

Lancaster County  
Public Defender

**1997 Annual Report**

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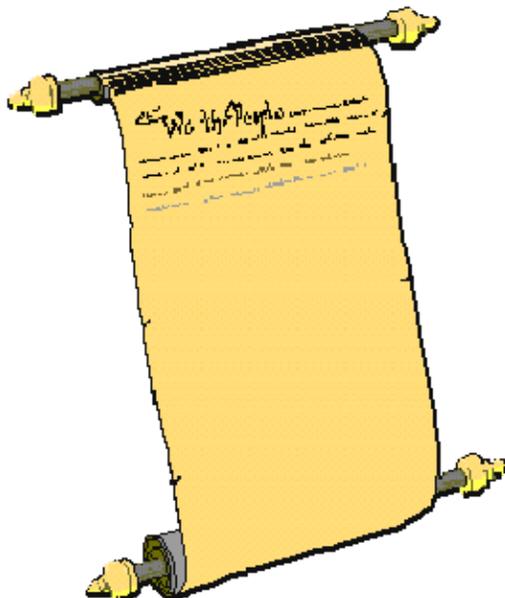
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**In all prosecutions, the accused shall enjoy the right  
to have the assistance of counsel for his defense.**



**Sixth Amendment  
Constitution of the United States**

**The 1997 Annual Report of the  
Lancaster County Public Defender**

**Dennis R. Keefe, Public Defender**

The past year has brought many changes and improvements to the Office of the Public Defender. In October of 1997, the juvenile division moved offices to Trabert Hall where the Separate Juvenile Court of Lancaster County is being located during the restoration of the Hall of Justice. By the end of 1997, we were ready to vacate the Public Defender's Office on the 4<sup>th</sup> floor of the old County City Building, as well as our annex on the third floor, and move into the new offices designated in the new County City Building on the second floor. For the first time in many years, the Public Defender's Office has adequate space to house all of the attorneys and support staff.

Technological improvements continued during 1997. The second phase of an upgrade of the Public Defender's microcomputers to pentiums with Windows 95 and Windows versions of WordPerfect continued. In addition, the Nebraska Commission on Public Advocacy provided the office with a new case management litigation support software - Trial Scout. The Public Defender's Office was in the process of testing this software on several of the major cases pending in the office.

Because of the number of major cases pending in the office, the workload factor far exceeded maximum allowable during most of 1997. The County Board approved the addition of a felony attorney, the first addition to the felony staff in 10 years. In addition, a Juvenile Division paralegal and a juvenile court attorney were hired in an attempt by the Public Defender's Office to assist the County Board in saving money on private attorney expenses in the Separate Juvenile Court.

Key issues that we are currently facing going into the FY99 include the passage of L.B. 1041, a bill which brings Nebraska into compliance with the federal Adoption and Safe Families Act of 1997, wherein Congress mandated that the states comply with certain provisions of that Act in order to continue receiving federal funds. Essentially, L.B. 1041 will increase the number of termination of parental right proceedings in the Separate Juvenile Court of Lancaster County. This will have an impact across the system including the ability of the Public Defender's Office to respond.

The Nebraska Commission on Public Advocacy has continued to provide representation in some of the major cases where the Public Defender's Office has declared a conflict of interest. This eliminates the need to appoint private attorneys at \$65 per hour. This has had the effect of saving Lancaster County property tax dollars to the extent of \$91,655.

With all of the challenges facing us, we will continue our service to the community through our dedicated and qualified staff, and continued efficiency in our operation. The major challenges for the coming year will be to ensure quality representation for all parties in the Separate Juvenile Court of Lancaster County in the most efficient way possible. Also, we will meet the challenge to provide the necessary level of quality of services in our major cases which will be carried over into the new fiscal year.

Dennis R. Keefe

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## 1997 in Review

The workload of the Lancaster County Public Defender's Office increased significantly in several categories over the past year. The highest percentage change in opened cases occurred in the categories of:



- Capital Felonies - an increase of 150% over last year , from 2 cases in 1996 to 5 cases in 1997
- Juvenile - an increase of 40%, with cases increasing from 930 in 1996 to 1300 in 1997
- Supreme Court Appeals - an increase of 78%, from 32 appeals in 1996 to 57 in 1997

### Cases Opened in 1997

Case type	Pending Start	Opened 1997	Closed 1997	Pending End 1997	% Change from 1996
Capital Felony <sup>1</sup>	1	5	0	6	150%
All Felonies <sup>1</sup>	282	846	839	308	9%
Juveniles <sup>1</sup>	235	1300	1216	325	0%
Misdemeanors <sup>1</sup>	390	2657	2691	562	4%
Mental <sup>1</sup>	9	324	344	1	20%
Miscellaneous <sup>2</sup>	23	118	118	28	3%
District Court Appeals	4	16	15	5	14%
Supreme Court Appeals	24	57	42	39	78%
<b>Totals</b>	<b>967</b>	<b>5323</b>	<b>5265</b>	<b>1274</b>	<b>13%</b>

<sup>1</sup>excludes cases that were made inactive (bench warrant issued) or cases that were reacted (arrested on bench warrant)

<sup>2</sup> includes felony revocation of probation (52 cases), habeas corpus (3 cases), fugitive from justice (53 cases), insanity verdict reviews (4 cases), post conviction (3 cases) declaratory judgment (2 cases), civil contempt (1 case).

### Distribution of Attorney time by Case Type

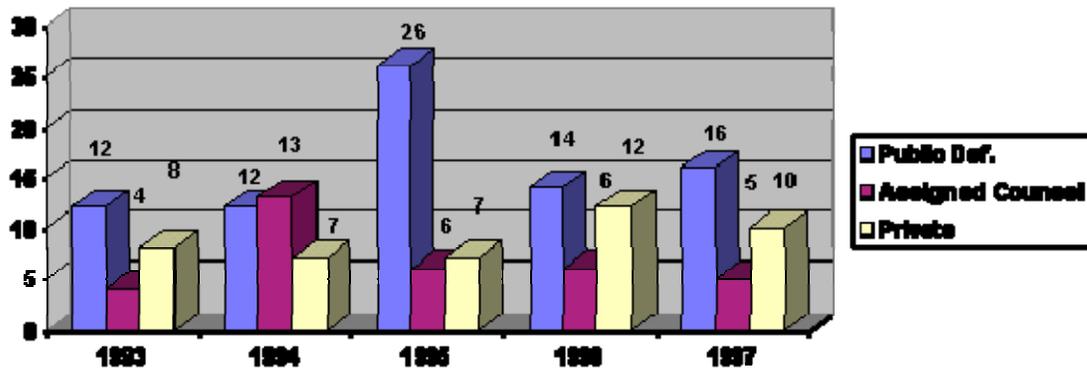
Case Type	% of Attorney Time / 1997	% of Closed Cases / 1997
All Felonies (including capital felonies)	43%	16%
Juveniles	23%	23%
Misdemeanors	24%	51%
Mental	3%	7%
Miscellaneous	2%	2%
Appeals	3%	1%

The increased complexity of felony cases requires more attorney time, thus the reason for a higher percentage of time being spent on a lower percentage of the entire case volume. The reverse is true of misdemeanors where less attorney time is required, even though they comprise 51% of the entire caseload for the Public Defender Office.

### FELONY Cases

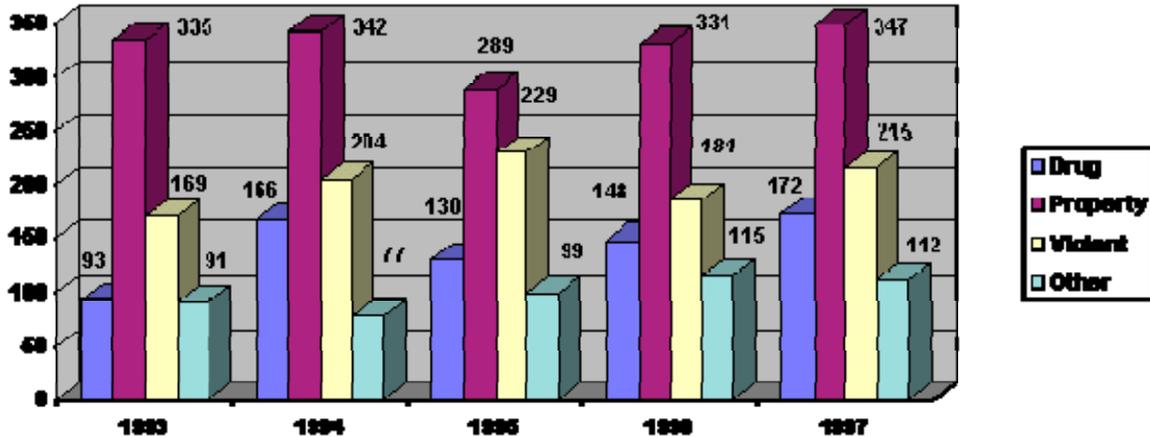
In 1997, the State Court Administrators Office reported 1,205 felony cases filed in the Lancaster County Court. Seventy percent of those cases (846) initially required appointment of counsel.

### Felony Jury Trials in Lancaster County District Court



Also in 1997, there was a total of 31 felony jury trials in the District Court of Lancaster County. Of that number, the Public Defender represented clients in 16 cases, assigned counsel represented clients in 5 cases, and privately retained attorneys represented clients in 10 cases. This represents an increase in the number of Public Defender jury trials over the previous year and a decrease in the appointed counsel and privately retained counsel.

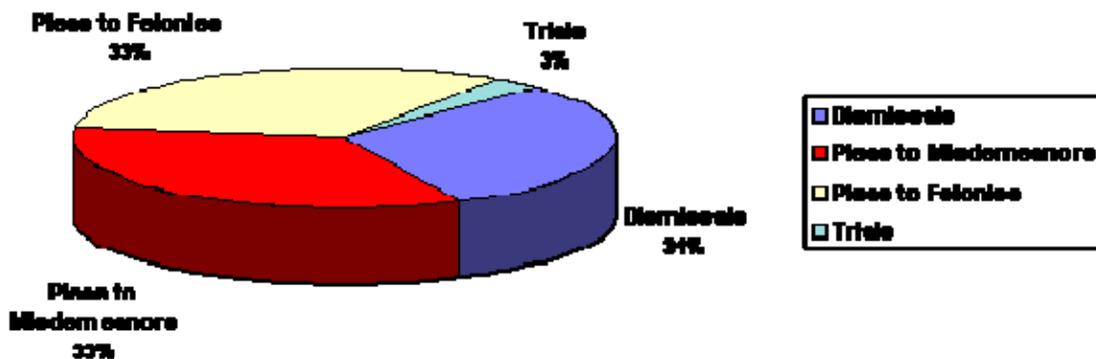
**New Open Felonies**



With the five new cases involving charges of first degree murder opened in 1997, the office entered 1998 with six active/pending cases of this type. These cases are extremely time-consuming, require the assignment of two attorneys to the case, and usually result in significant expenditures of expert witness fees. Because of the number of cases opened in 1997, the office adopted the team approach to these cases. The teams include the attorneys assigned, a paralegal, an investigator, and a law clerk. Team meetings are held on a regular basis for planning and progress reviews.

For felonies, the office opened an eight year record high of 846 felony cases. This was a 9% increase over the 1996 figure. Drug felonies opened by the Public Defender's Office increased 16% and violent felonies increased 17%, demonstrating the additional resources which were focused by law enforcement and prosecution on these felony types. Because of the significant penalties under new Nebraska state laws, drug felonies are just as likely now to be prosecuted in state court as in federal court (where most of the major drug cases were filed in the past).

**Disposition for Felonies**



**JUVENILE Cases**

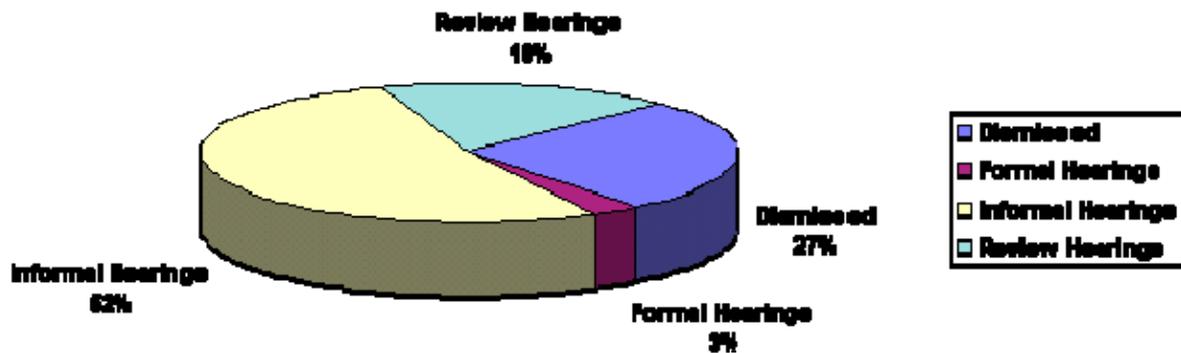
**New Open Juvenile Cases -**

The number of new juvenile cases has steadily increased over the past five years. However, the 40% increase in law violation juvenile cases (from 638 cases in 1996 to 864 in 1997) was unprecedented. Most of that increase occurred in the 4<sup>th</sup> quarter of 1997 and can be attributed to the new Juvenile Diversion Program implemented in September and October of 1997. A number of juveniles, eligible for

the Diversion Program, failed to respond to letters sent by the program. These cases of first-time juvenile offenders - as young as ten years old - were referred to the County or City Attorney's Office. Formal court filings and appointments of counsel followed. Juvenile Court law violation cases filed by the County Attorney increased 32% over 1996, and City Attorney cases increased 53% over the same period.

The number of new juvenile family cases also increased in 1997. The Public Defender's Office agreed to begin accepting appointments in abuse/neglect cases in late 1997 in anticipation of adding an attorney to the juvenile division in January, 1998. Due to the large increase in juvenile law violations (as noted above), the number of abuse/neglect cases that the Public Defender's Office will be able to accept in the future will be limited.

**Disposition for Juvenile Law Violation cases -**

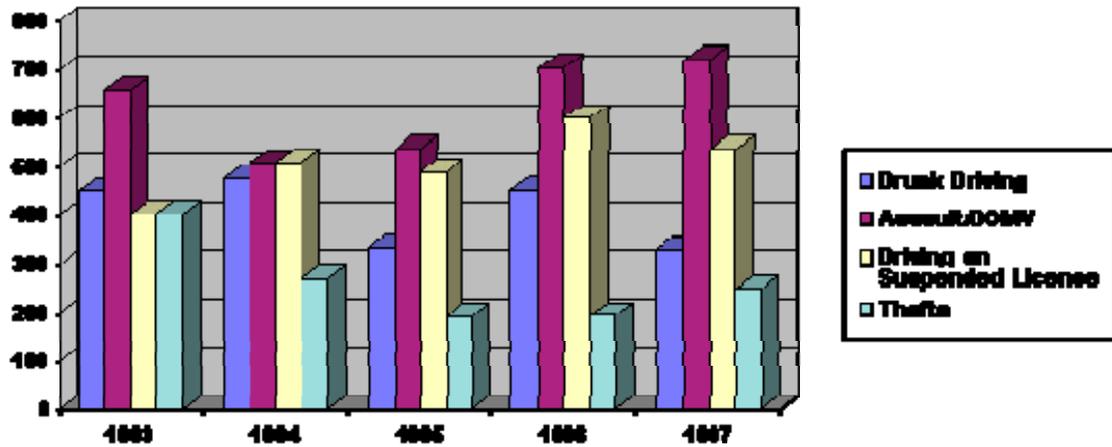


**MISDEMEANOR Cases**

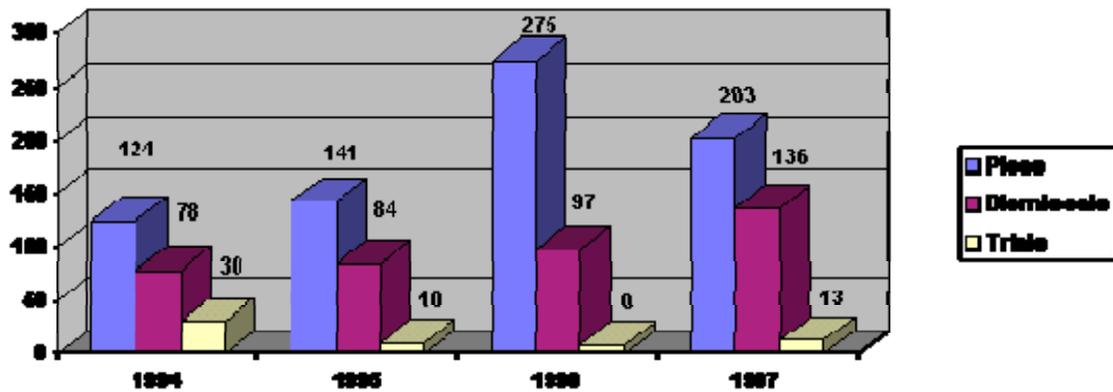
**New Open Misdemeanor Cases**

The number of misdemeanor cases requiring appointed counsel varies from year to year and from judge to judge. Past practice shows that some appointing judges make an assessment at the outset that a particular type of case may warrant a jail sentence and therefore, court appointed counsel is most likely. Other judges may not make the same assessment. Consequently, as in 1996, categories such as disturbing the peace rose 105% in the number of new open cases in one year.

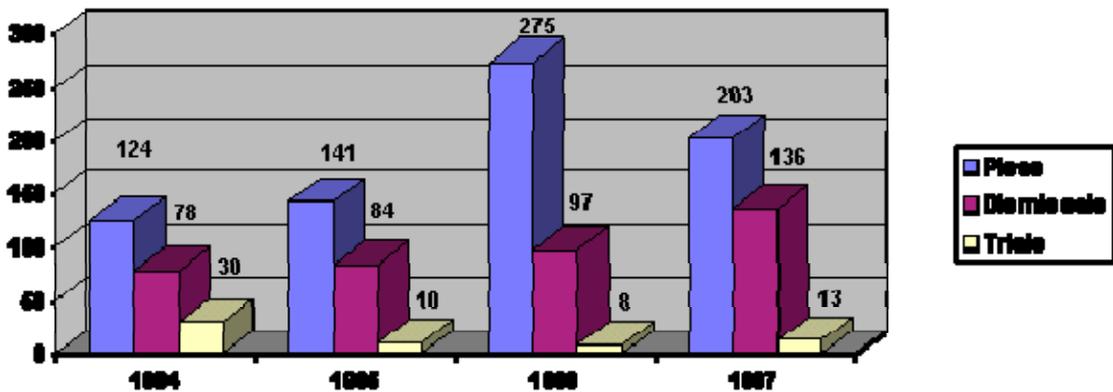
Of the major categories of misdemeanor cases, assaults and domestic violence cases showed a slight increase in 1997 while driving on suspended license and drunk driving each showed decreases. The number of theft cases requiring appointed counsel increased but this again is probably due to judicial philosophy regarding potential sentencing.



*Disposition for most active categories - Domestic Violence*

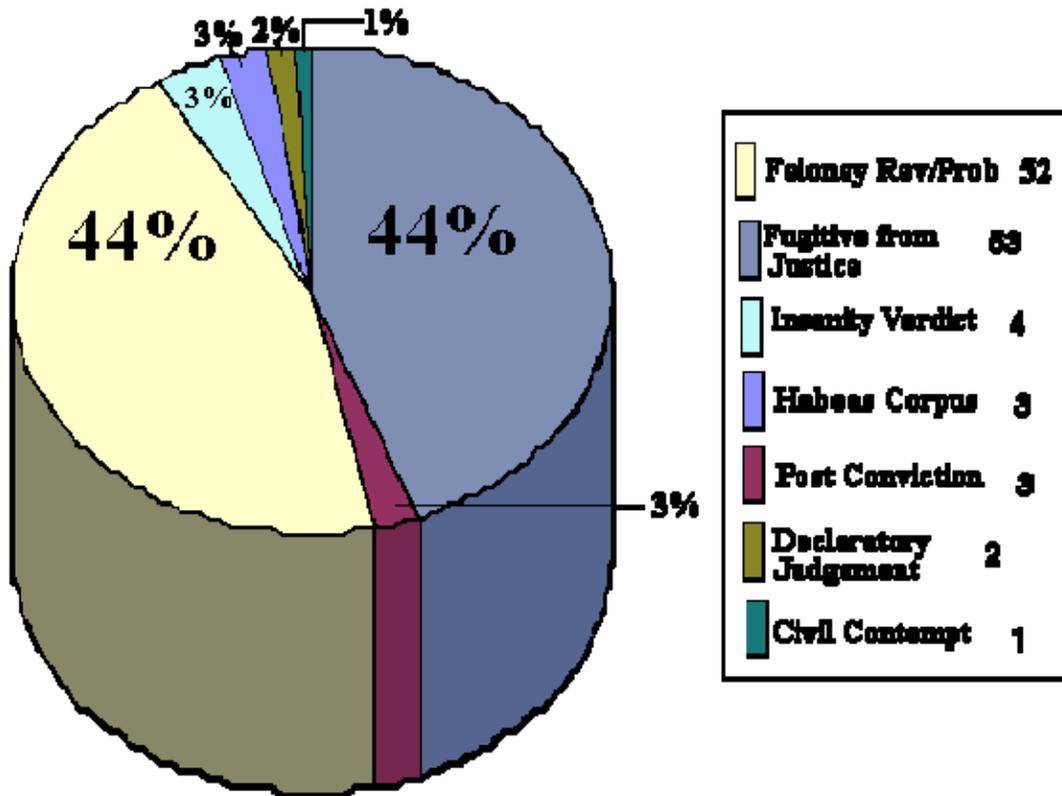


Disposition for most active cases - Driving Under the Influence (DUI)



### Miscellaneous Cases

New Open Miscellaneous Cases for 1997, by category



### Key Impact Issues for the up-coming year

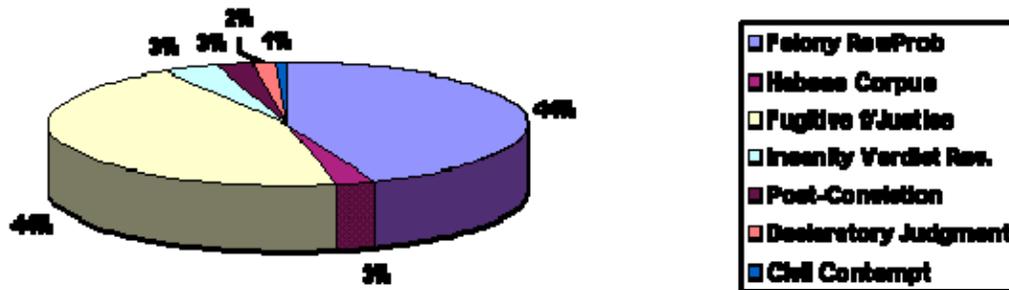
#### Major Cases

As we enter the new fiscal year, the Public Defender's Office has eight major cases pending. Six of those cases involve charges of first degree murder. Each of those six cases have significant expert witness expenses attached to them and will require additional funding. They will also continue to consume large amounts of attorney time, requiring the part time assistant public defender to be maintained at least through the end of this calendar year.

#### Drug Felonies

Drug felonies filed in state court continue to rise. Currently, the Lancaster County Attorney's Office employs two attorneys who are funded by federal grant monies through the State Crime Commission. We are told that the Lancaster County Attorney's Office intends to ask for a third prosecutor for these drug offenses. The only federal drug and violent crime money given to indigent defense in Nebraska is through the Nebraska Commission on Public Advocacy. Lancaster County does benefit when a commission attorney represents a client in a conflict of interest situation.

## ***Domestic Violence Cases***



Greater emphasis will continue to be placed on the investigation and prosecution of domestic violence cases. Legislative changes, prosecutorial policy changes, and requests by some for greater jail sentences in this type of case will result in more attorney time being devoted to domestic violence cases. Currently, the Lancaster County Attorney has two attorneys and a paralegal funded with federal program monies through the State Crime Commission. A new grant is being requested at this time which would not only continue those positions, but would also add a police officer and a sheriff's deputy specifically to deal with the investigation and follow-up on domestic violence cases. Because the State Crime Commission will not fund indigent defense projects under these federal grants, any required increase in staff falls upon Lancaster County.

## **Juvenile Cases and Nebraska Legislative Bill 1041**

Congress passed the Adoption and Safe Families Act of 1997, which will increase the termination of parental rights proceedings in the Separate Juvenile Courts and family courts across the country. States are threatened with the loss of child welfare and foster care funds if they do not bring their laws into compliance with the federal act. Nebraska is on the verge of passing L.B. 1041, bringing the state into compliance with the federal act. The Lancaster County Attorney has estimated a need for two additional deputy county attorneys in the juvenile division of his office to handle the increased workload created by L.B. 1041. Approximately \$110,000 is to be appropriated under LB 1041 to fund these additional prosecutors in the Lancaster County Attorney's Office.

Overall, this legislation has the potential of adding significant costs for Lancaster County in providing counsel in Juvenile Court.

- First, termination of parental right cases are almost always contested cases.
- Second, the deputy county attorney in a termination of parental rights case is usually only one of approximately three to six attorneys representing the children and the parents.
- Third, the Juvenile Court is paying private attorneys at the rate of \$60 per hour for work in Juvenile Court whereas the cost of an entry level deputy county attorney is approximately \$15 per hour.

We can assume that if the costs of prosecuting these cases will be \$110,000 (as appropriated by L.B. 1041), other legal costs to the county will be from three to five times that amount for these cases. This will affect all costs of providing legal services in the Juvenile Court, including Public Defender Office costs, assigned counsel costs and the contract with Legal Services of Southeast Nebraska and the law firm of Orton, Thomas, Peterson & O'Connell.

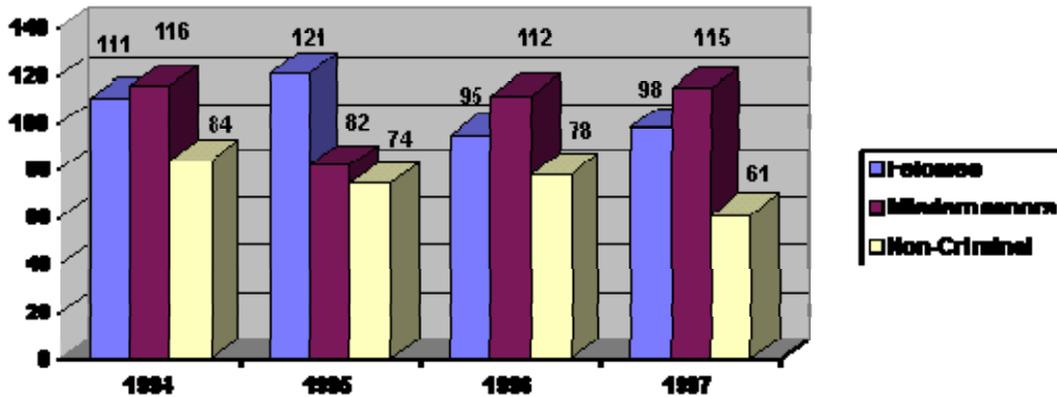
## Budget Summary

### Conflicts and Referrals to the Commission on Public Advocacy

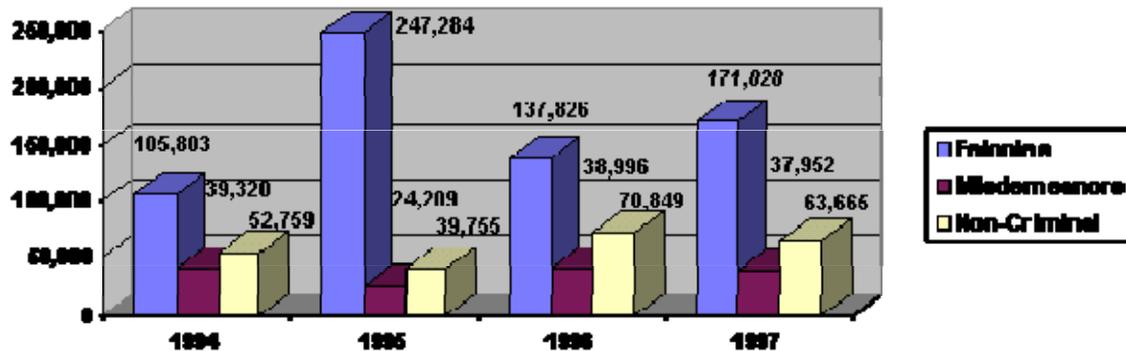
During 1997, the Nebraska Commission on Public Advocacy, a state-funded office of defense attorneys, agreed to represent clients in 13 cases where the Lancaster County Public Defenders' Office had a conflict of interest. The Commission estimates it has spent 1200 attorney hours on these cases during 1997. If private attorneys had been appointed to represent these individuals, the cost to Lancaster County Taxpayers would have been \$91,655. The Commission on Public Advocacy represented these clients with *no cost* to Lancaster County.

### Assigned Counsel (District & County Courts)

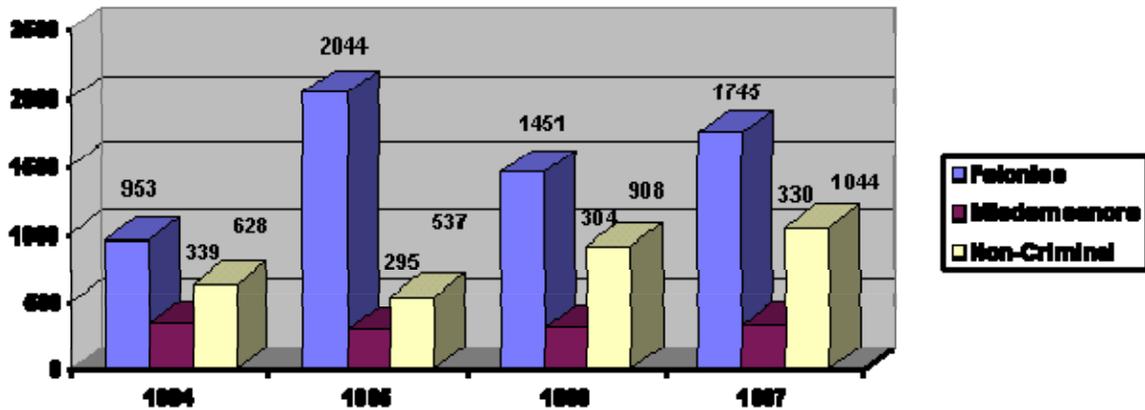
In addition to the Lancaster County Public Defender's Office, there are other indigent defense legal costs for Lancaster County. The graphs that follow show the number of cases deferred to assigned counsel for the past five years, the cost per year as well as the cost by case type.



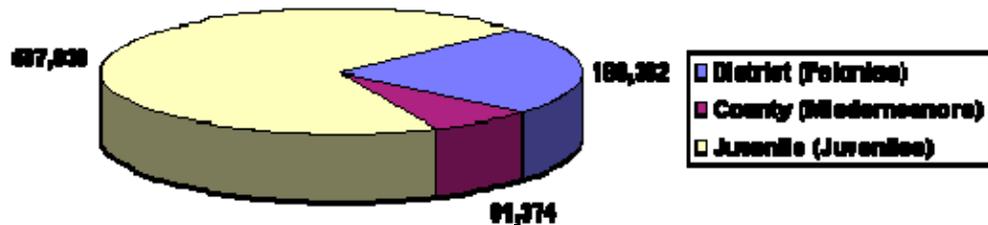
### Assigned Counsel Costs (District & County Courts)



**Assigned Counsel Costs per Case by Case Type (District & County Courts)**



**Projected FY 98 expenditure for assigned counsel, by Court**



The pie graph shows the projected FY '98 expenditures for district court (felonies), county court (misdemeanors) and juvenile court (juvenile cases), as estimated by the County's Fiscal Analyst based upon the first 6 months of expenditures in FY '98.

**Budget - Other Contracts**

**Juvenile Court Contract - Abuse & Neglect Cases**

Lancaster County has a contract with the law firm of **Norton, Thomas, Peterson, & O'Connell** for abuse and neglect representation in juvenile court. The contract limits the law firm to accepting 50 new cases per year with the maximum pending active - 120 cases; with expenditure of \$53,000 per year. During 1997, they received their maximum of 50 new appointments, and they expended 773.38 hours on all of their pending cases.

**Child Support / Paternity Contract**

Lancaster County has a contract with the law firm of **Ugai and Lindgren** to handle defense representation in paternity and child support cases. The contract calls for payment of \$48,000 with a limitation of 350 child support cases and 100 paternity cases per year, with expenditure of \$100 per case for anything above those limits. At the end of their contract year of FY 97, Ugai and Lindgren were appointed to 467 child support cases, 56 Paternity cases and they expended 849.3 hours on these cases. In the first half of FY 98 (July 1, 1997 - December 31, 1997), Ugai and Lindgren were appointed to 208 child support cases and 20 paternity cases. They expended 382.9 hours.

## ***Public Defender Staff / Credentials***

### **Public Defender**

#### ***Dennis R. Keefe***

Graduate of University of Nebraska College of Law, 1972

Elected to Office of Public Defender, November, 1978

### **Chief Deputy Public Defender**

#### ***Scott P. Helvie***

Graduate of University of Nebraska College of Law, 1976

Public Defender: 1976 - 1981, Lincoln County, Nebraska

1981 to present, Lancaster County, Nebraska

Primary area of practice: Felonies

### **Public Defenders**

#### ***Michael D. Gooch***

Graduated University of Nebraska College of Law, 1976

Deputy Public Defender, 1980 to present, Lancaster County

Primary area of practice: Felonies

#### ***Robert G. Hays***

Graduated Antioch Law School, 1977

Deputy Public Defender, 1984 to present, Lancaster County

Primary area of practice: Felonies

#### ***Joseph D. Nigro***

Graduated University of Nebraska College of Law, 1983

Deputy Public Defender, 1983 to present, Lancaster County

Primary area of practice: Felonies & Mental Health Commitments

#### ***Webb E. Bancroft***

Graduated University of Nebraska College of Law, 1983

Deputy Public Defender, 1989 to present, Lancaster County

Primary area of practice: Felonies

#### ***Susan R. Tast***

Graduated University of Nebraska College of Law, 1986

Deputy Public Defender, 1989 to present, Lancaster County

Primary area of practice: Misdemeanors

#### ***Margene M. Timm***

Graduated University of Nebraska College of Law, 1983

Deputy Public Defender, 1989 to present, Lancaster County

Primary area of practice: Juvenile Division Supervisor

#### ***Kristi Egger Brown***

Graduated University of Nebraska College of Law, 1988

Deputy Public Defender, 1990 to present, Lancaster County

Primary area of practice: Felonies

#### ***Shawn D. Elliott***

Graduated University of Nebraska College of Law, 1989

Deputy Public Defender, 1996 to present, Lancaster County

Primary area of practice: Misdemeanors

#### ***Paul E. Cooney***

Graduated University of Nebraska College of Law, 1993

Deputy Public Defender, 1996 to present, Lancaster County

Primary area of practice: Felonies

**Jenny Witt**

Graduated University of Nebraska College of Law, 1996  
Deputy Public Defender, 1997 to present, Lancaster County  
Primary area of practice: Juvenile law

**Reggie Ryder**

Graduated University of Nebraska College of Law, 1997  
Deputy Public Defender, 1998 to present, Lancaster County  
Primary area of practice: Juvenile law

**Julie B. Hansen**

Graduated University of Nebraska College of Law, 1993  
Part-time Deputy Public Defender, 1998 to present, Lancaster County  
Primary area of practice: Misdemeanors

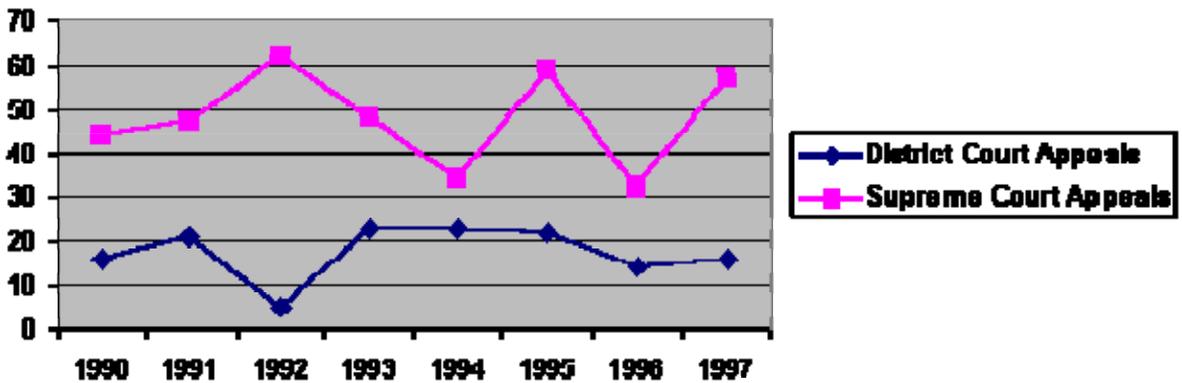
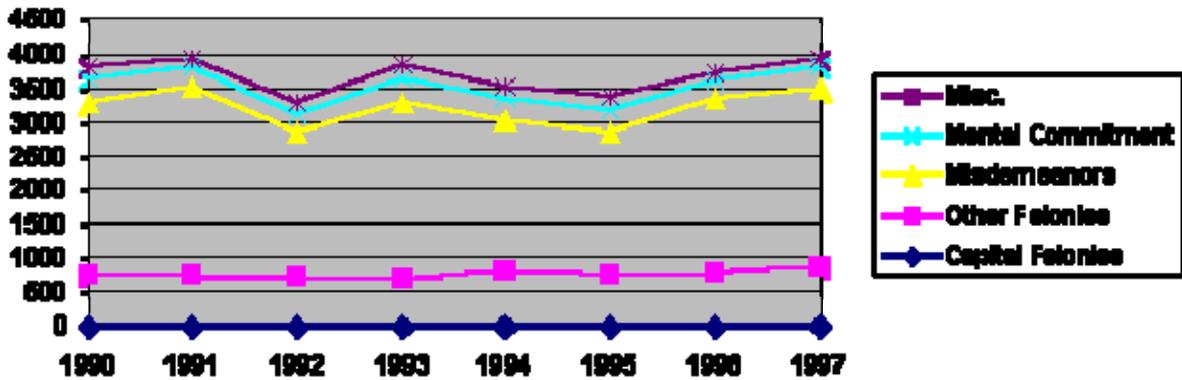
<b>Felony</b>	<b>Misdemeanor</b>	<b>Juvenile</b>
Scott P. Helvie Michael D. Gooch Robert G. Hays Joseph D. Nigro Webb E. Bancroft	Susan R. Tast Shawn D. Williott Julie B. Hansen	Margene M. Timm, Supervisor

<b>Support Staff</b>	
<p><b>Office Manager</b> Mary Gehr, 1980 to present</p> <p><b>Paralegals</b> Monica Socha, 1976 to present Donna Garwood, 1982 to present Jed Rojewski, 1996 to present Bob O'Connor, 1997 to present Angelia Onuoha, 1997 to present</p> <p><b>Law Clerks</b> Tim Tuttle Matt Cattlett John Gustafson Chaka Heinze</p>	<p><b>Legal Secretaries</b> Lori Hershberger, 1983 to present Angela Owens, 1992 to present Michelle Scamehorn, 1997 to present</p> <p><b>Clerk I</b> Mayme Shannon, 1997 to present</p>

**APPENDIX A**

Historical Comparison of Cases Opened Since 1990

Case Type	1990	1991	1992	1993	1994	1995	1996	1997	%Chg 96-97
<b>Capital Felonies</b>	0	1	6	7	0	0	2	5	150%
<b>Other Felonies</b>	728	753	691	688	789	747	778	846	9%
<b>Misdemeanors</b>	2548	2756	2133	2579	2225	2097	2560	2657	4%
<b>Juveniles</b>	559	605	626	694	819	793	930	1300	40%
<b>Mental Commitment</b>	352	298	266	381	332	322	270	324	20%
<b>District Court Appeals</b>	16	21	5	23	23	22	14	16	14%
<b>Supreme Court Appeals</b>	44	47	62	48	34	59	32	57	78%
<b>Miscellaneous Cases</b>	188	136	185	189	170	207	115	118	3%
<b>Totals</b>	<b>4435</b>	<b>4617</b>	<b>3974</b>	<b>4609</b>	<b>4392</b>	<b>4247</b>	<b>4701</b>	<b>5323</b>	<b>13%</b>



**APPENDIX B**

Budget, Lancaster County Public Defender

**APPENDIX C**

Constitutional & 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 1991)**

Public Defender in certain counties; election; There is hereby created in counties that now have or that shall hereafter attain a population in excess of one hundred thousand inhabitants, and in other counties upon approval by the county board, the office of public defender, who, in counties having a population in excess of one hundred thousand inhabitants which have not elected a public defender prior to July 10, 1984, shall be elected at the next general election following July 10, 1984, or the year in which the county attain a population of one hundred thousand inhabitants, and who, in other counties, shall be elected at the first general election of county officers following approval by the county board and every four year thereafter.

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 the provisions of this section.

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 to 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 shall receive the same annual salary as each deputy county attorney of comparable ability and experience shall receive in such counties.

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.

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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 the county in which he or she holds 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.

Neb. Rev. Stat. §23-3402 (Reissue 1991) 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 of 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 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.

(1) It shall also 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 83-1049 to 83-1051.

(1) 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.

(1) 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 of 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 an indigent.

Neb. Rev. Stat. §23-3403 (Reissue 1991)

Public defender; assistants, personnel; compensation; office space, fixtures and supplies; county furnish.  
The public defender may appoint as many assistant public defenders, who shall be attorney 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 his 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, brief-printing, investigative, expert, travel and other miscellaneous expenses reasonably necessary to enable the public defender to effectively and competently represent the clients of his office.

Neb. Rev. Stat. §29-3901(3) (Reissue 1995)

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.