



OFFICE OF THE STATE PUBLIC DEFENDER
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STATE PUBLIC DEFENDER'S EFFICIENCY REPORT
Required by Senate File 575 (Act of 82nd General Assembly, First Session, 2007)
December 7, 2007

I. Introduction

As part of its appropriations bill for Iowa justice systems for Fiscal Year 2008, the General Assembly appropriated funds for the State Public Defender to administer Iowa's indigent defense programs with the following condition:

As a condition of receiving moneys under this subsection the state public defender shall make recommendations about containing the costs incurred by the office of the state public defender and court-appointed attorneys for providing legal representation of indigent persons. The state public defender shall report the recommendations to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system, and to the legislative services agency by December 15, 2007.

Acts of the 82nd General Assembly, 1st sess., S.F. 575 § 10 (2007).

This report will first address the State Public Defender's leadership strategy in administering Iowa's indigent defense programs. It will then address how we've achieved efficiency and cost containment while maintaining an effective level of service. The report will conclude with a recap of what we've achieved and recommendations for where we should go in the future.

The State Public Defender has published two previous Efficiency Reports: *State Public Defender's Efficiency Report Required by Senate File 2298* (Act of 80th General Assembly, 2nd sess., 2004) (December 13, 2004), and *State Public Defender's Efficiency Report Required by Senate File 439* (Act of 80th General Assembly, 1st sess., 2003) (December 15, 2003). This report will build on those reports, so they are recommended advance reading.

II. Leadership Strategy for Iowa's Indigent Defense Programs

For the past eight years, the State Public Defender has implemented a strategy of long-term management and containment of indigent defense costs, while maintaining a quality level of service. There are several fundamental concepts about indigent defense that are important to understanding this strategy.

The first rule of indigent defense is that the State must provide for it. The right to counsel is mandated, depending on the type of case, either by the United States Constitution, the Iowa Constitution, or the Iowa Code. There is no option to eliminate service or reduce it below a constitutional level. *See, e.g., Pfister v. Iowa Dist. Ct.*, 688 N.W.2d 790 (Iowa 2004) (Iowa Code provision eliminating right to appointed counsel for parole violations held unconstitutional). Service should be delivered efficiently, but Rule Number One is it must be delivered.

The second rule of indigent defense is the State Public Defender has no influence over the demands on Iowa's indigent defense programs. The General Assembly and Governor determine the content of the Iowa Code. Iowa's state, county, and city law enforcement agencies decide whom to arrest. The Department of Human Services decides whose children need to be removed from their homes. People living and traveling through Iowa do things to get themselves arrested or their children removed. Perhaps most influential of all are Iowa's 99 independently elected county attorneys, who have enormous power and discretion in making charging decisions and initiating juvenile court cases. Before there can be discussion of cutting or capping indigent defense costs, we must first ask how the charges and juvenile proceedings involving indigents will be reduced or capped. If the answer to that question proves elusive, and so far it has, we go back to Rule Number One – the service must be provided.

Because the State Public Defender has no influence on the charges and other filings against indigents, our focus has been on long-term containment of costs. We recognize there will always be increasing demands on indigent defense programs as our society becomes more complicated and government continues its robust programs to enforce the laws. Our responsibility is to deal with that growth efficiently while providing quality service to indigent clients.

The best way to achieve long-term management and containment of indigent defense costs is to maximize use of the full-time, salaried attorneys and support staff of the 20 field offices of the State Public Defender Service. In Fiscal Year 2007, the cost per case for the SPD Trial Division was \$227. The average attorney fee claim for cases handled by court-appointed private attorneys was \$427. This cost differential doesn't take into account the imbalance of major cases (Class A and B felonies) handled by public defenders compared with court-appointed private attorneys, so the actual cost savings is even higher.

Reliance on the full-time defenders of the State Public Defender Service is also important to quality of service. SPD field offices are the only law firms in Iowa specializing exclusively in criminal defense and juvenile court representation. Since the first public defender office was established in 1914 in Los Angeles, California, there have been two co-equal reasons for relying on public defenders: cost efficiency and quality of service, each of which is a product of specialization.

While public defenders are the cornerstone for Iowa's indigent defense programs, it's also critical to maintain an effective partnership with the private bar. SPD field offices cannot efficiently cover all Iowa counties for all cases. Even in counties with full service from a public defender office, that office must return cases for conflict of interest and to avoid case overload. There must be sufficient numbers of qualified private lawyers willing to accept court appointments in cases not handled by public defenders. Accordingly, the State Public Defender's strategy for long-term management and containment of indigent defense costs has included supporting periodic, moderate increases in court-appointed fee rates. These increases are intended to keep pace with law office overhead and provide incentive for private attorneys to contract with the State Public Defender for indigent defense services.

III. Efficiency and Cost Containment Measures

A. *Public Defender Operations*

The State Public Defender reviews and must approve every expense by a public defender field office, no matter how small. Training expenses have been kept low by emphasizing SPD's own resources, partnerships with persons and organizations willing to donate services or provide them at reduced cost, and distance learning on the Iowa Communications Network. In early 2007, SPD reorganized our State Appellate Defender Office, Administrative Office, and Civil Commitment Unit after the retirement of a senior SPD supervisor. The result was new efficiencies, an additional resource (a half-time Training and Professional Development Officer), and overall cost savings.

In the past eight years, public defender case production has increased 25% with no additional Trial Division resources, while maintaining quality service. Public defender offices now cover 85 of Iowa's 99 counties at least for major cases, and 43 counties receive full service in either adult criminal cases, juvenile cases, or both. This represents a 60% increase in county coverage since 1999.

We've done this by using technology as a workforce multiplier, reorganizing field offices to improve efficiency, and emphasizing caseload management experience in hiring new attorneys. Almost half of the 25% production increase is due to improved record keeping including use of a computerized case management system, which prevents "lost" workload. Public defender offices now get credit for all the work they do.

SPD developed our original case management computer program (Defender) using in-house resources, saving in excess of \$100,000 that would have been spent on a commercially available program. Our current project to replace Defender with new, Internet-based software (the working title is "Pilot") is a joint effort by SPD and the State's Information Technology Enterprise. The partnership between SPD and ITE will keep Pilot's cost below that of commercial products and the money we pay within Iowa government.

We've developed and successfully implemented a Strategic IT Plan, which ensures SPD field offices stay updated in computer hardware and software at the most economical cost available. SPD was the first large State agency to implement a strategic plan involving leased computer equipment. Other State agencies have since followed our lead. We also have a Strategic Telephone Plan, which has achieved the same goal for field office telecommunications.

SPD has used a computerized legal research subscription (first Lexis, now Westlaw) since 2000. This promotes efficiency and long-term cost containment by allowing SPD attorneys and investigators to access legal research material from their desks, without time-consuming trips to law libraries. We've offset a significant part of this service's cost by canceling most hard-copy book subscriptions and limiting new hard-copy purchases to resources not available on line or those routinely needed in court.

Starting in 1999, SPD has handled virtually 100% of civil commitment defense under the Sexually Violent Predator Act (chapter 229A of the Iowa Code) with a specialized unit. SPD's Civil Commitment Unit started with two attorneys and has expanded to four as the State broadened the civil commitment program. These are complicated and enormously expensive cases, requiring highly specialized expertise and reliance on an esoteric area of expert testimony.

If these cases were handled by private attorneys, the additional costs of each lawyer reinventing the proverbial wheel would be astronomical. Our CCU organization and operations have been copied by other states with statutes similar to chapter 229A. One of our CCU staff attorneys was hired by Massachusetts to set up a civil commitment defense unit on Iowa's model.

B. Indigent Defense Fund Administration

The State Public Defender also administers the Indigent Defense Fund. This is the appropriation that pays fee claims by private attorneys and other service providers in court-appointed cases for indigents in cases that are not handled by public defender offices. SPD administers the IDF under administrative rules that implement requirements of the Iowa Code, balance fairness to both claimants and indigent clients (who are required by the Code to reimburse the State), and promote good stewardship of public funds. *See* IOWA ADMIN. CODE § 493-12.1(3) (13B, 815).

In addition to the rulemaking requirements of chapter 17A of the Iowa Code, SPD provides copies of draft administrative rule changes for pre-publication review by the Judicial Branch and the Iowa State Bar Association. This opportunity for comment by important stakeholders defuses potential misunderstandings and allows us to incorporate suggestions before we get to formal rulemaking, thus promoting efficiency.

It's important to be accountable to private attorneys and other service providers for an efficient claims process that gives them a reasonable expectation for when a proper fee claim will be paid. Since 2000, SPD has adopted performance measures on fee claim processing, which we publish on our website. We grade ourselves on how well we do and let everyone know the results. We started doing this three years before Iowa's Accountable Government Act required State agencies to set performance measures. See Section IV of this report for a summary of our performance measures for Fiscal Year 2007 and the first quarter of Fiscal Year 2008.

We've turned what used to be a "paper-and-stubby-pencil" claims process into an automated one, deploying the Claims Review System software in 2000. This resulted in a faster process and one where we can provide claimants with up-to-date information on a claim's current status. This is an important feature for claimants, as most are small business operators with a critical need for cash flow information.

While CRS was developed by a contractor, maintenance and upgrade responsibility has since been taken over by the State's ITE. This is another successful partnership that has kept our money within State government and resulted in savings over what we had been paying to contractors.

SPD also partners closely with the Fiscal Bureau of the Department of Inspections and Appeals, through which our claims are paid and warrants issued. SPD's claims staff and DIA Fiscal accounting technicians meet regularly to identify and eliminate bottlenecks.

There has been a 30% increase in fee claim traffic through SPD since Fiscal Year 2003. Because keeping the CRS database current is so important to our claims process efficiency, SPD has requested General Assembly approval for an additional Full Time Equivalent position to maintain the CRS database.

SPD also makes appropriate use of flat-fee contracts with nonprofit organizations, private attorneys for indigent defense in the special problem-solving courts in place throughout Iowa

(e.g., drug court, mental health treatment court, youthful offender court), and with individual attorneys for appellate work. This results in cost savings while ensuring quality representation for each client represented by a flat-fee contractor.

These have been the major efficiency measures in the last eight years. There have been enumerable small decisions that promote efficiency on a daily basis, in both administration of public defender operations and the Indigent Defense Fund. Each SPD Front Office staff member wears two hats – one dealing with public defender operations and the other the Indigent Defense Fund. We have the flattest organizational pyramid in State government. There are no intermediate layers of supervision. All SPD supervisors, with the sole exception of the State Public Defender, handle a personal caseload in addition to their leadership duties.

IV. Conclusion

The following are SPD's Performance Measures under the Accountable Government Act for Fiscal Year 2007 and the First Quarter of Fiscal Year 2008:

FY2007 (Standard is in parenthesis):

Public Defender – Case Production (95% of Expectation): 103% - 73,252 cases.

Public Defender – Cases with Final Findings of Ineffective Assistance ($\leq 1\%$): No cases.

Indigent Defense Fund – Claims Processing (90% within 35 days; average time ≤ 35 days):

Adult Claims: 97%; 28.4 days.

Appellate Claims: 100%; 6.4 days.

Juvenile Claims: 94%; 26.6 days.

Miscellaneous Claims: 100%; 22.1 days.

Indigent Defense Fund – Notices of Action Upheld (95%): 99.8% - 12,859 out of 12,881.

FY 2008, First Quarter:

Public Defender – Case Production (95% of Expectation): 101% - 72,056 cases projected.

Public Defender – Cases with Final Findings of Ineffective Assistance ($\leq 1\%$): No cases.

Indigent Defense Fund – Claims Processing (90% within 35 days; average time ≤ 35 days):

Adult Claims: 88%; 29.5 days.

Appellate Claims: 100%; 4.1 days.

Juvenile Claims: 100%; 21.6 days.

Miscellaneous Claims: 100%; 16.9 days.

Indigent Defense Fund – Notices of Action Upheld (95%): 99.9% - 2007 out of 2009.

In summary, the Office of the State Public Defender has administered programs of ever-increasing complexity efficiently and, at the same time, delivering quality service. Efficiency and quality are demonstrated by the above Performance Measures. They are maintained by SPD's ongoing commitments to innovation, communication, and accountability to all stakeholders.

The State Public Defender's overarching strategy remains the long-term efficient management and containment of indigent defense costs while maintaining a level of service that doesn't just meet the constitutionally required minimum, but is something Iowa can be proud of. We must always keep in mind that indigent defense is a constitutional mandate. If Iowa maintains robust programs for prosecuting crime and protecting children, the programs for representing indigents must also be robust. If there is growth in the demands on Iowa's indigent defense programs, there must be growth in the cost of those programs. The keys to keeping Iowa's indigent defense programs performing at the level we've achieved remain full funding for public defender operations, expansion of public defender coverage where it makes sense to do so, and providing appropriate incentive for efficient and experienced private attorneys to remain on the court-appointment lists.

Respectfully Submitted,

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