

2007 ANNUAL REPORT

OF THE LANCASTER COUNTY PUBLIC DEFENDER

***"Justice is conscience,
not a personal conscience
but the conscience of the
whole of humanity."***

Alexander Solzhenitsyn



When I started working for the Lancaster County Public Defenders Office as a law clerk/investigator in 1971, there were only three attorneys in the office and they worked only part time, mixing their public defender work with private practice.

In those early days, the office opened approximately 200 felonies, 100 juvenile cases and less than 20 misdemeanor cases. In 1972, *Argesinger v. Hamlin* was decided by the United States Supreme Court, expanding the right to counsel to misdemeanor cases. Subsequent decisions by that court and others further expanded the right to counsel to juvenile cases, mental health commitment cases, contempt cases and paternity cases. The number of cases assigned to the Lancaster County Public Defender grew exponentially, but the number of staff attorneys did not keep pace.

When I became public defender in 1979, I immediately requested an evaluation of our workload by the National Legal Aid and Defender Association. Their report, to no ones surprise, found that the public defenders office was seriously understaffed. We added two staff attorneys immediately and I set a policy prohibiting private practice by the staff attorneys.

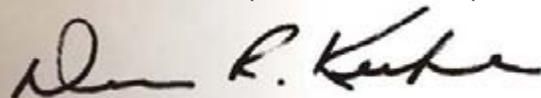
Twelve years after I became public defender, caseload pressures again mounted within the office for a variety of reasons. I requested that The Spangenberg Group of West Newton, Massachusetts, evaluate our workload. Again, we were found to be lacking in the number of staff attorneys needed to perform the work. The response was again to add an attorney position.

My experience in leading the Lancaster County Public Defenders Office the past 30 years teaches me that to retain competent, qualified and dedicated attorneys, an office such as ours needs to do two things: keep salaries reasonable and keep caseloads reasonable. Without those elements, there can be no assurance that clients are receiving constitutionally mandated effective assistance of counsel nor can there be any assurance that the attorneys are meeting their professional responsibilities not to handle more cases than they can competently represent.

The workload situation in the office reached a new milestone in 2007. We opened 8,713 new cases and we closed 8,943 cases. There were increases in both felony and misdemeanor cases caused by a variety of factors: legislation creating new crimes and enhancing penalties especially in the drunk driving and domestic violence caseloads; more appointments in many of the City Ordinance cases; as well as filing practices in the prosecutors offices.

It is time that our office undertake a study that will tell us how many cases are too many if we are to continue to provide competent legal representation consistent with our professional responsibilities. We have an advantage over many public defender offices which have conducted such studies, because we have collected attorney time information over the past 20 plus years.

At the end of 2007, Lancaster County contracted with the Policy Research Center of the University of Nebraska-Lincoln, to analyze the time data and conduct a workload study. The results of the study will be used by the office for years to come to define appropriate workload, based upon scientifically valid data and methodology. The result will both protect our clients rights and allow our attorneys to meet their professional responsibilities.



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.

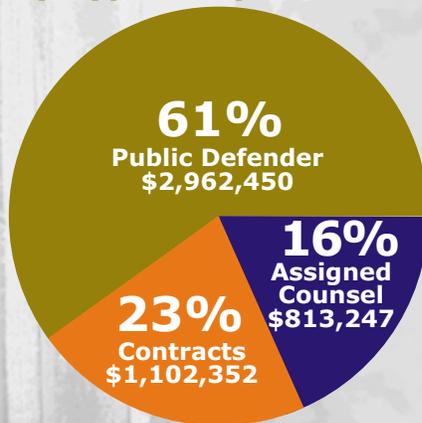
Goals

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.

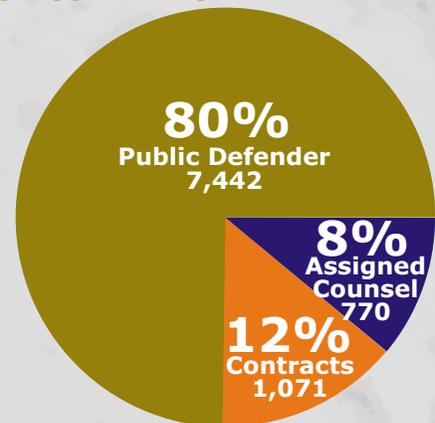
Overview of Lancaster County's Indigent Defense System

The courts in Lancaster County use three types of systems to provide attorneys for 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 some of these felony cases, the Nebraska Commission on Public Advocacy agrees to represent the defendant, when conflicts arise, at no charge to Lancaster County. 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. In the 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 2007, the numbers of cases handled by each type of system and the expenditures by types of cases.

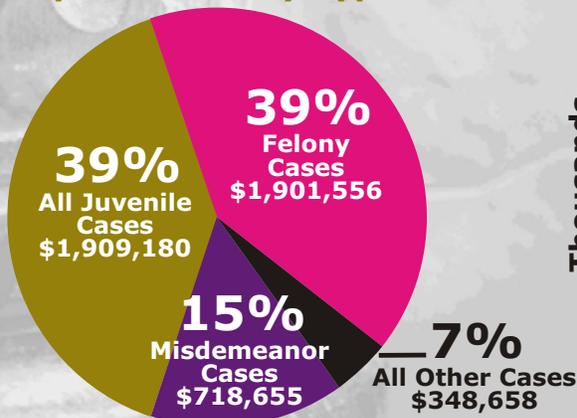
Total 2007 Expenditures By Type of System¹



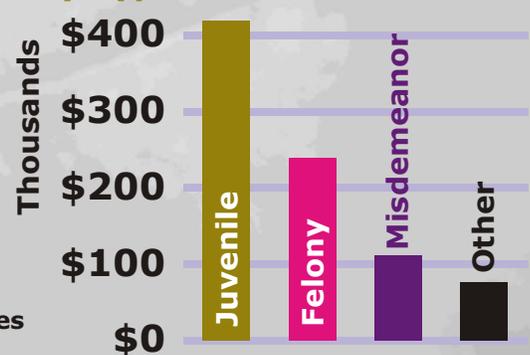
Total 2007 New Open Cases By Type of System²



Total 2007 Indigent Defense Expenditures By Type of Case



Total 2007 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 in 2005, we began using 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 2007.

2007 Assigned Counsel Notes

- Of the 1,512 felony cases closed by the public defenders office in 2007, 324 cases (21%) were closed because of a conflict of interest which required the appointment of the Commission on Public Advocacy or private assigned counsel.
- Assigned counsel was paid \$230,767 in 247 felony cases in 2007. The cost per case for those non major felony cases closed by assigned counsel in 2007 was \$934 per case compared to \$793 in 2006, \$846 in 2005 and \$736 in 2004.³
- The Nebraska Commission on Public Advocacy was appointed to represent clients in 46 of the 324 felony cases where the public defender had a conflict at the trial level in 2007, and 4 Major Felony (First Degree Murder) cases. The commissions services are provided at no cost to Lancaster County and will save the county hundreds of thousands of dollars in attorneys fees.
- Of the 4,513 misdemeanor cases closed by the public defenders office in 2007, 565 (13%) were closed because of a conflict of interest requiring appointment of assigned counsel. Assigned counsel was paid \$100,823 in 368 misdemeanor cases in 2007. In the misdemeanor cases closed by assigned counsel in 2007, the cost per case was \$274 compared to \$278 in 2006, \$286 in 2005 and \$261 per case in 2004.⁴
- Juvenile Court spent a total of \$412,623 on assigned counsel in 2007, a second straight year where this figure has declined. In a 2 year period it has declined by 12%. The number of abuse/neglect filings between 2006 and 2007 decreased by 14%, from 353 cases in 2006 to 302 cases in 2007.

Contract Notes

- Lancaster County spent \$1,102,352 for contracts in juvenile court in 2007.
- Two changes were made in the juvenile court contracts in 2007. First, with the closing of the Pierson-Fitchett firm, Lancaster County entered into a contract directly with David Thompson, formerly of that firm, to assume responsibility for the contract. Secondly, the county renewed their juvenile court contract with Larry Ohs who originally took over for Richard Bollerup. Ohs added Steven Williams as an attorney on that contract.
- At the end of 2007, Lancaster County had contracts for legal services in Juvenile Court with 11 private attorneys/law firms and 1 with Legal Aid of Nebraska.

3. *These cost per case figures are based only upon those felonies that were completed in 2007.*

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

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. We want to thank the volunteer members of this committee who served during 2007. They are Andy Strotman, Randy Goyette, Sean Brennan, Brad Roth, and Jeanelle Lust.

Public Defender's Office Operations The Felony Division

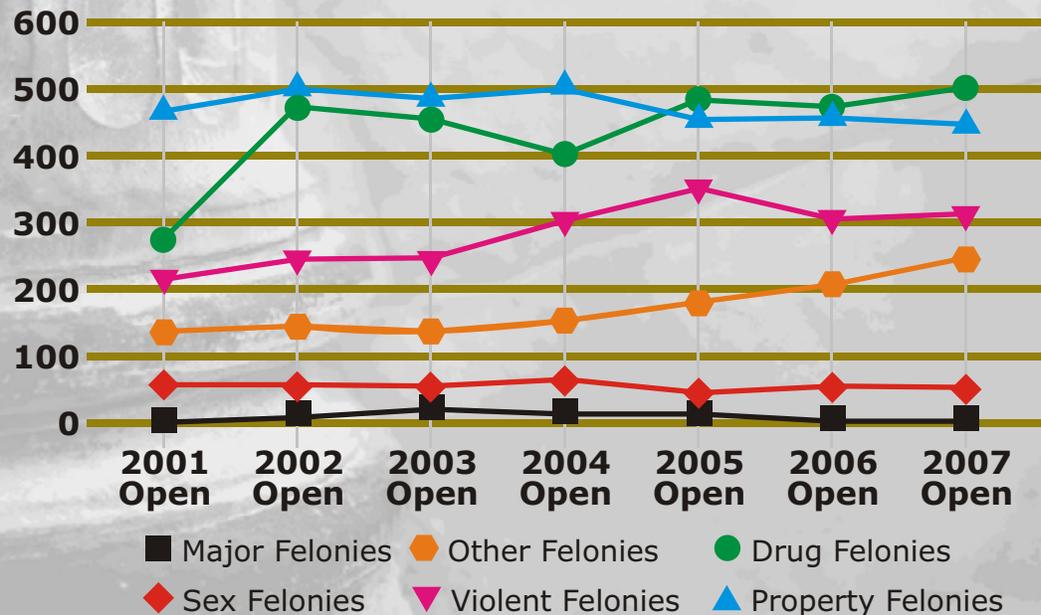
Scott P. Helvie, Chief Deputy
 Robert G. Hays, Chief Deputy
 Joseph D. Nigro, Deputy
 Webb E. Bancroft, Deputy
 Kristi J. Egger-Brown, Deputy
 Shawn D. Elliott, Deputy
 Timothy M. Eppler, Deputy
 Christopher L. Eickholt, Deputy
 Matthew G. Graff, Deputy
 Andrea D. Snowden, Deputy
 (Resigned in October 2007)

Joe Renteria, Investigator

Jed Rojewski, Paralegal
 Kristi Gottberg, Paralegal

Valerie McHargue, Law Clerk
 Brittani Lewit, Law Clerk
 Yohance Christie, Law Clerk
 Ti'era Johnson, Law Clerk

New Open Felonies By Type



Felony Case Notes

- The county attorneys office filed 1,910 felony cases in Lancaster County Court in 2007, representing a 1% decrease over 2006.⁵ The public defenders office was appointed in 1,577 (83%) of those cases in the first instance.
- The 1,577 felony cases opened by the public defender in 2007 represents a 4% increase over 2006 and a 10% increase over 2004.
- 260 of the new felony cases opened by the public defender in 2007 would not have been classified as felonies in 2002. Virtually all of these cases are in the domestic violence and drunk driving categories.
- The number of felony cases pending in the public defenders office at the end of 2007 was 17% higher than the number pending at the end of 2006.
- The largest increase (19%) in new opened cases occurred with the Other Felonies, followed by Drug Felonies (6%). Sex Felonies and Property Felonies actually declined slightly.
- Major Cases Opened and Closed in 2007: We opened 11 new major cases and closed the same number in 2007. The office opened 5 cases of First Degree Murder, 1 case involving Second Degree Murder, 1 case of Manslaughter, 1 case of Motor Vehicle Homicide, 1 case of Child Abuse Resulting in Death and 1 case each of Attempted First Degree Murder and Attempted Second Degree Murder. We closed 4 cases of First Degree Murder (1 after a trial, 1 after a plea, 1 due to a conflict, and 1 because the client retained private counsel); we closed 2 cases of Second Degree Murder (1 after a plea and 1 due to a conflict); we closed 3 cases of Child Abuse Resulting in Death (1 following trial, 1 after a plea, and 1 because the client retained private counsel). We also closed 1 case of Motor Vehicle Homicide because the client retained private counsel.
- In 2007, the Public Defenders Office had 34 clients with 49 cases admitted to the Adult Drug Court Program. 31 public defender Drug Court clients with 44 cases had their cases closed in 2007; 16 clients (52%) were closed following successful graduation and case dismissal and 15 of the clients (48%) were closed for unsuccessful participation and the cases were referred back to the regular criminal courts.

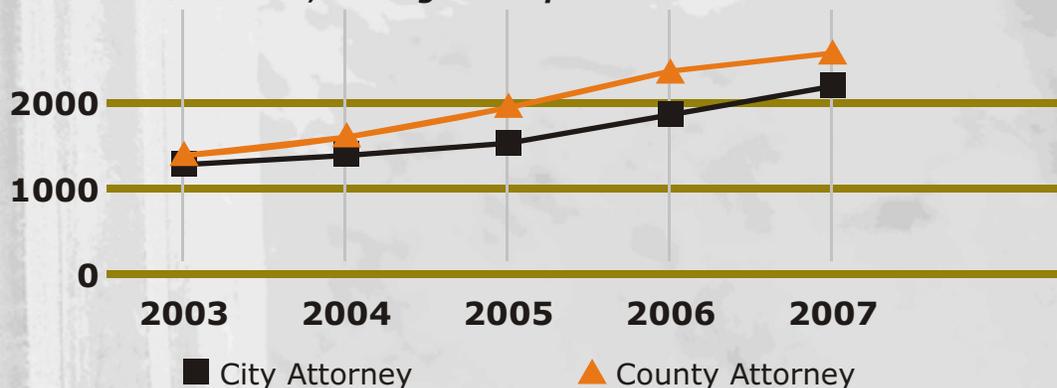
5. The figures for new filed felonies has been provided by the State Court Administrators Office.

Misdemeanor Division

Susan R. Tast, Deputy
Elizabeth D. Foster, Deputy
Paul E. Cooney, Deputy
John C. Jorgensen, Deputy
Angela Franssen, Paralegal
Steve Schultz, Paralegal

Growth in Public Defender Misdemeanor Cases filed by the City Attorney and County Attorney from 2003-2007

These cases are Drunk Driving, Assaults, Domestic Violence, Violation of Protection Orders, Driving on Suspended License and Theft



Misdemeanor Case Notes

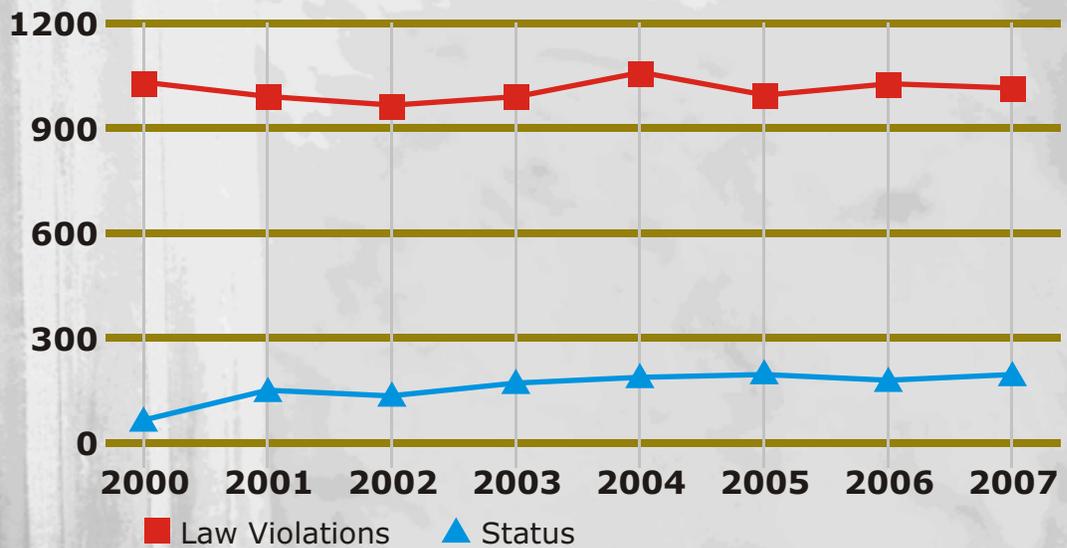
- Non traffic misdemeanor filings in Lancaster County Court, including filings by the City Attorney and the County Attorney, decreased by 3% from 2006 to 2007.⁶
- Public Defender Office appointments in overall misdemeanor cases increased by 5% from 2006 to 2007. The increase for City Attorney filed cases was 8% and for County Attorney filed cases the increase was 2%.
- Public Defender Office Appointments in City Attorney filed cases has increased by 54% from 2003 to 2007 and County Attorney filed cases increased by 58% during that time period.
- There are 3 Deputy Public Defenders and one paralegal assigned to the County Attorney filed Misdemeanors which totaled 2271 new cases in 2007.
- There is 1 Deputy Public Defender and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 2020 new cases in 2007. The major categories of cases here would be Drunk Driving Cases (415), Driving on Suspended License Cases (322), Assault (220), Theft (226), Disturb The Peace (191), and Minor In Possession of Alcohol (93). Other relatively minor offenses are also included such as Consuming Alcohol in Public, Criminal Mischief, Disorderly House, Pawn or Sell property with 2 Prior Thefts, and Trespass.

Juvenile Division

Margene M. Timm, Chief Deputy
Sarah P. Newell, Deputy
Jennifer M. Houlden, Deputy
Reggie L. Ryder, Deputy
(Appointed to the Juvenile Court Bench in September of 2007)

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

Juvenile Case Openings By Case Type



Juvenile Case Notes

- According to the State Court Administrators Office, law violation filings in the Separate Juvenile Court increased by 12% from 1436 in 2006 to 1602 in 2007. Public Defender appointments remained virtually the same.
- Status cases (mostly school trancies) saw a 46% increase in filings in 2007 but the number of cases opened by the public defenders office increased by only 16%.
- The Public Defenders Office opened 24 new cases in the Juvenile Drug Court program in 2007 and closed 17. Of the 17 cases closed, 8 were closed following successful completion and graduation and 9 were closed following unsuccessful termination from the program.

Mental Health Commitments, Child Support Enforcement, Paternity, and Miscellaneous Cases

Dorothy A. Walker, Deputy
Angelia Onuoha, Paralegal
Gabriella Acosta-Lohman, Law Clerk
Joshua Pluta, Law Clerk
Valerie McHargue, Law Clerk
Brittani Lewit, Law Clerk

- The number of new petition cases in the Mental Health Commitment docket increased in 2007 by 14% over 2006 figures (from 265 cases to 302 cases).
- The public defenders office closed 449 mental commitment cases in 2007. Of the cases closed, 30% were closed because the case was dismissed without a hearing; 12% were closed following a contested hearing; and 57% were closed following a stipulated hearing and 1% were closed because of a conflict of interest.
- There were 7 appeals filed in the district court from mental commitment proceedings in 2007.
- The public defenders office opened 235 miscellaneous cases in 2007, including 109 felony revocation of probation cases (50%); 61 fugitive from justice cases (15%); 49 adult drug court cases (27%); and reviewed 13 cases involving verdicts of not responsible by reason of insanity (7%).
- In our first full year of responsibility for the Child Support and Paternity cases in some time, the office opened 382 Child Support contempt cases and 152 Paternity cases in 2007.

Upcoming Issues

Workload Study

- In light of the ever increasing number of cases and the increased attention on the ethics of public defenders handling an excessive caseload, Lancaster County Public Defender Dennis R. Keefe determined to ask the Board for funding to conduct a workload study for his office. At the end of 2007 negotiations were under way to have the University of Nebraska Lincoln Public Policy Center conduct the study.

Public Defender City Attorney Misdemeanor Cases

- Through an inter local agreement, the City of Lincoln has contributed to Lancaster County's costs of providing indigent defense services to individuals charged with misdemeanors filed by the City Attorneys Office. One attorney is assigned to this docket in the Public Defenders Office and one paralegal is assigned to assist. With recent increases in the caseload, it is no longer reasonable to expect one attorney to be able to provide the services. This docket clearly calls for two attorneys.

New Home For the Public Defender's Office

- At the close of 2007, the public defenders office prepared to move to its new home in Courthouse Plaza, 633 South 9th Street.

New Case Management System

- Also at the close of 2007, we prepared to implement the new case management information system, defenderData.

Appendix A

TABLE 1

**Lancaster County Public Defender's Office
Open/Closed Caseload Report 2007**

CASETYPE	PENDING START	OPENED 2007	CLOSED 2007	PENDING END 2007
Appeals	50	110	105	56
Felonies	556	1566	1512	654
Juveniles	387	1517	1504	396
Major Cases	4	11	11	4
Mentals	10	454	458	8
Miscellaneous	194	764	840	226
Misdemeanors	909	4291	4513	804
Totals	2110	8713	8943	2148

TABLE 2

**Lancaster County Public Defender's Office
Historical Comparison of Cases Opened Since 1997**

CASETYPE	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Chg. 06-07
Appeals	71	58	85	86	96	95	109	110	107	119	110	-8%
Felonies	840	962	976	981	1130	1404	1368	1415	1515	1506	1566	4%
Juveniles	1288	1484	1605	1453	1520	1487	1331	1467	1417	1520	1517	0%
Major Cases	9	16	13	9	6	10	15	12	11	4	11	175%
Mental Comm.	324	379	391	406	458	533	471	416	415	370	454	23%
Misc.	118	151	134	152	221	202	210	178	187	810	764	-6%
Misd.	2646	3148	3438	3306	3661	2955	2749	3157	3551	4101	4291	5%
Totals	5296	6198	6642	6393	7092	6686	6253	6755	7203	8430	8713	3%

Appendix B

Lancaster County General Fund Expense Budget

Public Defender EXPENDITURES	ACTUALS	MODIFIED	ACTUALS	PROPOSED	ADOPTED
	2005-06	BUDGET 2006-07	2006-07	BUDGET 2007-08	2007-08
SALARIES & WAGES	1,848,062	2,002,783	1,998,919	2,075,375	2,075,375
EMPLOYEE BENEFITS	574,408	588,936	581,563	607,556	607,556
OFFICE SUPPLIES	13,376	13,750	17,317	17,000	17,000
OTHER CONTRACTED SERVICES	60,265	80,481	69,978	65,868	65,868
TRANS, TRAVEL & SUBSISTANCE	11,908	11,275	8,104	11,440	11,440
COMMUNICATIONS	18,486	18,050	18,713	19,131	19,131
POSTAGE, COURIER & FREIGHT	4,993	5,000	5,702	5,500	5,500
PRINTING & ADVERTISING	13,521	13,825	13,554	13,250	13,250
CONTRACTED HEALTH SERVICE	12,696	15,500	14,924	15,000	15,000
OTHER CLIENT SERVICES	0	50	14	50	50
MISC FEES & SERVICES	95,725	92,248	86,629	98,628	98,628
INSURANCE & SURETY BONDS	7,267	7,592	8,202	8,387	8,387
REPAIR & MAINTENANCE COST	284	500	0	500	500
RENTALS	75,219	76,305	77,916	124,862	124,862
EQUIPMENT	2,717	3,446	1,371	14,689	14,689
TOTAL PUBLIC DEFENDER	2,738,925	2,909,741	2,902,906	3,062,134	3,062,134

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