programs and Priorities**

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

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

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

On the appellate level staff reductions have meant that as many as 11% of the appeals in tried cases will not be assigned to a lawyer. The average time that appellate court(s) will have to wait until counsel is assigned will be approximately six months. By fiscal year 2010 the wait could reach one year. All of this assumes that case growth remains flat.

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

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

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

### **Trends and Outside Influences**

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

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

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

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



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

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

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

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

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

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

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

## Conclusion

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

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

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

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

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

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

The **service principles** include:

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

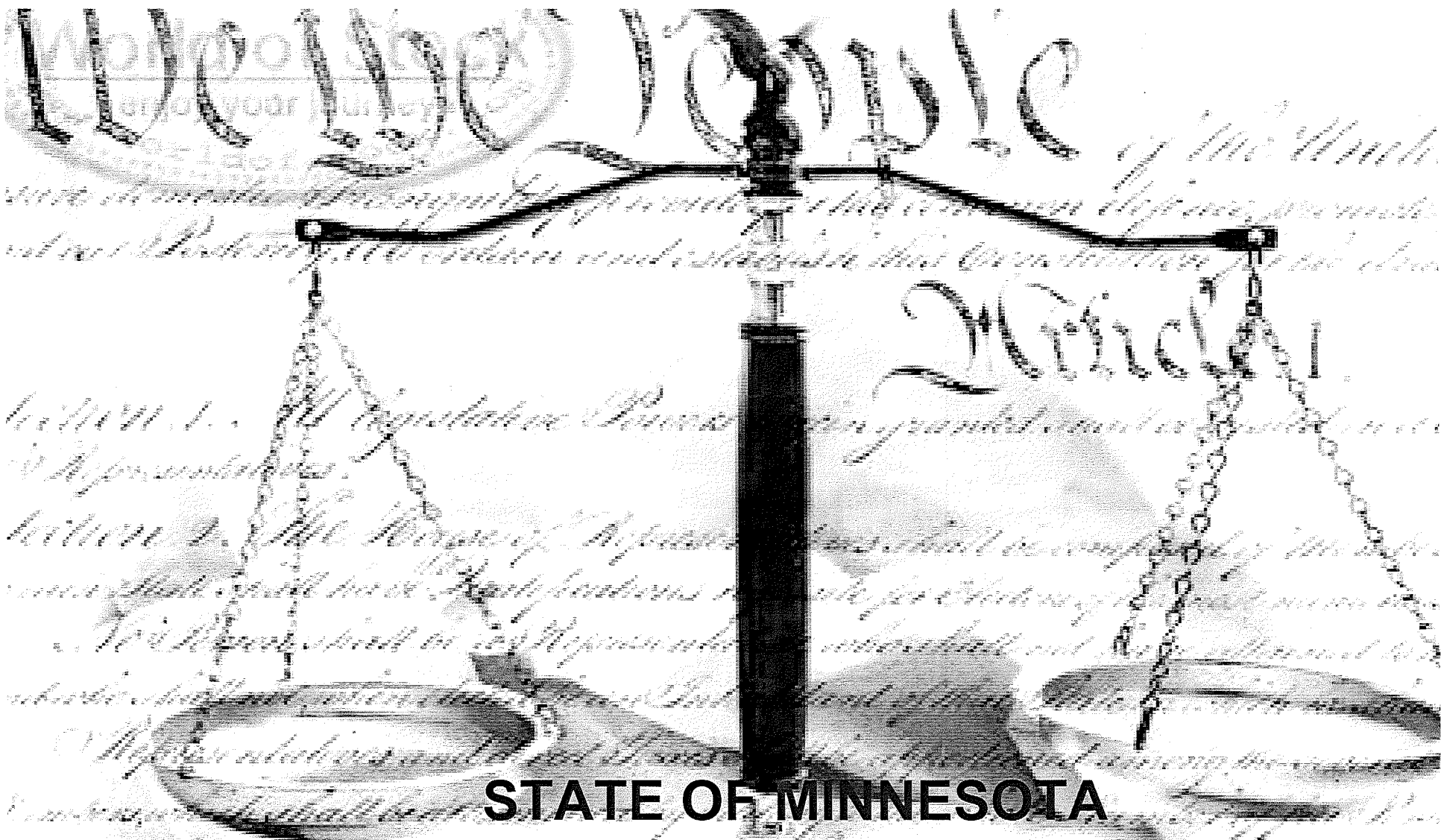
Again facing a major budget deficit in FY 2005, the Board developed a service delivery plan based on the 2003 case priorities. The Board's **service delivery priorities** include:

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

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

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

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



**STATE OF MINNESOTA**  
**BOARD OF PUBLIC DEFENSE**  
**HOUSE PUBLIC SAFETY FINANCE DIVISION**  
**2009**

# **BUDGET AND SERVICE** **PRIORITIES**

## **Budget Principles:**

- **Minimize negative impacts on clients.**
- **Maintain a statewide public defender system.**
- **Minimize impact on staff and infrastructure.**
- **Place a priority on mandated services.**

## **Service Priorities:**

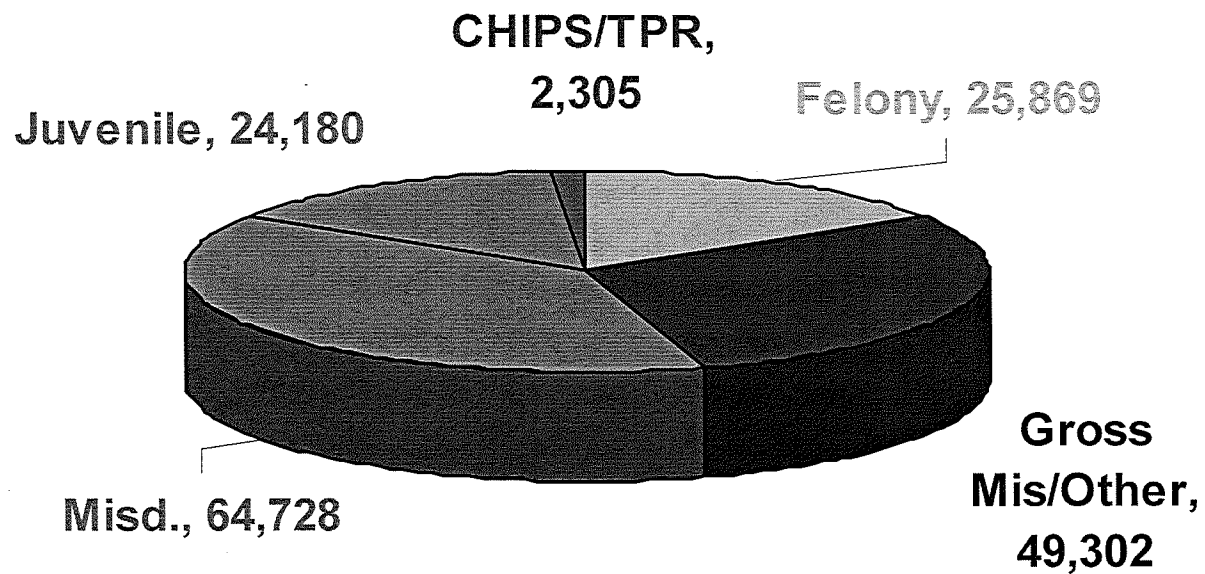
- **Prioritize service to clients in custody.**
- **Evaluate the staffing of specialty courts.**
- **Eliminate representation in non- mandatory cases.**

# BOARD OF PUBLIC DEFENSE

- Largest User of Courts
- Provide Service in Every County/Courtroom
- Quality Control for the Criminal Justice System
- Caseloads controlled by outside factors
- Time commitments controlled by outside factors

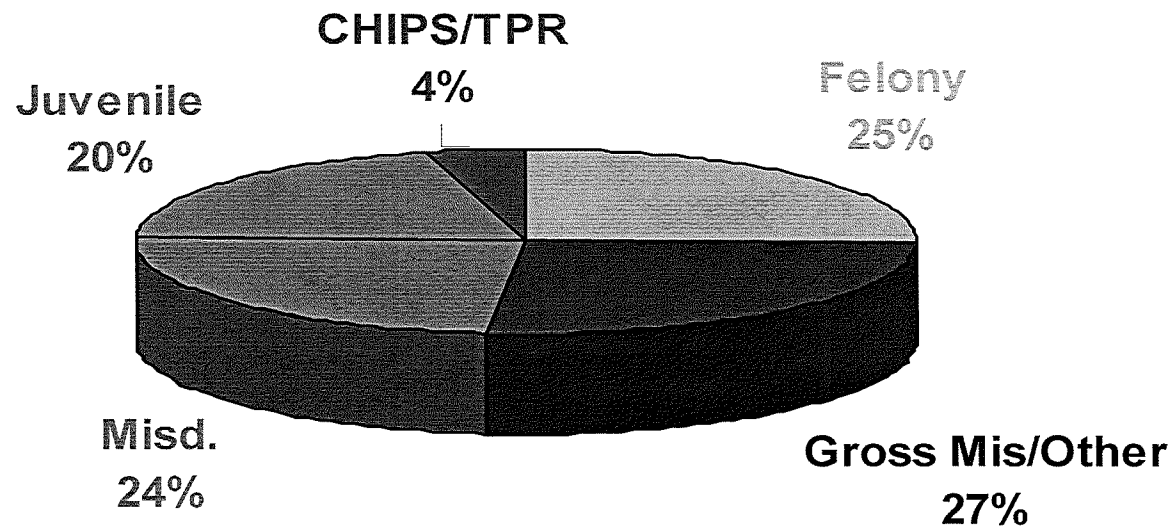


# ESTIMATED F.Y. 2009 CASES BY CASE TYPE (Based on July-Oct)



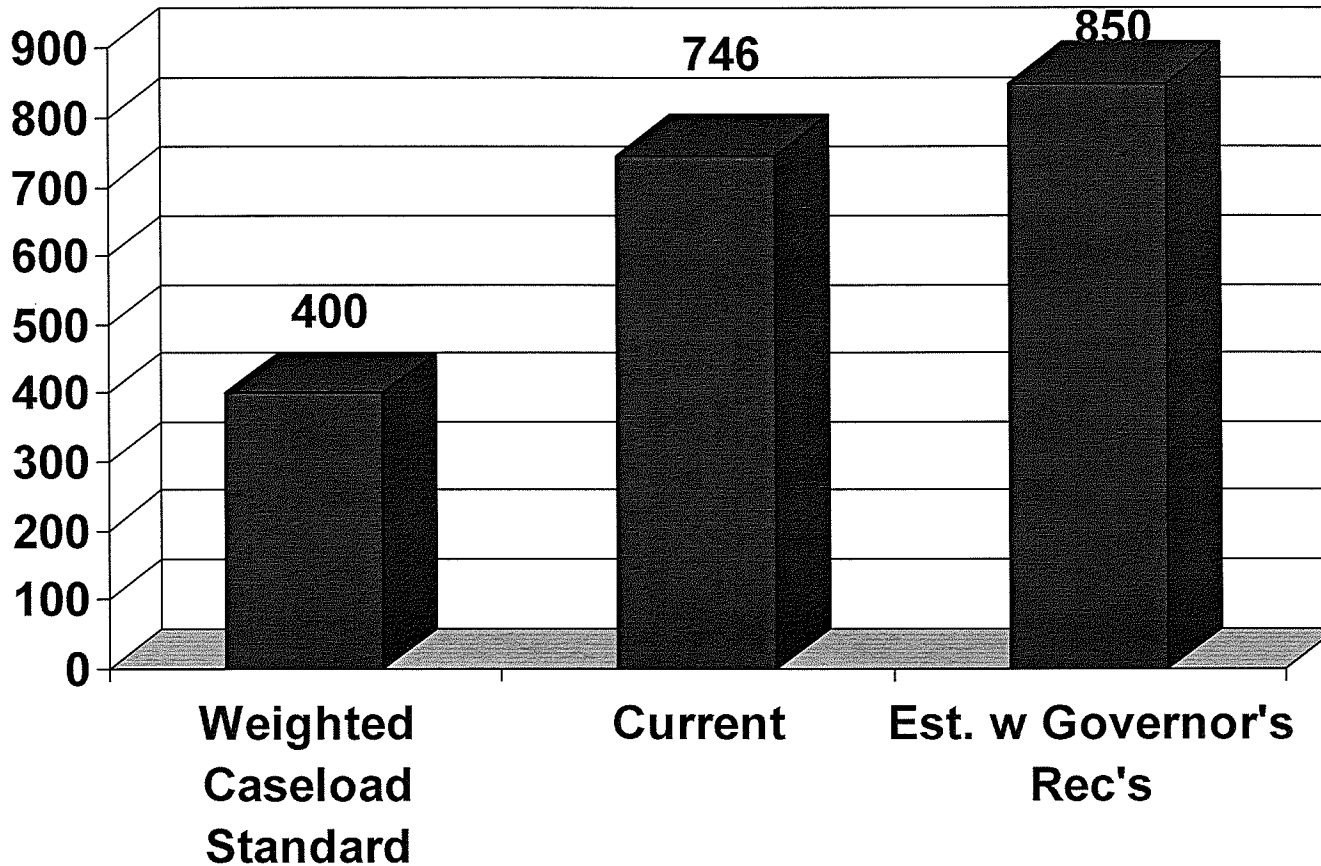
# ESTIMATED F.Y.2009 CASE UNITS BY TYPE

(Case unit is approx. = to a misdemeanor)

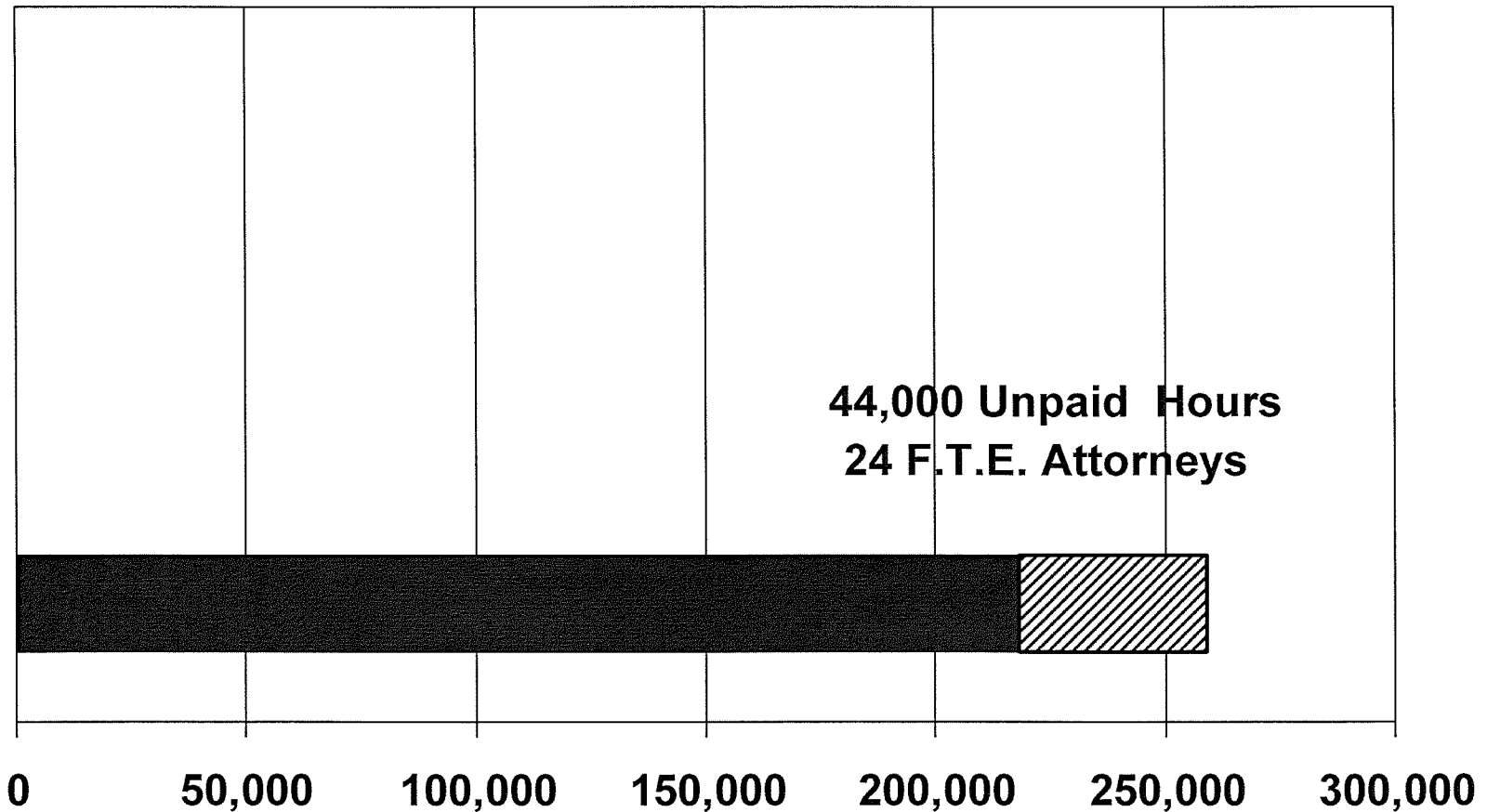




# Estimated Case Units Per F.T.E. Attorney



**BOARD OF PUBLIC DEFENSE PART-**  
**TIME PUBLIC DEFENDER UNPAID**  
**HOURS F.Y.2008**



# **CASELOADS/TIME** **COMMITMENTS**

- **The Board does not and cannot control caseloads or workloads.**
- **These are controlled by external factors: increases in police and prosecution, legislative changes, constitutional mandates, Supreme Court Rules, sentencing guideline changes, and judicial calendaring changes.**

# **EXAMPLES OF OUTSIDE** **FACTORS**

- 1987-2005, the Legislature created 86 sentencing enhancements.
- Statewide prosecutors outnumber defenders 2 to 1.
- 1998-2008, 26 new judgeships were created, each with a court room needing services.
- 33 drug courts operating- very labor-intensive
- Stearns County awarded \$300,000 for a Domestic Violence Court.
- Hennepin County Sheriff awarded a \$500,000 federal grant for DNA testing to help reduce a backlog of “thousands” of cold cases.
- State Patrol received \$175,000 for Holiday DWI Enforcement.
- Travel- (Calendar coverage)
- Sting Operations ( I.e. Roseau, MN)
- 2000-Present Supreme Court implements Children’s Justice Initiative (CJI) In Child Protection Cases.

# **Board Of Public Defense Fiscal** **Year 2009 Budget**

- Loss of 50 F.T.E. attorney positions on the district level.
- Loss of 3 attorney positions on the appellate level.
- Total loss of 12% of the attorney staff.
- Loss of 100,000 hours of attorney time.
- 19 other positions went unfilled.

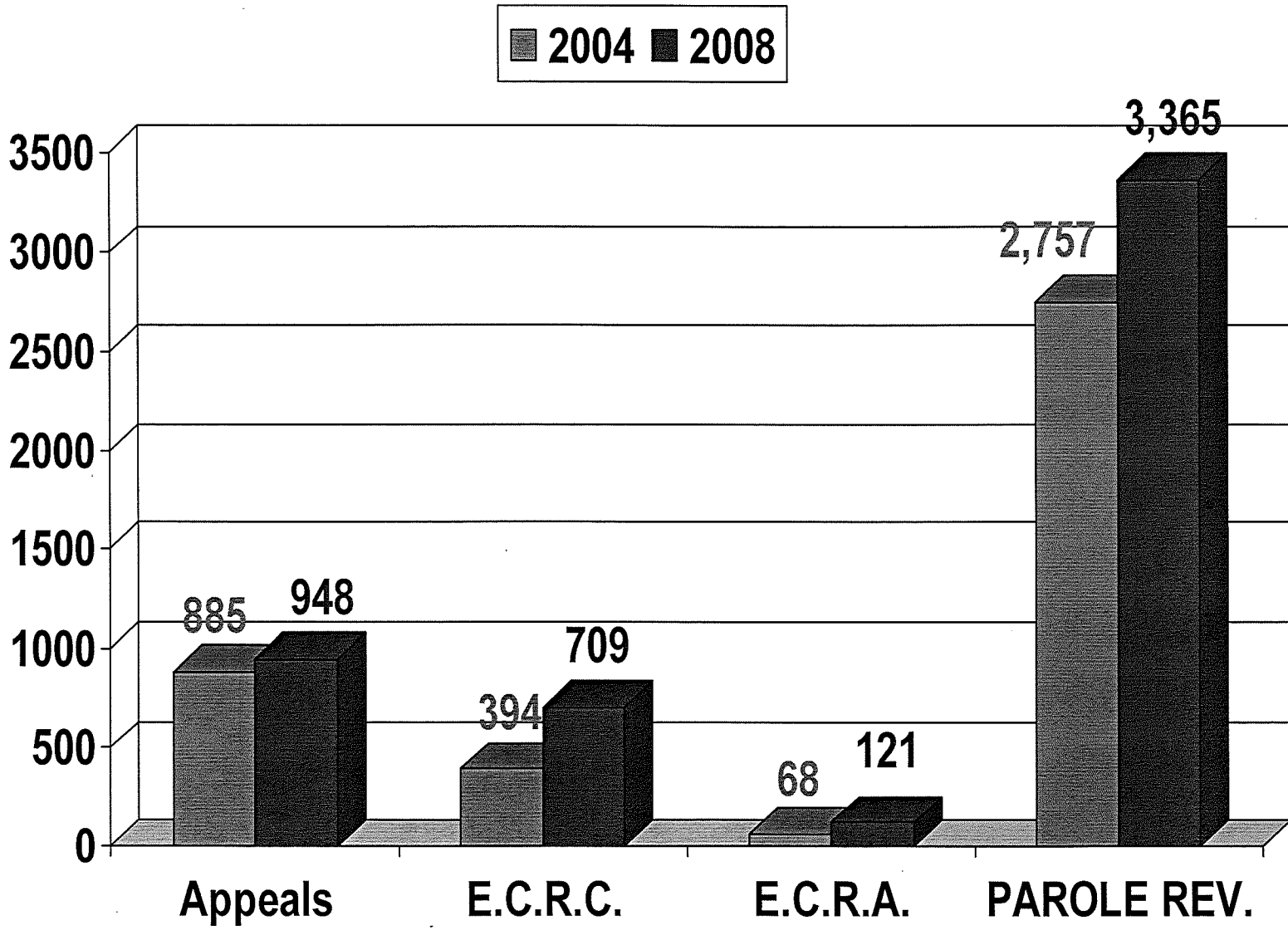
# APPELLATE OFFICE

Provides constitutionally mandated services in:

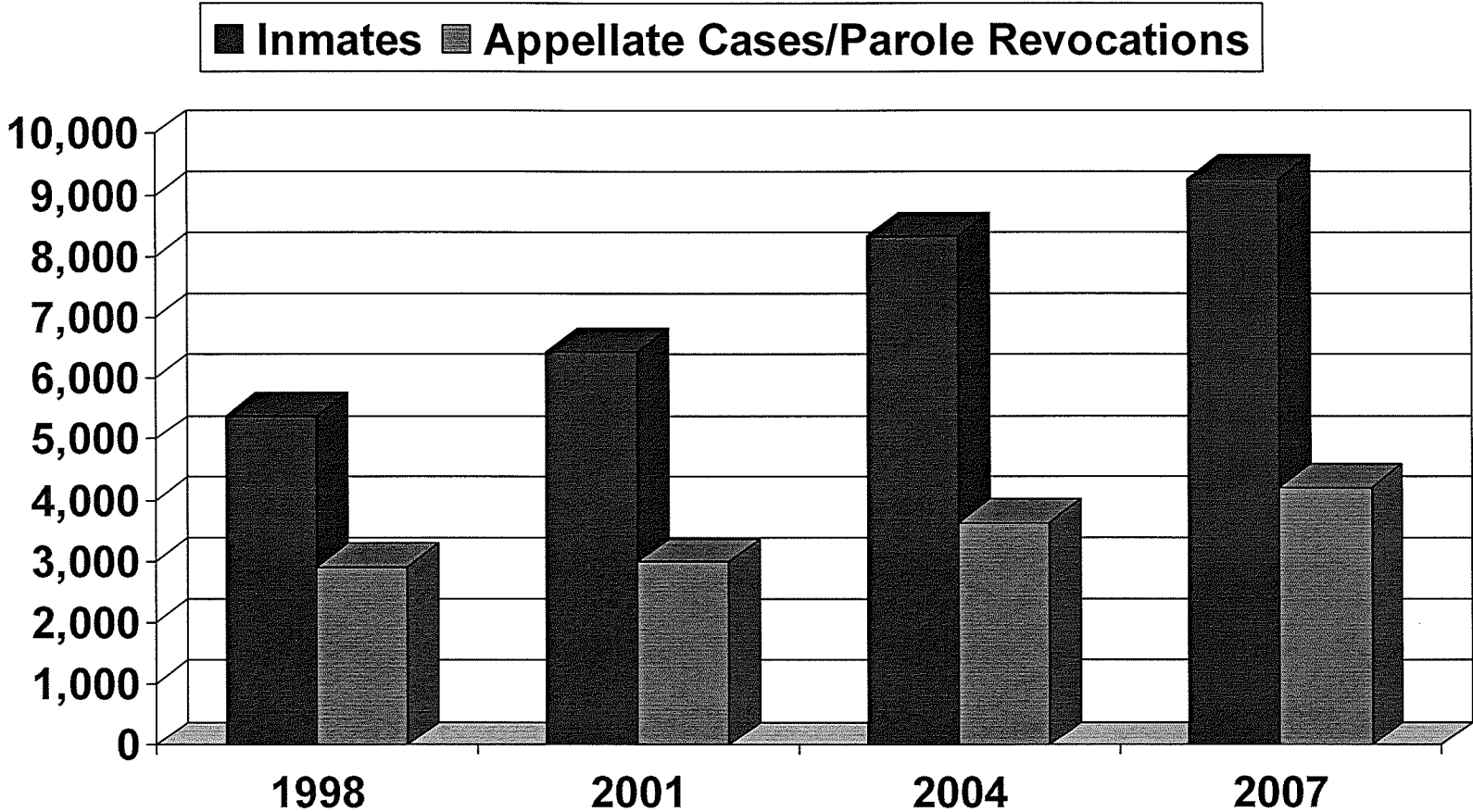
- Criminal appeals
- Post conviction proceedings
- Supervised release proceedings
- Sex offender community notification (ECRC) and
- review hearings (ECRA)



# APPELLATE CASELOADS 2004 and 2008



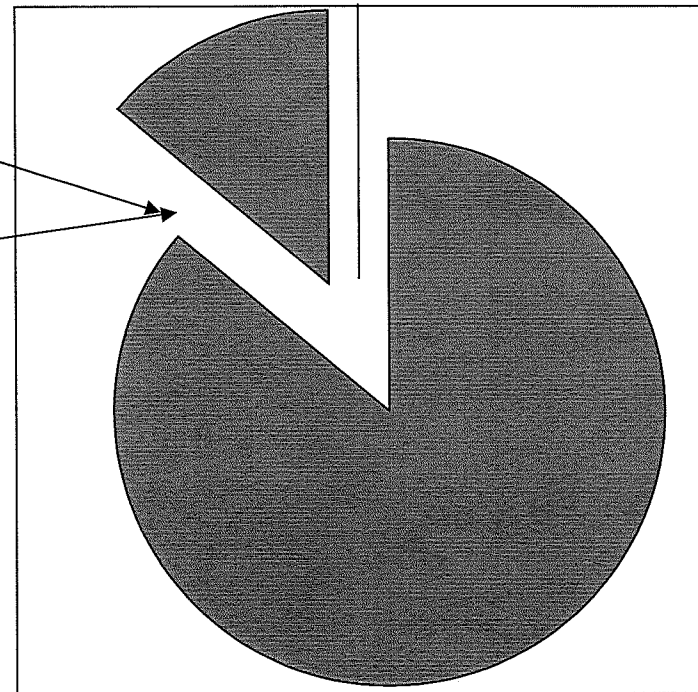
# D.O.C. INMATES v APPELLATE CASES OPENED & PAROLE REVOCATION CASES 1998-2007





# Governor's Recommendation Staffing

- **5% Reduction**
- **Equates to 50+ (Est.)  
F.T.E. Attorneys**
- **14% of the Staff**
- **100,000 Hours of  
Attorney Time**



# **Potential Impacts**

- **No out of custody cases. (Major delays)**
- **Case and time limits established.**
- **Defendants will be out of custody longer increasing risks to public safety.**
- **The integrity of the judicial system and the rule of law will be questioned.**
- **In Greater Minnesota there will be counties without public defenders.**

# Potential Impacts

- **Limited appearances- Courts will have limited access to public defenders.**
- **There will be counties without public defenders.**
- **In the more urban counties the number of calendars that can be staffed will be reduced, essentially idling many court rooms.**
- **Often public defenders are scheduled in two different court rooms; this brings the court system to a halt.**
- **Part Time Public Defender Hours- ??????????**
- **The speedy trial rights and the courts' timelines for timely case processing will not be met.**
- **Jail Overcrowding**

# **Potential Impacts**

## **Appellate Level**

- **The average time that appellate courts will have to wait until counsel is assigned could increase to a year or more.**
- **Sentencing errors not rectified could lead to people staying in prison too long at a cost to themselves and the Department of Corrections.**
- **The Court of Appeals will be unable to decide cases in a just and timely manner.**
- **In the post conviction unit (appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release, parole revocation) further delays will also occur.**
- **At some point, the delay in appellate services could lead to the courts ordering the release of prisoners who have been on the waiting list too long.**
- **Community notification hearings could be delayed or stopped altogether. This could jeopardize the state's ability to continue to properly supervise sexually dangerous persons.**

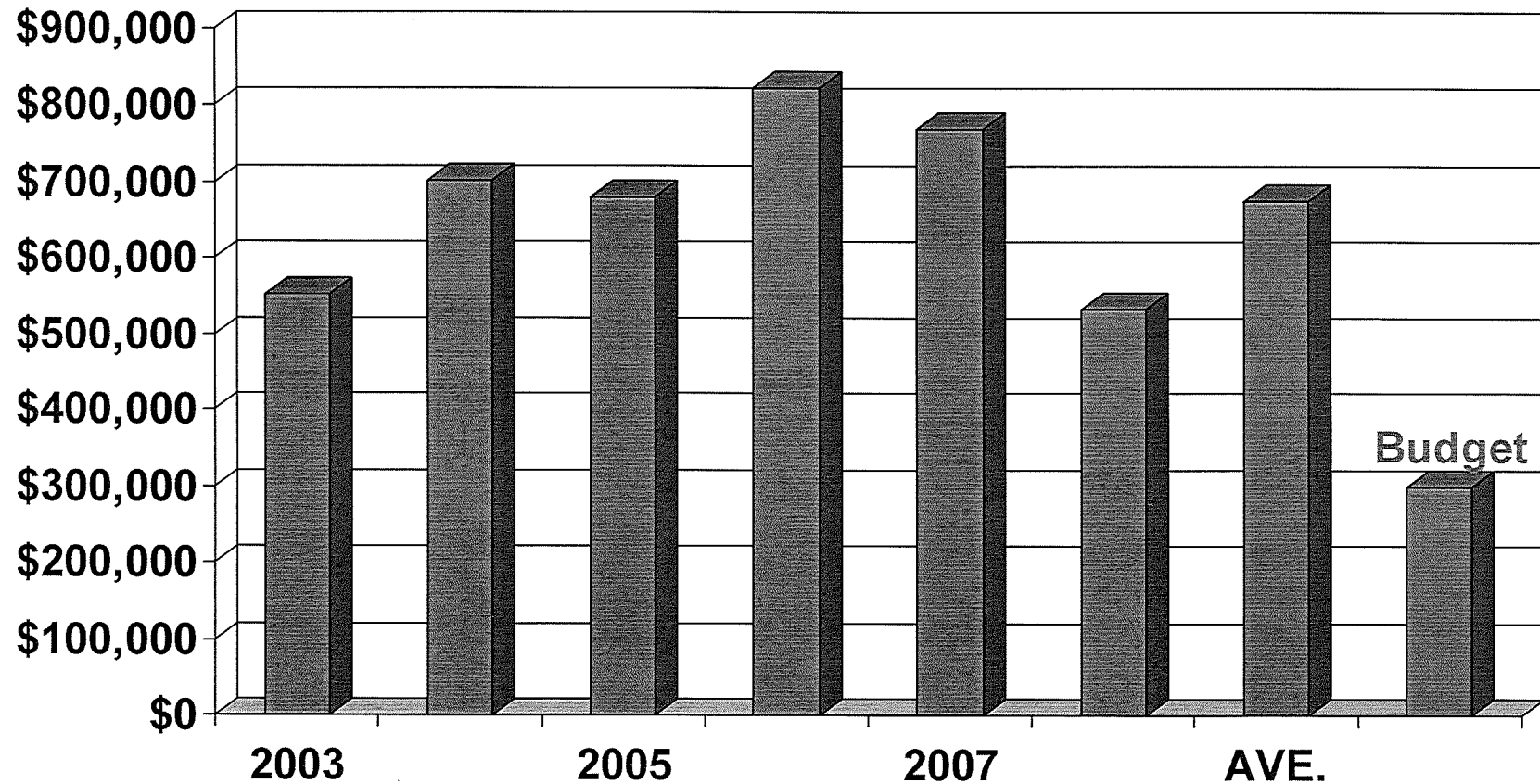
# Board of Public Defense

## 2010-2011 Budget Request (\$000)

	<u>FY 2010</u>	<u>FY 2011</u>
• Deficit(53 F.T.E.s)	\$3,701	\$3,914
• 2010/2011 Personnel	\$2,838	\$6,499
• Support Staff	\$610	\$645
• Mandated Costs*	\$582	\$650
• PD Corporations	\$87	\$179
<b>TOTAL</b>	<b>\$7,818</b>	<b>\$11,887</b>

\* Transcripts, Mileage, Rent

# Board of Public Defense Appellate Transcript Costs F.Y. 2003-2008



No. C 9-81-1206

**STATE OF MINNESOTA  
IN SUPREME COURT**

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OFFICE OF  
APPELLATE COURTS

JUN 4 2009

**FILED**

In re Petition to Amend the Rules of the Minnesota  
Supreme Court on Lawyer Registration

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**PETITION OF LEGAL SERVICES PLANNING COMMITTEE**

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**Legal Services Planning Committee**  
Peter Knapp, Chair (#151087)  
William Mitchell College of Law  
875 Summit Avenue  
Saint Paul, MN 55105  
(651) 290-6423

*Petitioner*

**Dorsey & Whitney LLP**  
James K. Langdon (#0171931)  
Britta Schnoor Loftus (#0388020)  
Meghan E. Lind (#0389034)  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402  
(612) 340-2600

*Attorneys for Petitioner  
Legal Services Planning Committee*

No. \_\_\_\_\_

**STATE OF MINNESOTA  
IN SUPREME COURT**

In re Petition to Amend the Rules of the Minnesota  
Supreme Court on Lawyer Registration

**PETITION OF LEGAL SERVICES PLANNING COMMITTEE**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Legal Services Planning Committee (the “Committee”) respectfully submits this petition seeking an amendment to Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration. The Committee requests an increase in the lawyer registration fee (“LRF”) by \$25.00 for every lawyer actively engaged in the practice of law, and an allocation of those additional proceeds to the Legal Services Advisory Committee for distribution to civil legal services for low income and disadvantaged Minnesotans.

In support of this petition, the Committee would show the following:

1. Petitioner Committee is a forum created by this Court to seek access to justice for low income and disadvantaged persons throughout Minnesota who face significant barriers to meeting their civil legal needs.
2. In 1997, the Court amended the Rules of the Supreme Court for Registration of Attorneys to allocate \$50.00 to the Legal Services Advisory Committee. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (Feb. 5, 1997). This decision was prompted by a Petition submitted by the Joint Legal Services Access



and Funding Committee, which argued that the allocation was necessary to meet the acute need for civil legal services for low income and disadvantaged Minnesotans.

3. Today, the unmet need is even greater. The U.S. Census Bureau estimates that almost half a million individuals in the state are living in poverty. *See* U.S. Census Bureau, 2007 Poverty and Median Income Estimates, <http://www.census.gov/did/www/saipe/data/statecounty/data/2007.html> (last visited May 29, 2009). At the most basic level, these families and individuals need legal assistance for critical matters such as child custody, health, housing issues, sustenance and personal safety. Studies suggest that perhaps as much as 75% of the legal needs of the disadvantaged are not addressed. *See* Minnesota Legal Services Planning Commission Drafting Committee, *Recommendations of the Minnesota Legal Services Planning Commission on the Configuration of the LSC-Funded Programs*, 26 HAMLIN J. PUB. L. & POL'Y 265, 282 (Spring 2005). In 2009, the American Bar Association released a report on pro bono legal services, in which it recognized that the bar needs to do more to support volunteer legal services and the individuals of limited means they serve. American Bar Association, *Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers*, Feb. 2009, <http://www.abanet.org/legalservices/probono/report2.pdf> (last visited June 2, 2009). The Legal Services Corporation also has studied the unmet need for civil legal services in the U.S. and discovered that “only a very small percentage of the civil legal problems experienced by low income people (one in five or less) are addressed with the assistance of either a private (pro bono or paid) or a legal aid lawyer.” Legal Services Corporation, *Documenting the Justice Gap In America*, June 2007 (2d ed.), <http://www.lsc.gov/justicegap.pdf> (last visited June 2, 2009). The report goes on to suggest that these figures probably understate the actual current need. *Id.* at 14. With the lowest salaries

and the highest unmet need, civil legal services are the most under-funded piece of the justice system.

4. Legal services are countercyclical—the need goes up when the economy, and therefore resources, goes down. The capacity of legal aid and pro bono programs to meet that need is declining due to increased costs (such as health insurance), combined with stagnant and declining funding. The Legal Services Advisory Committee funds roughly one-third of civil legal services. However, effective July 1, 2009, its state appropriations will be reduced by \$1.1 million per year. This loss means that approximately 2600 fewer families per year will be able to obtain legal services. Interest on Lawyers' Trust Accounts ("IOLTA") revenues have dropped nearly 75% from just two years ago, and IOLTA funding was recently cut, translating into an additional 1,000 families that will not have access to legal assistance. The Lawyers Trust Account Board announced that they will be cutting grants by at least \$500,000 this month. Finally, the Volunteer Lawyer Network, the Volunteer Attorney Program in Duluth, and other free-standing volunteer attorney programs are running at bare minimum: they have eliminated staff positions and taken numerous cost-cutting measures. Given the state of the economy, there is no realistic expectation that existing resources will rebound in the near future.

5. Inflation also has affected civil legal services. According to the Consumer Price Index inflation calculator, the \$50.00 fee instituted in 1997 would need to be \$66.43 to have the same buying power in 2009. *See* United States Department of Labor: Bureau of Labor Statistics, *CPI Inflation Calculator*, [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited June 1, 2009). In other words, the cost of living has increased by approximately 33% since 1997.

6. In response to these growing needs and shrinking resources, the Committee respectfully petitions this Court to increase the LRF by \$25.00 for every lawyer actively engaged in the practice of law.

7. Pursuant to the Constitution of the State of Minnesota, this Court has the exclusive power to regulate the bar. See MINN. CONST. art. III, § 1 and art. VI, § 1. *Sharood v. Hatfield*, 210 N.W.2d 275 (1973) (“[T]he power to make the necessary rules and regulations governing the bar was intended to be vested exclusively in the supreme court . . . .” (quoting *In re Petition for Integration for the Bar of Minnesota*, 12 N.W.2d 515, 516 (1943))); *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Auth.*, 251 N.W.2d 620, 623 (1976) (“This court is empowered by Article 3, § 1, of the 1974 Minnesota Constitution to administer, among other areas, the practice of law.”).

8. This exclusive authority includes the power to supervise lawyers and to regulate bar admission requirements. See Minn. Stat. § 480.05 (“The Supreme Court . . . shall prescribe, and from time to time may amend and modify . . . rules governing the examination and admission to practice of attorneys at law and rules governing their conduct in the practice of their profession . . . .”); accord *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 755 (1992) (“Under Article 3, Section 1 of the Minnesota Constitution, this power [to decide who may properly practice law before the courts of this state] is vested solely in the judiciary.” (citation omitted)); *In re Daly*, 189 N.W.2d 176, 179 (1971) (“The ultimate determination governing admission, supervision, and discipline of attorneys in this state . . . is vested in this court.” (citation omitted)). Accordingly, the Constitution, statutory law, and case law all support the Court’s authority to increase the LRF to provide additional funding for legal services.

9. The Court repeatedly has exercised its power to determine the amount and use of LRF by amending the Rules of the Supreme Court for Registration of Attorneys. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (June 17, 2003) (reallocating funds from the State Board of Continuing Legal Education to the Lawyers Professional Responsibility Board); *Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (May 8, 2000) (reducing allocations of LRFs to the State Board of Law Examiners and the Lawyers Professional Responsibility Board); *Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206, C8-84-1650, C4-91-1728 (Apr. 18, 2000) (increasing the LRF to allocate funds to the Lawyer Trust Account Board for a lawyers assistance program); *Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206, C0-85-2205, C2-84-2163 (May 22, 1998) (revoking a temporary reallocation of LRFs from the Client Security Fund to the Board of Continuing Legal Education). Specifically, the Court previously has exercised its power to increase LRFs in order to allocate funds for legal services. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (Feb. 5, 1997) (increasing LRF to allocate fifty dollars for the Legal Services Advisory Committee).<sup>1</sup> Accordingly, precedent demonstrates that the Court has the power to increase LRFs to allocate funding for legal services.

10. Funding civil legal services through an increase in LRFs would help to ensure the protection of constitutionally guaranteed rights. The Minnesota Constitution recognizes that

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<sup>1</sup> The new increase of \$25 will make for a total of \$75 per attorney to sustain civil legal assistance, a figure which appropriately matches the amount currently sought by the State of Minnesota Board of Public Defense.

every person is entitled to a legal remedy for wrongs inflicted and that every person is entitled to access justice:

REDRESS OF INJURIES OR WRONGS. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

MINN. CONST. art. I, § 8. By providing assistance to help disadvantaged Minnesotans navigate the legal system and understand the laws, legal services providers help to guarantee that every person is afforded these rights. An increase in LRFs would help civil legal services providers guarantee every person access to justice.

11. Funding civil legal services through an increase in LRFs is also appropriate because lawyers have a special obligation to ensure access to justice. The Minnesota Rules of Professional Conduct provide that a lawyer is “a public citizen having *special responsibility* for the quality of justice.” Minn. R. Prof. Conduct, pmb1., ¶ [1] (Oct. 1, 2005) (emphasis added). The Rules also provide that lawyers have an obligation to seek access to the legal system, including furthering the public’s understanding of the law and legal system and devoting time and resources to ensure access to justice:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. . . . [A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these

objectives and should help the bar regulate itself in the public interest.

Minn. R. Prof. Conduct, pmb1., ¶ [6]; *accord* Minn. R. Prof. Conduct 6.1 (“Every lawyer has a professional responsibility to provide legal services to those unable to pay . . .”). The Rules provide that “in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible,” lawyers “should financially support” programs instituted by the government and the profession “to meet the need for free legal services.” Minn. R. Prof. Conduct 6.1, cmt. [10]; *see also* Minn. R. Prof. Conduct, 6.1 (“[A] lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.”). Although all citizens have an obligation to uphold the law, lawyers have a special, professional responsibility to ensure access to justice. Accordingly, funding civil legal services through an increase in LRFs is an appropriate means by which to ensure continued access to justice throughout the State of Minnesota.<sup>2</sup>

12. Indeed, it is reasonable to require lawyers to provide this financial support to civil legal services for low income and disadvantaged persons. Lawyers are given a monopoly by the Court on the practice of law. This monopoly carries with it a responsibility to make sure that all citizens, including the approximately 15% of the population with insufficient resources, have access to justice. Furthermore, the majority of Minnesota attorneys have the ability to absorb

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<sup>2</sup> In addition to Minnesota, other states have used LRF to provide funding for legal services. *See, e.g.,* New York State Unified Court System, *Attorney Registration: Registration FAQ*, Mar. 12, 2008, <http://www.nycourts.gov/attorneys/registration/faqs.shtml#q1> (last visited May 31, 2009) (providing that—pursuant to Section 468-a of the Judiciary Law and 22 NYCRR Part 118 of the Rules of the Chief Administrator of the Courts—\$50.00 of the \$350.00 LRF be deposited in the Indigent Legal Services Fund); State Bar of Texas, *\$65 Legal Services Fee and Voluntary ATJ Contribution: Frequently Asked Questions*, [http://www.texasbar.com/Template.cfm?Section=For\\_Attorneys&Template=/ContentManagement/ContentDisplay.cfm&ContentID=11498](http://www.texasbar.com/Template.cfm?Section=For_Attorneys&Template=/ContentManagement/ContentDisplay.cfm&ContentID=11498) (last visited May 31, 2009) (providing that—pursuant to the State Bar Act, § 81.054—\$65.00 of the LRF be designated to civil legal aid and indigent criminal defense).

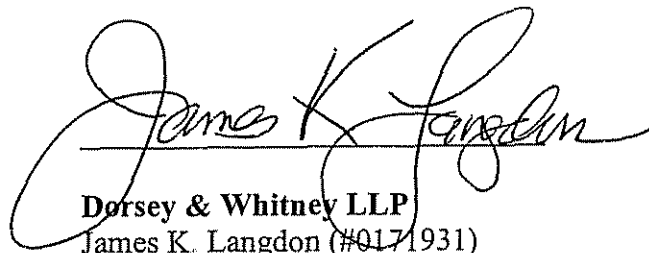
this \$0.48 per week increase in the cost of doing business.<sup>3</sup> Even with the proposed increases, Minnesota's LRF still would be comparable to the nationwide average. *See* Administrative Office of Pennsylvania Courts, *News Release: Annual Registration Fee for Lawyers to Increase*, Apr. 2, 2009, *available at* <http://www.aopc.org/NR/rdonlyres/7753FE41-9923-447A-82C8-2D8BFC282686/0/prrel09402.pdf> (last visited June 2, 2009) (noting that the national average attorney registration fee is over \$300).

For the foregoing reasons, the Committee respectfully requests that the Court amend the Rules on Registration of Attorneys to increase the allocation to the Legal Services Advisory Committee by \$25.00.

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<sup>3</sup> The Minnesota State Bar Association ("MSBA") intends to discuss this issue at its upcoming convention. Currently, the MSBA does not oppose the legislative determination that this Court should impose a \$75 charge on the LRF to help fund public defense. The MSBA did not oppose the increase because, among other reasons, it viewed the charge as necessary and as an alternative to the threatened sales tax on legal services.

Dated: June 4, 2009

A handwritten signature in black ink, reading "James K. Langdon". The signature is written in a cursive style with large, flowing loops. It is positioned above a horizontal line.

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