

2017 Annual Report of the
Lancaster County Public Defender's Office





2017 was a welcome year of stability for the Public Defender's Office after multiple years in which we lost some wonderful, experienced attorneys who left due to retirements or pursuing other opportunities. Mark Carraher, a former law clerk, joined our office, replacing Abbi Romshek, who took a job with the Douglas County Public Defender's Office. Mark works in the Juvenile Division. Brittani Lewit moved from the Juvenile Division to the Misdemeanor Division, and Matt Meyerle moved to the Felony Division. Lupe Malcom joined our staff as a receptionist, and Jennifer Duncan joined our staff as a paralegal.

The number of felony possession of a controlled substance cases continued to increase, causing us to file overload motions in 539 felonies in 2017.

I was instrumental in the passage of legislation to give judges more discretion in sentencing driving on revoked license cases, increasing the number of licensed drivers on our streets. I also played a significant role in getting legislation passed which encouraged judges to look at an individual's financial ability to pay when setting bond, and which will prevent people being jailed to sit out fines simply because they are poor. These were important steps in changing the system so it doesn't punish poverty.

We will continue to fight for a system which treats all equally. And we will continue to fight for our clients.

Joe Nigro
Lancaster County Public Defender

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MISSION STATEMENT

The mission of the Lancaster County Public Defender's office is to provide high quality legal services for indigent clients and to advocate zealously on behalf of each individual client.

PHILOSOPHY AND GOALS

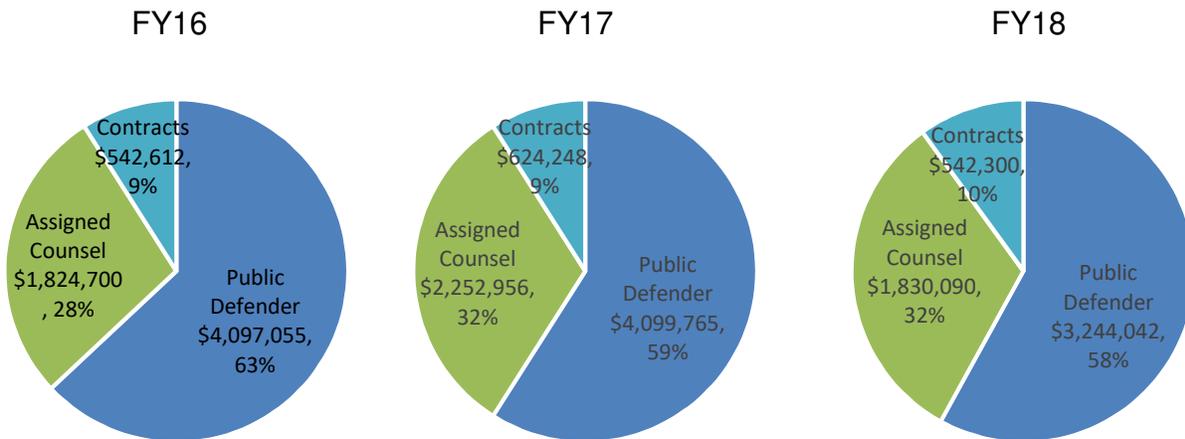
It is the philosophy of the Lancaster County Public Defender's Office to provide client centered legal representation of the highest quality.

GOALS

1. Recruit and retain attorneys and support staff who will provide high quality legal representation for each client.
2. Maintain reasonable caseload levels for staff attorneys.
3. Provide all resources and ancillary services necessary to represent the client of the office.
4. Provide continuing training for all staff.
5. Maintain political and professional independence for the office
6. Maintain a professional work environment.
7. Provide creative representation.
8. Provide visionary management.
9. Provide full-service representation.
10. Maintain adequate and stable funding.

OVERVIEW OF LANCASTER COUNTY'S INDIGENT DEFENSE SYSTEM

The indigent defense system in Lancaster County consists of the Lancaster County Public Defender's Office, private assigned counsel in county, district and juvenile court, a contract with Legal Aid of Nebraska for juvenile court, and a contract with a private law firm for the Child Support and Paternity cases. The charts below compare the FY18 expenditures as of March 31, 2018, or three quarters (as reported by the Budget and Fiscal Office) for each segment of the system with the FY16 and FY17 Actual Expenditures.



2017 ASSIGNED COUNSEL NOTES

Of the 2,330 felony cases closed by the Public Defender's Office in 2017, 635 of those cases (27%) involved a conflict of interest which required the appointment of private assigned counsel or the Commission on Public Advocacy. The prior years being 31% and 34%. In addition, 539 felony cases (23%) were closed in 2017 because they exceeded the office's caseload standards.

Of the 2,923 misdemeanor cases closed by the Public Defender's Office in 2017, 527 (18%) were closed because of a conflict of interest requiring appointment of assigned counsel. There were 170 misdemeanor excessive caseload cases in 2017 (this compares to 311 in 2009, 18 in 2010, 3 in 2011, 0 in 2012, 0 in 2013, 34 in 2014, 18 in 2015, and 182 in 2016).

Of the 1,070 juvenile law violations and status cases closed by the Public Defender in 2017, 244 (22.8%) were closed because of a conflict of interest and either Legal Aid of Nebraska or a private attorney was appointed. In 2017, the Public Defender withdrew from 0 juvenile cases because of our workload standards (compared to 114 in 2009, 27 in 2010, 16 in 2011, 0 in 2012, 0 in 2013, 37 in 2014, 4 in 2015, and 9 in 2016).

CONTRACT NOTES

The only contract for legal services in the Juvenile Court in 2017 was the contract with Legal Aid of Nebraska.

According to the Separate Juvenile Court, there were 228 new 3(a) (abuse/neglect) cases (including transfers from other counties) filed in the Separate Juvenile Court of Lancaster County in 2017. This represents a decrease of 11% in 2016.

2017 was the second year of a new Child Support/Paternity contract between Lancaster County and the Olson, Zalewski and Wynner Law Firm. The contractor opened 512 Child Support contempt cases (compared to 422 in 2016) and closed 561 (390 in 2016), opened 82 new paternity cases (103 in 2016) and closed 108 (81 in 2016) and opened 0 other contempt matters (0 in 2016). The firm logged 1242 hours (766 in 2016) including 402 attorney hours (452 in 2016) for this work.

LANCASTER COUNTY INDIGENT DEFENSE ADVISORY COMMITTEE

In 1995, at the request of Lancaster County Public Defender Dennis R. Keefe, the Lancaster County Board of Commissioners established the Lancaster County Indigent Defense Advisory Committee to advise the Public Defender and the Lancaster County Board on all issues relating to indigent defense. Members of the advisory committee are nominated by the Board of Trustees of the Lincoln Bar Association and are appointed by the Board of Commissioners. The advisory committee plays a very important role, especially in the recommendation of new contractors for Lancaster County. The current committee consists of Sean Brennan, Brad Roth, Jeanelle Lust, Dallas Jones, and Stan Beeder.

PUBLIC DEFENDER'S OFFICE OPERATIONS

New employees include Mark Carraher as a Deputy Public Defender in the Juvenile Division. Guadalupe Malcom at our front desk, Jennifer Duncan as a paralegal, and three part time law clerks, Melissa Figueroa, Sarah Burghaus, and Addison Fairchild.

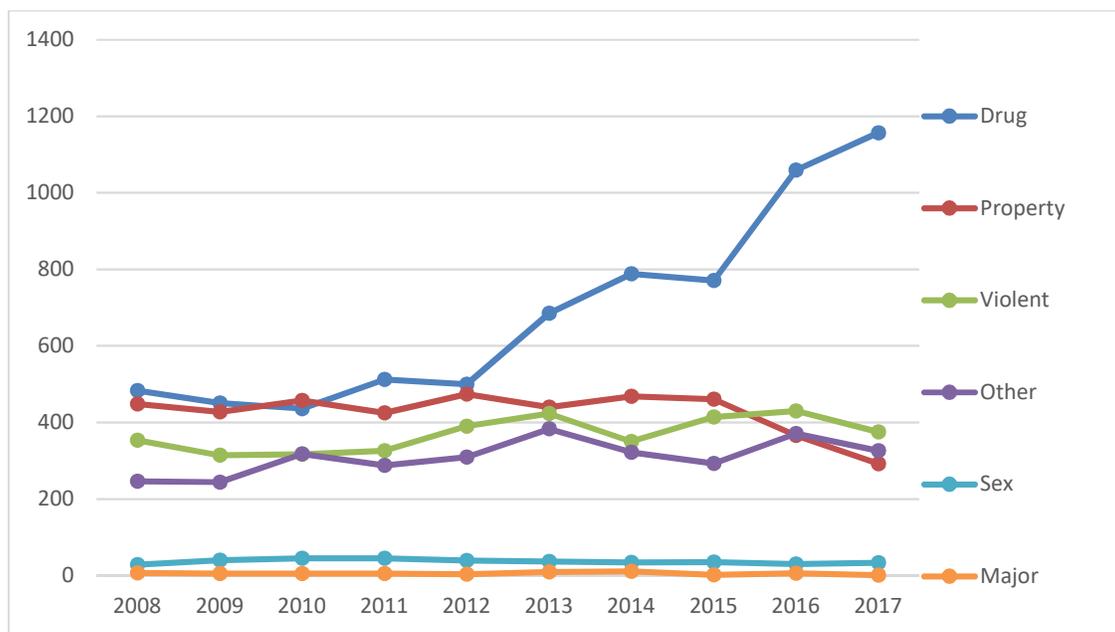
2017 saw several employees reach milestones: Monica Ross-Williams, 40 years; Joe Renteria, 20 years; Paul Cooney, 20 years; Shawn Elliott, 20 years; Jed Rojewski, 20 years; Mariah Trout-Holmes, 15 years; Steve Schultz, 15 years; and Donna Reifschneider, 10 years.

THE FELONY DIVISION

Paul E. Cooney, Chief Deputy
 Robert G. Hays, Chief Deputy
 Webb E. Bancroft, Deputy
 Kristi J. Egger, Deputy
 Shawn D. Elliott, Deputy
 Timothy M. Eppler, Deputy
 John C. Jorgensen, Deputy
 Jennifer M. Houlden, Deputy
 Yohance L. Christie, Deputy
 Todd C. Molvar, Deputy
 Nathan J. Sohriakoff, Deputy

Joe Renteria, Investigator
 Nate Kaiser, Investigator
 Angela Franssen, Paralegal
 Kristi Gottberg, Paralegal
 Amy Swearer, Law Clerk
 Addison Fairchild, Law Clerk
 Megan Meyerson, Law Clerk
 Katherine Lesiak, Law Clerk
 Sarah Burghaus, Law Clerk
 Melissa Figueroa, Law Clerk
 Haleigh Brockman, Law Clerk

NEW OPEN FELONIES BY TYPE



FELONY CASE NOTES

The number of state filed felony cases in Lancaster County court decreased about 3% from 2016, and our office’s felony appointments decreased 1%. Felony drug cases increased 9%. Drug cases constituted 53% of our felony cases in 2017.

In 2017 the number of felonies assigned to the Public Defender decreased by 78 cases or 3.5% from 2016.

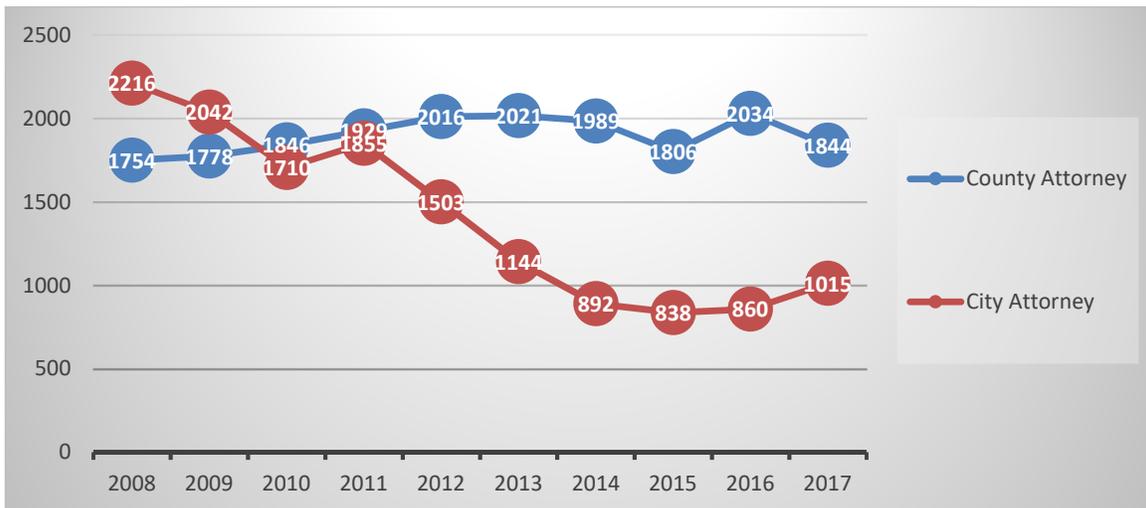
Major Cases Opened and Closed in 2017: We opened 1 new major cases of Motor Vehicle Homicide and closed 3 cases (2 were 1st Degree Murder. Each pled to a lesser felony. 1 person was charged with Manslaughter and pled as charged).

In 2017 the Public Defender’s Office had 23 clients admitted to the Adult Drug Court program and 36 Public Defender Drug Court clients had their cases closed; 22 had their cases closed following successful graduation and case dismissed. This is a 37.5% increase over last year. 14 had their cases closed because of unsuccessful participation and the cases were transferred back to the regular criminal court. This also is a 40% increase. Joe Nigro and Paul Cooney are the attorneys assigned to Adult Drug Court.

THE MISDEMEANOR DIVISION

Paul E. Cooney, Chief Deputy
 Amanda R. Baskin, Deputy
 Abbi R. Romshek, Deputy
 Nathan J. Sohriakoff Deputy
 George C. Dungan, Deputy
 Brittani E. Lewit, Deputy

Matthew F. Meyerle, Deputy
 Chelsie E. Krell, Deputy
 Kristi J. Egger, Deputy
 Angelia Onuoha, Paralegal
 Steve Schultz, Paralegal
 Jennifer Duncan, Paralegal



MISDEMEANOR CASE NOTES

Overall, Public Defender misdemeanor appointments decreased by 1% in 2017, after rising 9% in 2016, which had fallen to the lowest level in 2015 we had seen in over 15 years. The number of County Attorney filed misdemeanors opened by the Public Defender (the more time intensive cases) decreased by 9%. After a slight increase in 2016 of 13%.

The number of City Attorney filed misdemeanors assigned to our office increased 18% between 2106 and 2017, after remaining fairly level the last three years.

The major misdemeanor charge categories that showed significant change in 2017 were: Disturb the Peace (up 32%), which were also up 40% last year; Criminal Mischief (up 41%), after a 24% increase last year; Trespass (up 34%). Driving on a Suspended License decreased 14%; Child Abuse went down 24% after going up last year 42%; and Thefts went down 10% after going up 20% in 2016.

There were 3 Deputy Public Defenders and 1.25 paralegals assigned to the County Attorney filed Misdemeanors which totaled 1,844 new cases in 2017.

There were 1.3 Deputy Public Defenders and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 1,015 new cases in 2017.

We negotiated a 5% increase with the city for the amount they reimbursed the County for our services. They reimbursed Lancaster County, \$429,689 in 2017.

MENTAL HEALTH COMMITMENTS AND MISCELLANEOUS CASES

Kristi J. Egger, Deputy
Sarah Burghaus, Law Clerk
Melissa Figueroa, Law Clerk
Megan Meyerson, Law Clerk

Haleigh Brockman, Law Clerk
Katherine Lesiak, Law Clerk
Amy Swearer, Law Clerk
Addison Fairchild, Law Clerk

There were 164 new petitions filed in 2017, an increase from the 147 petitions filed in 2016.

Only 1 of the new petitioners n 2017 involved petitions for commitment under the Sex Offender Commitment Act, compared to 6 in 2013, 1 in 2014, 4 in 2015, and 1 in 2016.

There were 2 appeals filed in the district court from mental health commitment proceedings in 2017.

The Public Defender's Office opened 244 miscellaneous cases in 2017 compared to 136 miscellaneous cases in 2016. The 2017 cases included 112 felony revocation of probation cases, 19 fugitive from justice cases, 23 adult drug court cases, 58 motions to review post release sentence, 26 probation administrative sanctions, 2 post conviction cases, 3 Intensive supervision diversion cases, and 1 felony vet court case.

THE JUVENILE DIVISION

In January 2014 we changed the manner in which we counted Juvenile Court cases. In 2014 we opened 1,133 Juvenile Cases; 1,181 cases in 2015; 1,252 cases in 2016; and 982 cases in 2017.

JUVENILE CASE NOTES

The Juvenile Court Administrator for Lancaster County reports that there were 1,034 Law Violation filings in the Separate Juvenile Court of Lancaster County, Nebraska, in 2017, an 18% decline from the number of filings in calendar year 2016 (1,254 filings). 2017 Status Offense filings amounted to 177 cases, a 44% decrease from calendar year 2016 (316 filings).

The Public Defender's Office opened 5 new cases in the Juvenile Drug Court program in 2017 and closed 8. Of the cases closed, 4 were closed following successful completion and graduation and 4 were closed following unsuccessful termination from the program.

FUTURE ISSUES

Too many people are incarcerated due to poverty. We must end the money bond system. Alternatives to incarceration must be considered due to prison and jail overcrowding, the high cost and ineffectiveness of incarceration, and the high numbers of people incarcerated due to mental health issues. The War on Drugs is a failure. We must treat substance abuse as a health problem, not a criminal justice issue.

Appendix A

**TABLE 1
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE
OPEN/CLOSED CASELOAD REPORT 2017**

CASETYPE	PENDING START	OPENED 2017	CLOSED 2017	PENDING END 2017
Appeals	46	128	119	57
Felonies	622	2183	2330	506
Juveniles	417	982	1112	310
Major Cases	4	1	3	2
Mentals	31	164	153	17
Miscellaneous	94	244	248	84
Misdemeanors	668	2859	2923	643
Totals	1882	6561	6888	1619

**TABLE 2
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE
HISTORICAL COMPARISON OF CASES OPENED SINCE 2007**

Casetype	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Chg 16-17
Appeals	110	101	95	98	92	73	66	76	118	120	128	7%
Felonies	1566	1558	1476	1573	1596	1712	1968	1962	1974	2256	2183	-3%
Juveniles	1517	1597	1323	1346	1325	1361	1048	1133	1181	1252	982	-22%
Major Cases	11	7	5	5	5	3	9	11	2	6	1	-83%
Mental Commitment	454	289	252	227	176	176	181	151	155	147	164	12%
Miscellaneous	764	749	616	234	230	155	157	141	153	136	244	79%
Misdemeanors	4291	3970	3820	3556	3784	3519	3165	2881	2643	2894	2859	-1%
Totals	8713	8271	7587	7039	7208	6999	6594	6355	6226	6811	6561	-4%

Appendix B

Lancaster County
General Fund Expense Budget

625 PUBLIC DEFENDER	ACTUALS FY16	ENCUMBR FY16	MODIFIED BUDGET FY17	ACTUALS FY17	ENCUMBR FY17	PROPOSED BUDGET FY18	ADOPTED BUDGET FY18
SALARIES & WAGES	\$2,739,054	\$0	\$2,768,553	\$2,810,872	\$0	\$2,915,536	\$2,915,536
EMPLOYEE BENEFITS	\$940,280	\$0	\$921,058	\$914,345	\$0	\$1,014,551	\$1,014,551
OFFICE SUPPLIES	\$12,576	\$0	\$14,500	\$11,844	\$0	\$13,000	\$13,000
OTHER CONTRACTED SERVICES	\$85,579	\$0	\$92,507	\$80,480	\$0	\$92,421	\$92,421
TRANS, TRAVEL & SUBSISTANCE	\$44,913	\$0	\$20,750	\$29,282	\$0	\$23,250	\$23,250
COMMUNICATIONS	\$6,040	\$0	\$6,243	\$5,026	\$0	\$4,943	\$4,943
POSTAGE, COURIER & FREIGHT	\$5,254	\$0	\$5,537	\$5,497	\$0	\$5,500	\$5,500
PRINTING & ADVERTISING	\$9,862	\$0	\$10,090	\$8,113	\$0	\$8,800	\$8,800
CONTRACTED HEALTH SERVICE	\$10,492	\$0	\$18,000	\$5,219	\$0	\$12,000	\$12,000
OTHER CLIENT SERVICES	\$37	\$0	\$0	\$0	\$0	\$0	\$0
MISC FEES & SERVICES	\$76,516	\$0	\$73,456	\$51,057	\$0	\$67,708	\$67,708
INSURANCE & SURETY BONDS	\$6,423	\$0	\$6,783	\$6,478	\$0	\$850	\$850
REPAIR & MAINTENANCE COST	\$342	\$0	\$500	\$372	\$0	\$0	\$0
RENTALS	\$150,863	\$0	\$161,794	\$169,429	\$0	\$222,225	\$222,225
EQUIPMENT	\$8,823	\$0	\$0	\$1,753	\$0	\$9,908	\$9,908
TOTAL PUBLIC DEFENDER	\$4,097,055	\$0	\$4,099,771	\$4,099,765	\$0	\$4,390,692	\$4,390,692

APPENDIX C

CONSTITUTIONAL AND STATUTORY BACKGROUND FOR OFFICE OF THE PUBLIC DEFENDER

In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.

Sixth Amendment Constitution of the United States

In all criminal prosecutions the accused shall have the right to appear and defend in person or by counsel.

Article 1, Section 11 Constitution of the State of Nebraska

Neb. Rev. Stat. 23-3401 (Reissue 2012) Public defender in certain counties; election; qualifications; prohibited practices; residency.

(1) There is hereby created the office of public defender in counties that have or that attain a population in excess of one hundred thousand inhabitants and in other counties upon approval by the county board. The public defender shall be elected as provided in the Election Act.

(2) The public defender shall be a lawyer licensed to practice law in this state. He or she shall take office after election and qualification at the same time that other county officers take office, except that upon the creation of such office in any county, a qualified person may be appointed by the county board to serve as public defender until such office can be filled by an election in accordance with 32-523.

(3) In counties having a population of more than one hundred seventy thousand inhabitants the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time in the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender receives the same annual salary as each deputy county attorney of comparable ability and experience receives in such counties.

(4) No public defender or assistant public defender shall solicit or accept any fee for representing a criminal defendant in a prosecution in which the public defender or assistant is already acting as the defendant's court-appointed counsel.

(5) A public defender elected after November 1986 need not be a resident of the county when he or she files for election as public defender, but a public defender shall reside in a county for which he or she hold office, except that in counties with a population of one hundred thousand or less inhabitants, the public defender shall not be required to reside in the county in which he or she holds office.

LANCASTER COUNTY GENERAL FUND EXPENSE BUDGET

Neb. Rev. Stat. 23-3402 (Reissue 2012)

Public Defender duties; appointment; prohibitions.

(1) It shall be the duty of the public defender to represent all indigent felony defendants within the county he or she serves. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing or any indigent defendant represented by him or her, the public defender may take any direct, collateral, or post conviction appeals to state or federal courts which he or she considers to be meritorious and in the interest of justice and shall file a notice of appeal and proceed with one direct appeal to either the Court of Appeals or the Supreme Court of Nebraska upon a timely request after sentencing from any such convicted felony defendant, subject to the public defender's right to apply to the court to withdraw from representation in any appeal which he or she deems to be wholly frivolous.

(2) It shall be the duty of the public defender to represent all indigent persons against whom a petition has been filed with a mental health board as provided in sections 71-945 to 71-947.

(3) It shall be the duty of the public defender to represent all indigent persons charged with misdemeanor offenses punishable by imprisonment when appointed by the court.

(4) Appointment of a public defender shall be by the court in accordance with sections 29-3902 and 29-3903. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion. A public defender shall not inquire into a defendant's financial condition for purposes of indigency determination except to make an initial determination if indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a determination of a defendant's indigency, except an initial determination of indigency of a person under arrest for investigation or on suspicion, nor recommend to a court that a defendant be determined or not determined as indigent.

(5) For purposes of this section, the definitions found in section 29-3901 shall be used.

Neb. Rev. Stat. 23-3403 (Reissue 2012)

Public Defender; assistants; personnel; compensation; office space, fixtures, and supplies.

The public defender may appoint as many assistant public defenders, who shall be attorneys licensed to practice law in this state, secretaries, law clerks, investigators, and other employees as are reasonably necessary to permit him or her to effectively and competently represent the clients of the office subject to the approval and consent of the county board which shall fix the compensation of all such persons as well as the budget for office space, furniture, furnishings, fixtures, supplies, law books, court costs,

and brief-printing, investigative, expert, travel and other miscellaneous expenses reasonably necessary to enable the public defender to effectively and competently represent the clients of the office.

Neb. Rev. Stat. 29-3601(3) (Reissue 2008)

Indigent shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities for one's self or one's family. Before a felony defendant's initial court appearance, the determination of his or her indigency shall be made by the public defender, but thereafter it shall be made by the court; and

Neb. Rev. Stat. 43-272

(1) When any juvenile shall be brought without counsel before a juvenile court, the court shall advise such juvenile and his or her parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel. The court shall inform such juvenile and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel. If the juvenile or his or her parent or guardian desires to have counsel appointed for such juvenile, or the parent or guardian of such juvenile cannot be located, and the court ascertains that none of such persons are able to afford an attorney the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and the court later determines that a parent of such juvenile is able to afford an attorney the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section 43-290. If the parent willfully refuses to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney or the county attorney or by the court without a request.

(2) The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile: (a) If the juvenile has no parent or guardian of his or her person or if the parent or guardian of the juvenile cannot be located or cannot be brought before the court; (b) if the parent or guardian of the juvenile is excused from participation in all or any part of the proceedings; (c) if the parent is a juvenile or an incompetent; (d) if the parent is indifferent to the interests of the juvenile; or (e) in any proceeding pursuant to the provisions of subdivision (3)(a) of section 43-247.

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent of the juvenile as to those proceedings with respect to which his or her guardianship extends.

(3) The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel. In such cases the guardian ad litem shall have the right to

counsel, except that the guardian ad litem shall be entitled to appointed counsel without regard to his or her financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of this section.

(4) By July 1, 2015, the Supreme court shall provided by court rule standards for guardians ad litem for juveniles in juvenile court proceedings.

(5) by July 1, 2017, the Supreme Court shall provide guidelines setting forth standards for all attorneys who practice in juvenile court.

Neb. Rev. Stat. 43-3102

1. Waiver of right to counsel by juvenile; writing; when waiver not allowed.

(1) In any court proceeding, any waiver of the right to counsel by a juvenile shall be made in open court, shall be recorded, and shall be confirmed in a writing signed by the juvenile.

(2) A court shall not accept a juvenile's waiver of the right to counsel unless the waiver satisfied subsection (1) of this section and is an affirmative waiver that is made intelligently, voluntarily, and understandingly. In determining whether such waiver was made intelligently, voluntarily, and understandingly, the court shall consider, among other things: (a) The age, intelligence, and education of the juvenile, (b) the juvenile's emotional stability, and (c) the complexity of the proceedings.

(3) The court shall ensure that a juvenile represented by an attorney consults with his or her attorney before any waiver of counsel.

(4) No parent, guardian, custodian, or other person may waive the juvenile's right to counsel.

(5) A juvenile's right to be represented by counsel may not be waived in the following circumstances:

(a) If the juvenile is under the age of fourteen;

(b) For a detention hearing;

(c) For any dispositional hearing where out-of-home placement is sought; or

(d) If there is ai motion to transfer the juvenile from juvenile court to county court or district court.