

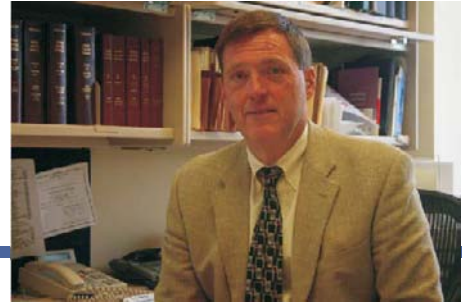


2005 ANNUAL REPORT OF THE LANCASTER COUNTY PUBLIC DEFENDER

*"Ours is a government of laws,
not men, John Adams said.
American society is founded on
the commitment to law, binding
the rulers as it does the ruled.
Our willingness to assure the
least among us the guiding
hand of counsel is a test of
our American faith."*

Anthony Lewis

Renowned former New York Times journalist, Pulitzer Prize winner, and author of *Gideon's Trumpet* (1964) in the Foreword to the ABA report "Gideon's Broken Promise: America's Continuing Quest For Equal Justice." (2005)



In December, 2004 the American Bar Association published a report based upon public hearings held around the country dealing with the right to counsel. The impetus for convening the hearings was to mark the occasion of the 40th anniversary of the United States Supreme Court decision in *Gideon v. Wainwright* which established the right to court appointed counsel in felony cases. The title of the report "Gideon's Broken Promise: America's Continuing Quest For Equal justice," provides a strong clue to the conclusions found in the study.

The "Main Findings" section of the report provides some strong judgments and warnings, including:


- When we fail to deliver on the promise of *Gideon* and the Supreme Court's other right to counsel decisions—when we fail to provide proper defense to the most vulnerable citizens in our society—the integrity of the criminal justice system is eroded and the legitimacy of criminal convictions is called into question.
- Funding for indigent defense services is shamefully inadequate.
- Lawyers who provide representation in indigent defense systems sometimes violate their professional duties by failing to furnish competent representation.

As a result of the findings, the report makes a number of important recommendations. One in particular caught my attention because of its relevance to an increasing problem for our office:

Attorneys and defense programs should refuse to continue indigent defense representation, or to accept new cases for representation, when, in the exercise of their best professional judgment, workloads are so excessive that representation will interfere with the rendering of quality legal representation or lead to the breach of constitutional or professional obligations.

As the commentary to that recommendation notes, this is not a new recommendation. It is based upon long standing national standards. Yet excessive case loads remain a problem for many indigent defense systems throughout the country. The results of excessive case loads, as the report notes, are significant for the attorney, but even more significant for the clients. "The most capable lawyers, even if they are well-trained and conscientious, cannot provide effective representation to their clients when there are simply too many clients."

As documented elsewhere in this annual report, the Lancaster County Public Defender's Office experienced excessive case load problems in 2005 in two areas. First, the misdemeanor cases increased 12% overall between 2004 and 2005. This is almost 400 more cases than the previous year. Our misdemeanor staff was carrying significantly higher case loads than our internal standards, based upon actual attorney time, would allow. Without



action, there is no doubt that clients would have suffered. We are fortunate and grateful that the Lancaster County Board of Commissioners understood the significance of the problem and added an attorney to our misdemeanor division in November of 2005.

At virtually the same time as this "misdemeanor crisis" was occurring, felony cases were also increasing significantly from 2004 to 2005, growing by almost 100 more new cases in that 1 year period and by 138 new cases in a 2 year period (a 12% overall increase). When I presented the problem to the County Board, again they acted by approving the first phase in a two step process to add one additional attorney position to the felony division. As we go to press, we are hopeful that they will approve step 2 in the plan during our current budget process.

As I informed the Board during these crises, I have an obligation, as the manager of the office, to act when the workload reaches unacceptable levels. The obligation is based upon the constitutional right of the client to the effective assistance of counsel as well as the ethical obligations of my lawyers and myself to competently represent our clients and not accept more work than we can professionally handle. As all national standards on this subject recommend, we have a policy in place that requires us to withdraw from appointments when our case load is excessive. We exercise this option only out of necessity and for the welfare of the clients. It has been implemented sparingly over the years, including 2005. In addition, we try to see what the least expensive options are for providing counsel without compromising quality, such as requesting the Nebraska Commission on Public Advocacy to take the cases at no cost to the County.

However, there is no doubt that we can and must act when the case load rises to levels that threaten our clients' constitutional rights. We appreciate the understanding and support we have received from the Lancaster County Board of Commissioners and we look forward to working with them in the future as we continue to monitor this problem.

Dennis Keefe



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Mission Statement

The mission of the Lancaster County Public Defender's Office is to provide high quality legal services for indigents 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 that each client should receive high quality legal representation which is as good as that provided by the best of the private bar.

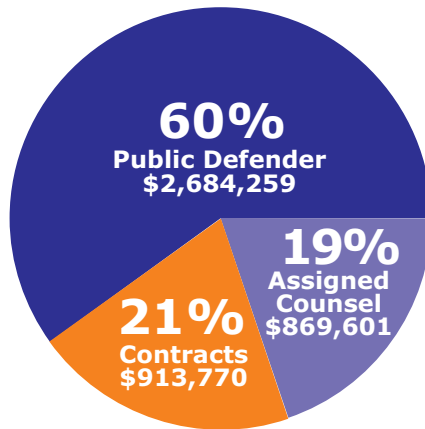
Goals

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.

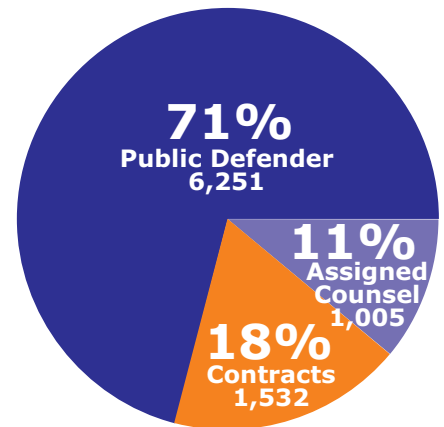
Overview of Lancaster County's Indigent Defense System

The courts in Lancaster County use three types of systems to provide attorneys to eligible individuals who exercise their constitutional right to counsel. In felony and misdemeanor cases, the courts use the public defender system as their primary system and private assigned counsel for those cases where the public defender has a conflict or otherwise cannot provide the services. In juvenile court, the public defender system is the primary system for law violation cases and status cases with contractors and assigned counsel used for conflicts. For abuse/neglect cases in juvenile court, the contractors are the primary system backed up by private assigned counsel. The following charts show how the money was spent on each system in 2005, the number of cases handled by each type of system and the expenditures by types of cases.

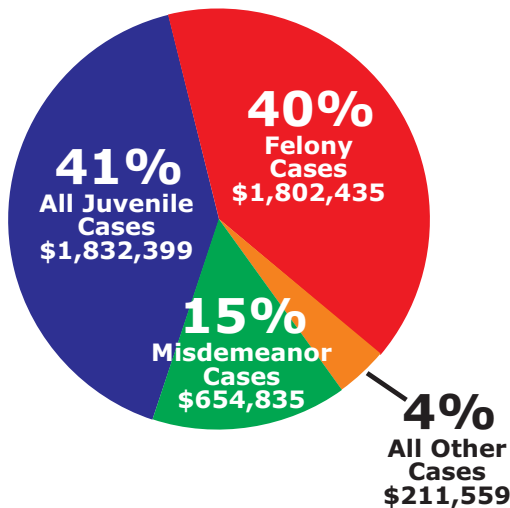
Total 2005 Expenditures By Type of System¹



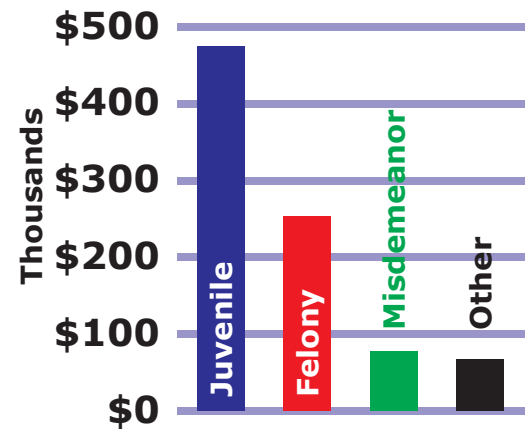
Total 2005 New Open Cases By Type of System²



Total 2005 Indigent Defense Expenditures By Type of Case



Total 2005 Expenditures for Assigned Counsel By Type of Case



1. In past versions of this report we used "budgeted amount" for a fiscal year to show all expenditures. Beginning this year, we are showing actual expenditures for the calendar year covered by the report. This would apply to all expenditure comments and charts in this report.

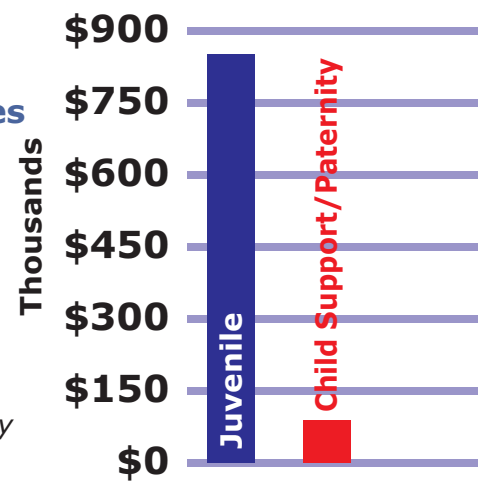
2. The figures for number of cases assigned to private counsel in felony and misdemeanor cases includes cases assigned to the Nebraska Commission on Public Advocacy. The number of assigned counsel cases in juvenile court is an estimate based upon claims for fees in juvenile cases in 2005. There is still no system for tracking private attorney appointments in juvenile court.

2005 Assigned Counsel Notes

- Of the 1,482 felony cases closed by the public defender's office in 2005, 326 cases were closed because of a conflict of interest and an additional 8 cases were closed because of excessive caseload in the public defender's office for a total of 334 cases (22.5%) which required the appointment of the Commission on Public Advocacy or private assigned counsel.
- Assigned counsel was paid \$20,173 in 6 major felony cases and \$220,060 in 358 other felony cases in 2005. The cost per case for those non major felony cases closed by assigned counsel in 2005 was \$846, compared to \$736 in 2004.³
- The Nebraska Commission on Public Advocacy was appointed to represent clients in 19 of the 326 felony cases where the public defender had a conflict at the trial level in 2005, including 2 cases involving charges of First Degree Murder and in 8 cases which the commission agreed to accept because of the public defender's case overload. The commission's services are provided at no cost to Lancaster County.
- Of the 3,482 misdemeanor cases closed by the public defender's office in 2005, 324 (9%) were closed because of a conflict of interest requiring appointment of assigned counsel. Assigned counsel was paid \$82,238 in 294 misdemeanor cases in 2005. In the misdemeanor cases closed by assigned counsel in 2005, the cost per case was \$286 compared with \$261 per case in 2004.⁴
- Juvenile Court spent a total of \$470,573 on assigned counsel in 2005, representing a 36% increase in the amount spent in 2004. Most of this increase was caused by the significant increase in new abuse/neglect cases filed between 2003 and 2004, which overwhelmed the contracts and required many more assigned counsel. The number of abuse/neglect filings between 2004 and 2005 actually decreased by 1%. Coupled with the addition of 2 new contracts in 2005, expenditures here should go down in the future.⁵

Total 2005 Expenditures for Contracts By Type of Case

Juvenile
\$846,570 (93%)
Child Support/Paternity
\$67,200 (7%).



3. These cost per case figures are based only upon felonies that were completed in 2005.

4. Only completed cases were counted for the cost per case figure.

5. It is difficult to determine the exact increase in abuse/neglect filings between 2003 and 2004 because the court changed how filings were counted due to the implementation of the JUSTICE system.

Contract Notes

- Lancaster County spent \$846,570 for contracts in juvenile court in 2005 and \$67,200 for the child support/paternity contract for a total of \$913,770 for all contracts in 2005.
- Because of the significant increase in the number of abuse/neglect filings in 2004, Lancaster County added two new contracts for juvenile cases in 2005 with the law firms of Pierson, Fitchett and Morris & Titus. The county also renewed their contracts with Thomas & Walton and Mary Jones and Norm Langemach.

Lancaster County Indigent Defense Advisory Committee

In 1995, 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. We want to thank the volunteer members of this committee who served during 2005. They are Andy Strotman, Randy Goyette, Sean Brennan, Mary Gaines, and Jeanelle Lust.

Public Defender's Office Operations The Felony Division

Scott P. Helvie, Chief Deputy
Robert G. Hays, Chief Deputy
Joseph D. Nigro, Deputy
Webb E. Bancroft, Deputy
Kristi Egger-Brown, Deputy
Shawn D. Elliott, Deputy
Timothy M. Eppler, Deputy
Julie B. Hansen, Deputy⁶
Christopher L. Eickholt, Deputy

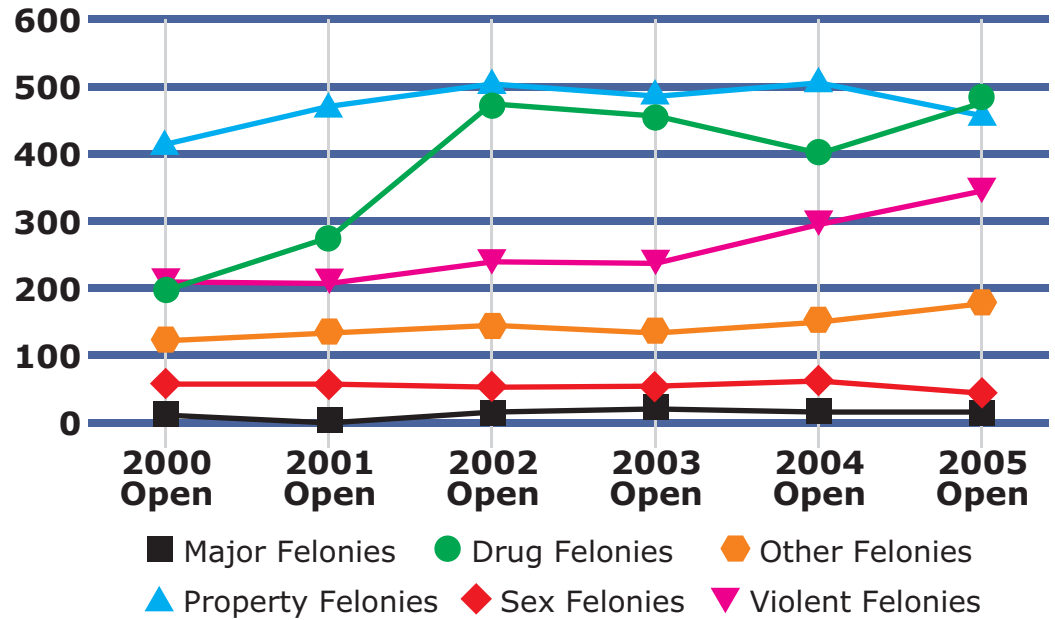
Joe Renteria, Investigator

Jed Rojewski, Paralegal
Kristi Gottberg, Paralegal

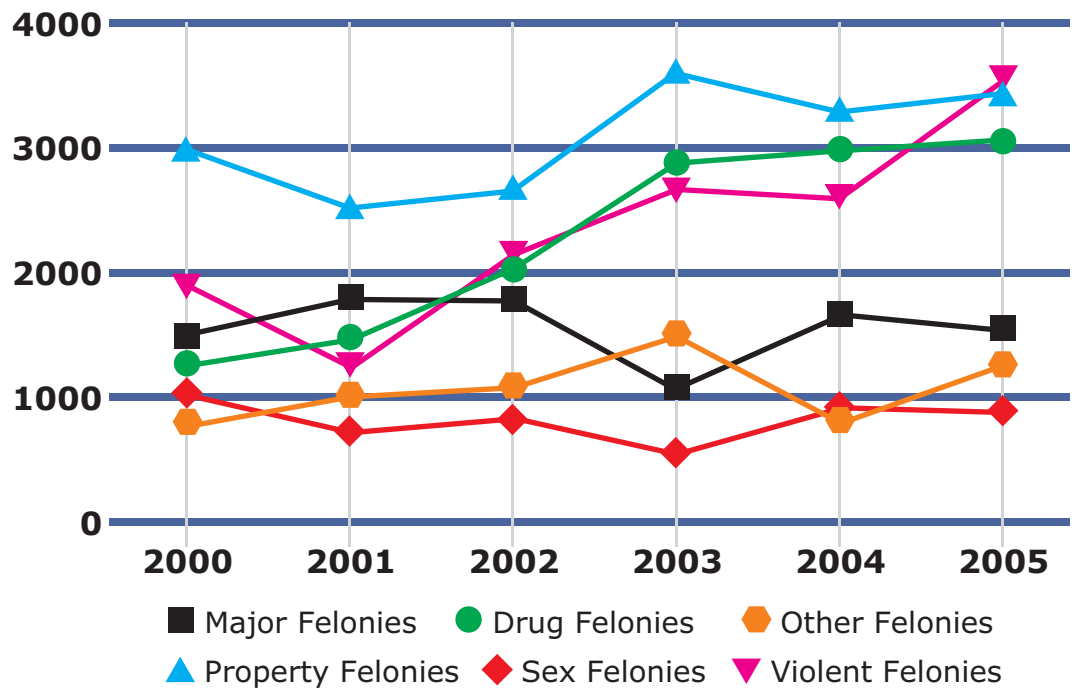
Ryan Esplin, Law Clerk
Allyson Mendoza, Law Clerk
Gabriela Acosta-Lohman, Law Clerk
Mindy Rush, Law Clerk

6. Julie Hansen resigned her position with us in September of 2005 and accepted a position as Deputy with the Federal Public Defender of Nebraska.

New Open Felonies By Type



Attorney Time Devoted To Felonies



Felony Case Notes

- The county attorney's office filed 1,797 felony cases in Lancaster County Court in 2005, representing a 5.8% increase over 2004.⁷ The public defender's office was appointed in 1,526 (85%) of those cases in the first instance.
- The 1,526 felony cases opened by the public defender in 2005 represents a 7% increase over 2004 and a 10% increase over 2003.
- The number of felony cases pending in the public defender's office at the end of 2005 was 6% higher than the number pending at the end of 2004 and 21% higher than number pending at the end of 2003.
- The largest increase (26%) occurred with the Other Felonies, followed by Drug Felonies (20%), and Violent Felonies (12%). Property Felonies declined by 8% and Sex Felonies by 29% (15 cases).
- Major Cases Opened and Closed in 2005: The office opened 1 case of Child Abuse Resulting in Death and closed 1 (after a jury trial); opened 5 cases of First Degree Murder and closed 4 (2 after a conflict of interest and 2 after pleas to lesser felonies); closed 1 case of Second Degree Murder (after pleas to a lesser felony); opened 2 cases of kidnapping and closed 3 cases (1 after a plea to a misdemeanor, 1 after being found not responsible by reason of insanity, and 1 after the client retained private counsel); opened 1 case of Manslaughter and closed 1 case (after being found guilty at a stipulated trial); closed 1 case of Attempted First Degree Murder (after being found not responsible by reason of insanity at a bench trial); and opened 2 cases of Attempted Second Degree Murder.
- In 2004, the Public Defender's Office had 41 cases admitted to the Drug Court Program. 42 public defender Drug Court cases were closed that year; 3 (7%) were closed due to a conflict of interest; 21 (50%) were closed following successful graduation and case dismissal and 18 (43%) were closed for unsuccessful participation and the cases were referred back to the regular criminal courts.

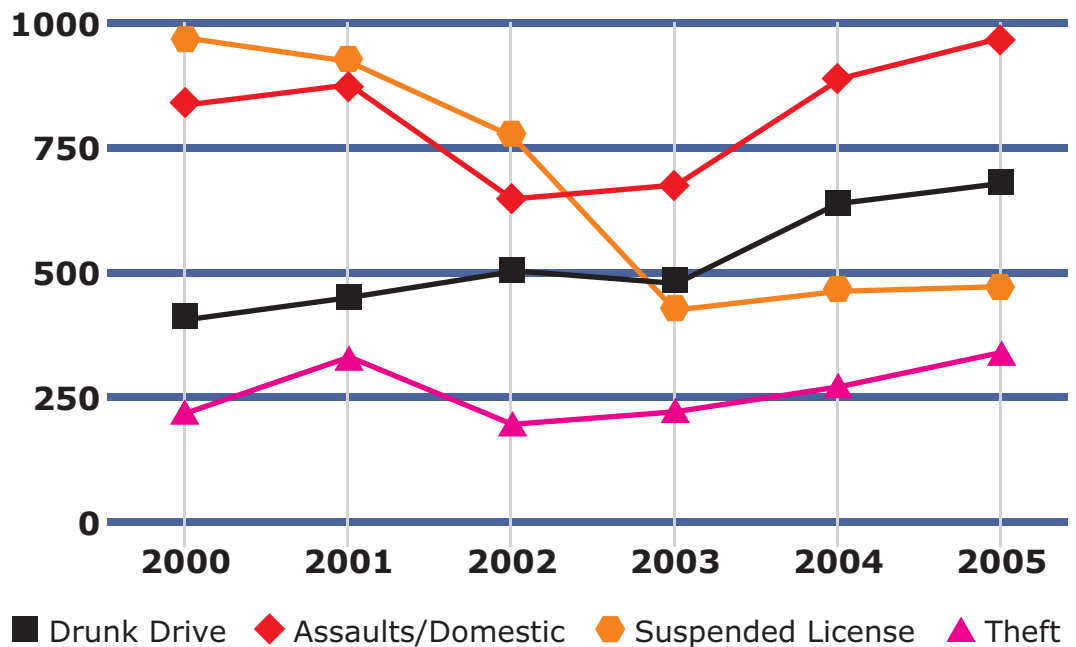
7. The figures for new filed felonies have been provided by the Lancaster County Judicial Administrator for this year. In past issues of this report, we have used figures from the State Court Administrator's Office but we have since determined that they include additional cases in their count of "felonies filed" that should not be counted.

Misdemeanor Division

Susan R. Tast, Deputy
Andrea D. Snowden, Deputy
Matthew G. Graff, Deputy

Angela Franssen, Paralegal
Steve Schultz, Paralegal

Growth in Selected Misdemeanor Charge Categories From 2000-2005



Misdemeanor Case Notes

- Non traffic misdemeanor filings in Lancaster County Court, including filings by the City Attorney and the County Attorney, decreased by 1% from 2004 to 2005.⁸
- Public Defender Office appointments in misdemeanor cases increased by 12% from 2004 to 2005. The increase for City Attorney filed cases was only 6% but for County Attorney filed cases, the increase was 19%.
- For the charge categories that make up most of the cases, the increases from 2004 to 2005 was as follows: Child Abuse up 28%, Revocations of Probation up 28%, Thefts up 17%, Drunk Driving up 11%, and Assaults/Domestic Violence/Violation of Protection Orders up 9%.

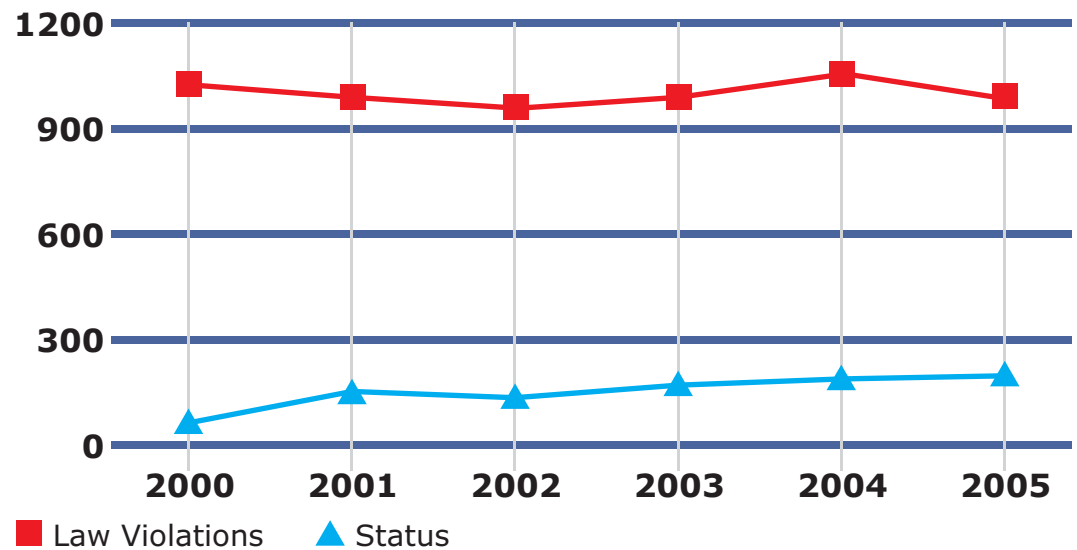
8. These figures are from the State Court Administrator.

Juvenile Division

Margene M. Timm, Chief Deputy
Reggie L. Ryder, Deputy
Paul E. Cooney, Deputy

Jed Rojewski, Paralegal
Kristi Gottberg, Paralegal
Angelia Onuoha, Paralegal

Juvenile Case Openings By Case Type



Juvenile Case Notes

- After a record number of filings in 2004, new abuse/neglect case filings leveled off in 2005, actually declining by about 1% to 338 cases.
- The number of Motions To Terminate Parental Rights, filed by the County Attorney, also declined slightly, from 49 cases in 2004 to 46 cases in 2005. The 2005 figures are still significantly above the 2001 figures of 15 such petitions filed.
- According to the Separate Juvenile Court, law violation filings (including transfers and supplemental filings) decreased by 1% from 1,590 filings in 2004, to 1580. Public Defender appointments decreased by 6%.
- Status cases (mostly school truancies) saw a 2% increase in filings in 2005 and the number of cases opened by the public defender's office increased by 3%. However, since 2000, the public defender appointments in status cases has more than doubled.
- The Public Defender's Office opened 19 new cases in the Juvenile Drug Court program in 2005 and closed 16. Of the 16 cases closed, 10 were closed following successful completion and graduation and 6 were closed following unsuccessful termination from the program.

Mental Health Commitments and Miscellaneous Cases

Dorothy A. Walker, Deputy
Sarah Newell, Law Clerk
Morgan White, Law Clerk
Allyson Mendoza, Law Clerk
Jennifer Houlden, Law Clerk

- The overall number of mental health commitment cases remained virtually the same in 2005, declining from 416 cases to 415 cases. However, the number of new petition cases declined from 327 in 2004 to 305 in 2005 and the number of review cases increased from 89 cases in 2004 to 110 in 2005.
- The public defender's office closed 417 mental commitment cases in 2005. Of the cases closed, 21% were closed because the case was dismissed without a hearing; 10% were closed following a contested hearing; and 69% were closed following a stipulated hearing.
- There were 14 appeals filed in the district court from mental commitment proceedings in 2005 and 2 appeals to the Court of Appeals and Supreme Court.
- The public defender's office opened 187 miscellaneous cases in 2005, including 103 felony revocation of probation cases (55%); 28 fugitive from justice cases (15%); 40 adult drug court cases (21%); and reviewed 12 cases involving verdicts of not responsible by reason of insanity (6%).

Upcoming Issues

The Cost of Counsel In Juvenile Court

- As noted previously in this report, Lancaster County spent 41% of its total cost of indigent defense in 2005 on juvenile cases. A substantial portion of the juvenile costs is in assigned counsel for abuse/neglect cases. We have been able to control some of those costs with the use of contracts, but when there are huge increases in filings, the contracts cannot support the number of attorney appointments needed. Although the number of abuse/neglect filings leveled in 2005 and we added 2 contracts to try to cover for the increase, there will always be the potential for variations in the cost of assigned counsel in these cases. This is especially problematic because, even after bringing the matter to the attention of the judges, there is still no tracking of appointments of assigned counsel in juvenile court.
- It would be my recommendation that Lancaster County seek legislation to shift the indigent defense costs of juvenile court proceedings to the state. The legislature has had a greater direct impact on the rising costs of juvenile cases than in any other area.

Public Defender Case Levels and Additional Staffing

- We have examined the types of felony cases opened by our office in 2004 and 2005 to determine where the increase is coming from. In terms of numbers of cases, the increase in Drug Felonies is most significant (from 405 cases in 2004 to 486 cases in 2005, a 20% increase). Many of the new cases involve Possession of Methamphetamine and Possession of Cocaine. The Legislature's creation of new felony cases impacts our case load and the county's costs. In 2005 we were appointed to 52 felony cases involving a charge of Strangulation, 15 felony cases of Driving While Intoxicated-4th Offense, and 16 cases of a felony Violation of A Protection Order-2nd Offense. This totals 83 felony cases that we were appointed to that would not have been felony cases prior to 1998 (VPO2 and Drunk Drive 4th) and 2004 (Strangulation).
- Our new open felony cases are increasing at a pace that has outstripped our ability to provide competent representation. We last added an attorney to the felony division in 2002 by shifting an attorney from the juvenile division and declining to accept new abuse/neglect cases. Since that time, we opened 1383 felony cases in 2003, 1427 cases in 2004, and 1526 cases in 2005. This represents a 10% increase in a 2 year period.
- The County Board has asked us to take back the Child Support/Paternity cases from the contractor and we have agreed to do so as of July 1, 2006, with the hope of providing some additional relief to the felony division. Even with this move, we will still be short approximately one half of a full time attorney in the felony division. We are asking in our FY07 proposed budget to increase the part time attorney to a full time attorney. The only other option would be to ask the courts for relief, which requires appointed counsel.
- The average increase in new open felony cases for our office for the past 5 years has been 10.8%. Assuming, conservatively, that the new open felonies increase at a 6% annual rate, based upon our internal case load controls, we would need to add a new attorney every 2.5 to 3 years. The serious misdemeanor cases have increased at an annual average rate of 5% over the past 5 years. Assuming this trend continues, a new misdemeanor attorney would need to be added every 5-6 years.
- With the growth in attorney staff, there will also need to be an increase in support staff. First on that list will be a second investigator, which we will need within the next 5 years. We are already below the number of investigator positions recommended by national standards, given the number of attorneys. Also, with the growth of the felony docket, we will need to add a paralegal position within the next 5 years for the juvenile cases, which are now handled partially by the felony paralegals. The misdemeanor docket will also need an additional paralegal in the next 5 years.

New Home For the Public Defender's Office

- The Public Building Commission has designated Courthouse Plaza Office Building, which they recently acquired, as the future home of the Lancaster County Public Defender's Office. We have agreed to this move to the 3 story office building to make room in the County-City Building for other offices that need to consolidate or expand. Because Courthouse Plaza will be the home of our office for some time to come, substantial remodeling will be necessary and new office furniture and equipment will need to be purchased. It is expected that we will move in by 2008.

New Case Management System

- At the end of 2005, the Lancaster County Public Defender's Office and the Lancaster County Attorney's Office were exploring, with the assistance of Information Services, the best way to proceed in the development of a new case management information system. A software product with an unusual and very favorable pricing structure was identified, which could have the affect of actually reducing the current costs for both offices.

Appendix A

TABLE 1

Lancaster County Public Defender's Office Open/Closed Caseload Report 2005

CASETYPE	PENDING START	OPENED 2005	CLOSED 2005	PENDING END 2005
Appeals	43	107	102	50
Felonies	504	1515	1471	536
Juveniles	420	1417	1423	394
Major Cases	8	11	11	8
Mentals	7	415	417	6
Miscellaneous	73	187	185	72
MIsdemeanors	678	3551	3482	744
Totals	1733	7203	7091	1810

TABLE 2

Lancaster County Public Defender's Office Historical Comparison of Cases Opened Since 1995

CASETYPE	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Chg. 04-05
Appeals	81	46	71	58	85	86	96	95	109	110	107	-3%
Felonies	741	774	840	962	976	981	1130	1404	1368	1415	1515	7%
Juveniles	792	931	1288	1484	1605	1453	1520	1487	1331	1467	1417	-3%
Major Cases	6	6	9	16	13	9	6	10	15	12	11	-8%
Mental Comm.	322	270	324	379	391	406	458	533	471	416	415	0%
Misc.	109	115	118	151	134	152	221	202	210	178	187	5%
MIsd.	2096	2560	2646	3148	3438	3306	3661	2955	2749	3157	3551	12%
Totals	4147	4702	5296	6198	6642	6393	7092	6686	6253	6755	7203	7%

Appendix B

Lancaster County General Fund Expense Budget

625 Public Defender	ACTUAL	MODIFIED	ACTUAL	PROPOSED	ADOPTED
60000 EXPENDITURES	2003-04	BUDGET	2004-05	2005-06	2005-06
61000 PERSONAL SERVICES					
61100 SALARIES & WAGES	1,685,235	1,753,072	1,753,093	1,793,020	1,793,020
61500 EMPLOYEE BENEFITS	508,890	566,465	554,891	579,010	579,010
61000 PERSONAL SERVICES	2,194,125	2,319,537	2,307,984	2,372,030	2,372,030
63000 SUPPLIES					
63100 OFFICE SUPPLIES	11,971	12,000	13,018	12,000	12,000
63000 SUPPLIES	11,971	12,000	13,018	12,000	12,000
64000 OTHER CHARGES & SERV					
64100 OTHER CONTRACTED SE	60,294	55,369	52,986	57,068	57,068
64700 TRANS, TRAVEL & SUB	14,108	11,350	8,560	10,300	10,300
64800 COMMUNICATIONS	14,705	17,750	18,474	17,750	17,750
64850 POSTAGE, COURIER &	3,861	4,500	3,911	4,250	4,250
64900 PRINTING & ADVERTIS	12,576	14,430	12,977	13,730	13,730
65100 CONTRACTED HEALTH S	14,008	18,000	18,581	14,500	14,500
65200 OTHER CLIENT SERVIC		50	11	50	50
65600 MISC FEES & SERVICE	80,827	98,780	109,348	81,273	81,273
65900 INSURANCE & SURETY	7,100	7,300	7,907	7,557	7,557
66200 REPAIR & MAINTENANC	421	500	765	500	500
66500 RENTALS	75,136	73,786	74,056	75,219	75,219
64000 OTHER CHARGES & SERV	283,035	301,815	307,576	282,197	282,197
67000 CAPITAL OUTLAY					
67400 EQUIPMENT	1,116	2,000	1,587	2,726	2,726
67000 CAPITAL OUTLAY	1,116	2,000	1,587	2,726	2,726
TOTAL PUBLIC DEFENDER	2,490,247	2,635,352	2,630,165	2,668,953	2,668,953

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 1997)

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 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 receives the same annual salary as each deputy county attorney of comparable ability and experience receive 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 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.

Appendix C (continued)

Neb. Rev. Stat. 23-3402 (Reissue 1997)

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 postconviction 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 83-1049 to 83-1051.

(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 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, 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 1997)

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. 29-3901(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; and