

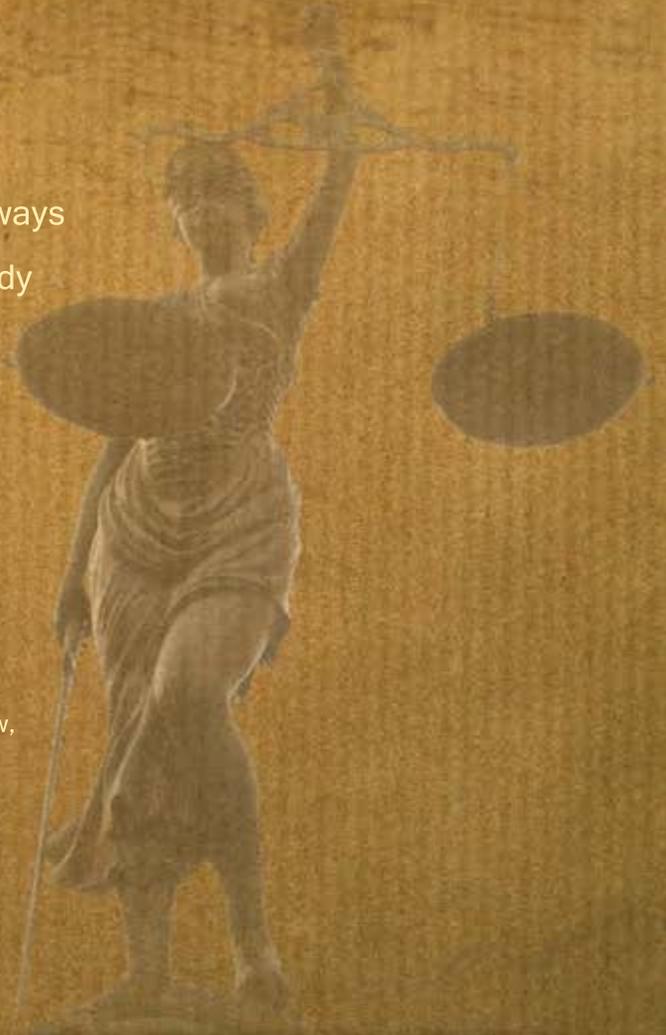
# 2011 ANNUAL REPORT

## OF THE LANCASTER COUNTY PUBLIC DEFENDER

*We the People*  
*insure domestic Tranquility, provide for the common Defense*  
*and our Posterity, do ordain and establish this Constitution*  
*Article I*

“It is just plain wrong to force lawyers to ration their services to clients in drastic ways just so that it can be said that a warm body possessing a law license ‘represented’ the accused. This persistent triumph of form over substance is a shameful mockery of the constitutional right to counsel.”

Norman Lefstein, Professor of Law and Dean Emeritus of the Indiana University School of Law, from his book *Securing Reasonable Caseloads: Ethics and Law in Public Defense*. (2011).





I consider Norm Lefstein a mentor and a friend. Over the years, I have come to know him as a passionate advocate for the right to counsel. His leadership on indigent defense at the national level is unparalleled. One need only look at the many activities in his career as outlined in his new book [Securing Reasonable Caseloads: Ethics and Law in Public Defense](#). He served as director of the Public Defender Service for the District of Columbia, as an Assistant U.S. Attorney in D.C., and as a staff member in the Office of Deputy Attorney General of the U.S. Department of Justice.

His professional activities include serving as Chair of the American Bar Association Section of Criminal Justice; as a member of the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID); as chair of SCLAID's Indigent Defense Advisory Group; and as Chief Consultant to a Subcommittee on Federal Death Penalty Cases of the Judicial Conference of the United States. For seventeen years, Professor Lefstein chaired the Indiana Public Defender Commission to which he was appointed by Indiana Governors. He also has frequently been an expert witness in proceedings concerned with professional ethics and/or defense representation.

Professor Lefstein was a member and co-reporter for the National Right to Counsel Committee, organized by The Constitution Project and the National Legal and Defender Association. In this capacity, he played a major role in writing *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, published in 2009. He also was the reporter for the ABA Eight Guidelines of Public Defense Related to Excessive Defender Workloads, approved by the American Bar Association in 2009. During the 1970's, Professor Lefstein served as Reporter for the Second Edition of ABA Criminal Justice Standards Relating to The Prosecution Function, The Defense Function, Providing Defense Services, and Pleas of Guilty. In 1982, Professor Lefstein wrote *Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing*, sponsored by ABA SCLAID; and in 2004, he co-authored *Gideon's Broken Promise America's Continuing Quest for Equal Justice*, also an ABA SCLAID publication. His law review articles concerned with indigent defense include an extensive study comparing public defense in the United States with criminal legal aid in the United Kingdom. In 2005, Professor Lefstein was honored as recipient of the Champion of Indigent Defense Award, presented by the National Association of Criminal Lawyers.

For all of his activities and accomplishments, Dean Lefstein remains accessible to those who need his assistance with problems in indigent defense systems. He knows that public defenders and assigned counsel across the country are asked every day to represent too many clients and that this has a significant negative impact on real lives.

His message is really quite simple and I have adopted it as my own:

- It is the client's right to effective assistance of counsel that is at stake when attorneys are asked to represent too many clients.
- There is a limit to the number of clients that an attorney can competently represent.
- It is the responsibility of the entire criminal justice system to make sure that public defenders and assigned counsel are not appointed to more cases than they can competently handle.

Those who truly care about the constitutional right to counsel, including judges and prosecutors, would adopt and live by this same message. Otherwise, one is simply assisting the "shameful mockery" of the constitutional right to counsel.

A handwritten signature in black ink that reads "Dennis R. Keefe". The signature is written in a cursive, flowing style.

Dennis Keefe

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## **MISSION STATEMENT**

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*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**

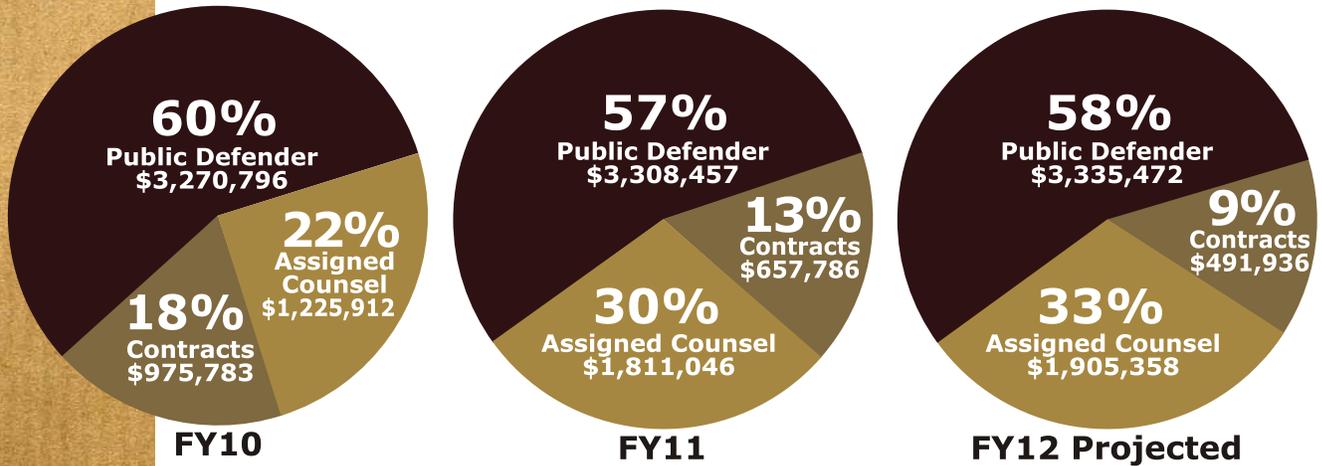
It is the philosophy of the Lancaster County Public Defender's Office that each client should receive high quality legal representation which is as good as that provided by the best of the private bar.

## **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 Defender's Office, private assigned counsel in county, district and juvenile court, and a series of contract attorneys for juvenile court and the Child Support and Paternity cases. The chart below compares the FY12 projected expenditures as of December 31, 2011 (as reported by the Budget and Fiscal Office) for each segment of the system with the FY11 Actual Expenditures.



### 2011 ASSIGNED COUNSEL NOTES

- Of the 1,577 felony cases closed by the public defender's office in 2011, 409 cases (26%) were closed because of a conflict of interest which required the appointment of the Commission on Public Advocacy or private assigned counsel. In addition, 55 felony cases were closed by the public defender because they exceeded the office's caseload standards.
- The Nebraska Commission on Public Advocacy was appointed by the Courts of Lancaster County to represent clients in 23 of the 463 felony cases where the public defender had a conflict or where the office exceeded its caseload limits. 3 of those cases involved charges of First Degree Murder, 12 were violent felonies, 2 were drug felonies, 3 were felonies that were companion cases to one of the other types of felonies, and 3 were appeals. The commission's services are provided at no cost to Lancaster County. Based upon time averages for the Lancaster County Public Defender's Office, the commission saved Lancaster County over \$90,000 in 2011.
- Of the 3,876 misdemeanor cases closed by the public defender's office in 2011, 571 (15%) were closed because of a conflict of interest requiring appointment of assigned counsel. In addition, 3 City Attorney-filed misdemeanor cases were closed because they exceeded the public defender's caseload standards (Compared to 311 in 2009 and 18 in 2010).
- Of the 1,280 Juvenile Law Violations and Status Offender cases closed by the public defender in 2011, 142 (11%) were closed because of a conflict of interest and either a contract attorney or private attorney was appointed. In addition, the public defender closed 16 of these cases because they exceeded our office caseload standards (compared to 14 in 2009 and 27 in 2010).

## CONTRACT NOTES

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- At the beginning of 2011, Lancaster County had contracts for legal services in Juvenile Court with 2 private attorneys/law firms and the contract with Legal Aid of Nebraska. At the end of 2011, the 2 private attorney contracts ended, leaving only the contract with Legal Aid of Nebraska.
- According to the Separate Juvenile Court, there were 342 new 3(a) (abuse/neglect) cases filed in the Separate Juvenile Court of Lancaster County in 2011, which represents a decrease of 18% from the 2010 record number of 415 new cases. This decrease would have reduced the number of attorney appointments needed in such cases by approximately 175.
- According to the State Court Administrator, the total number of filings in the Separate Juvenile Court of Lancaster County in 2011 were 83% of the total number of filings in Douglas County's Separate Juvenile Court (Lancaster County Law Violation filings were 90% of Douglas County's numbers, Abuse and Neglect Cases were 73% of Douglas County's numbers, and Lancaster County's Status cases were 77% of Douglas County's filings). Lancaster County's population is 55% of Douglas County's population.
- In the second year of the Child Support/Paternity contract between Lancaster County and the DeMars Gordon Law Firm, the contractor opened 380 Child Support contempt cases and closed 427, opened 124 new Paternity cases and closed 127, and opened 17 other Orders To Show Cause matters. The firm logged 1,649.6 hours total for this work which would exceed the standards for one attorney in this office.

## 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 2011. They are Andy Strotman, Randy Goyette, Sean Brennan, Brad Roth, and Jeanelle Lust.

# PUBLIC DEFENDER'S OFFICE OPERATIONS

## OVERVIEW

The overall number of new cases for the Lancaster County Public Defender's Office increased by 2% in 2011 over 2010, with felony cases increasing by 1% and misdemeanors increasing by 6%. Juvenile cases were down slightly but the status offenses were up and there are signs that these cases will continue to increase.

Although the state filed 2.3% fewer felony cases in County Court in 2011, our office was appointed to 1% more felony cases than in 2010. Drug felonies showed a 17% increase and Violent Felonies showed a 3% increase but all other categories of felony cases decreased in 2011.

Overall, our misdemeanor cases increased by 6% in 2011. The number of County Attorney filed misdemeanor cases opened by the public defender increased by 4% and the number of City Attorney filed misdemeanors, after showing several years of declining numbers, increased by 8% in 2011. In terms of charge categories, Assaults increased by 5% overall, Drunk Driving cases increased by 1% and Suspended License cases showed a 20% increase. In those charge categories where the judges appear to have divergent opinions about the possibility of a jail sentence and thus the appointment of counsel fluctuates (Trespass, Disturbing the Peace, Thefts), we saw increases of over 20% in each.

## NEW TERM OF OFFICE BEGINS

Dennis R. Keefe was sworn in to office for his 8th consecutive term as Lancaster County Public Defender in January of 2011 and shortly thereafter the office celebrated its 40th anniversary. Keefe is the only current employee of the office that was also employed as an original member of the office in its first year (1971).



## DEPUTY PUBLIC DEFENDER TRAINS MEXICAN LAWYERS AND JUDGES

Elizabeth Elliott, one of the Deputy Public Defenders in the office, was invited to join a team from the University of Nebraska College of Law in 2011, the first year of the Rule



*Ms. Elliott teaching in Mexico City as part of the partnership.*

of Law Partnership, a USAID-funded program. The partners in this project were **Universidad Nacional Autonoma de Mexico (UNAM)** and the **University of Nebraska College of Law (UNL)**. The partnership was formed to help prepare UNAM faculty, students and the local bench and bar to meet the challenges they may encounter during the implementation of the new adversarial criminal justice system in Mexico. Ms. Elliott traveled with her team to Mexico City where they provided training to their Mexican counterparts. The students of the training consisted primarily of UNAM

professors who teach criminal law. During the 5 day "working seminar", they received instruction in the oral adversarial process, including conducting opening statements, questioning witnesses - by both direct and cross examination - and making closing arguments. Additionally, the professors were taught various critiquing methods and techniques to aid them when giving feedback to their students performing such tasks. During the practical application portions of the workshop, each professor performed each segment of an oral trial in mock courtrooms and received both an in-courtroom and video-tape performance critique by members of the teaching team.

Each professor also conducted two feedback exercises whereby they observed a performance and gave a relevant, appropriate critique. The teaching team for the workshop consisted of two experienced criminal attorneys representing UNL, including Ms. Elliott, and two professors from UNAM. The workshop held at UNAM was one of several trial advocacy training courses to be conducted during the three year life of the partnership.



#### **Kristi Egger-Brown Honored For Years of Service**

In May of 2011, Kristi Egger-Brown, one of the Deputy Public Defenders was honored at the County's Employee Recognition Breakfast for her 20 years of service to the office. Ms. Egger-Brown was a law clerk with the office when she attended Law School and she worked for the Hall County Public Defender before joining the Lancaster County Public Defender's Office as a Deputy Public Defender.

## **FEDERAL GRANT HELPS WITH TRAINING AND TECHNOLOGY**

The office also benefitted throughout the year from two different grants that originated with the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance and was awarded to our office by the Nebraska Crime Commission. In one of the grants, the Lancaster County Public Defender's office partnered with the Nebraska State Bar Association's Minority Justice Committee, and Professor Kevin Ruser of the UNL College of Law to provide statewide training on the immigration consequences of criminal convictions. Over 300 attorneys were provided with the training in state and the grant also provided funds to send 4 county public defenders to national immigration training in Albuquerque, New Mexico. In addition, the grant provided a number of county public defender offices with Professor Ruser's Manual on Immigration Law for criminal defense attorneys. The other grant provided the office with funds to upgrade the office's case management system, allowed us to purchase 7 additional mini laptop computers for attorneys to take to court and update their case files, as well as the ability to send all of the attorneys in the office to national premier training programs for criminal defense attorneys.

#### **BUDGET WOES HIT LANCASTER COUNTY**

The budget process was a difficult one in 2011. The County was confronted with a decrease in state aid to counties and a significant demand from county corrections for additional funding for operational costs related to the new jail. The amount of general fund money budgeted for the Lancaster County Public Defender's Office actually decreased in 2011 (for FY12). As the County Commissioners were looking at all options, they asked the Lancaster County Indigent Defense Task Force to lead a study of the costs of the entire indigent defense system. The County retained Elizabeth Neeley, PhD. Of Objective Advantage as their research consultant and the report is due to be released in 2012.

#### **OFFICE TIME TRACKING CITED IN NEW BOOK AS MODEL PROCESS**

As the year ended, The American Bar Association Standing Committee on Legal Aid and Indigent Defendants, published a book entitled '**Securing Reasonable Caseloads - Ethics and Law In Public Defense**'. The author of the book was Norman Lefstein, Professor of Law and Dean Emeritus of the Indiana University School of Law-Indianapolis. Professor Lefstein had previously served as the director of the Public Defender Service for the District of Columbia, as an Assistant United States Attorney in D.C., and as a staff member in the Office of the Deputy Attorney General, United States Department of Justice. He has played an important role over the past 50 years in the development of national standards for indigent defense as well as writing regarding ethical obligations of public defenders and public defender managers regarding caseloads. In the book, he cites favorably the Lancaster County Public Defender's Office's history of attorney time tracking as a worthwhile activity for public defender offices in their quest to find manageable caseloads.

# THE FELONY DIVISION

Scott P. Helvie, Chief Deputy  
 Robert G. Hays, Chief Deputy  
 Sarah P. Newell, Deputy  
 Webb E. Bancroft, Deputy  
 Kristi J. Egger-Brown, Deputy  
 Shawn D. Elliott, Deputy  
 Elizabeth D. Elliott, Deputy  
 Christopher L. Eickholt, Deputy

Timothy M. Eppler, Deputy  
 John C. Jorgensen, Deputy  
 Joseph D. Nigro, Deputy  
 Joe Renteria, Investigator

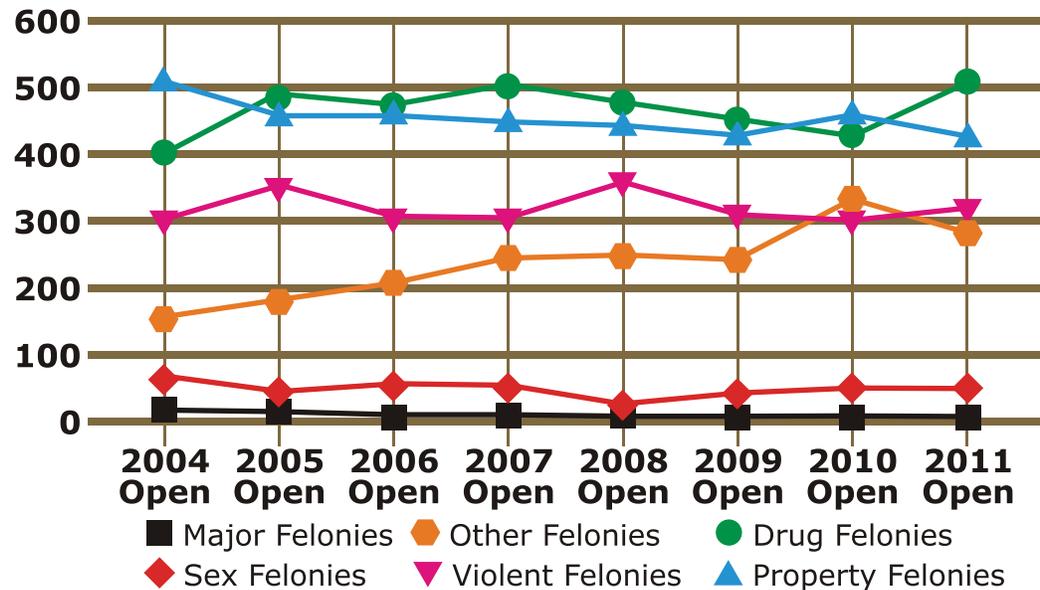
Steve Schultz, Paralegal  
 Angela Franssen, Paralegal  
 Kristi Gottberg, Paralegal  
 Abbi Romshek, Law Clerk  
 Leroy Scott, Law Clerk  
 Lori Hoetger, Law Clerk  
 Luke Henderson, Law Clerk  
 Ariel Johnson, Law Clerk

## Felony Workload Capacity vs Actual Workload



With one Major case closing following a trial in 2011 and 2 new Major cases of First Degree Murder assigned to the office, we exceeded our workload capacity by 55 cases in the felony division in 2011.

## NEW OPEN FELONIES BY TYPE



## FELONY CASE NOTES

- The county attorney's office filed 1,891 felony cases in Lancaster County Court in 2011, representing a 2.3% decrease from 2010.<sup>1</sup> The public defender's office was appointed in 1,601 (85%) of those cases in the first instance.
- The 1,601 felony cases opened by the public defender in 2011 represents a 1% increase over 2010 and, for the second year in a row, this represents an all time high in terms of new open felony cases.
- In 2011, Drug Felonies jumped by 17% over the previous year, representing an all time high number of Drug Felonies of 512 cases. Violent Felonies showed a 3% increase, while all other types of felonies declined from the 2010 figures or remained unchanged.
- Major Cases Opened and Closed in 2011: We opened 5 new major cases and closed 6 cases. The office opened 4 cases of First Degree Murder and 1 case of Second Degree Murder in 2011. We closed 3 cases of First Degree Murder, 2 because of conflicts and 1 because of case overload. All 3 of these cases were accepted by the Nebraska Commission on Public Advocacy. We closed 1 case of Second Degree Murder following a trial, 1 case of attempted Second Degree Murder following trial, and 1 case of Child Abuse Resulting in Death following trial.

1. The figures for new filed felonies has been provided by the Lancaster County Court Judicial Administrator.

- In 2011, the Public Defender's Office had 39 clients admitted to the Adult Drug Court Program and 17 public defender Drug Court clients had their cases closed; 1 client's case was closed because the charges were dismissed, but of the remaining clients, 5 clients (31%) had their cases closed following successful graduation and case dismissal and 11 of the clients (69%) had their cases closed because of unsuccessful participation and the cases were referred back to the regular criminal courts. Joseph Nigro was the attorney assigned to Adult Drug Court in 2011.

## MISDEMEANOR DIVISION

Susan R. Tast, Deputy	Valerie R. McHargue, Deputy	Jed Rojewski, Paralegal
Joseph D. Nigro, Deputy	Todd C. Molvar, Deputy	Kristi Gottberg, Paralegal
Paul E. Cooney, Deputy	Sarah P. Newell, Deputy	Angelia Onuoha, Paralegal
Jennifer M. Houlden, Deputy		Steve Schultz, Paralegal

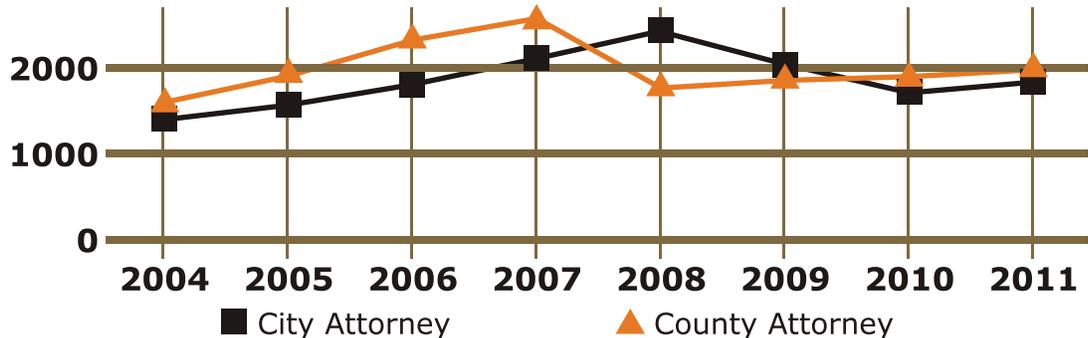
### Misdemeanor Workload Capacity vs Actual Workload



The misdemeanor division withdrew from only 3 cases in 2011 because of workload standards and all 3 cases were due to the fact that they were companions to felony cases. The actual 2011 misdemeanor workload did not reach capacity for the office.

### GROWTH IN PUBLIC DEFENDER MISDEMEANOR CASES FILED BY THE CITY AND COUNTY ATTORNEYS FROM 2004-2011

*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, declined by 2.5% from 2010 to 2011.<sup>2</sup>
- Public Defender Office appointments in all misdemeanor cases increased by 6% from 2010 to 2011, but they still did not return to the record levels established in 2006 and 2007. There was an increase for City Attorney filed cases 8% and an increase for County Attorney filed cases of 4%.
- There are 3 Deputy Public Defenders and 1.25 paralegals assigned to the County Attorney filed Misdemeanors which totaled 1,929 new cases in 2011.
- There are 1.3 Deputy Public Defenders and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 1,855 new cases in 2011.
- Drunk Driving Cases increased by 1% and Suspended License Cases increased by 20% in 2011. Some of the charge categories where judges differ on the use of jail time as punishment showed significant increases including Theft (up 21%), Disturb The Peace (up 24%) and Trespass (up 34%).

2. These figures are from the State Court Administrator.

# JUVENILE DIVISION

Margene M. Timm, Chief Deputy  
Todd C. Molvar, Deputy  
Yohance L. Christie, Deputy  
Valerie R. McHargue, Deputy

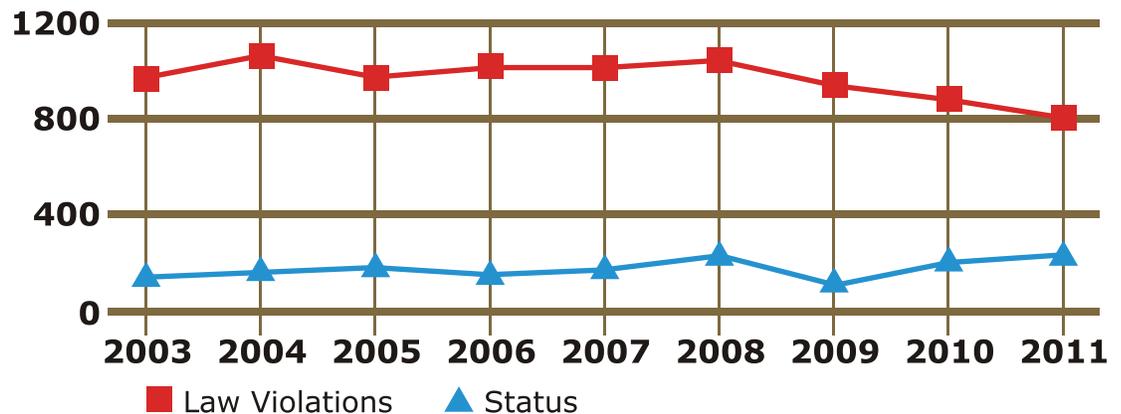
Kristi Gottberg, Paralegal  
Jed Rojewski, Paralegal

## Juvenile Workload Capacity vs Actual Workload



The juvenile division exceeded the monthly caseloads in January and then again in May and June of 2011 for a total of 16 cases but ended the year under the workload capacity for the office.

## JUVENILE CASE OPENINGS BY CASE TYPE



## JUVENILE CASE NOTES

- The State Court Administrators Office's report shows that law violation filings in the Separate Juvenile Court of Lancaster County decreased by slightly more than 6% from 2010 to 2011. Lancaster County Public Defender appointments in law violation cases declined by 11%. Law Violation filings in Lancaster County have declined by 23% from the 2008 high.
- The State Court Administrators Office's report also shows that Status filings (mostly school trancies) grew by almost 56% in 2011. The Public Defender's Office experienced a 40% increase in appointments in Status cases in 2011.
- In 2011, the public defender's office conflicted out of 11% of the juvenile cases it closed, or 142 cases. Some of these cases were then assigned to the remaining contractors and others to private assigned counsel. In addition, the office was relieved of its appointment in 16 cases because we exceeded the new caseload standards for the office. There is a caveat here: we do not have information on all of the appointments to private attorneys made by the juvenile court because they sometimes appoint attorneys without asking us if we have a conflict or, in the case of case overload, they sometimes continue to appoint private attorneys even after we no longer have an overload. The 16 cases occurred when the office exceeded the monthly limits in January, May, and June, 2011. By the end of the year, the number of new cases slowed and the office did not reach the annual maximum. We will attempt to adjust the monthly maximums in the future so that we do not withdraw unnecessarily from cases.
- The Public Defenders Office opened 21 new cases in the Juvenile Drug Court program in 2011 and closed 18. Of the 18 cases closed, 8 were closed following successful completion and graduation and 10 were closed following unsuccessful termination from the program.

## MENTAL HEALTH COMMITMENTS AND MISCELLANEOUS CASES

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Todd C. Molvar, Deputy  
Joseph D. Nigro, Deputy  
Andy Conroy, Law Clerk  
Matthew Meyerle, Law Clerk  
Abbi Romshek, Law Clerk  
Leroy Scott, Law Clerk

- Following years of steady decline in new petitions filed, 2011 resulted in an all-time low number of new mental health commitment petitions (176).
- 3 of the new petitions in 2011 involved petitions for commitments under the Sex Offender Commitment Act.
- There were 2 appeals filed in the district court from mental health commitment proceedings in 2011.
- The public defenders office opened 229 miscellaneous cases in 2011 compared to 234 miscellaneous cases in 2010 and 225 miscellaneous cases in 2009 (after adjusting for the Paternity cases). The 2011 cases included 160 felony revocation of probation cases; 27 fugitive from justice cases; 39 adult drug court cases; and 3 new cases involving reviews of cases where there had been a verdict of not responsible by reason of insanity.

## FUTURE ISSUES

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**NEW JAIL WILL OPEN.** The Lancaster County jail will open in late fall of 2012. This will have a major impact on the Lancaster County Public Defender's Office. Currently, attorneys can visit their clients in jail by walking across the street or in between court appearances in the various courts. With the new jail, attorneys and paralegals will have to plan their visits with the client in advance, walk to their vehicle, drive 5 miles to the new jail, park, wait, and then visit with the client, and then make the return trip. This will affect everything from the amount of money that we need for mileage reimbursement to the amount of time attorneys must spend per case, affecting the workload standards of the office. We began 2012 with a project to specifically track the amount of time attorneys currently spend on jail visits so that we can compare that data to the amount of time such visits will require when the new jail opens.

**JUVENILE STATUS CASES.** Early in 2012, the Nebraska Legislature was considering additional changes to the school truancy statues that may have the affect of significantly increasing status offense cases that are filed and that require appointed counsel.

**NEBRASKA COMMISSION ON PUBLIC ADVOCACY.** The Legislature was also considering a bill that could significantly impact the ability of the Commission on Public Advocacy to handle as many cases in Lancaster County as they have in the past.

## APPENDIX A

**TABLE 1**

**LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
OPEN/CLOSED CASELOAD REPORT 2011**

<b>CASETYPE</b>	<b>PENDING START</b>	<b>OPENED 2011</b>	<b>CLOSED 2011</b>	<b>PENDING END 2011</b>
Appeals	47	92	105	38
Felonies	595	1596	1570	592
Juveniles	500	1325	1280	553
Major Cases	4	5	7	2
Mentals	6	176	204	4
Miscellaneous	100	230	208	111
Misdemeanors	771	3784	3876	685
Totals	2023	7208	7250	1985

**TABLE 2**

**LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
HISTORICAL COMPARISON OF CASES OPENED SINCE 2001**

<b>CASETYPE</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Chg. 10-11</b>
Appeals	96	95	109	110	107	119	110	101	95	98	92	-6%
Felonies	1130	1404	1368	1415	1515	1506	1566	1558	1476	1573	1596	1%
Juveniles	1520	1487	1331	1467	1417	1520	1517	1597	1323	1346	1325	-2%
Major Cases	6	10	15	12	11	4	11	7	5	5	5	0%
Mental Comm.	458	533	471	416	415	370	454	289	252	227	176	-22%
Misc.	221	202	210	178	187	810	764	749	616	234	230	-2%
Misd.	3661	2955	2749	3157	3551	4101	4291	3970	3820	3556	3784	-6%
Totals	7092	6686	6253	6755	7203	8430	8713	8271	7587	7039	7208	2%

## APPENDIX B

### LANCASTER COUNTY GENERAL FUND EXPENSE BUDGET

<b>Public Defender EXPENDITURES</b>	<b>ACTUALS 2009-10</b>	<b>MODIFIED BUDGET 2010-11</b>	<b>ACTUALS 2010-11</b>	<b>PROPOSED BUDGET 2011-12</b>	<b>ADOPTED BUDGET 2011-12</b>
SALARIES & WAGES	2,233,379	2,269,029	2,289,508	2,276,585	2,276,585
EMPLOYEE BENEFITS	635,316	646,706	651,986	643,133	643,133
OFFICE SUPPLIES	18,591	16,750	15,225	16,750	16,750
OTHER CONTRACTED SERVICES	58,512	66,300	58,851	68,307	68,307
TRANS, TRAVEL & SUBSISTANCE	13,801	9,290	7,616	8,290	8,290
COMMUNICATIONS	21,359	20,996	23,386	18,943	18,943
POSTAGE, COURIER & FREIGHT	5,860	6,715	5,674	5,537	5,537
PRINTING & ADVERTISING	8,460	9,690	9,373	9,590	9,590
CONTRACTED HEALTH SERVICE	6,675	15,000	11,181	15,000	15,000
OTHER CLIENT SERVICES	0	50	0	0	0
MISC FEES & SERVICES	83,921	88,508	76,467	80,274	80,274
INSURANCE & SURETY BONDS	8,217	8,422	7,755	8,422	8,422
REPAIR & MAINTENANCE COST	0	500	0	500	500
RENTALS	151,223	151,223	151,223	151,223	151,223
EQUIPMENT	7,442	0	212	0	0
<b>TOTAL PUBLIC DEFENDER</b>	<b>3,252,756</b>	<b>3,309,179</b>	<b>3,308,457</b>	<b>3,302,554</b>	<b>3,302,554</b>

## APPENDIX C

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### 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)*

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### **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