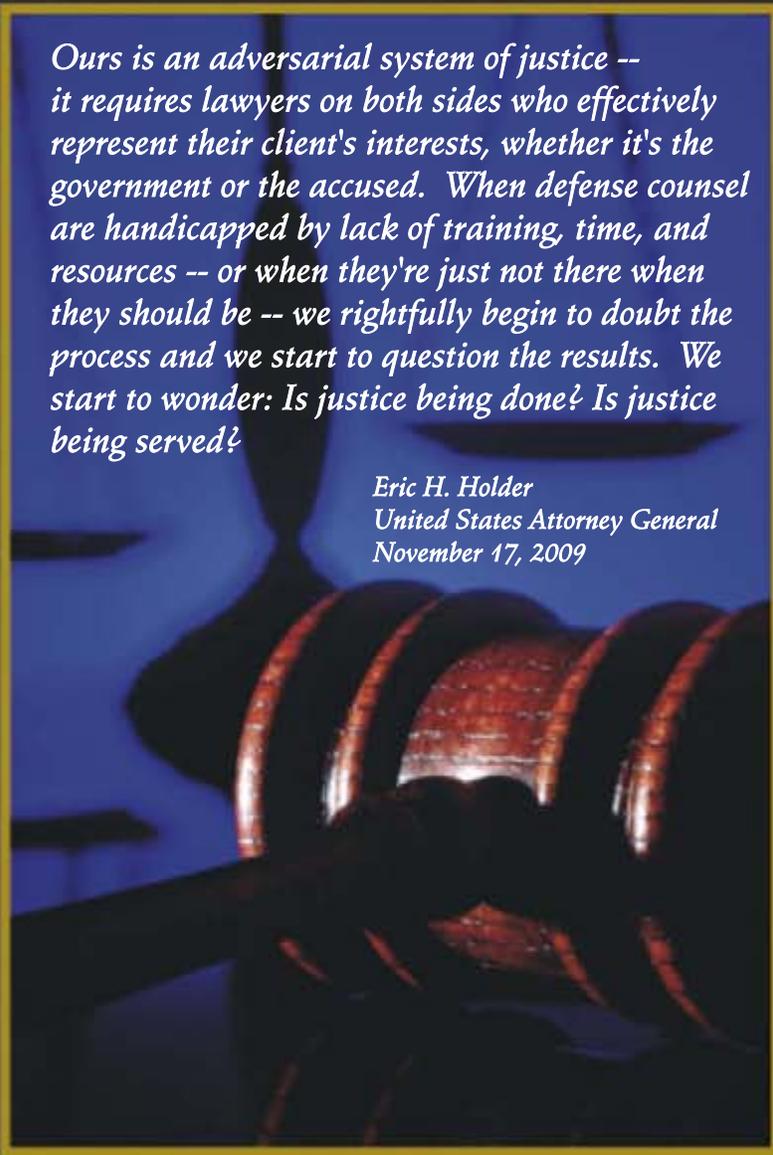


2009 ANNUAL REPORT OF THE LANCASTER COUNTY PUBLIC DEFENDER

Ours is an adversarial system of justice -- it requires lawyers on both sides who effectively represent their client's interests, whether it's the government or the accused. When defense counsel are handicapped by lack of training, time, and resources -- or when they're just not there when they should be -- we rightfully begin to doubt the process and we start to question the results. We start to wonder: Is justice being done? Is justice being served?

*Eric H. Holder
United States Attorney General
November 17, 2009*





Research shows that a vast majority of Americans believe that the quality of justice a person receives should not be determined by how much money he or she has.

Americans know that the only way to access justice is with competent legal representation. They also know that fairness demands that public defender systems must be well managed and adequately funded and resourced. In terms of providing for a fair justice system, this is infinitely more important than building jails and detention facilities.

I have had the honor of serving as the Public Defender in Lancaster County for more than 30 years. During that time I have constantly searched for ways to improve our office and the indigent defense system generally. I have sought out and participated in national organizations which are dedicated to improving the quality of services for accused persons who cannot afford an attorney. I have served as Chair of the Defender Council of the National Legal Aid and Defender Association and as a member of the American Bar Associations Standing Committee on Legal Aid and Indigent Defense, as well as Chair of their Indigent Defense subcommittee.

Through all of those enriching experiences I have learned many lessons about the importance of the Right To Counsel and best practices in making that right a meaningful reality for people who are accused but cannot afford an attorney. But my own experience, first in representing clients, and then in hiring and managing an office of public defenders, tells me that some factors are more important than others in making the dream of equal justice a reality. In my opinion, hiring staff who are not only effective advocates but who have a true commitment to the work that we do every day, paying reasonable salaries to retain them, and keeping the caseloads reasonable so as not to overwhelm them and send them fleeing to other opportunities, are essential to operating a quality indigent defense system.

We as an office took on the issue of reasonable caseloads in 2008 when we participated in a study of caseloads and workloads which ended with caseload standards for our office and a recommendation that we adopt them, which we did. 2009 was the first complete year that we used the standards and the results were much different than we had anticipated. This was not because we had to withdraw from more cases than we had anticipated, but rather, because we ended up withdrawing from fewer cases in virtually every category because reported crime rates declined and the number of cases filed declined. This was unexpected but welcome. It also made the first full year of case standards less onerous for all.

The research based caseload standards will stand, however, as a foundation for the future of the office. We will have times when we will have to withdraw from significantly more cases than was true in 2009, but everyone will know the reason and the County Board will be given research based information upon which to base decisions of when to hire additional staff.

Of course, it is true that having caseload standards does not automatically ensure that clients receive effective assistance of counsel. There are other issues that must be addressed. But it is clear to me that no matter how dedicated the attorneys, no matter how intelligent or creative they are, no matter how many hours they are willing to work, they cannot provide quality legal services if there is no limit on the number of clients they are expected to represent. It is not the only consideration in the management of a public defenders office but it is a very important one. As an office, we have taken a giant step forward in protecting the interests of all of our clients with the adoption of these standards.

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

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

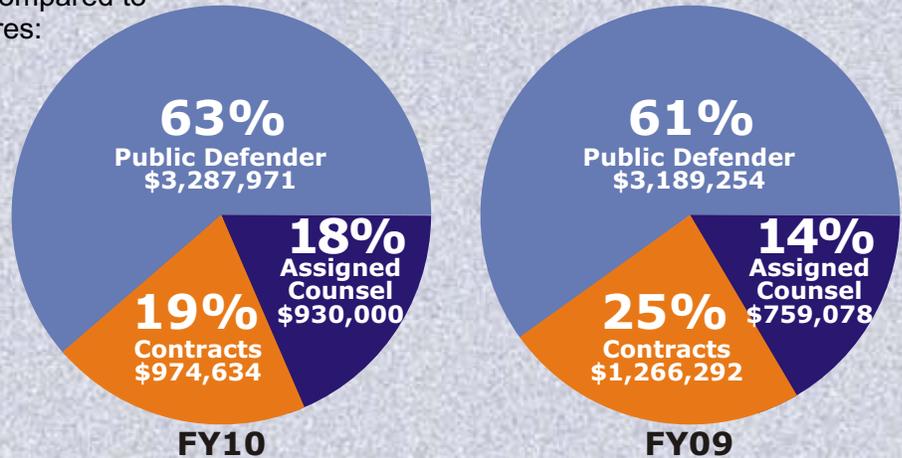
It is the philosophy of the Lancaster County Public Defender's Office that each client should receive high quality legal representation which is as good as that provided by the best of the private bar.

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 FY10 budgeted expenditures for each segment of the system is set out in the chart below, compared to the FY09 figures:



2009 Assigned Counsel Notes

- Of the 1,557 felony cases closed by the public defenders office in 2009, 385 cases (25%) were closed because of a conflict of interest which required the appointment of the Commission on Public Advocacy or private assigned counsel. In addition, 14 felony cases were closed by the public defender because they exceeded the office's caseload standards.
- The Nebraska Commission on Public Advocacy was appointed to represent clients in 16 of the 385 felony cases where the public defender had a conflict or the 14 cases where the office exceeded its caseload limits, and 1 Major Felony (Child Abuse Resulting in Death) case. The number of cases that the Commission accepted was down in 2009 because they determined that they would no longer accept drug cases because those cases created too many conflicts which resulted in their inability to represent clients in more serious and time consuming violent crimes. The commission's services are provided at no cost to Lancaster County and will save the county hundreds of thousands of dollars in attorneys fees.
- Of the 3,919 misdemeanor cases closed by the public defender's office in 2009, 538 (14%) were closed because of a conflict of interest requiring appointment of assigned counsel. In addition, 311 City Attorney-filed misdemeanor cases (8%) were closed because they exceeded the public defender's caseload standards.
- Of the 1,357 Juvenile Law Violations and Status Offender cases closed by the public defender in 2009, 176 (13%) were closed because of a conflict of interest and either a contract attorney or private attorney was appointed. In addition, the public defender closed 14 of these cases because they exceeded their office caseload standards.

Contract Notes

- At the beginning of 2009, Lancaster County had contracts for legal services in Juvenile Court with 11 private attorneys/law firms and 1 with Legal Aid of Nebraska.
- In a letter to the Lancaster County Board of Commissioners dated May 19, 2009, the Juvenile Court Judges informed the Board that they no longer wished to use the contracts to provide legal services in the Separate Juvenile Court of Lancaster County and asked the Board to let the contracts expire as they came to the end of a term. The judges decided to revert to the ad hoc assigned counsel system paying private assigned counsel \$65 per hour.

In their letter, the Juvenile judges said that their new system could save money in the delinquency cases (which are only 11% of the contracts costs) and the new system could result in cost savings through a more efficient ... process. However, they also complained that the current contract system for guardians ad litem encourages doing less for children rather than more, which implies that the judges expect more work to be done. Lancaster County Public Defender Dennis Keefe informed the Board that several studies he had conducted always showed that the contracts reduced the costs of providing these services by 30%.

- As a result of the judges action, two contractors gave notice terminating their contracts during 2009, and two other contracts were allowed to expire without renewal.
- According to the Separate Juvenile Court, there were 350 new 3(a) (abuse/neglect) cases filed in the Separate Juvenile Court of Lancaster County in 2009, representing a 10% decrease from the number they reported filed in 2008. This should have reduced the number of court appointed counsel needed in those types of cases by almost 100 appointments.
- According to the State Court Administrator, the number of total filings in the Separate Juvenile Court of Lancaster County was 79% of the total number filed in Douglas County.
- During the FY10 budget process the County Board also approved a new Child Support/Paternity contract beginning January 1, 2010.

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 2009. They are Andy Strotman, Randy Goyette, Sean Brennan, Brad Roth, and Jeanelle Lust.

Public Defender's Office Operations

Overview

2009 was a very interesting year for our office in more ways than one. It was the first full year that our caseload standards were implemented and while we expected to withdraw from a larger number of cases, an interesting thing happened reported crime and the number of new cases filed by prosecutors declined across the board. Felonies, misdemeanors, and juvenile cases all declined both in terms of the number of filings and in terms of the number of new cases assigned to the public defender. One of the few exceptions to this decline was the drunk driving cases (Public Defender Felony Drunk Driving cases increased by 70% and Misdemeanor Drunk Driving cases increased by 21%).

While we do not know the reason or reasons for the overall decline in cases, it comes as a welcome relief from several years of ever escalating caseloads. It is also a relief for the budget because fewer cases had to be assigned to private attorneys. Whether or not this decline is a trend will not be known for some time, but we will watch closely over the next few months to see what happens.

Comings and Goings

The office experienced more turnover in 2009 than we normally see. Two attorneys, Matthew Graff and Andrew Weeks, left the office for other opportunities and they will be missed. Dorothy Walker, who actually served two separate terms as a Deputy Public Defender retired and is spending more time with her grandchildren. Replacing Matt was former law clerk, Valerie McHargue, and replacing Andrew was Todd Molvar, a UNL College of Law graduate and a member of the Colorado Bar. Yohance Christie, another former law clerk with our office, was hired to replace Dorothy.



Honors and Awards

On April 13, 2009, Deputy Public Defender, Susan Tast, was honored by the University of Nebraska Omaha College of Public Affairs and Community Service with a 2009 Alumni Award for Excellence in Public Service for her many years of service to the Lancaster County Public Defenders Office. Pictured here at the awards luncheon are (left to right) Dr. Candice Batton, Director of the School of Criminology and Criminal Justice, Susan Tast, and B.J. Reed, Dean of the College of Public Affairs and Community Service.



On Tuesday, December 1, 2009, Jed Rojewski, a paralegal with our office was presented with the November Commissioners Award of Excellence, in a ceremony before the Lancaster County Board of Commissioners. Pictured (left to right) are Commissioner Ray Stevens and Jed Rojewski.

At the annual meeting and luncheon of the Nebraska Criminal Defense Attorneys Association, Dennis Keefe was presented with the 2009 Don Fiedler Lifetime Achievement Award named after a long time member and criminal defense attorney from Omaha. Keefe was a co-recipient with Douglas County Public Defender Tom Riley.

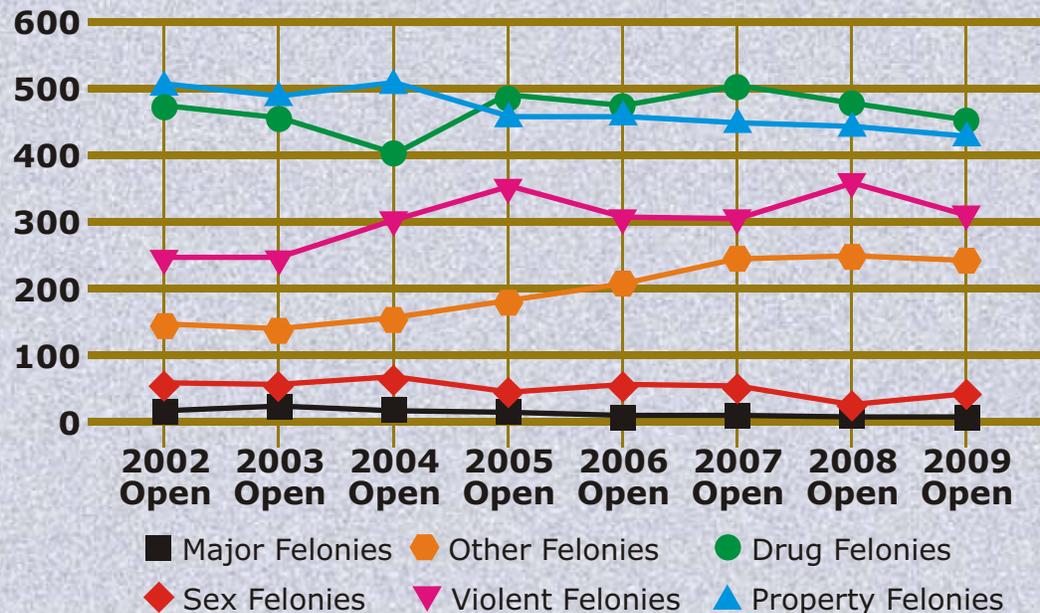
The Felony Division

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 Nagel, Law Clerk
 Jordan Clegg, Law Clerk

New Open Felonies By Type



Felony Case Notes

- The county attorneys office filed 1,818 felony cases in Lancaster County Court in 2009, representing a 6% decrease from 2008.¹ The public defenders office was appointed in 1,481 (81%) of those cases in the first instance.
- The 1,481 felony cases opened by the public defender in 2009 represents a 5% decrease over 2008 and is a five year low in terms of new open felony cases. This is certainly welcome news but it is too early to say if there is a trend.
- All of the sub categories of felonies declined in number when compared with 2008, except for the Sex Felonies.
- Despite this drop in overall filings and appointments, public defender appointments in felony drunk driving cases increased by 70% in 2009 when compared with 2008 and these cases will only continue to increase.
- Major Cases Opened and Closed in 2009: We opened 5 new major cases and closed the same number. The office opened 1 case of First Degree Murder, 1 case involving Attempted First Degree Murder, 2 cases of Second Degree Murder and 1 case of Attempted Second Degree Murder. We closed 1 case of First Degree Murder following a guilty plea; 1 case of Attempted First Degree Murder because of a conflict of interest; 1 case of Attempted Second Degree Murder because of a conflict of interest; 1 case of Child Abuse Resulting in Death because of a conflict; and 1 case of Manslaughter after a guilty plea.
- In 2009, the Public Defenders Office had 22 clients admitted to the Adult Drug Court Program and 29 public defender Drug Court clients had their cases closed; 16 clients (55%) had their cases closed following successful graduation and case dismissal and 13 of the clients (45%) had their cases closed because of unsuccessful participation and the cases were referred back to the regular criminal courts.

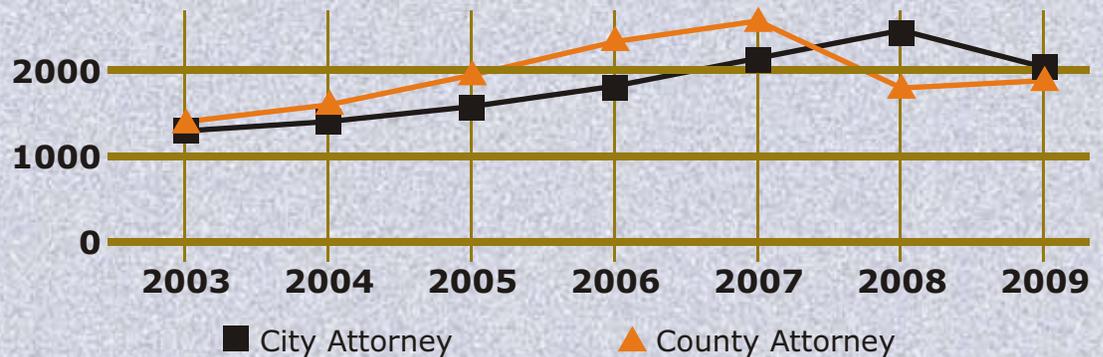
Misdemeanor Division

Susan R. Tast, Deputy
Sarah P. Newell, Deputy
Paul E. Cooney, Deputy
Andrew D. Weeks, Deputy

Angela Franssen, Paralegal
Kristi Gottberg, Paralegal

Growth in Public Defender Misdemeanor Cases filed by the City Attorney and County Attorney from 2003-2009

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 5% from 2008 to 2009.²
- Public Defender Office appointments in all misdemeanor cases decreased by 4% from 2008 to 2009, reaching a six year low. There was a decrease for City Attorney filed cases (8%) but a slight increase for County Attorney filed cases of 1%.
- There are 3 Deputy Public Defenders and one paralegal assigned to the County Attorney filed Misdemeanors which totaled 1778 new cases in 2009.
- There is 1 Deputy Public Defender and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 2042 new cases in 2009. Of all the major categories of cases involved here only one showed an increase - Drunk Driving Cases increased 21% from 816 misdemeanor cases in 2008 to 989 cases in 2009.

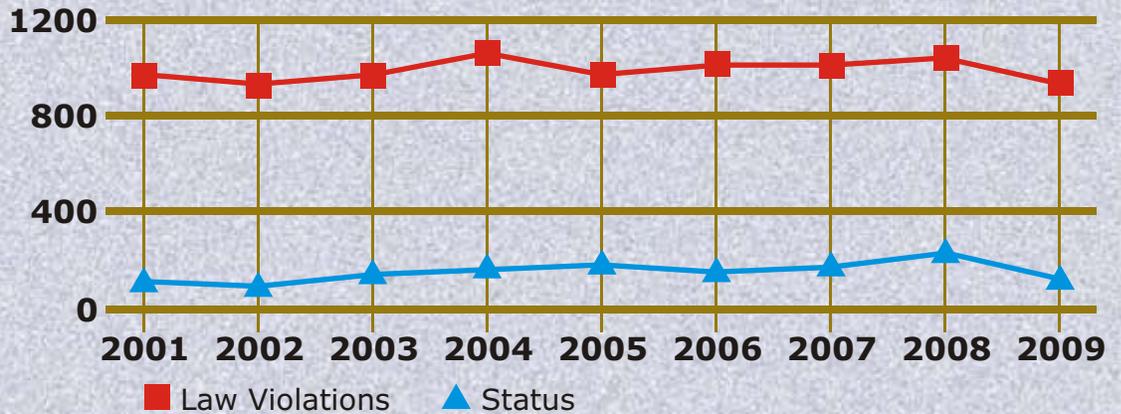
2. These figures are from the State Court Administrator.

Juvenile Division

Margene M. Timm, Chief Deputy
Tim M. Eppler, Deputy
Jennifer M. Houlden, Deputy

Jed Rojewski, Paralegal
Steve Schultz, Paralegal
Angelia Onuoha, Paralegal

Juvenile Case Openings By Case Type



Juvenile Case Notes

- Although their total numbers differ slightly both the Lancaster County Juvenile Court Administrator and the State Court Administrators Office show that law violation filings in the Separate Juvenile Court decreased by 11% from 2008 to 2009. Lancaster County Public Defender appointments in law violation cases declined by 15%.
- Again, although their total numbers differ slightly, both the Lancaster County Juvenile Court Administrator and the State Court Administrators Office show that Status filings (mostly school trancies) dropped by over 25% in 2009. The Public Defenders Office experienced a 29% decline in appointments in Status cases. Even with this large decline, Status filings in Lancaster County remain at approximately 84% of the filings in Douglas County.
- In 2009, the public defenders office conflicted out of 13% of the juvenile cases it closed, or 177 cases. Some of these cases were then assigned to the contractors and others to private assigned counsel. In addition, the office was relieved of its appointment in 14 cases because we exceeded the new caseload standards for the office.
- The Public Defenders Office opened 14 new cases in the Juvenile Drug Court program in 2009 and closed 24. Of the 24 cases closed, 9 were closed following successful completion and graduation and 15 were closed following unsuccessful termination from the program.

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

Dorothy A. Walker, Deputy
Steve Schultz, Paralegal
Brett Pettit, Law Clerk
Tara Nagel, Law Clerk
Yohance Christie, Law Clerk
Ti'era Johnson, Law Clerk

- The number of new petition cases in the Mental Health Commitment docket decreased slightly in 2009 by 2% over 2008 figures (from 255 cases to 249 cases).
- 8 of the new petitions involved petitions for commitment under the Sex Offender Commitment Act. This was a record number for those time consuming proceedings. There were 12 appeals filed in the district court from mental commitment proceedings in 2009, and 5 of those involved appeals from commitments under the Sex Offender Commitment Act.
- The public defenders office opened 225 miscellaneous cases in 2009 compared to 216 miscellaneous cases in 2008. The 2009 cases included 150 felony revocation of probation cases; 44 fugitive from justice cases; 22 adult drug court cases; and 7 cases involving reviews of cases where there had been a verdict of not responsible by reason of insanity.
- In 2009 the office opened 280 Child Support Contempt cases compared to 374 Child Support contempt cases in 2008. We also opened 110 Paternity cases in 2009 compared to 159 Paternity cases in 2008. At the end of 2009, all Child Support and Paternity cases were transferred to a new contract that Lancaster County entered into with the law firm of DeMars, Gordon, Olson and Zalewski.

Appendix A

TABLE 1

Lancaster County Public Defender's Office Open/Closed Caseload Report 2009

CASETYPE	PENDING START	OPENED 2009	CLOSED 2009	PENDING END 2009
Appeals	61	95	100	55
Felonies	614	1476	1552	559
Juveniles	523	1323	1357	504
Major Cases	4	5	5	3
Mentals	6	252	183	9
Miscellaneous	205	616	837	100
Misdemeanors	685	3820	3919	625
Totals	2098	7587	7953	1855

TABLE 2

Lancaster County Public Defender's Office Historical Comparison of Cases Opened Since 1999

CASETYPE	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Chg. 08-09
Appeals	85	86	96	95	109	110	107	119	110	101	95	-6%
Felonies	976	981	1130	1404	1368	1415	1515	1506	1566	1558	1476	-5%
Juveniles	1605	1453	1520	1487	1331	1467	1417	1520	1517	1597	1323	-17%
Major Cases	13	9	6	10	15	12	11	4	11	7	5	-29%
Mental Comm.	391	406	458	533	471	416	415	370	454	289	252	-13%
Misc.	134	152	221	202	210	178	187	810	764	749	616	-18%
Misd.	3438	3306	3661	2955	2749	3157	3551	4101	4291	3970	3820	-4%
Totals	6642	6393	7092	6686	6253	6755	7203	8430	8713	8271	7587	-8%

Appendix B

Lancaster County General Fund Expense Budget

Public Defender EXPENDITURES	ACTUALS 2007-08	MODIFIED BUDGET 2008-09	ACTUALS 2008-09	PROPOSED BUDGET 2009-10	ADOPTED 2009-10
SALARIES & WAGES	2,082,322	2,155,120	2,175,902	2,226,033	2,226,033
EMPLOYEE BENEFITS	606,074	625,458	631,264	653,519	651,687
OFFICE SUPPLIES	19,626	17,750	16,698	17,750	17,750
OTHER CONTRACTED SERVICES	65,594	55,866	51,727	56,500	56,500
TRANS, TRAVEL & SUBSISTANCE	13,406	11,928	10,747	12,079	12,079
COMMUNICATIONS	22,091	19,800	20,712	20,996	20,996
POSTAGE, COURIER & FREIGHT	5,847	5,665	6,351	6,715	6,715
PRINTING & ADVERTISING	13,348	12,340	10,462	12,340	12,340
CONTRACTED HEALTH SERVICE	7,550	15,000	8,925	15,000	15,000
OTHER CLIENT SERVICES	0	50	0	50	50
MISC FEES & SERVICES	112,417	99,258	80,924	95,283	95,283
INSURANCE & SURETY BONDS	8,192	8,387	8,330	8,387	8,387
REPAIR & MAINTENANCE COST	400	500	532	500	500
RENTALS	95,521	148,335	148,335	151,223	151,223
EQUIPMENT	9,639	1,515	1,692	1,189	1,189
TOTAL PUBLIC DEFENDER	3,062,029	3,176,972	3,172,603	3,277,564	3,275,732

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