



**State of Minnesota
Department of Finance**

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January 25, 2005

The Minnesota Legislature
State Capitol
St. Paul, Minnesota

To the 2005 Legislature:

I respectfully submit for your consideration the Governor's FY 2006-07 budget proposal for the judicial branch agencies, including the Supreme Court, the Court of Appeals, the Trial Courts, the Legal Profession Boards, and the Board of Public Defense. The Governor respects the separation of powers and the desire of constitutional officers and officials in the judicial and legislative branches to independently present their budget requests directly to the legislature without specific recommendations from the Governor. However, since the Governor is required by law to submit a balanced budget to the legislature, it is necessary to identify funding for those offices as part of preparing a complete budget.

For the judicial branch, the Governor recommends an increase of \$20 million to recognize current caseload increases and other cost pressures in the criminal justice area. The funding recommendation has been pro-rated among the judicial branch agencies supported by the general fund. The Legal Profession Boards are fully funded by fees collected under court rules.

The Governor recommends funding for significant changes in the sentencing of sex and methamphetamine offenders. His budget includes \$22.2 million for additional trial and other court-related costs anticipated for the Trial Courts and the Board of Public Defense as a result of these sentencing changes.

The Governor recommends \$15.4 million for the Board of Public Defense relating to the funding deficiency in the agency's FY 2005 budget as a result of the determination that the public defender co-pay statute is unconstitutional. He has separately recommended funding of the current year deficiency in legislation that he has requested the legislature pass early in the current session.

Finally, the Governor recommends a \$10 increase in the criminal/traffic surcharge the state currently collects, raising it from \$60 to \$70. This increase is expected to raise \$11.4 million for the general fund in the FY 2006-07 biennium, which will help fund public safety and criminal justice initiatives in his budget.

Sincerely,

A handwritten signature in cursive script that reads "Peggy S. Ingison".

Peggy Ingison
Commissioner

Dollars in Thousands

	Current		Governor Recomm.		Biennium
	FY2004	FY2005	FY2006	FY2007	2006-07
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	53,763	46,082	46,082	46,082	92,164
Recommended	53,763	46,082	59,403	63,251	122,654
Change		0	13,321	17,169	30,490
% Biennial Change from 2004-05					22.8%
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	52,571	47,274	59,403	63,251	122,654
Gift	13	0	0	0	0
Statutory Appropriations					
General	323	638	500	500	1,000
Gift	63	58	0	0	0
Total	52,970	47,970	59,903	63,751	123,654
<u>Expenditures by Category</u>					
Total Compensation	34,031	29,836	28,769	28,817	57,586
Other Operating Expenses	5,082	5,127	18,127	21,927	40,054
Local Assistance	13,857	13,007	13,007	13,007	26,014
Total	52,970	47,970	59,903	63,751	123,654
<u>Expenditures by Program</u>					
Appellate Office	3,739	3,345	3,279	3,279	6,558
Administrative Services Office	1,838	1,924	14,976	18,776	33,752
District Public Defense	47,393	42,701	41,648	41,696	83,344
Total	52,970	47,970	59,903	63,751	123,654
Full-Time Equivalent (FTE)	456.5	452.7	452.7	452.7	

<i>Dollars in Thousands</i>				
	FY2005	Governor's Recomm.		Biennium
		FY2006	FY2007	2006-07
Fund: GENERAL				
FY 2005 Appropriations	46,082	46,082	46,082	92,164
Technical Adjustments				
Current Law Base Change		145	193	338
Subtotal - Forecast Base	46,082	46,227	46,275	92,502
Change Items				
Caseload Increase	0	1,695	1,695	3,390
Sex and Meth Offender Sentencing Changes	0	3,800	7,600	11,400
Ongoing Deficiency Costs	0	7,681	7,681	15,362
Total Governor's Recommendations	46,082	59,403	63,251	122,654
Fund: GENERAL				
Planned Statutory Spending	638	500	500	1,000
Total Governor's Recommendations	638	500	500	1,000
Fund: GIFT				
Planned Statutory Spending	58	0	0	0
Total Governor's Recommendations	58	0	0	0

PUBLIC DEFENSE BOARD

Change Item: Caseload Increase

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$1,695	\$1,695	\$1,695	\$1,695
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$1,695	\$1,695	\$1,695	\$1,695

Recommendation

The Governor recommends \$20 million in additional funding for the judicial branch in the FY 2006-07 biennium to recognize current caseload increases and other cost pressures in the criminal justice area. The funding recommendation amount has been pro-rated among the Supreme Court, Court of Appeals, Trial Courts, and Board of Public Defense. The Governor makes no specific recommendations on judicial branch agency change requests.

Background

The Governor respects the separation of powers and the desire of officials in the judicial and legislative branches and other constitutional officers to independently present their requests directly to the legislature without specific recommendations from the Governor. However, since the Governor is required by law to submit a balanced budget to the legislature, it is necessary to identify funding for those offices as part of preparing a complete and balanced budget.

The Governor's recommendation for the judicial branch recognizes that caseload increases and other cost pressures provide constant challenges for officials to administer justice in a fair and timely manner.

Relationship to Base Budget

Base funding for the judicial branch agencies in the FY 2006-07 biennium is \$621 million. For purposes of calculating the distribution of this funding, ongoing costs for a deficiency request by the Board of Public Defense were added to the underlying base amount. With that adjustment, the funding increase recommended is about 3.14% for judicial branch agencies.

PUBLIC DEFENSE BOARD

Change Item: Sex and Meth Offender Sentencing Changes

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$3,800	\$7,600	\$7,600	\$7,600
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$3,800	\$7,600	\$7,600	\$7,600

Recommendation

The Governor recommends significant changes in the sentencing of sex and methamphetamine offenders as part of his plan to make Minnesotans safer.

Background

Recent events have heightened concerns about ensuring that dangerous sex offenders are kept locked up, in some cases for the rest of their lives. The Governor will set out new sentencing policies and practices for sex offenders. The proposal will include life sentences for the worst offenders and increased sentences for most other sex offenders. The Governor is also proposing changes in methamphetamine sentencing, including longer sentences for using precursor substances to manufacture this very dangerous drug. This funding initiative will provide the public defender resources to cover these sentencing changes.

Cost estimates presented in this budget for the Trial Courts, Board of Public Defense, and Department of Corrections are preliminary and subject to change based on the details of the plan.

Relationship to Base Budget

The Trial Courts and the Board of Public Defense will incur costs for additional cases and lengthier trials. The Department of Corrections will incur costs for additional prison beds.

Key Measures

Dangerous sex and methamphetamine offenders will receive longer sentences. Minnesotans will be safer when these offenders are off the street.

Statutory Change: To be available at a later date.

PUBLIC DEFENSE BOARD**Change Item: Ongoing Deficiency Costs**

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$7,681	\$7,681	\$7,681	\$7,681
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$7,681	\$7,681	\$7,681	\$7,681

Recommendation

The Governor recommends \$7,681,000 each year for ongoing costs of the deficiency created in the agency's FY 2005 budget as a result of the Supreme Court decision holding that the public defender co-pay statute is unconstitutional. The Governor has separately recommended FY 2005 funding to the agency in a deficiency bill.

Background

Legislation enacted in 2003 instituted a public defender co-pay statute. Anticipated co-pay receipts were dedicated to the agency's budget in FY 2005, and the underlying General Fund appropriation was reduced by a like amount. The Minnesota Supreme Court later held that the co-pay statute was unconstitutional. Without these receipts available, the agency's FY 2005 budget would be cut by \$7,681,000, a 14% decrease. Legislation introduced in the 2004 addressed the funding issue, but other funding issues were not resolved and the legislation did not pass. Faced with the possible layoff of a significant number of public defender staff later in the summer, the Governor and legislative leaders from both parties directed the agency to maintain operations and promised quick action on a deficiency bill early in the 2005 session. That bill is pending as this budget is being prepared. This recommendation would maintain that funding level in FY 2006 and FY 2007.

Relationship to Base Budget

The current law funding level for the Board of Public Defense in FY 2006-07 is \$92,502,000. If the ongoing costs related to the deficiency are added, that amount is \$107,864,000.



**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

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January 25, 2005

To the 2005 Minnesota Legislature:

The purpose of this correspondence is to transmit to you the 2006-2007 biennial budget request for the state of Minnesota Board of Public Defense.

The public defense system is the largest customer of the courts. Public defenders provide service in every courthouse in Minnesota, handling over 165,000 cases per year. The Appellate Office provides mandated services to individuals in appellate cases in the Minnesota Court of Appeals and Supreme Court; post conviction proceedings in the District Courts; supervised release/parole revocation; and representation in sex offender community notification hearings. The budget also includes partial funding for five non-profit 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.

As most of you know, Governor Pawlenty and the legislative leadership have committed to passing a deficiency appropriation to restore a \$7.6 million budget reduction. When passed, this would restore the base budget to just over \$53 million. This is \$1.1 million less than the original FY 2003 appropriation, and approximately the same amount as in FY 2004.

At this level the Board will not have the resources to maintain its existing staff. During the last several years, the Board has not received the funding necessary to accommodate personnel cost increases. Insurance costs alone have increased over 70% in the last five years. These increases along with the budget reductions taken in FY 2003 have combined to create the situation where the Board cannot continue to maintain its existing staff and services to the court. In a recent Legislative Auditor's Report on the District Courts, 70% of judges stated that a major cause for delay in the criminal justice system was that there were too few public defenders. This report was conducted prior to the fiscal problems that the Board has encountered in the last two years. In addition, the Department of Finance is anticipating personnel costs to increase four percent each year of the biennium. If this occurs with no additional funding it could mean the elimination of an additional 50-75 attorney positions.

The Board is requesting funding to address the issues mentioned above, as well as issues that have arisen due to changes in prosecution patterns, changes in juvenile court proceedings, technology changes, court rulings, and legislative changes. All of these factors are out of the control of the public defense system, but they have a huge impact on the system.

PUBLIC DEFENDER VIABILITY

The Board is requesting an additional \$6,122,000 in fiscal year 2006 and \$8,412,000 in fiscal year 2007 to address the issues that most threaten the viability of the public defender system. The request would bring caseloads down to a more manageable level of 715 case units per full time equivalent, provide attorneys to handle the 29,000 excess hours part time defenders are now putting in, fund twenty attorney positions that the Board cannot fund in 2006/2007, fund the increased personnel costs of existing staff, and provide a minimal amount to the public defense corporations to keep the five thousand cases a year that they provide service to out of the public defender system.

APPELLATE OFFICE

The Board is requesting \$616,000 in fiscal year 2006 and \$365,000 in fiscal year 2007 to deal with a 60% increase in sex offender notification cases, cases arising from the Blakely decision, and an increase in appeals arising from the increase in inmates at the state correctional facilities.

TRIAL/D.N.A. TEAM

The Board is requesting \$574,000 in FY 2006 and \$572,000 in FY 2007 for a traveling trial team to deal with the increased number of trials related to methamphetamine cases, sexual assault cases, and increased use of DNA. The trial of major felonies has increasingly involved complex scientific evidence. Methamphetamine lab cases, sex offenses, and other violent crimes where blood and body fluids are at issue, are appearing more and more frequently in rural counties. County attorneys routinely bring in attorneys from the Attorney General's Criminal Division to conduct the prosecutions. The Board has no similar ability to bring in resources on these cases. The county attorneys also have access to individuals well-trained in DNA science and well-trained at testifying in court. Again the Board has no similar ability.

INFORMATION SYSTEMS

The Board is requesting \$215,000 in FY 2006 and \$260,000 in FY 2007 for development of a records management system (RMS) for Public Defenders to replace the system that has been in use since 1995. The existing RMS is not compatible with new systems developed by the rest of the criminal justice system, primarily MNCIS and the Statewide Supervision System. A new RMS will allow greater information sharing and reduce redundant data entry, allowing the public defender system to keep pace with its partners in the criminal justice system.

CHILD PROTECTION CASES (CHIPS) - CHILDRENS JUSTICE INITIATIVE (CJI)

The Board is requesting \$9,098,000 in FY 2006 and \$8,986,000 in FY 2007 to fund representation for parents in child protection cases (CHIPS) and to give the proper time and attention to child protection cases. While there is no statutory requirement to do so, the Board has represented parents in these cases. Under M.S. 260C.331, Subd. d, representation of parents is a county responsibility. Also, the state currently does not provide funding for appeals in termination of parental rights (TPR) cases. This remains a county responsibility.

Over the last five years, the Supreme Court has developed its 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 than in the past. It is now the practice in all 87 counties in Minnesota. The challenge for the Board is to find the attorney time to carry out the "best practices." Based on the time commitments in the CJI, there is a need for an additional 189,000 hours of attorney time to meet the CJI protocol. In addition, the CJI proposes that public defenders represent non-custodial parents. This could add another 3,000 public defender appointments to the caseload. Finally, there is need for a small team for appeals in TPR cases.

Thank you for your consideration of this budget proposal. I look forward to working with you.

Sincerely,



Kevin Kajer
Chief Administrator

Technology Funding Detail (Dollars in Thousands)

Funding Distribution	2006-2007 Biennium		2008-2009 Biennium		2010-2011 Biennium	
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personnel	0	0	0	0	0	0
Supplies	5	0	0	0	0	0
Hardware	0	0	0	0	0	0
Software	20	10	0	0	0	0
Facilities	0	0	0	0	0	0
Services	190	200	160	160	160	160
Training	0	50	0	0	0	0
Grants	0	0	0	0	0	0
TOTAL	\$215	\$260	\$160	\$160	\$160	\$160

Recommendation

Agency Request: Submitted for Reference Only

Background

The board requests \$215,000 in FY 2006 and \$260,000 in FY 2007 for development of a records management system (RMS) for Public Defenders to replace the system that has been in use since 1995. The existing RMS is not compatible with new systems developed by the rest of the criminal justice system, primarily the Minnesota Court Information System (MNCIS) and the Statewide Supervision System. A new RMS will allow greater information sharing and reduce redundant data entry, allowing Public Defense to keep pace with its partners in the criminal justice system.

The arrival of CriMNet and one of its components, MNCIS, requires extensive changes to the agency's databases in order for them to interface with MNCIS. This interface will allow the board to capture court staff keystrokes thus eliminating the need for Public Defender staff to re-enter the same data. The existing system was built at a time when data sharing between agencies amounted to faxed pieces of paper. Data integration initiatives over the past decade have resulted in systems like MNCIS being built in a way that allows real-time sharing of data that is essential to the business of public defenders, like defendant identifying information, charge information calendaring and disposition data. This initiative will provide in FY 2006 for the hiring of a project manager, who will guide the RFP process, select a software vendor, finalize the system design, and begin software development. FY 2007 funding will allow for completion of software development and purchase/configuration of the hardware necessary to deploy the new RMS.

Because of the need to interface with MNCIS, there is a need to replace the board's data-base which is written in an obsolete 10 year old programming language. Other essential areas requiring funding include increased expenses of employee education, increased cost of data lines allowing communication via internet, contract programming assistance to maintain our programming, software licensing and the replacement of servers

Relationship to the Base Budget

The board has not had funds appropriated for regular ongoing replacement of computer equipment.

The office is seeking to fund projects that will enable the board to capture information that the state already has entered, thereby reducing the need for data entry. It is also requesting funding in order to maintain existing information systems, and replace obsolete hardware and software. These items have no base level funding.

Key Measures

- ◆ Eliminate the need for information to be entered more than once by state employees.
- ◆ The number of keystrokes needed to open a public defender file will be reduced by putting in place a new RMS utilizing shared data instead of data that is redundantly entered.

- ◆ Public defender time will be reduced as the need to access parallel systems (publicly funded) to do ad hoc searches for essential information will be reduced.
- ◆ Interface with the courts and criminal justice systems essential for largest user of court system.
- ◆ Eliminate the need for information to be entered more than once by public employees.

Alternatives Considered

The board is requesting funding to address technology changes mandated by changes in the information systems of court.

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$616	\$365	\$365	\$365
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$616	\$365	\$365	\$365

Recommendation

Agency Request: Submitted for Reference Only

Background

The board requests funding of \$616,000 in FY 2006 and \$365,000 in FY 2007 to deal with increased sex offender notification cases, cases arising from the Blakely decision, and increased appeals arising from the increase in inmates at the state correctional facilities.

The budget request is an attempt to improve the efficiency of the court system. The office continues to labor under heavy and dramatically increasing caseloads. These caseloads are brought about by factors totally outside the control of the office.

In the past year the number of appellate files opened increased by 27%, sex offender notification hearings increased by 60%, and parole revocation hearings increased by 17%. The state's prison population is increasing dramatically. (25% between FY 2001 and FY 2004) As this population increases so do appeals, post conviction cases, supervised release/parole violations, and community notification hearings. As more individuals are incarcerated for longer periods of time appeals become more frequent and more complicated.

A recent U.S. Supreme Court decision (Blakely v. Washington) has called into question upward departures from presumptive sentences imposed under the Minnesota Sentencing Guidelines. This decision means a minimum of 300 to 500 additional cases for the Appellate Office. These cases have already begun to show up with a 50% increase in cases during July and August 2004. It is also possible that Blakely will be ruled retroactive to 2000. This would mean that there are more than 4,000 cases subject to re-sentencing under Blakely.

Under a 1996 law the Appellate Office represents clients in community notification hearings for sex offenders. In the past the Office of the State Public Defender only represented those individuals recommended for Level II or III. (About 40% of offenders.) Given recent events it is believed that this percentage will increase to 50%. The Department of Human Services (DHS) is also now doing a substantial number of these hearings. Review of Level I and II offenders who violate parole, and the automatic referral of all Level III offenders for possible civil commitment will increase the number and length of these hearings. Based on caseloads to date this could mean 150-175 additional cases per year.

Relationship to Base Budget

The office does not have the funding for the increased caseloads, renewed emphasis on sex offender notification hearings, or for the new cases generated as a result of the Blakely decision. The board is requesting funding to keep up with the demand of increased sex offender notification hearings, increased number of appeals, and one time funding to handle cases resulting from the Blakely decision.

Key Measures

- ◆ 60% increase in sex offender notification hearings 2003-2004
- ◆ 27% increase in appeals 2003-2004
- ◆ 17% increase in parole revocation hearings 2003-2004
- ◆ 25% increase in DOC inmate population 2001-2004

- ◆ Hundreds and potentially thousands of cases as a result of Blakely decision.

Alternatives Considered

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as; police and prosecution patterns, constitutional mandates, Supreme Court Rules and decisions, statutory changes, court policy all of which the board has no control of.

PUBLIC DEFENSE BOARD

Agency Change Item: District Public Defender Viability

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$6,122	\$8,412	\$8,412	\$8,412
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$6,122	\$8,412	\$8,412	\$8,412

Recommendation

Agency Request: Submitted for Reference Only

Background

The board requests \$6,122,000 in FY 2006 and \$8,412,000 in FY 2007 to maintain the public defender system.

It is important to note that 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 being held to the same ethical standards as private attorneys in regard to the handling of cases.

This request is an attempt to maintain Minnesota’s public defender system and its cost effective part time model of service delivery. The request would address the issues that most threaten the viability of the public defender system. These issues include; caseloads in excess of double the board’s adopted caseload standards, excess hours put in by part time defenders, the filling of vacant positions, personnel costs of existing staff, and the continued existence of public defense corporations.

During 2004, district public defenders will provide service in over 185,000 cases. Under Board and American Bar Association standards, this will equate to 288,000 case units with each “unit” representing the equivalent of a misdemeanor case. If the vacancy and personnel costs are not addressed, during FY 2006-07 caseloads will increase to an average of over 1,000 case units, two and one half times what the Board of Public Defense Weighted Caseload Standards and A.B.A. standards call for. The request would provide the resources to bring the average caseload down to a more manageable level of 710 case units, provide staff to address the 30,000 excess hours that part time defenders put in, and allow the board to fill the 34 vacant positions it will not be able to fill in FY 2006-07. It would also provide for personnel cost increases thus preventing the board from having to hold positions vacant, or lay off staff. Finally, the request would provide the public defense corporations with minimal funding to help ensure their survival and keep the cases they now have out of the public defense system.

During FY 2004, part time defenders provided more than 30,000 uncompensated hours. In addition, increased cases in the complicated areas of methamphetamine, and sex offenders and additional court calendars (18 new judgeships in the last four years) continue to hamper the board’s ability to provide adequate services to clients and the court in criminal cases. Oftentimes court must be stopped because of a lack of public defenders.

In both criminal and juvenile court client services deteriorate and the entire criminal justice system stops while waiting for public defenders. Part time public defenders find it difficult to continue to provide this service. Under this stress and without additional resources the public defense system is in serious jeopardy of failing, and with it the prosecution and court functions.

In recent years the board has not received funding for salary and benefit increases. Insurance costs alone have risen 72% in the last four years. It received a \$1.1 million budget reduction in FY 2003. The result has been layoffs and an inability to fund positions. With the cost increases that the Department of Finance is now projecting for FY 2006-07 additional positions would need to go unfilled or be eliminated.

The five public defense corporations provide cost-effective quality legal defense services primarily to the state's minority communities. These cases (approximately 5,000) would otherwise be public defender cases. The request would provide funding to maintain current staff and provide small technology upgrades in order to keep these cases from becoming public defender cases.

Relationship to Base Budget

The annual base budget of the board for FY 2006-07 is in flux. Governor Pawlenty and the legislative leadership have committed to passing a deficiency appropriation to restore a \$7.6 million budget reduction. When passed, this would restore the base budget to just over \$53 million. This is \$1.1 million less than the original FY 2003 appropriation, and approximately the same amount as in FY 2004.

Key Measures

- ◆ Caseloads for 2006-07 could increase to 1,000 case units, more than two and one half times board and A.B.A. standards
- ◆ 30,000 excess hours provided by part-time public defenders
- ◆ 34 vacant positions
- ◆ 75-100 potential positions left vacant or layoffs in FY 2006-07
- ◆ Criminal justice system delayed or stopped
- ◆ 70% of judges believe that there are too few public defenders

Alternatives Considered

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as; police and prosecution patterns, constitutional mandates, Supreme Court Rules and decisions, statutory changes, court policy all of which the board has no control of.

PUBLIC DEFENSE BOARD

Agency Change Item: Trial/D.N.A. Team

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$574	\$572	\$572	\$572
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$574	\$572	572	\$572

Recommendation

Agency Request: Submitted for Reference Only

Background

The board requests \$574,000 in FY 2006 and \$572,000 in FY 2007 for a statewide trial unit to deal with the increased number of trials related to methamphetamine cases, sexual assault cases, and increased use of DNA.

The trial of major felonies has increasingly involved complex scientific evidence. Methamphetamine lab cases, sex offenses, and other violent crimes where blood and body fluids are at issue, are appearing more and more frequently in rural counties. Law enforcement relies on the Bureau of Criminal Apprehension (BCA) to help with these cases. County attorneys in small counties routinely bring in attorneys from the Attorney General's Office (AG) Criminal Division to conduct the prosecutions. In these instances a single part time public defender must try a case against two full time assistant attorney generals. In many instances a retired judge will also be brought in to the county. The result is that either a part time public defender must now try a major case and handle the regular court calendar, or another public defender from a neighboring county must be brought in to handle the court calendar. These cases often involve co-defendants who require separate counsel, requiring another part time defender to travel, leaving another court calendar uncovered. Justice is not well served, and the court system suffers from a situation where the defense is short staffed.

Rural public defenders are generally part-time employees, general practitioners who, like the local county attorneys, do not try enough complex scientific cases to develop expertise in DNA or controlled substance forensics. Increasingly the outcome of these cases hinges on DNA evidence. Over the last several years numerous defendants have been cleared by the use of DNA. Likewise several cases have been solved with the use of DNA evidence. Prosecutors have a distinct advantage over the defense in this area. The BCA, State Patrol and some police departments have crime labs and some analyze DNA. The county attorneys have access to individuals well-trained in this science who are also well-trained at testifying in court. Given the practical impossibility of every public defender becoming knowledgeable enough in this area, a team to assist or take over a case would provide the defense with at least some help against the extensive state and federal resources.

Relationship to the Base Budget

A small team with expertise in scientific evidence would provide representation to clients facing major sex and drug charges throughout the state. This group would enable the Board of Public Defense to respond quickly and appropriately to these serious felonies across Minnesota, freeing up the district public defenders to respond to their heavy caseloads and court calendars with less risk of interruption to the flow of judicial business. They would also be available to train other public defender staff in DNA analysis. The agency does not have this service available.

Key Measures

- ◆ Keep court calendars running
- ◆ Maximize limited resources, by cost effective sharing of resources across districts.
- ◆ Provide a consistent and better service throughout the state.
- ◆ Reduce expert analysis costs
- ◆ Staying current on DNA testing and analysis

Alternatives Considered

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as; police and prosecution patterns, constitutional mandates, Supreme Court Rules and decisions, statutory changes, court policy all of which the board has no control of.

PUBLIC DEFENSE BOARD

Agency Change Item: Children's Justice Initiative - C.H.I.Ps

Fiscal Impact (\$000s)	FY 2006	FY 2007	FY 2008	FY 2009
General Fund				
Expenditures	\$9,098	\$8,986	\$8,986	\$8,986
Revenues	0	0	0	0
Other Fund				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact	\$9,098	\$8,986	\$8,986	\$8,986

Recommendation

Agency Request: Submitted for Reference Only

Background

The board requests \$9,098,000 in FY 2006 and \$8,986,000 in FY 2007 to fund representation for parents in Child In Need of Protective Service (CHIPS) and to give the proper time and attention to child protection cases.

While there is no statutory requirement to do so, the board has represented parents in these cases. Under M.S. 260C.331, subd. d, representation of parents is a county responsibility. Also, the state currently does not provide funding for appeals in termination of parental rights (TPR cases). This remains a county responsibility. In calendar year 1995 public defenders were appointed to 4,055 CHIPS cases, and Termination of Parental Rights (TPR) cases. By 2004 that number had increased to just less than 8,500.

Over the last five years, the Supreme Court has developed its 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 than in the past. This is a major step forward for children and for the judicial branch, and it now is the practice in all 87 counties in Minnesota. The representation of parties to CHIPS and Termination of Parental Rights cases has taken up an ever-increasing proportion of staff time and resources. The challenge for the board is to find the attorney time to carry out the "best practices", for example, doubling the number of minutes scheduled for a CHIPS hearing while moving the case forward on an accelerated court calendar.

Under the current budget conditions the board does not have the resources to continue to provide non-mandated services, let alone meet the expectations of the CJI. The CJI includes a best practices guide for CHIPS cases. This includes guidelines for attorney time and resources devoted to each stage of a CHIPS case. Using these best practices, and estimates from public defenders on the length of trials, the board developed an estimate of the staffing needs based on these guidelines and current practice. A CHIPS or TPR case includes the following stages and time commitments based on the CJI protocol; Emergency protective care hearing two hours, pre trial conference six hours, CHIPS trial (not all cases) 24 hours, permanency trial 64 hours, and review hearings (Est. 3 hearings per case) 12 hours.

Based on the time commitments outlined there would be a need for an additional 189,000 hours of attorney time to meet the CJI protocol. While most public defenders around the state provide service in a variety of cases, it is estimated that there are 66 FTE attorneys that do work in CHIPS cases. To meet the protocol would require 38 new FTE attorneys and associated support staff.

In addition, the CJI would like to see public defenders represent non-custodial parents. Currently, in most CHIPS cases public defenders do not represent non-custodial parents. Data from the Trial Court Information System (TCIS) indicates that in FY 2004 there were 5,035 dependency/neglect filings. Assuming that there would be a non-custodial parent in 75% of the cases, and an 80% public defender representation rate, there would be 3,021 additional public defender appointments. The board's Weighted Case Load Study (WCLS) calls for an attorney to handle no more than 80 CHIPS cases per year. Based on this there would be a need for an additional 38 FTE attorneys and associated support staff.

Relationship to Base Budget

The agency does not currently have funding for these services.

Key Measures

- ◆ Devote resources to important cases
- ◆ 189,000 hours of attorney time needed
- ◆ Provide quality services to children and parents throughout the state
- ◆ 3,000 potential non custodial parents

Alternatives Considered

Discontinue the service, which by statute is a county function.

Agency Purpose

The Public Defense Board 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. The public defense system is the largest customer of the courts and public defenders provide service in every courthouse in Minnesota, handling over 185,000 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 State Public Defender's Office (SPD) provides services to indigent prison clients.

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 In Need of Protective Services (CHIPS). This is accomplished through a system that relies heavily on part-time attorneys (65%). During FY 2003 the districts provided service for 185,000 cases. Public defenders carry more than double the Board and American Bar Association caseload standards. This program also includes partial funding for five non-profit 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 five corporations are the Neighborhood Justice Corporation (St. Paul), Legal Rights Center (Minneapolis), Duluth Indian Legal, and the Leech Lake and White Earth Criminal and Juvenile Defense Corporations.

The SPD 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; individuals subject to community notification.

Budget

During fiscal year 2005 the board was faced with a \$7.6 million budget reduction. If this reduction had occurred the board would have been forced to layoff 140 attorneys or about 25% of its staff. This would have brought the courts to a virtual standstill in many parts of the state. Over the summer Governor Pawlenty and the leaders of each of the four caucuses committed to funding this shortfall early in the 2005 session. It is unclear at this time how this shortfall will be handled for the 2006-2007 biennial budget. The FY 2004-05 budget totals \$99.8 million. Agency staff includes 540 full-time equivalent employees. This includes 380 attorney positions, most of which are part-time.

The entire agency is funded through the General Fund.

At A Glance

Two Year State Budget:

- ◆ \$99.8 million - General Fund

Annual Caseloads

- ◆ 185,000 District Public Defense Cases
- ◆ 2,757 Parole Revocation Hearings
- ◆ 1,101 Appellate Files Opened
- ◆ 434 Community Notification Hearings

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Dollars in Thousands

	Current		Governor Recomm.		Biennium 2006-07
	FY2004	FY2005	FY2006	FY2007	
<u>Direct Appropriations by Fund</u>					
General					
Current Appropriation	53,763	46,082	46,082	46,082	92,164
Recommended	53,763	46,082	59,403	63,251	122,654
Change		0	13,321	17,169	30,490
% Biennial Change from 2004-05					22.8%
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	52,571	47,274	59,403	63,251	122,654
Gift	13	0	0	0	0
Statutory Appropriations					
General	323	638	500	500	1,000
Gift	63	58	0	0	0
Total	52,970	47,970	59,903	63,751	123,654
<u>Expenditures by Category</u>					
Total Compensation	34,031	29,836	28,769	28,817	57,586
Other Operating Expenses	5,082	5,127	18,127	21,927	40,054
Local Assistance	13,857	13,007	13,007	13,007	26,014
Total	52,970	47,970	59,903	63,751	123,654
<u>Expenditures by Program</u>					
Appellate Office	3,739	3,345	3,279	3,279	6,558
Administrative Services Office	1,838	1,924	14,976	18,776	33,752
District Public Defense	47,393	42,701	41,648	41,696	83,344
Total	52,970	47,970	59,903	63,751	123,654
Full-Time Equivalents (FTE)	456.5	452.7	452.7	452.7	

Program Description

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

Program at a Glance

- ◆ 1,101 appellate cases opened in FY2003
- ◆ 434 Sex offender notification hearings in CY 2004, 757 parole revocation cases opened in CY 2004

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 there are 7,568 inmates in the state's correctional facilities, a 38% increase over the 1999 population. This population is the client base for the Appellate Office. Appellate cases have increased substantially in recent years. From CY 2003 to CY 2004, the number of appellate files opened is expected to increase by 27%. Sex offender notification hearings are expected to increase 61% and parole revocation hearing to increase 17%.

A recent U.S. Supreme Court decision (Blakely v. Washington) has called into question upward departures from presumptive sentences imposed under the Minnesota Sentencing Guidelines. At a minimum, all cases that were not "final" at the time Blakely was decided are seemingly subject to it. This could be as many as 500 cases. It is also very possible that Blakely will be ruled retroactive at least to the date of Apprendi v. New Jersey, the case upon which Blakely was based. This would mean that there are more than 4,000 cases subject to resentencing under Blakely.

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 (OSPD). In the past the OSPD has only represented those individuals recommended for Level II or III. (About 40% of offenders.) Given recent events it is believed that this percentage will increase to 50%. This could result in 25-30 more cases per year. The Department of Human Services (DHS) is also now doing a substantial number of these hearings. Parole violations will also increase the workload. If a risk level I or II offender is returned to prison, the committee can elect to increase their risk level. This could mean more than 175 new cases per year. Finally, all level III offenders are now automatically referred for possible commitment. Because of the greatly increased consequences, most of those recommended for a level III will want to vigorously contest that designation, including requesting administrative review.

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; to individuals subject to community notification.

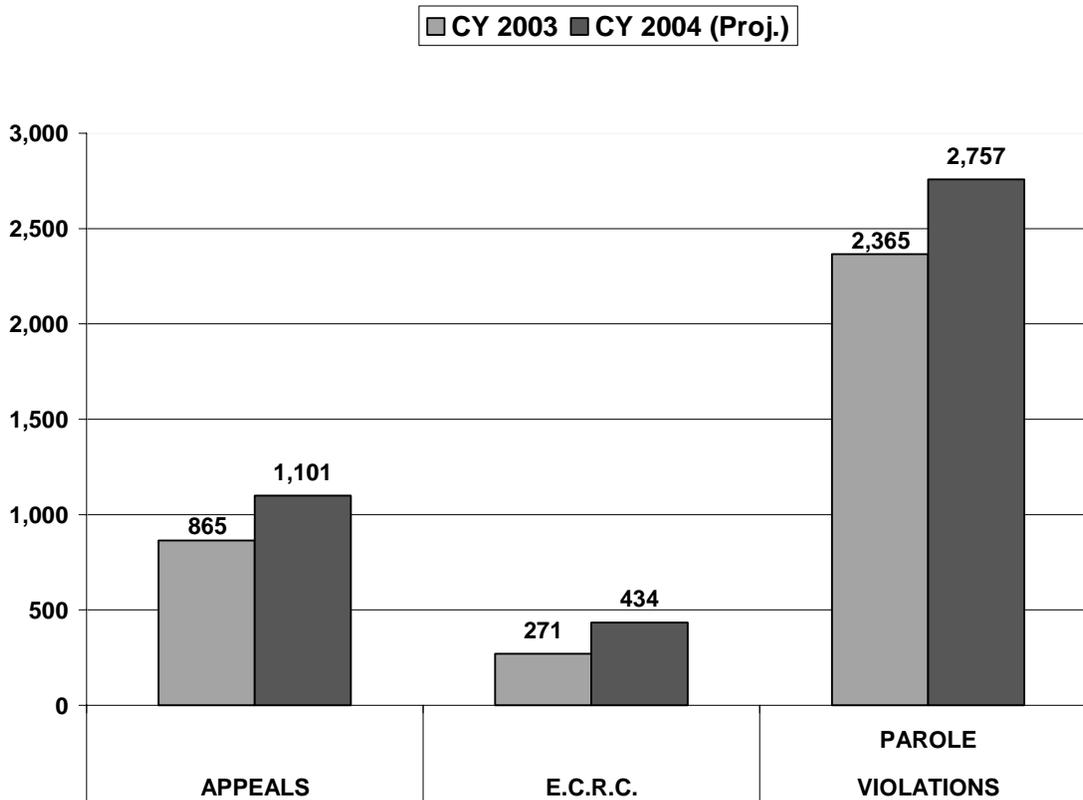
Historical Perspective

There is a constitutional right to counsel at public expense for indigent prisoners' appeals and parole revocation hearings. In Minnesota the prisoners' indigency rate is approximately 90%. 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.

Key Measures

- ⇒ Appellate cases increased 27% from CY 2003 to CY 2004.
- ⇒ Potential of 3,000-4,000 new cases as a result of Blakely decision.
- ⇒ Community notification hearings estimated increase of 61% CY 2003 to CY 2004
- ⇒ Parole revocation hearings increased 17% from CY 2003 to CY 2004.

BOARD OF PUBLIC DEFENSE- APPELLATE OFFICE CASELOADS



Program Funding

The State Public Defender has attempted to keep up with the ever-increasing caseload within its limited resources by using law clerks where possible. Currently, the office staff has 28.5 FTE attorneys, a budget of approximately \$3.8 million. Approximately 8% of the budget is used to pay for the cost of trial transcripts. The increasing caseloads continue to make it difficult for the office 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		Governor Recomm.		Biennium 2006-07
	FY2004	FY2005	FY2006	FY2007	
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	3,739	3,345	3,279	3,279	6,558
Total	3,739	3,345	3,279	3,279	6,558
<u>Expenditures by Category</u>					
Total Compensation	2,964	2,570	2,504	2,504	5,008
Other Operating Expenses	775	775	775	775	1,550
Total	3,739	3,345	3,279	3,279	6,558
<u>Expenditures by Activity</u>					
Appellate Office	3,739	3,345	3,279	3,279	6,558
Total	3,739	3,345	3,279	3,279	6,558
Full-Time Equivalents (FTE)	38.5	38.5	38.5	38.5	

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 organizations.

Services Provided

The Administrative Services Offices provides staff support to all public defender organizations, as well as implements the board's policies. In addition, it is responsible for management of the agency systems related caseloads, budget, personnel, and information systems. It accomplishes this with the smallest administrative staff of any state agency of comparable size. 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 five public defense corporations.

Over the past few years, the board has been working to complete state assumption of public defense services, and implement the policy changes and mandates that the legislature has passed. Specifically, the board has developed and implemented policies covering personnel, compensation, budgeting, training, client eligibility, conflict cases, and MIS systems. Caseload standards have also been adopted. During FY 2004 the board completed negotiations with two bargaining units representing attorneys and support staff. The board has also completed work on a strategic plan, a training plan, and an information systems plan 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 1-1-99 are state employees.

The Information Systems (IS) Office designs, implements, and maintains systems in 12 main offices and 16 satellite offices. Over 700 public defender staff people use these systems statewide. They are currently accomplishing this with five staff people. Significant time and effort is dedicated to maintaining and enhancing existing systems such as e-mail, virus protection, web site resources, case and client statistics, asset tracking, attorney timekeeping, online legal brief, and transcript banks. Currently, most of the IS team's time is spent integrating systems with the Minnesota Supreme Court's new Minnesota Court Information System (MNCIS). Changes in criminal justice information systems directly impact the public defender system. The overall goals of Minnesota's criminal justice system cannot be reached if the needs of the public defender system (the largest single user of the criminal justice system) are not recognized and provided for.

Key Measures

- ⇒ 12 main offices and 16 regional offices supported by five Information Technology (IT) staff.
- ⇒ A staff of 12 and 3% of the budget supports a system of 500 state employees and 200 county employees.

Program Funding

The board is accomplishing its mission and supporting district and appellate public defender programs with a minimal staff. Currently, 3% of the budget is expended on central administration and information systems. There are 12 staff people that support an annual budget \$47 million and affecting 500 state and over 200 county employees.

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PUBLIC DEFENSE BOARD

Program: ADMINISTRATIVE SERVICES OFFICE

Program Summary

<i>Dollars in Thousands</i>					
	Current		Governor Recomm.		Biennium
	FY2004	FY2005	FY2006	FY2007	2006-07
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	1,838	1,924	14,976	18,776	33,752
Total	1,838	1,924	14,976	18,776	33,752
<u>Expenditures by Category</u>					
Total Compensation	1,117	1,271	1,271	1,271	2,542
Other Operating Expenses	721	653	13,705	17,505	31,210
Total	1,838	1,924	14,976	18,776	33,752
<u>Expenditures by Activity</u>					
Administrative Services Office	1,838	1,924	14,976	18,776	33,752
Total	1,838	1,924	14,976	18,776	33,752
Full-Time Equivalent (FTE)	12.3	12.3	12.3	12.3	

Program Description

The ten Judicial District Public Offices provide quality criminal defense services to indigent persons in felonies, gross misdemeanors, misdemeanors, juvenile delinquency, and Children in Need of Protective Services (CHIPS). Under Minnesota law, all individuals accused of a felony, gross misdemeanor, misdemeanor or juvenile crime are entitled to be represented by an attorney before, during, and after their trial. 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 (65%), as well as support staff. During 2003, the districts provided service in 167,000 cases. Currently, public defenders carry more than double the number of case units that is recommended under the board's Weighted Caseload Standards and American Bar Association Standards.

Program at a Glance

- ◆ 185,000 cases opened in 2004
- ◆ Largest user of court system
- ◆ Presence in every county in the state
- ◆ Caseloads in excess of double A.B.A. standards
- ◆ 30,000 Excess Part-Time Hours

Population Served

Trial level public defense serves the attorney needs of 185,000 indigent Minnesotans.

Services Provided

The public defender system provides trial level representation in criminal defense cases, including investigation, expert witnesses and support services. This program also includes part of the cost of five 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

In the last 10 years, the state has assumed the cost of providing these services from the counties. This process was completed on 1-1-95. As of 1-1-99, all new hires in the Second (Ramsey) and Fourth (Hennepin) Judicial District public defender offices are state employees. In the Second Judicial District, the state provides full funding for the public defender office. In the Fourth Judicial District, there is a cost sharing between the state and Hennepin County. A major reason for state assumption of public defense costs was to bring about equity within the judicial system. It was (and is) believed that the quality of representation should not be determined by the property values in a particular judicial district or county. Over the last several years increase enforcement of complicated felony cases, statutory changes, new judgeships, changes in court proceedings, and regional demographic changes, have all combined to push the public defender system to the brink of collapse. Caseloads continue to exceed more than double the Board's and A.B.A. caseload standards. There were eighteen new judgeships created in the last four years without corresponding increases for public defender staff. Finally, the increased demands for representation and complexity of child protection cases have overburdened the public defense system. Under this stress and without additional resources the public defense system is in serious jeopardy of failing, and with it the entire criminal justice system.

The board is the largest user of the state court system, so changes in court procedures, calendaring of cases, and technology advances, directly impact the board's ability to provide quality legal services to its clients. New judgeships, proposals for special courts (i.e. Drug Court), prosecution task forces, changes in juvenile court proceedings, or technology changes need to be examined as to their impact on the ability of the public defender system to continue to provide services to the clients and courts. All of these initiatives, as well as 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, all of which the board has no control over. Among the new

challenges are issues such as sex offenders, methamphetamine, and permanency hearings in child protection cases.

Key Measures

- ⇒ 30 positions unable to be filled
- ⇒ Potential for several more unfilled positions or layoffs beginning in 2006-2007
- ⇒ District public defenders now carry caseloads that average twice the recommended standards.
- ⇒ Part time public defenders provided in excess of 40,000 uncompensated hours in FY 2003.

Program Funding

The current appropriation for this program is approximately \$47 million annually. State imposed increased costs related to insurance, as well as increased personnel and insurance costs have strained district budgets. The state's lack of past funding for compensation increased and budget cuts in 2003, have placed an enormous burden on district budgets. These past funding deficiencies along with the high caseloads make it difficult to maintain the viability of the public defense system. Caseloads, vacant positions and hours for part-time (as well as full-time) defenders continue to increase making it more difficult to attract and retain good defense attorneys. For part-time defenders more time is demanded from them without compensation. 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

<i>Dollars in Thousands</i>					
	Current		Governor Recomm.		Biennium 2006-07
	FY2004	FY2005	FY2006	FY2007	
<u>Expenditures by Fund</u>					
Direct Appropriations					
General	46,994	42,005	41,148	41,196	82,344
Gift	13	0	0	0	0
Statutory Appropriations					
General	323	638	500	500	1,000
Gift	63	58	0	0	0
Total	47,393	42,701	41,648	41,696	83,344
<u>Expenditures by Category</u>					
Total Compensation	29,950	25,995	24,994	25,042	50,036
Other Operating Expenses	3,586	3,699	3,647	3,647	7,294
Local Assistance	13,857	13,007	13,007	13,007	26,014
Total	47,393	42,701	41,648	41,696	83,344
<u>Expenditures by Activity</u>					
District Public Defense	47,393	42,701	41,648	41,696	83,344
Total	47,393	42,701	41,648	41,696	83,344
Full-Time Equivalents (FTE)	405.7	401.9	401.9	401.9	