

2021 Annual Report
of the
Lancaster County Public Defender's Office





2021 was another challenging year due to the pandemic. There was excitement early in the year as people started to get vaccinated. Getting people vaccinated is crucial to ending the pandemic. I did what I could to move our people up the list to get vaccinated. Ultimately, 100% of our staff was vaccinated. Public defenders care about protecting others. If only everyone would have the same attitude and get vaccinated. As summer came, it seemed we would come out of the pandemic, but then the delta variant hit, and things got worse. The jail population also rose, and correctional facilities saw surges in cases. The end of the year saw the beginning of the omicron surge and even more cases. Our staff continued to work from

home when possible, in an effort to keep people safe. We have continued to advocate for a reduction in the jail population. The pandemic has made it clear that the only people who should be in jail are those who are truly dangerous to others.

The County Board approved my request to make one of our Client Services Associate positions a full-time position after we had had difficulty filling two part time positions over the years. The Board also authorized me to add a social worker and an attorney. Kimberly Lawless became a full-time Client Services Associate. She left later in the year for a position in her field. Claudia Menjivar then filled the position. Sabrina Dutch joined us as our second social worker. Our social workers have helped so many clients. They are especially valuable in writing mitigation reports that have convinced judges to let people out of jail and to place people on probation. The workload on our social workers continues to go up. We also added another attorney so we could take more cases. Kelsey Helget joined our staff and has worked in the Misdemeanor Division. Jamel Connor joined the Juvenile Division.

A case was filed against an employee who handled evidence for the State Patrol. This caused some cases to be dismissed, and there may be more dismissals coming.

The Legislature passed LB271, a bill to encourage 24/7 programs, and most importantly, to authorize 24/7 operator's permits. This was an idea I first took to the Legislature a few years ago. Lancaster County took up advocating for this bill, and we got it passed.

I was involved in helping to create a DUI Court, and it started in the summer. This is an important addition to our problem-solving courts.

I continue to advocate for reforms to the criminal justice system, including advocating for legislation to reduce penalties for drug possession, limit the use of habitual criminal allegations, and eliminate money bond. Nebraska has the most overcrowded prison system in America. Our jail population is too big. And when the population of Lancaster County is 4% Black, but our jail population is consistently 1/3 Black, something needs to change. I will continue to fight for systemic reform. Our attorneys will keep fighting for every one of our clients.

Joe Nigro
Lancaster County Public Defender

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MISSION STATEMENT

The mission of the Lancaster County Public Defender's Office is to provide high quality legal services for indigent clients and to advocate zealously on behalf of each individual client.

PHILOSOPHY AND GOALS

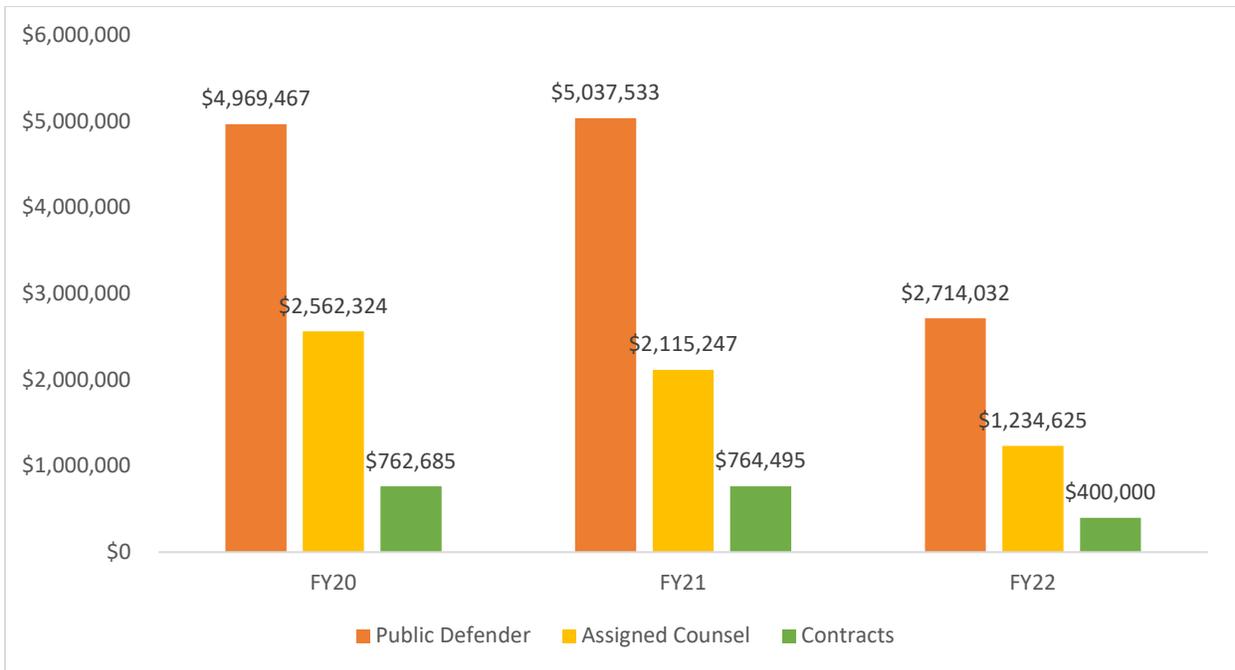
It is the philosophy of the Lancaster County Public Defender's Office to provide client centered legal representation of the highest quality.

GOALS

1. Recruit and retain attorneys and support staff who will provide high quality legal representation for each client.
2. Maintain reasonable caseload levels for staff attorneys.
3. Provide all resources and ancillary services necessary to represent the clients of the office.
4. Provide continuing training for all staff.
5. Maintain political and professional independence for the office.
6. Maintain a professional work environment.
7. Provide creative representation.
8. Provide visionary management.
9. Provide full-service representation.
10. Maintain adequate and stable funding.

OVERVIEW OF LANCASTER COUNTY'S INDIGENT DEFENSE SYSTEM

The indigent defense system in Lancaster County consists of the Lancaster County Public Defender’s office, private assigned counsel in county, district and juvenile court, a contract with Legal Aid of Nebraska for juvenile court, and a contract with a private law firm for the child support and paternity cases. The charts below compare the FY22 expenditures as of December 31, 2021, or half a year (as reported by the Budget and Fiscal Office) for each segment of the system with the FY20 and FY21 being Actual Expenditures.



2021 ASSIGNED COUNSEL NOTES

Of the 2,222 felony cases closed by the Public Defender’s Office in 2021, 671 of those cases (30%) involved a conflict of interest which required the appointment of private assigned counsel or the Commission on Public Advocacy. The prior year’s being 34% and 29%. In addition, 262 felony cases (12%) were closed in 2021 because they exceeded the office’s caseload standards.

Of the 2,676 misdemeanor cases closed by the Public Defender’s Office in 2021, 536 (20%) were closed because of a conflict of interest requiring appointment of assigned counsel. There were 345 misdemeanor excessive caseload cases in 2021 (this compares to 625 in 2020, 394 in 2019, 373 in 2018, 170 in 2017, 182 in 2016).

Of the 629 juvenile law violations and status cases closed by the Public Defender in 2021, 93 (15%) were closed because of a conflict of interest and either Legal Aid of Nebraska or a private attorney was appointed. In 2021, the Public Defender withdraw from 0 juvenile cases because of our workload standards (this compares to 0 in 2020, 0 in 2019, 0 in 2018, 0 in 2017, 9 in 2016).

CONTRACT NOTES

The only contract for legal services in the Juvenile Court in 2021 was the contract with Legal Aid of Nebraska.

According to the Separate Juvenile Court, there were 301 new 3(a) (abuse/neglect) cases (including transfers from other counties) filed in the Separate Juvenile Court of Lancaster County in 2021. This represents a 54% increase from 2020, a 15% decrease from 2019, an increase of 13% in 2018, and a decrease of 37% in 2017.

2021 was the third year of a three year contract of the Child Support/Paternity between Lancaster County and the Olson, Zalewski and Wynner Law Firm. Another 3 year contract starts in 2022. The contractor opened 83 child support contempt cases (compared to 196 in 2020) and closed 106 (220 in 2020), opened 43 new paternity cases (37 in 2020) and closed 30 (42 in 2020) and opened 0 other contempt matters (0 in 2020). The firm logged 812 hours (671 in 2020) including 169 attorney hours (206 in 2020) for this work.

LANCASTER COUNTY INDIGENT DEFENSE ADVISORY COMMITTEE

In 1995, at the request of the Lancaster County Public Defender Dennis R. Keefe, the Lancaster County Board of Commissioners established the Lancaster County Indigent Defense Advisory committee to advise the Public Defender and the Lancaster County Board on all issues relating to indigent defense. Members of the advisory committee are nominated by the board of Trustees of the Lincoln Bar Association and are appointed by the Board of Commissioners. The advisory committee plays a very important role, especially in the recommendation of new contractors for Lancaster County. The current committee consists of Sean Brennan, Brad Roth, Dallas Jones, Stan Beeder, and Heidi Hayes.

PUBLIC DEFENDER'S OFFICE OPERATIONS

New employees include Kelsey Helget as a Deputy in the Misdemeanor Division and Jamel Connor as a Deputy in the Juvenile Division. We also hired part-time law clerks,

Ariana Lopez, Veronica Parish, Danny Martinez, and Samantha Conners. Kimberly Lawless as a Client Services Associate, as well as Sabrina Dutch as our second Social Worker.

Kimberly Lawless, our temporary, part time and full time Client Services Associate left to pursue a work from home job in her career field, as well as Law Clerks Sarah O'Neill, Ariana Lopez, Robert Larsen, and Jessa Schultis.

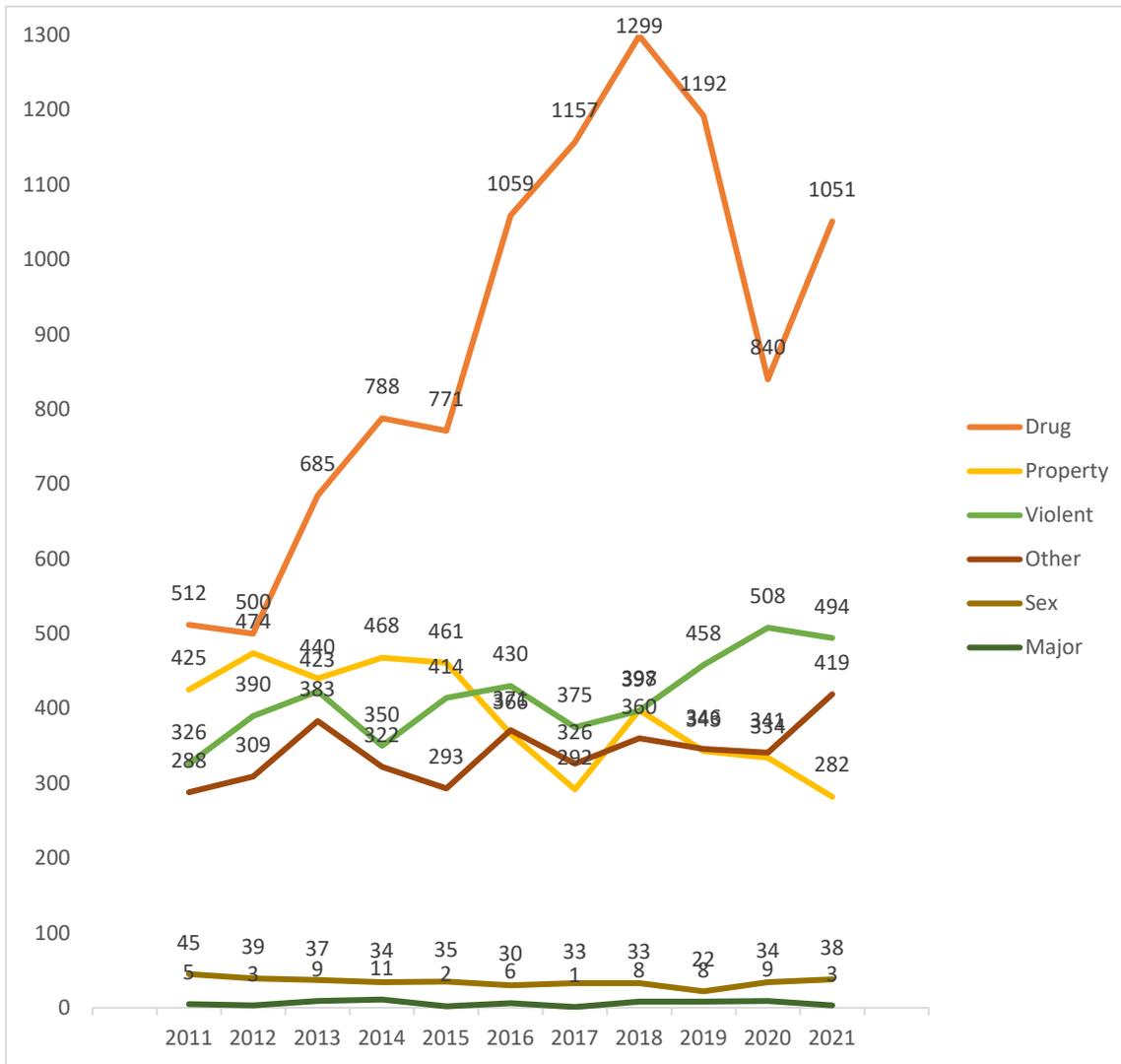
Because of the pandemic, two Years of Service Award ceremonies were held together, and the following were missed in their appropriate year: Robert Hays reached his 35 year milestone, Webb Bancroft reached his 30 year milestone, Tim Eppler, Angela Franssen, and Kristi Gottberg reached their 20 year milestone.

THE FELONY DIVISION

Paul E. Cooney, Chief Deputy
Robert G. Hays, Chief Deputy
Webb E. Bancroft, Deputy
Kristi J. Egger, Deputy
Shawn D. Elliott, Deputy
Timothy M. Eppler, Deputy
John C. Jorgensen, Deputy
Todd C. Molvar, Deputy
Amanda R. Baskin, Deputy
George C. Dungan, Deputy
Nathan J. Sohriakoff, Deputy
Brittani E. Lewit, Deputy
Chelsie E. Krell, Deputy

Joe Renteria, Investigator
Nate Kaiser, Investigator
Jed Rojewski, Paralegal
Jennifer Duncan, Paralegal
Rebecca Meinders Social Worker
Sabrina Dutch, Social Worker
Robert Larsen, Law Clerk
Emma Lindemeier, Law Clerk
Jessa Schultis, Law Clerk
Sarah O'Neil, Law Clerk
Ariana Lopez, Law Clerk
Veronica Parish, Law Clerk
Samantha Conners, Law Clerk

NEW OPEN FELONIES BY TYPE



FELONY CASE NOTES

The number of state filed felony cases in Lancaster County Court increased by 9%, after an 11% decrease in 2020, and our office’s felony appointments increased 11% after a 13% decrease in 2020.

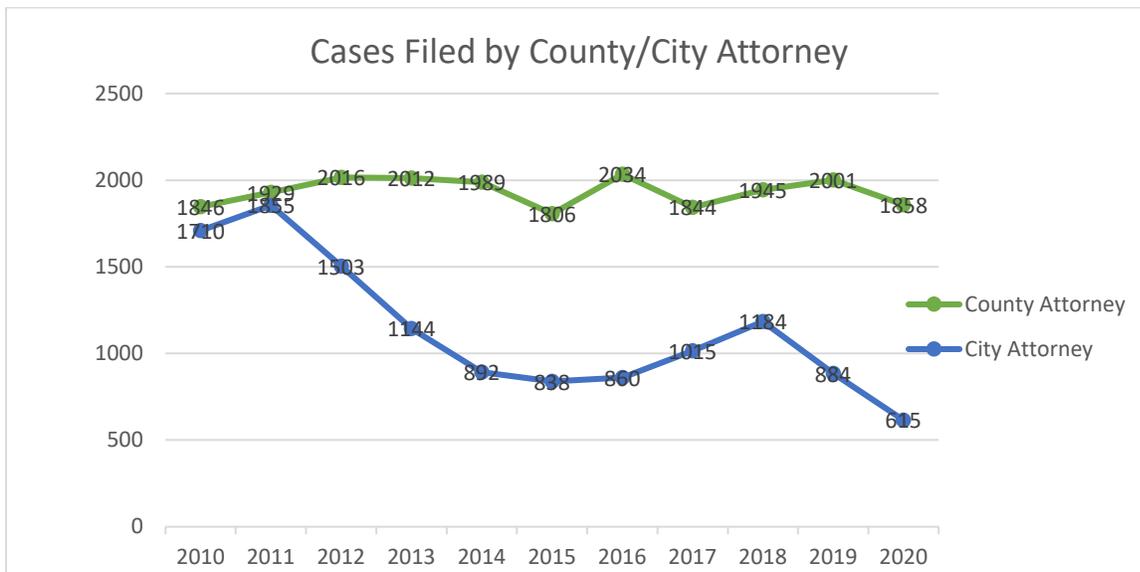
Major Cases Opened and Closed in 2021: We opened 2 major cases of 1st Degree Murder; closed 1 case due to a conflict and 1 case pled to a lesser felony. We opened 1 major case of 2nd Degree Murder; closed 2 cases due to retained private counsel. We closed 2 major cases of Motor Vehicle Homicide; 1 pled to a misdemeanor and 1 pled guilty.

In 2021 the Public Defender’s Office had 24 clients admitted to the Adult Drug Court program and 20 Public Defender Drug Court clients had their cases closed; 8 had their cases closed following successful graduation and case dismissed. This is a 20% decrease from last year. Eleven cases (55%) were closed because of unsuccessful participation and the cases were transferred back to the regular criminal court. This is almost twice the number of unsuccessful participants as last year. One was dismissed for contamination. Joe Nigro and Paul Cooney are the attorneys assigned to Adult Drug Court.

THE MISDEMEANOR DIVISION

Paul E. Cooney, Chief Deputy
 Sarah J. Safarik, Deputy
 Mark D. Carraher, Deputy
 James G. Sieben, Deputy
 Megan R. Kielty, Deputy
 Kelsey L. Helget, Deputy

Angela Franssen, Paralegal
 Kristi Gottberg, Paralegal
 Connie Rowe, Paralegal



MISDEMEANOR CASE NOTES

Overall, Public Defender misdemeanor appointments increased 7% in 2021, after decreasing 14% in 2020. The number of County Attorney filed misdemeanors opened

by the Public Defender (the more time intensive cases) increased by 1%, after a 7% decrease in 2020.

The number of City Attorney filed misdemeanors assigned to our office increased 24% between 2020 and 2021, after decreasing 30% between 2019 and 2020.

Nine major misdemeanor charge categories showed an increase in 2021, compared to 1 in 2020, mainly Carry Concealed Weapon up 91%; Trespassing up 78%; False Reporting up 43%; and Criminal Mischief up 42%. Five categories were down, compared to 11 in 2020, mainly Bad Checks down 50% which was a 50% increase in 2020.

There were 4 Deputy Public Defenders assigned to the County Attorney filed Misdemeanors which totaled 1,883 new cases in 2021, and 2 Deputy Public Defenders assigned to the City Attorney filed Misdemeanors which totaled 762 new cases in 2021. There were 3 paralegals who share the Misdemeanor cases.

We negotiated a 5% increase with the city for the amount they reimbursed the county for our services. They reimbursed Lancaster County \$522,290 in 2021.

MENTAL HEALTH COMMITMENTS AND MISCELLANEOUS CASES

Kristi J. Egger, Deputy
Robert Larsen, Law Clerk
Emma Lindemeier, Law Clerk
Veronica Parish, Law Clerk
Samantha Conners, Law Clerk

Ariana Lopez, Law Clerk
Sarah O'Neil, Law Clerk
Jessa Schultis, Law Clerk
Danny Martinez, Law Clerk

There were 151 new petitions filed in 2021, 15 more than last year.

Only one of the new petitions in 2021 involved petitions for commitment under the Sex Offender Commitment Act, compared to 1 in 2021, 3 in 2019, 6 in 2018, and 1 in 2017.

There was 1 appeal filed in the district court from mental health commitment proceedings in 2021, 2 in 2020, 4 in 2019, 2 in 2018 and 2017.

The Public Defender's Office opened 285 miscellaneous cases in 2021 compared to 273 in 2020. The 2021 cases included 100 revocation of probation cases, 111 Motion to Revoke Post Release Sentence cases, 25 Probation Administrative Sanctions cases, and 24 Felony Drug Court cases.

THE JUVENILE DIVISION

Jennifer M. Houlden, Chief Deputy
Teresa J. Nutzman, Deputy
Ella M. Newell, Deputy

Elizabeth E. Gasaway, Deputy
Jamel J. Connor, Deputy
Angelia Onuoha, Paralegal

In January 2014, we changed the manner in which we counted Juvenile Court cases. We opened 1,252 cases in 2016, 982 cases in 2017, 754 in 2018, 723 in 2019, 525 in 2020, and 680 in 2021.

JUVENILE CASE NOTES

The Juvenile Court Administrator for Lancaster County reports there were 472 Law Violation filings in the Separate Juvenile Court of Lancaster County, Nebraska, in 2021 which is a 15% decrease from 2020 (553), a 23% decrease from 2019 (716), a 12% decrease from 2018 (809) which was a 22% decrease from the number of filings in 2017 (1,034). 2021 Status Offense filings of 199 cases a 51% increase from 2020 (101) which was a 47% decrease from 2019 (192) cases, which was a 97% increase from 2018 (97), which was a 45% decrease from 2017 (177).

2019 was the last year for the Juvenile Drug Court Program.

FUTURE ISSUES

Our workload standards continue to show that we could save Lancaster County money by adding attorneys. Our social workers cannot keep up with their workload. We have not added any law clerks since at least 1975, when we had six attorneys. Now we have 25.

There are too many people incarcerated, especially people of color. There are too many people with mental health issues in the criminal justice system. 95% of the people incarcerated will get out. If we don't address their underlying issues, they will come back. Alternatives to incarceration for non-violent offenses must be used. We must provide more mental health treatment. Eliminating money bond and ending the failed War on Drugs are necessary steps to change the criminal justice system. We must stop punishing poverty, and we must fight against racism in the system.

TABLE 1
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE
OPEN/CLOSED CASELOAD REPORT 2021

CASETYPE	PENDING START	OPENED 2020	CLOSED 2020	PENDING END 2020
Appeals	37	104	96	45
Felonies	745	2284	2229	757
Juveniles	165	680	629	206
Major Cases	4	3	6	1
Mentals	14	151	194	28
Miscellaneous	82	285	256	105
Misdemeanors	672	2645	2677	634
Totals	1719	6152	6087	1776

TABLE 2
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE
HISTORICAL COMPARISON OF CASES OPENED SINCE 2011

Casetype	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Chg 20-21
Appeals	92	73	66	76	118	120	128	118	114	72	104	44%
Felonies	1596	1712	1968	1962	1974	2256	2183	2487	2361	2057	2284	11%
Juveniles	1325	1361	1048	1133	1181	1252	982	754	723	525	680	30%
Major Cases	5	3	9	11	2	6	1	8	8	9	3	-67%
Mental Commitment	176	176	181	151	155	147	164	169	170	136	151	11%
Miscellaneous	230	155	157	141	153	136	244	335	397	273	285	4%
Misdemeanors	3784	3519	3165	2881	2643	2894	2859	3129	2889	2473	2645	7%
Totals	7208	6999	6594	6355	6226	6811	6561	7000	6662	5545	6152	11%

Appendix B

Lancaster County
General Fund Expense Budget

Public Defender	Actuals FY 20	Enc FY 20	Modified Budget FY 21	Actuals FY 21	Enc FY 21	Proposed Budget FY 22	Adopted Budget FY 21
Salary & Wages	\$3,359,933	0	\$3,339,523	\$3,431,452	0	\$3,650,444	\$3,650,444
Employee Benefits	\$1,137,752	0	\$1,081,250	\$1,090,442	0	\$1,215,899	\$1,215,899
Office Supplies	\$19,821	0	\$15,000	\$14,730	0	\$15,000	\$15,000
Energy Supplies	0	0	0	0	0	\$3,936	\$3,936
Other Contract Serv	\$88,392	0	\$142,452	\$137,658	0	\$140,654	\$140,654
Trans, Travel & Subsistence	\$28,036	0	\$25,890	\$1,506	0	\$25,890	\$25,890
Communications	\$2,852	0	\$3,071	\$1,887	0	\$2,551	\$2,551
Postage	\$6,196	0	\$5,000	\$6,892	0	\$5,400	\$5,400
Printing & Advertise	\$8,292	0	\$8,500	\$11,868	0	\$9,100	\$9,100
Contracted Health Services	\$15,575	0	\$16,000	\$13,449	0	\$17,000	\$17,000
Other Client Service	0	0	0	\$46	0	0	0
Misc Fees & Service	\$46,791	0	\$67,718	\$67,344	0	\$72,824	\$72,824
Insurance & Surety Bonds	\$7,186	0	\$70,260	\$7,332	0	\$7,276	\$7,276
Repairs & Maintenance	\$129	0	0	0	0	\$3,400	\$3,400
Rentals	\$239,205	0	\$239,055	\$239,055	0	\$239,055	\$239,055
Equipment	\$9,308	0	\$18,167	\$4,869	\$3,236	\$8,014	\$8,014
Totals	\$4,969,467	0	\$5,031,886	\$5,028,529	\$3,236	\$5,416,444	\$5,416,444

**CONSTITUTIONAL AND STATUTORY BACKGROUND
FOR OFFICE OF THE PUBLIC DEFENDER**

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

Sixth Amendment

Constitution of the United States

In all criminal prosecutions the accused shall have the right to appear and defend in person or by counsel.

Article 1, Section 11

Constitution of the State of Nebraska

Neb. Rev. Stat. 23-3401 (Reissue 2012)

**Public defender in certain counties; election; qualifications;
prohibited practices; residency.**

(1) There is hereby created the office of public defender in counties that have or that attain a population in excess of one hundred thousand inhabitants and in other counties upon approval by the county board. The public defender shall be elected as provided in the Election Act.

(2) The public defender shall be a lawyer licensed to practice law in this state. He or she shall take office after election and qualification at the same time that other county officers take office, except that upon the creation of such office in any county, a qualified person may be appointed by the county board to serve as public defender until such office can be filled by an election in accordance with 32-523.

(3) In counties having a population of more than one hundred seventy thousand inhabitants the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time in the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender receives the same annual salary as each deputy county attorney of comparable ability an experience receives in such counties.

(4) No public defender or assistant public defender shall solicit or accept any fee for representing a criminal defendant in a prosecution in which the public defender or assistant is already acting as the defendant's court-appointed counsel.

(5) A public defender elected after November 1986 need not be a resident of the county when he or she files for election as public defender, but a public defender shall reside in a county for which he or she hold office, except that in counties with a population of one hundred thousand or less inhabitants, the public defender shall not be required to reside in the county in which he or she holds office.

LANCASTER COUNTY GENERAL FUND EXPENSE BUDGET

Neb. Rev. Stat. 23-3402 (Reissue 2012)

Public Defender duties; appointment; prohibitions.

(1) It shall be the duty of the public defender to represent all indigent felony defendants within the county he or she serves. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing or any indigent defendant represented by him or her, the public defender may take any direct, collateral, or post conviction appeals to state or federal courts which he or she considers to be meritorious and in the interest of justice and shall file a notice of appeal and proceed with one direct appeal to either the Court of Appeals or the Supreme Court of Nebraska upon a timely request after sentencing from any such convicted felony defendant, subject to the public defender's right to apply to the court to withdraw from representation in any appeal which he or she deems to be wholly frivolous.

(2) It shall be the duty of the public defender to represent all indigent persons against whom a petition has been filed with a mental health board as provided in sections 71-945 to 71-947.

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

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

an initial determination if indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a determination of a defendant's indigency except an initial determination of indigency of a person under arrest for investigation or on suspicion, not recommend to a court that a defendant be determined or not determined as indigent.

(5) For purposes of this section, the definitions found in section 29-3901 shall be used.

Neb. Rev. Stat. 23-3403 (Reissue 2012)

Public Defender; assistants; personnel; compensation; office space, fixtures, and supplies.

The public defender may appoint as many assistant public defenders, who shall be attorneys licenses to practice law in this state, secretaries, law clerks, investigators, and other employees as are reasonably necessary to permit him or her to effectively and competently represent the clients of the office subject to the approval and consent of the county board which shall fix the compensation of all such persons as well as the budget for office space, furniture, furnishings, fixtures, supplies, law books, court costs, and brief-printing, investigative, expert, travel and other miscellaneous expenses reasonably necessary to enable the public defender to effectively and competently represent the clients of the office.

Neb. Rev. Stat. 28-3901(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

Neb. Rev. Stat. 43-272 (Reissue 2021)

(1)(a) In counties having a population of less than one hundred fifty thousand inhabitants:

(1)(a) In counties having a population of less than one hundred fifty thousand inhabitants:

(i) When any juvenile court petition is filed alleging jurisdiction of a juvenile pursuant to subdivision (2) of section 43-247, counsel shall be appointed for such juvenile; and

(ii) In any other instance in which a juvenile is brought without counsel before a juvenile court, the court shall advise such juvenile and his or her parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel.

(b) In counties having a population of one hundred fifty thousand or more inhabitants, when any juvenile court petition is filed alleging jurisdiction of a juvenile pursuant to

subdivision (1), (2), (3)(b), or (4) of section 43-247, counsel shall be appointed for such juvenile.

(c) The court shall inform any juvenile described in this subsection and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel. If the juvenile or his or her parent or guardian desires to have counsel appointed for such juvenile, or the parent or guardian of such juvenile cannot be located, and the court ascertains that none of such persons are able to afford an attorney, the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and the court later determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section 43-290. If the parent willfully refused to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney or the county attorney or by the court without a request.

(2) The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile: (a) If the juvenile has no parent or guardian of his or her person or if the parent or guardian of the juvenile cannot be located or cannot be brought before the court; (b) if the parent or guardian of the juvenile is excused from participation in all or any part of the proceedings; (c) if the parent is a juvenile or an incompetent; (d) if the parent is indifferent to the interests of the juvenile; or (e) in any proceeding pursuant to the provisions of subdivision (3)(a) and section 43-247.

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent of the juvenile as to those proceedings with respect to which his or her guardianship extends.

(3) The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel. In such cases the guardian ad litem shall have the right to counsel, except that the guardian ad litem shall be entitled to appointed counsel without regard to his or her financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of this section.

(4) By July 1, 2015, the Supreme Court shall provide by court rule standards for guardians ad litem for juveniles in juvenile court proceedings.

(5) By July 1, 2017, the Supreme Court shall provide guidelines setting forth standards for all attorneys who practice in juvenile court.

Neb. Rev. Stat. 43-3102

Waiver of right to counsel by juvenile; writing; when waiver not allowed.

(1) In any court proceeding, any waiver of the right to counsel by a juvenile shall be made in open court, shall be recorded, and shall be confirmed in a writing signed by the juvenile.

(2) A court shall not accept a juvenile's waiver of the right to counsel unless the waiver satisfied subsection (1) of this section and is an affirmative waiver that is made intelligently, voluntarily, and understandingly. In determining whether such waiver was made intelligently, voluntarily, and understandingly, the court shall consider, among other things: (a) The age, intelligence, and education of the juvenile, (b) the juvenile's emotional stability, and (c) the complexity of the proceedings.

(3) The court shall ensure that a juvenile represented by an attorney consults with his or her attorney before any waiver of counsel.

(4) No parent, guardian, custodian, or other person may waive the juvenile's right to counsel.

(5) A juvenile's right to be represented by counsel may not be waived in the following circumstances:

(a) If the juvenile is under the age of fourteen;

(b) For a detention hearing;

(c) For any dispositional hearing where out-of-home placement is sought; or

(d) If there is a motion to transfer the juvenile from juvenile court to county court or district court.