

2018 Annual Report  
of the  
Lancaster County Public Defender's Office



“Freedom and justice cannot be parceled out in pieces to suit political convenience. I don’t believe you can stand for freedom for one group of people and deny it to others.”

Coretta Scott King



In 2018, we expanded our office space into the rest of the building we used to share with Community Corrections. After ten years we had filled up our old space. The additional space gives us needed space and room to grow.

It was a quiet year otherwise. We added one felony attorney. Amy Peters, a former law clerk, joined our office. Amy works in the Juvenile Division. Sarah Safarik moved from the Juvenile Division to the Misdemeanor Division, and Amanda Baskin moved to the Felony Division. Nathan Sohriakoff moved from the Felony Division to the Misdemeanor Division.

The number of felony possession of a controlled substance cases continued to increase, causing us to file overload motions in 832 felonies in 2018. Increases in misdemeanor filings caused us to file overload motions in 373 misdemeanors in 2018. I continued to advocate for changes in the criminal justice system at the Legislature which will make our system more effective, less costly, more humane, and more fair.

Joe Nigro

Lancaster County Public Defender

# TABLE OF CONTENTS

Mission Statement	1
Overview of Lancaster County's Indigent Defense System	2
Assigned Counsel Notes	2
Contract Notes	3
Indigent Defense Advisory Committee	3
Public Defender's Office Operations	3
Felony Division	3
Misdemeanor Division	5
Mental Health Commitments and Miscellaneous Cases	6
Juvenile Division	6
Future Issues	7
Appendix A	8
Appendix B	9
Appendix C	10

## 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

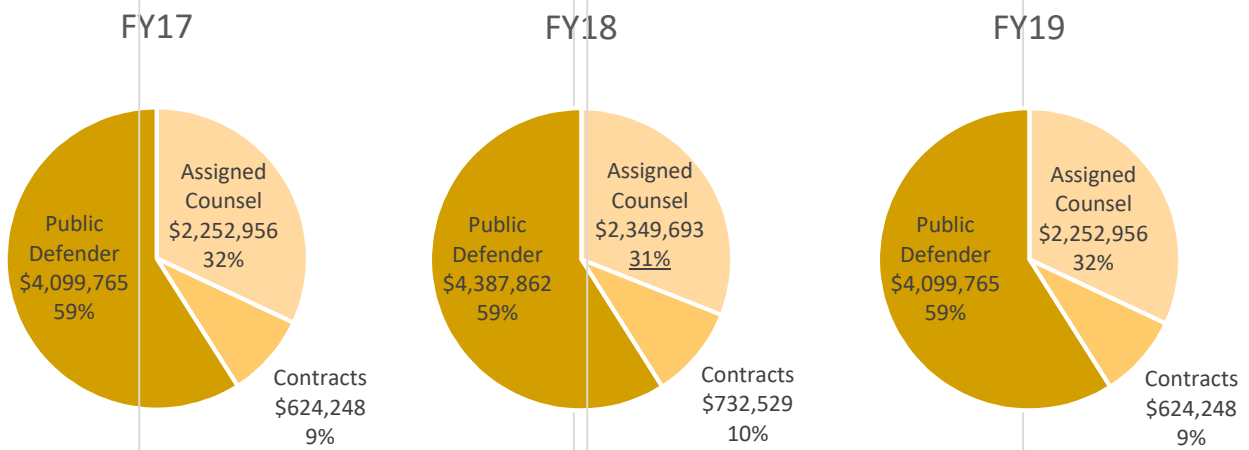
It is the philosophy of the Lancaster County Public Defender's Office to provide client centered legal representation of the highest quality.

## 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 clients 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 FY19 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 FY17 and FY18 being Actual Expenditures.



## 2018 ASSIGNED COUNSEL NOTES

Of the 2,481 felony cases closed by the Public Defender's Office in 2018, 644 of those cases (26%) involved a conflict of interest which required the appointment of private assigned counsel or the Commission on Public Advocacy. The prior years being 27% and 31%. In addition, 832 felony cases (34%) were closed in 2018 because they exceeded the office's caseload standards.

Of the 3,028 misdemeanor cases closed by the Public Defender's Office in 2018, 510 (17%) were closed because of a conflict of interest requiring appointment of assigned counsel. There were 373 misdemeanor excessive caseload cases in 2018 (this compares to 170 in 2017, 182 in 2016, and 18 in 2015).

Of the 778 juvenile law violations and status cases closed by the Public Defender in 2018, 105 (13%) were closed because of a conflict of interest and either Legal Aid of Nebraska or a private attorney was appointed. In 2018, the Public Defender withdraw from 0 juvenile cases because of our workload standards (this compares to 0 in 2017, 9 in 2016, and 4 in 2015).

## CONTRACT NOTES

The only contract for legal services in the Juvenile Court in 2018 was the contract with Legal Aid of Nebraska.

According to the Separate Juvenile Court, there were 143 new 3(a) (abuse/neglect) cases (including transfers from other counties) filed in the Separate Juvenile Court of Lancaster County in 2018. This represents a decrease of 37% from 2017, which was an 11% decrease from 2016.

2018 was the third year of the Child Support/Paternity contract between Lancaster County and the Olson, Zalewski and Wynner Law Firm. The contractor opened 422 child support contempt cases (compared to 512 in 2017) and closed 440 (561 in 2017), opened 61 new paternity cases (82 in 2017) and closed 57 (108 in 2017) and opened 0 other contempt matters (0 in 2017). The firm logged 1,352 hours (1,242 in 2017) including 460 attorney hours (402 in 2017) for this work.

## LANCASTER COUNTY INDIGENT DEFENSE ADVISORY COMMITTEE

In 1995, at the request of the 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 Amy Peters as a Deputy Public Defender in the Juvenile Division, and part time law clerks, David Gottschalk, Luke Hautzinger, and Vincent Ware.

2018 saw Angelia Onuoha reach her 20 year milestone and Jennifer Houlden reached her 10 year milestone.

## THE FELONY DIVISION

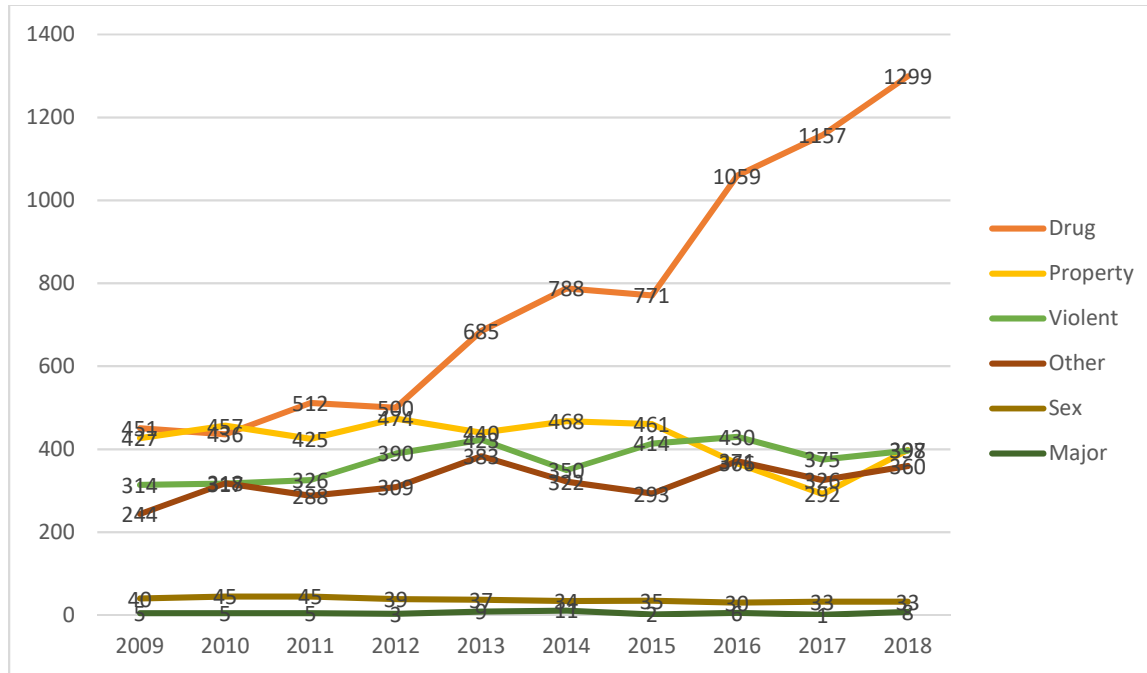
Paul E. Cooney, Chief Deputy  
Robert G. Hays, Chief Deputy  
Webb E. Bancroft, Deputy  
Kristi J. Egger, Deputy  
Shawn D. Elliott, Deputy  
Timothy M. Eppler, Deputy  
John C. Jorgensen, Deputy  
Jennifer M. Houlden, Deputy

Joe Renteria, Investigator  
Nate Kaiser, Investigator  
Jed Rojewski, Paralegal  
Kristi Gottberg, Paralegal  
Addison Fairchild, Law Clerk  
Melissa Figueroa, Law Clerk  
Sarah Burghaus, Law Clerk  
Katherine Lesiak, Law Clerk

Yohance L. Christie, Deputy  
 Todd C. Molvar, Deputy  
 Amanda R. Baskin, Deputy

David Gottschalk, Law Clerk  
 Luke Hautzinger, Law Clerk  
 Vincent Ware, Law Clerk

## NEW OPEN FELONIES BY TYPE



## FELONY CASE NOTES

The number of state filed felony cases in Lancaster County Court increased by 13% from 2017, and our office's felony appointments increased 2%.

In 2018 the number of felonies assigned to the Public Defender increased by 311 cases or 14% from 2017.

Major Cases Opened and Closed in 2018: We opened 3 major cases of 1<sup>st</sup> Degree Murder and closed 4 cases. One case was dismissed, two were a conflict, and one pled to a lesser felony offense. We opened 3 major cases of 2<sup>nd</sup> Degree Murder and closed 2 cases. Both cases were conflicts. We opened 1 major case of Kidnapping and closed 2 cases. One case was a conflict and the other one pled to a secondary count. We opened 1 major case of Motor Vehicle and closed 1 case which pled to a secondary count.

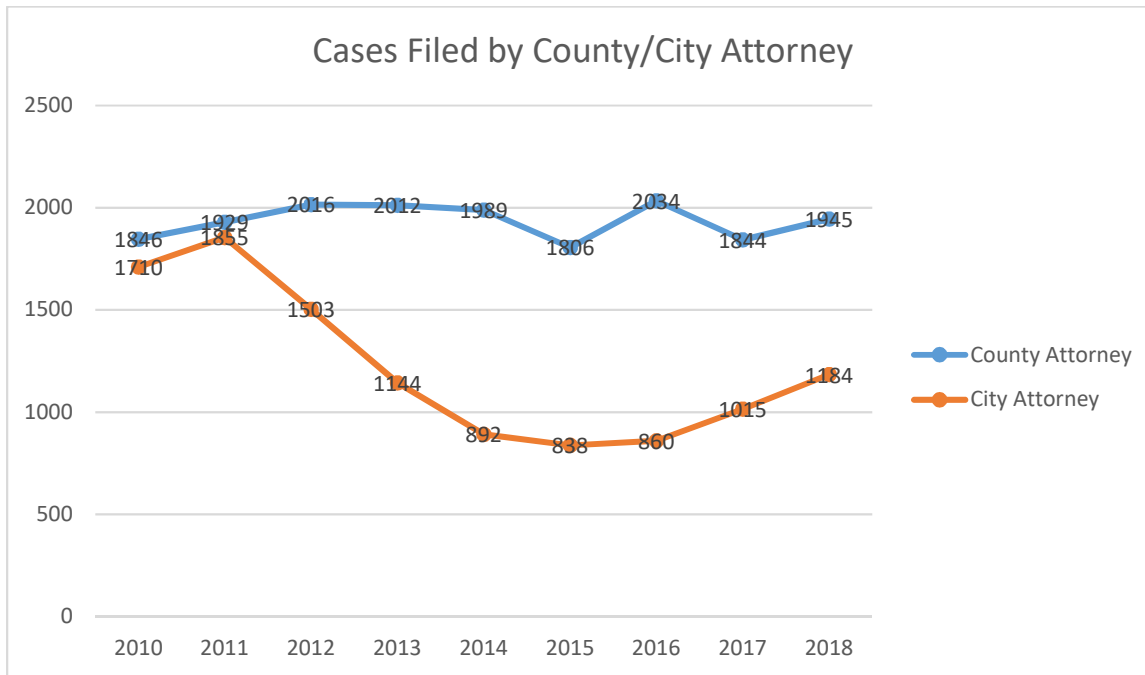
In 2018 the Public Defender's Office had 13 clients admitted to the Adult Drug Court program and 19 Public Defender Drug Court clients had their cases closed; 14 had their cases closed following successful graduation and case dismissed. This is a 13% increase over last year. Only 3 cases were closed because of unsuccessful participation and the cases were transferred back to the regular criminal court. This is

also a 23% decrease. Two cases were conflicts. Joe Nigro and Paul Cooney are the attorneys assigned to Adult Drug Court.

## THE MISDEMEANOR DIVISION

Paul E. Cooney, Chief Deputy  
Nathan J. Sohriakoff, Deputy  
George C. Dungan, Deputy  
Brittani E. Lewit, Deputy  
Sarah J. Safarik, Deputy

Chelsie E. Krell, Deputy  
Kristi J. Egger, Deputy  
Amanda R. Baskin, Deputy  
Jennifer Duncan, Paralegal  
Angela Franssen, Paralegal



## MISDEMEANOR CASE NOTES

Overall, Public Defender misdemeanor appointments increased 9% in 2018, after decreasing 1% in 2017. The number of County Attorney filed misdemeanors opened by the Public Defender (the more time intensive cases) increased by 5%, after a 1% decrease in 2017.

The number of City Attorney filed misdemeanors assigned to our office increased 17% between 2017 and 2018, after increasing 18% between 2016 and 2017.

The major misdemeanor charge categories that showed significant change in 2018 were: Criminal Mischief (up 80%), Carry a Concealed Weapon (up 40%), Trespass (up 31%), and Child Abuse (up 20%).



There were 3 Deputy Public Defenders and 1.25 paralegals assigned to the County Attorney filed Misdemeanors which totaled 1,945 new cases in 2018.

There were 2 Deputy Public Defenders and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 1,144 new cases in 2018.

We negotiated a 5% increase with the city for the amount they reimbursed the county for our services. They reimbursed Lancaster County \$451,173 in 2018.

## MENTAL HEALTH COMMITMENTS AND MISCELLANEOUS CASES

Kristi J. Egger, Deputy  
Sarah Burghaus, Law Clerk  
Melissa Figueroa, Law Clerk  
Luke Hautzinger, Law Clerk

Addison Fairchild, Law Clerk  
Katherine Lesiak, Law Clerk  
David Gottschalk, Law Clerk  
Vincent Ware, Law Clerk

There were 169 new petitions filed in 2018, a slight increase from 164 filed in 2017.

Six of the new petitions in 2018 involved petitions for commitment under the Sex Offender Commitment Act, compared to 1 in 2017 and 2016.

There were 2 appeals filed in the district court from mental health commitment proceedings in 2018, the same as were filed in 2017.

The Public Defender's Office opened 335 miscellaneous cases in 2018 compared to 244 in 2017. The 2018 cases included 158 revocation of probation cases, 124 Motion to Review Post Release Sentence cases, 14 Probation Administrative Sanctions cases, and 13 Felony Drug Court cases.

## THE JUVENILE DIVISION

Margene M. Timm, Chief Deputy  
Teresa J. Nutzman, Deputy  
Sarah J. Safarik, Deputy  
Angelia Onuoha, Paralegal

Mark C. Carraher, Deputy  
James G. Sieben, Deputy  
Amy J. Peters, Deputy

In January 2014, we changed the manner in which we counted Juvenile Court cases. In 2016 we opened 1,252 cases, 982 cases in 2017, and 754 in 2018.

## JUVENILE CASE NOTES

The Juvenile Court Administrator for Lancaster County reports there were 809 Law Violation filings in the Separate Juvenile Court of Lancaster County, Nebraska, in 2018, a 22% decrease from the number of filings in 2017 (1,034). 2018 Status Offense filings of 97 cases, a 45% decrease from 2017 (177).

The Public Defender's Office opened 8 new cases in the Juvenile Drug Court program in 2017 and closed 7. Of the cases closed, 4 were closed following successful completion and graduation and 3 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. Policies on prosecuting and incarcerating people due to health issues continue to drive our workload up and fill our jail and prisons. These policies must change.

Appendix A

**TABLE 1  
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
OPEN/CLOSED CASELOAD REPORT 2018**

CASETYPE	PENDING START	OPENED 2018	CLOSED 2018	PENDING END 2018
Appeals	57	118	122	53
Felonies	506	2487	2481	514
Juveniles	310	754	778	287
Major Cases	2	8	9	3
Mentals	17	169	230	21
Miscellaneous	84	335	319	96
Misdemeanors	643	3129	3028	775
Totals	1619	7000	6967	1749

**TABLE 2  
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
HISTORICAL COMPARISON OF CASES OPENED SINCE 2008**

Casetype	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Chg 17-18
Appeals	101	95	98	92	73	66	76	118	120	128	118	-8%
Felonies	1558	1476	1573	1596	1712	1968	1962	1974	2256	2183	2487	14%
Juveniles	1597	1323	1346	1325	1361	1048	1133	1181	1252	982	754	-23%
Major Cases	7	5	5	5	3	9	11	2	6	1	8	700%
Mental Commitment	289	252	227	176	176	181	151	155	147	164	169	3%
Miscellaneous	749	616	234	230	155	157	141	153	136	244	335	37%
Misdemeanors	3970	3820	3556	3784	3519	3165	2881	2643	2894	2859	3129	9%
Totals	8271	7587	7039	7208	6999	6594	6355	6226	6811	6561	7000	7%

Appendix B

Lancaster County  
General Fund Expense Budget

625 PUBLIC DEFENDER	ACTUALS FY17	ENCUMBR FY17	MODIFIED BUDGET FY18	ACTUALS FY18	ENCUMBR FY18	PROPOSED BUDGET FY19	ADOPTED BUDGET FY18
SALARIES & WAGES	\$2,810,872	\$0	\$2,915,536	\$2,928,685	\$0	\$3,083,517	\$3,083,517
EMPLOYEE BENEFITS	\$914,345	\$0	\$1,014,551	\$927,947	\$0	\$978,771	\$978,771
OFFICE SUPPLIES	\$11,844	\$0	\$13,000	\$19,493	\$0	\$13,000	\$13,000
OTHER CONTRACTED SERVICES	\$80,480	\$0	\$92,421	\$93,661	\$0	\$104,583	\$104,583
TRANS, TRAVEL & SUBSISTANCE	\$29,282	\$0	\$23,250	\$54,809	\$0	\$23,250	\$23,250
COMMUNICATIONS	\$5,026	\$0	\$4,943	\$2,798	\$0	\$3,451	\$3,451
POSTAGE, COURIER & FREIGHT	\$5,497	\$0	\$5,500	\$5,123	\$0	\$5,500	\$5,500
PRINTING & ADVERTISING	\$8,113	\$0	\$8,800	\$7,362	\$0	\$8,800	\$8,800
CONTRACTED HEALTH SERVICE	\$5,219	\$0	\$12,000	\$21,927	\$0	\$14,000	\$14,000
MISC FEES & SERVICES	\$51,057	\$0	\$61,440	\$77,055	\$0	\$63,178	\$63,178
INSURANCE & SURETY BONDS	\$6,478	\$0	\$7,118	\$6,478	\$0	\$7,118	\$7,118
REPAIR & MAINTENANCE COST	\$372	\$0	\$0	\$0	\$0	\$0	\$0
RENTALS	\$169,429	\$0	\$222,225	\$234,645	\$0	\$240,495	\$240,495
EQUIPMENT	\$1,753	\$0	\$9,908	\$7,881	\$0	\$37,535	\$37,535
<b>TOTAL PUBLIC DEFENDER</b>	<b>\$4,099,765</b>	<b>\$0</b>	<b>\$4,390,692</b>	<b>\$4,387,862</b>	<b>\$0</b>	<b>\$4,583,198</b>	<b>\$4,583,198</b>

**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 an 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, not 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 licenses 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. 28-3601(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) and 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 provide 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**

**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 a motion to transfer the juvenile from juvenile court to county court or district court.