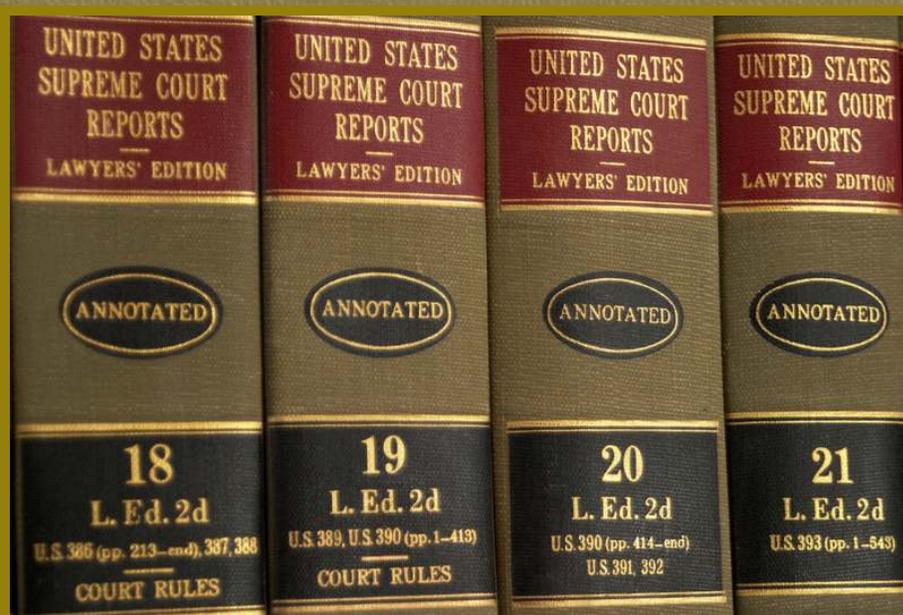


As President, I will work every day to ensure that this country has a criminal justice system that inspires trust and confidence in every American, regardless of age, or race, or background.

*Barack Obama
Howard University,
September 28, 2007*

2008 ANNUAL REPORT OF THE LANCASTER COUNTY PUBLIC DEFENDER



One of the younger attorneys in my office told me an incredible story.

Several years ago, he was practicing law at a firm in a smaller community. His father did volunteer work at a prison and asked him if he would look into the case of an incarcerated individual who professed his innocence. This prisoner was unable to get any attorney to look seriously at his case. Eventually, this attorney persuaded one of the more experienced attorneys in the firm to represent the individual in seeking post conviction DNA testing.



That attorney from his old firm had just phoned my deputy to tell him that the client was now going to be released from prison after 18 years because it was determined that the client and 5 others who had been convicted and imprisoned for murder and other crimes, were actually innocent. Over a period of weeks and months a great deal of publicity was focused on these cases, which involved false confessions by low functioning individuals prompted by the prosecutor's threat of the death penalty and fraudulent criminal laboratory work. As this is written, the Nebraska Legislature is debating a bill that will put a price on an innocent individual's loss of freedom at the hands of the state.

If this case was the first of its kind in this country, society would look at it as an aberration and we would rationalize our way around it. But it isn't the first of its kind in this country, it isn't even the first of its kind in modern Nebraska history. The national record is now replete with case after case of individuals charged and convicted of murder (some sentenced to death) only to be freed later when DNA evidence proved their innocence. The causes of these breakdowns in the justice system have been examined and the culprits include mistaken eyewitness identifications, bad and sometimes criminal policing, bad and sometimes unethical prosecuting, bad and sometimes unethical science and bad and sometimes unethical defense lawyering.

In the Nebraska legislative debate, I read the comments of one senator who assured us that this type of thing would never happen again, given the state of DNA science. This statement is naive in the extreme and offers only false comfort regarding our state's justice system. First, are we to assume that the causes of these gross injustices only occur in cases where there is DNA evidence available to prove the injustice? Why is that a logical assumption? Rather, is it not reasonable to assume that the same mistaken identifications, bad policing, prosecuting, science and lawyering that occurred in the celebrated murder cases might also have occurred in burglary cases or drug cases where DNA evidence would rarely play a crucial role? That an innocent individual might be convicted of such lesser crimes, be sentenced to prison and never draw the attention of the media to their plight, is not hard to believe at all. Most of the cases that have generated the greatest publicity involving innocent people being convicted of crimes they did not commit, involve charges of murder. It is a given that, whatever jurisdiction you are in, murder cases will always consume a disproportionate amount of the justice system resources. Even in jurisdictions where the quality of justice is extremely low, each component of the system will devote significantly more time and money to these cases than for your average felony. Is it not, therefore, reasonable to assume that, if serious mistakes and intentional wrongdoing are so evident in these serious cases where so much time and money is spent, the same grotesque mistakes and misconduct must also exist in less serious cases where DNA evidence will play no part in the equation?

From the standpoint of an office charged with the responsibility of vigorous advocacy for the accused, the lessons to be learned from these cases are many. The responsibility entrusted to the attorneys and staff in my office is great because the effect of error on the individual client could be enormous. This is why it is important to recruit and retain highly qualified attorneys who are not overburdened with cases to the point that they cannot provide effective assistance of counsel. To that end, we committed ourselves this past year to a research based workload study to answer the question what a reasonable caseload should be for a public defender attorney. The study was made easier for the researcher and added to the validity of the result because of management decisions that were made many years ago requiring attorneys to track their time on each case.

The result is a scientific method of determining when additional staff is needed or when additional private assigned counsel are needed to cover the excess cases. The standards will serve as a protection for the clients of the Lancaster County Public Defender's Office for years to come and they will provide the Lancaster County Board of Commissioners with a legitimate, understandable, and consistent method of determining when additional resources are necessary.

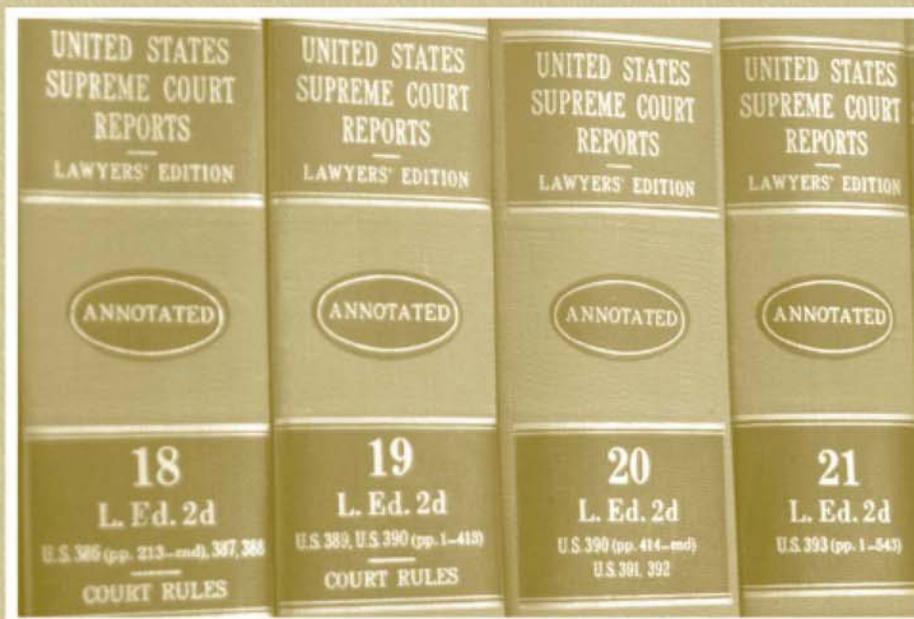
If anyone needs a reminder of why it is necessary to provide indigent defense services in a quality manner, we will just refer them to the current debate in the Nebraska Legislature. Some will understand and be persuaded by the abomination of innocent people being sentenced to prison or worse. Others will only be affected by the possibility of huge money judgments against governmental entities when they allow the system to go berserk.

A handwritten signature in blue ink that reads "Dennis R. Keefe". The signature is fluid and cursive, with a large initial "D" and "K".

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

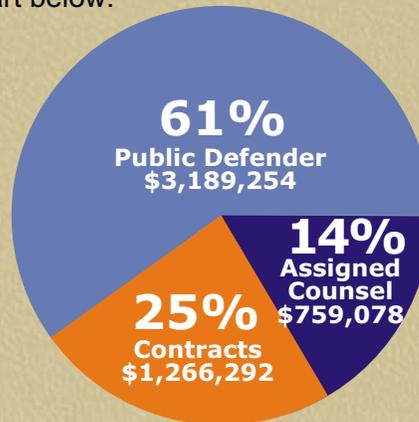
It is the philosophy of the Lancaster County Public Defender's Office that each client should receive high quality legal representation which is as good as that provided by the best of the private bar.

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 indigent defense system in Lancaster County consists of the Lancaster County Public Defenders Office, private assigned counsel in county, district and juvenile court, and a series of contract attorneys for juvenile court. The projected FY09 total expenditures as of December 31, 2008 for each segment of the system is set out in the chart below:



2008 Assigned Counsel Notes

- Of the 1,610 felony cases closed by the public defenders office in 2008, 351 cases (22%) were closed because of a conflict of interest which required the appointment of the Commission on Public Advocacy or private assigned counsel. In addition, 17 felony cases were closed by the public defender because they exceeded the caseload standards that were implemented in 2008.
- The Nebraska Commission on Public Advocacy was appointed to represent clients in 67 of the 351 felony cases where the public defender had a conflict or the 17 cases where the office exceeded its caseload limits, and 3 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 4,163 misdemeanor cases closed by the public defender's office in 2008, 538 (13%) were closed because of a conflict of interest requiring appointment of assigned counsel. In addition, 118 cases were closed because they exceeded the public defender's caseload standards.
- Of the 1,424 Juvenile Law Violations and Status Offender cases closed by the public defender in 2008, 229 (16%) were closed because of a conflict of interest and either a contract attorney or private attorney was appointed. In addition, the public defender closed 55 of these cases because they exceeded their office caseload standards.

Contract Notes

- Lancaster County was projected to spend \$1,266,292 for contracts in juvenile court in FY09, for both base contract costs and overages.
- In 2008, several of the contracts were renewed for new three year terms: Pollack and Ball; Ohs and Williams; David Thompson; Hewitt/Langemach; and Thomas & Walton.
- At the end of 2008, Lancaster County had contracts for legal services in Juvenile Court with 11 private attorneys/law firms and 1 with Legal Aid of Nebraska.
- There were 402 3(a) (abuse/neglect) cases filed in the Separate Juvenile Court of Lancaster County in 2008. This represented a 33% increase from the number filed in 2007. It also represents 82% of the number of these filings in Douglas County, even though Lancaster County has only 55% of the population of Douglas County.

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 2008. They are Andy Strotman, Randy Goyette, Sean Brennan, Brad Roth, and Jeanelle Lust.

Public Defender's Office Operations The Felony Division

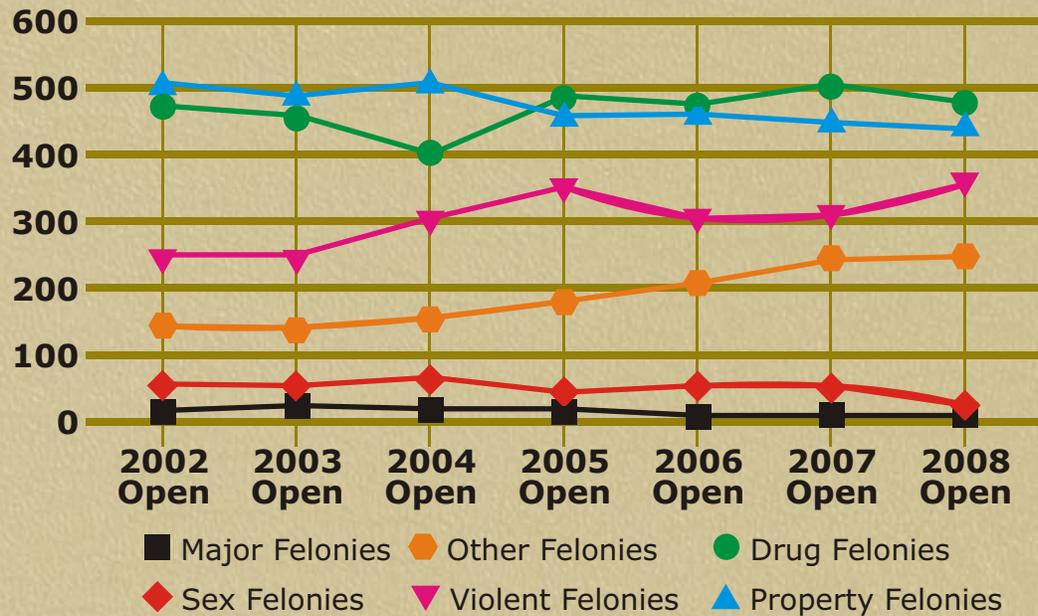
Scott P. Helvie, Chief Deputy
 Robert G. Hays, Chief Deputy
 Joseph D. Nigro, Deputy
 Webb E. Bancroft, Deputy
 Kristi J. Egger-Brown, Deputy
 Shawn D. Elliott, Deputy
 Timothy M. Eppler, Deputy
 Christopher L. Eickholt, Deputy
 Matthew G. Graff, Deputy
 John C. Jorgensen, Deputy

Joe Renteria, Investigator

Jed Rojewski, Paralegal
 Kristi Gottberg, Paralegal

Yohance Christie, Law Clerk
 Ti'era Johnson, Law Clerk
 Tara Erickson, Law Clerk
 Jordan Clegg, Law Clerk

New Open Felonies By Type



Felony Case Notes

- The county attorneys office filed 1,932 felony cases in Lancaster County Court in 2008, representing a 1% increase over 2007.¹ The public defender's office was appointed in 1,565 (81%) of those cases in the first instance.
- The 1,565 felony cases opened by the public defender in 2008 represents less than 1% decrease over 2007 but we still show a 10% increase over the 2004 numbers.
- At least 200 of the new felony cases opened by the public defender in 2008 would not have been classified as felonies in 2002. Virtually all of these cases are in the domestic violence and drunk driving categories.
- All of the sub categories of felonies remained the same or declined in number when compared with 2007, except for the Violent Felonies which increased by 14%.
- Major Cases Opened and Closed in 2008: We opened 7 new major cases and closed the same number. The office opened 4 cases of First Degree Murder, 1 case involving Attempted First Degree Murder, 1 case of Child Abuse Resulting in Death and 1 case of Attempted Second Degree Murder. We closed 3 cases of First Degree Murder (1 because of a conflict of interest and 2 because we had exceeded our caseload standards); we closed 2 cases of Attempted First Degree Murder (1 after a plea and 1 because the client retained private counsel); and we closed 2 cases of Attempted Second Degree Murder (1 because the client retained private attorney and 1 because of a plea).
- In 2008, the Public Defenders Office had 35 clients admitted to the Adult Drug Court Program. 23 public defender Drug Court clients had their cases closed in 2008; 9 clients (39%) were closed following successful graduation and case dismissal and 14 of the clients (61%) were closed for unsuccessful participation and the cases were referred back to the regular criminal courts.

1. The figures for new filed felonies have been provided by the state court administrator's office.

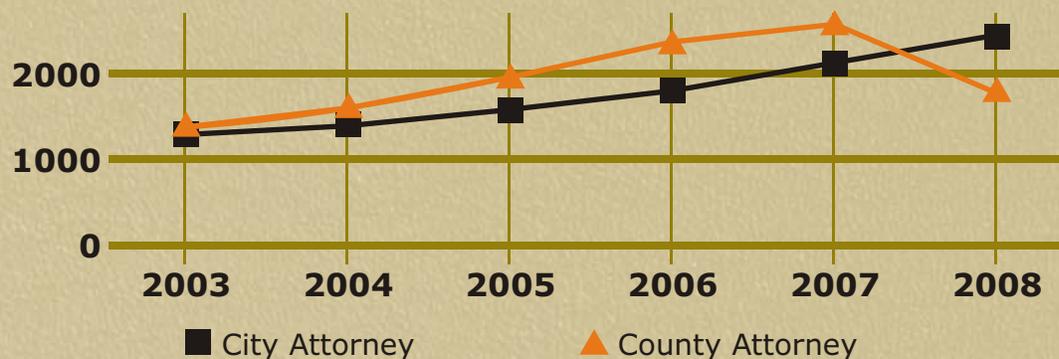
Misdemeanor Division

Susan R. Tast, Deputy
Elizabeth D. Foster, Deputy
Paul E. Cooney, Deputy
Andrew D. Weeks, Deputy

Angela Franssen, Paralegal
Steve Schultz, Paralegal

Growth in Public Defender Misdemeanor Cases filed by the City Attorney and County Attorney from 2003-2008

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



Misdemeanor Case Notes

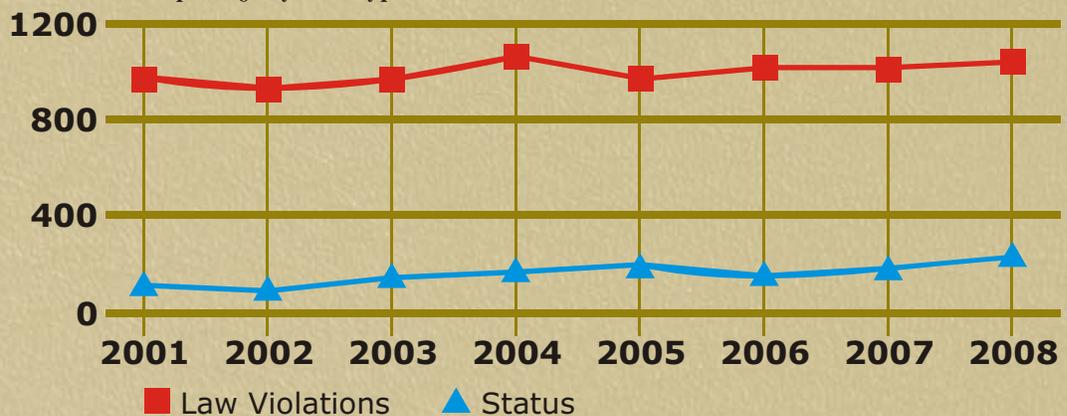
- Non traffic misdemeanor filings in Lancaster County Court, including filings by the City Attorney and the County Attorney, increased by 29% from 2007 to 2008.²
- Public Defender Office appointments in all misdemeanor cases decreased by 7% from 2007 to 2008. There was an increase for City Attorney filed cases (10%) but a decrease for County Attorney filed cases of 23%. The best explanation for this dramatic decrease in County Attorney filed misdemeanors is the philosophy of one of the County Court judges about when the appointment of the public defender is needed because of potential jail sentences.
- Public Defender Office Appointments in City Attorney filed cases has increased by 70% in the five year period beginning in 2005, and County Attorney filed cases have increased by 22% during that time period, even with the huge decrease between 2007 and 2008.
- There are 3 Deputy Public Defenders and one paralegal assigned to the County Attorney filed Misdemeanors which totaled 1754 new cases in 2008.
- There is 1 Deputy Public Defender and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 2216 new cases in 2008. The major categories of cases here would be Drunk Driving Cases (541), Driving on Suspended License Cases (404), Assault (225), Theft (215), Disturb The Peace (163), and Minor In Possession of Alcohol (109). 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

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

Juvenile Case Openings By Case Type



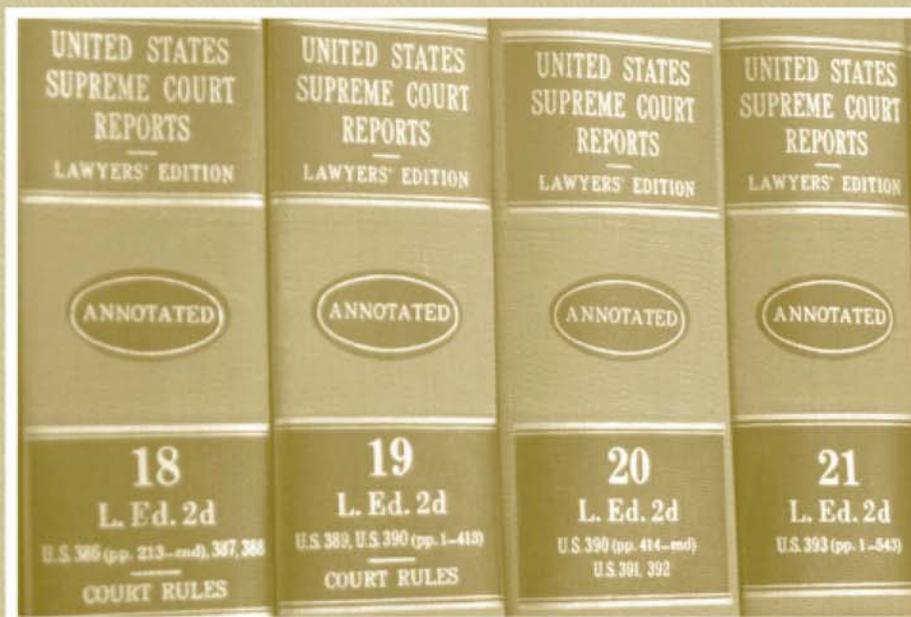
Juvenile Case Notes

- According to the State Court Administrators Office, law violation filings in the Separate Juvenile Court increased by 3% from 1602 in 2007 to 1650 in 2008. Interestingly, this 2008 figure is 85% of the number of law violation filings in Douglas County. Lancaster County Public Defender appointments increased by 2%.
- Status cases (mostly school trancies) saw a 50% increase in filings in 2008 but the number of cases opened by the public defenders office increased by only 20%. The number of filings in status cases in 2008 represents a 120% increase since 2006. Furthermore, the number of these cases filed in Lancaster County in 2008 (318) was 130% of the number filed in Douglas County, even though the population of Lancaster County is only 55% of Douglas County.
- In 2008, the public defenders office conflicted out of 16% of the cases it closed, or 274 cases. Most of these cases were then assigned to the contractors. In addition, the office was relieved of its appointment in 55 cases because they exceeded the new caseload standards for the office.
- The Public Defenders Office opened 19 new cases in the Juvenile Drug Court program in 2008 and closed 20. Of the 20 cases closed, 9 were closed following successful completion and graduation and 11 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 decreased in 2008 by 16% over 2007 figures (from 302 cases to 255 cases).
- The public defenders office closed 160 mental commitment cases in 2008. Of the cases closed, 44% were closed because the case was dismissed without a hearing; 3% were closed following a contested hearing; and 11% were closed following a stipulated hearing; 6% were closed because of a conflict of interest and the remainder were closed because the commitment was eventually dismissed following treatment.
- There were 4 appeals filed in the district court from mental commitment proceedings in 2008.
- The public defenders office opened 216 miscellaneous cases in 2008 compared to 235 miscellaneous cases in 2007. The 2008 cases included 120 felony revocation of probation cases; 43 fugitive from justice cases; 42 adult drug court cases; and reviewed 11 cases involving verdicts of not responsible by reason of insanity (7%).
- In 2008 the office opened 379 Child Support Contempt cases compared to 382 Child Support contempt cases in 2007. We also opened 159 Paternity cases in 2008 compared to 152 Paternity cases in 2007.



Upcoming Issues

Workload Study

- The workload study of the Lancaster County Public Defenders Office was completed by the University of Nebraska Policy Research Center in 2008. The Public Defenders Office Response to the study was presented to the Lancaster County Board of Commissioners in September of 2008. Both documents can be found at <http://www.lincoln.ne.gov/cnty/pdefen/index.htm>
- The Lancaster County Public Defenders Office began implementing the caseload standards in September of 2008 and they withdrew from a number of cases based upon these standards, as follows:
Felony Cases 17
City Attorney Filed Misdemeanors 118
Juvenile Cases 55
- The Lancaster County Board of Commissioners must choose among several options for dealing with these cases. The options involve adding staff to the public defenders office, entering into contracts for some of the dockets; or continuing with the appointment and payment of private assigned counsel on a case by case basis.

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. As part of the workload study mentioned above, meetings were held with the City Council and County Board regarding the recommendation in the caseload study that the City consider decriminalization of some of the more minor misdemeanor cases as a way to reduce the number of cases that require appointed counsel. No action had been taken at the start of 2009.

Enhancements to the Case Management System

- The Lancaster County Public Defenders Office began using its new case management information system on January 1, 2008. We are overall pleased with the implementation but we are going to be looking at several important enhancements in the second and third years.

Appendix A

TABLE 1

Lancaster County Public Defender's Office Open/Closed Caseload Report 2008

CASETYPE	PENDING START	OPENED 2008	CLOSED 2008	PENDING END 2008
Appeals	56	101	95	61
Felonies	655	1558	1603	614
Juveniles	397	1597	1715	523
Major Cases	4	7	7	4
Mentals	8	289	176	6
Miscellaneous	225	749	915	205
Misdemeanors	803	3970	4163	685
Totals	2148	8271	8674	2098

TABLE 2

Lancaster County Public Defender's Office Historical Comparison of Cases Opened Since 1998

CASETYPE	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Chg. 07-08
Appeals	58	85	86	96	95	109	110	107	119	110	101	-8%
Felonies	962	976	981	1130	1404	1368	1415	1515	1506	1566	1558	-1%
Juveniles	1484	1605	1453	1520	1487	1331	1467	1417	1520	1517	1597	5%
Major Cases	16	13	9	6	10	15	12	11	4	11	7	-36%
Mental Comm.	379	391	406	458	533	471	416	415	370	454	289	-36%
Misc.	151	134	152	221	202	210	178	187	810	764	749	-2%
Misd.	3148	3438	3306	3661	2955	2749	3157	3551	4101	4291	3970	-7%
Totals	6198	6642	6393	7092	6686	6253	6755	7203	8430	8713	8271	-5%

Appendix B

Lancaster County General Fund Expense Budget

Public Defender EXPENDITURES	ACTUALS	PROPOSED	PROPOSED	PROPOSED	ADOPTED
	2006-07	BUDGET 2007-08	ADOPTED 2007-08	BUDGET 2008-09	ADOPTED 2008-09
SALARIES & WAGES	1,998,919	2,075,375	2,082,322	2,111,450	2,111,450
EMPLOYEE BENEFITS	581,563	607,556	606,074	625,458	625,458
OFFICE SUPPLIES	17,317	17,000	19,626	17,750	17,750
OTHER CONTRACTED SERVICES	69,978	65,868	65,594	55,866	55,866
TRANS, TRAVEL & SUBSISTANCE	8,104	11,440	13,406	11,928	11,928
COMMUNICATIONS	18,713	19,131	22,091	19,800	19,800
POSTAGE, COURIER & FREIGHT	5,702	5,500	5,847	5,665	5,665
PRINTING & ADVERTISING	13,554	13,250	13,348	12,340	12,340
CONTRACTED HEALTH SERVICE	14,924	15,000	7,550	15,000	15,000
OTHER CLIENT SERVICES	14	50	0	50	50
MISC FEES & SERVICES	86,629	98,628	112,417	99,258	99,258
INSURANCE & SURETY BONDS	8,202	8,387	8,192	8,387	8,387
REPAIR & MAINTENANCE COST	0	500	400	500	500
RENTALS	77,916	124,862	95,521	148,335	148,335
EQUIPMENT	1,371	14,689	9,639	1,515	1,515
TOTAL PUBLIC DEFENDER	2,902,906	3,062,134	3,062,029	3,133,302	3,133,302

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 2007) 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 2007)

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 71-945 to 71-947.

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

(4) Appointment of a public defender shall be by the court in accordance with sections 29-3902 and 29-3903. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion. A public defender shall not inquire into a defendant's financial condition for purposes of indigency determination except to make an initial determination 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 2007)

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 2008)

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