

2012 ANNUAL REPORT

OF THE LANCASTER COUNTY PUBLIC DEFENDER

**"If we are to keep our democracy,
there must be one commandment:
thou shalt not ration justice."**

- Judge Learned Hand



In 2012, the Nebraska Supreme Court appointed an ad hoc committee to study and recommend standards for qualifications of appointed counsel for adults in Nebraska Courts. This followed a failed attempt to reach a consensus a few years before when proposed standards were roundly criticized by many individuals and groups. I was asked to serve on this committee and I agreed, but I was not sure what to expect as a final outcome given the previous experience and the composition of the group which included many judges and prosecutors.

It is interesting to me that, in 2012, we in Nebraska are still talking about whether we should have indigent defense standards and what they should look like. We are far behind the times. Most states, local jurisdictions and individual public defender offices that are considered by many observers to have the best systems of providing for indigent defense, adopted meaningful, enforceable standards long ago. Some jurisdictions have adopted qualification standards, some have adopted performance standards and others have adopted delivery system standards or a

combination of all three. These standards have, in many instances, made a measurable difference in improving the quality of the indigent defense system.

The focus of the Nebraska group was on qualification standards for appointed counsel and a fair system of assigning the cases. The discussion over many meetings brought out some interesting facts and ideas. Judges from rural areas, for example, said the problem for them was finding anyone who wanted to do these court appointments and there was some fear that with qualification standards, this problem would be exacerbated. We had a lively discussion of where to draw the line for various qualification standards, such as educational requirements, with some arguing that attorneys right out of law school could handle Class I misdemeanor offenses, and others disagreeing with that proposition.

More judges than I would have anticipated, both rural and urban, expressed concern about the quality of services being provided by some assigned counsel. (Some of this concern related to caseloads that were clearly outrageous but some of it is apparently the result of attorneys not prepared for the work). There was also an expression of concern by some attorneys in the group that the appointment process was not fair and transparent. The discussion of what the appointment process should look like led to a difficult (and uncomfortable for judges) discussion of how to remove an attorney from the list.

All of these issues are important and some are difficult to resolve but they have all been confronted by other jurisdictions that have actually implemented the type of standards we are talking about. We are not unique in regards to the problems we experience with the indigent defense systems. But, just because the problems are difficult does not mean we should not confront them. The unavailability of attorneys in rural Nebraska affects many aspects of our judicial system, and the problem with finding attorneys interested in accepting court appointments is real. However, that does not mean that we should allow unqualified attorneys or attorneys who are accepting far too many cases to be able to handle them competently, to represent the poor in criminal cases.

Yes, it is difficult for a judge to tell an attorney that he or she is not qualified for a certain type of court appointment or to remove an attorney from the list, but if we are going to have the judiciary running the system (which I would argue, based upon national system standards, we should not do) then exactly those conversations need to take place. When you consider all of the collateral consequences that have been heaped on top of the criminal penalties (even for misdemeanors) by state and federal legislators who pander to various emotional arguments on crime and the criminal justice system, then you do need to make sure that attorneys are qualified to represent people even in misdemeanor cases. Just because someone has a law degree and has passed the bar does not mean that the person is competent to represent individuals charged with a crime (this was confirmed by the experience of a number of judges on the committee).



I always remind myself when I am discussing indigent defense with others that there are three fundamentally important facts to remember about this issue: (1) This is the only area of law where the client has a constitutional right to counsel; (2) Notwithstanding that it is a constitutional right, the client does not get to choose who represents her/him; and (3) All of this legal work is paid for with public funds, which should mean a system that is transparent, accountable and as efficient as possible.

The final product of this committee which was forwarded to the Nebraska Supreme Court near the end of 2012, after consulting various groups of stakeholders, is the product of compromise. It is certainly not everything that I think we should have. It is probably more than some would want. But, at least it would be a start, if the Court implements the standards in a way that makes them a mandatory requirement.

I am particularly excited about one aspect of these discussions – the Nebraska State Bar Association and Nebraska's two law schools have agreed to partner to provide a program for new attorneys, waiting on their bar results, who want to accept court appointments in criminal cases. I am very hopeful that Nebraska will finally join the ranks of many other jurisdictions and states who have tried to improve their indigent defense system through the implementation and enforcement of meaningful standards.

If Nebraska does not take this next step in 2013, the year of the 50th anniversary of the United States Supreme Court decision in *Gideon v. Wainwright*, it will simply reaffirm the position of official indifference to the Constitutional Right to Counsel in this state.

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

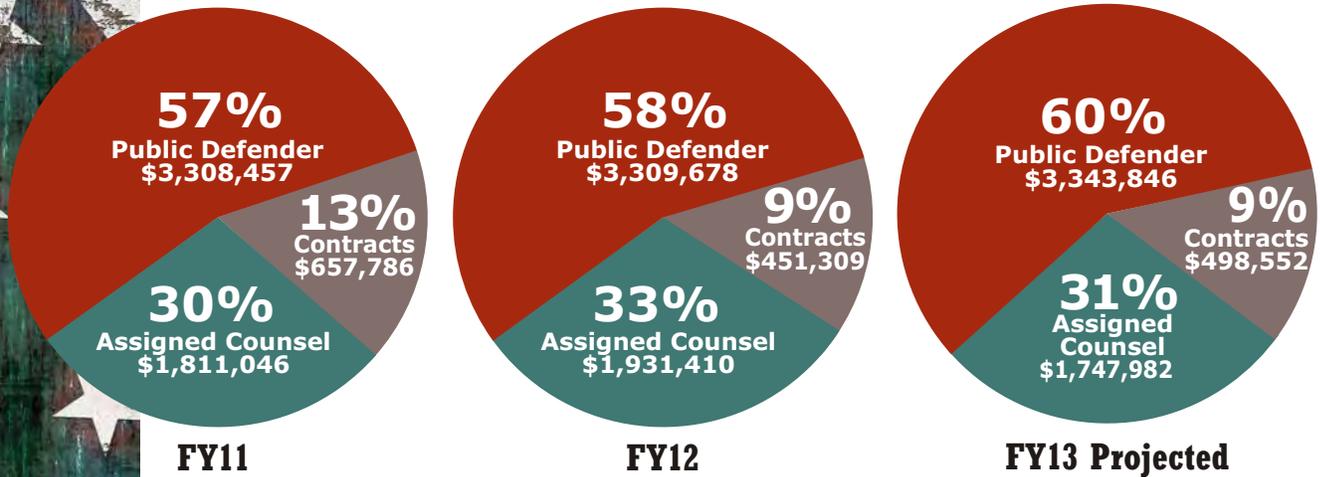
It is the philosophy of the Lancaster County Public Defender's Office that each client should receive high quality legal representation which is as good as that provided by the best of the private bar.

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 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 chart below compares the FY13 projected expenditures as of December 31, 2012 (as reported by the Budget and Fiscal Office) for each segment of the system with the FY12 and FY11 Actual Expenditures.



2012 ASSIGNED COUNSEL NOTES

- Of the 1,635 felony cases closed by the public defender's office in 2012, 464 of those cases (28%) involved a conflict of interest which required the appointment of private assigned counsel or the Commission on Public Advocacy. This was an increase of 2% over the felony conflicts in 2011. In addition, 59 felony cases were closed in 2012 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 7 of the 523 felony cases closed by the public defender because of a conflict or excessive caseload. 2 of those 7 cases involved charges of First Degree Murder, 1 involved a charge of Second Degree Murder and the remainder were cases involving other violent felonies. 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 \$77,875 in attorney fees in 2012.
- Of the 3,669 misdemeanor cases closed by the public defender's office in 2012, 563 (15%) were closed because of a conflict of interest requiring appointment of assigned counsel. In addition, 4 misdemeanor cases were closed because they were companion cases to felonies that exceeded the public defender's caseload standards. There were no misdemeanor excessive caseload cases in 2012 (this compares to 311 in 2009, 18 in 2010, and 3 in 2011).
- Of the 1,361 Juvenile Law Violations and Status Offender cases closed by the public defender in 2012, 160 (12%) were closed because of a conflict of interest and either Legal Aid of Nebraska or a private attorney was appointed. In 2012, the public defender did not have to withdraw from any juvenile cases because of our workload standards (compared to 14 in 2009, 27 in 2010, and 16 in 2011).



CONTRACT NOTES

- The only contract for legal services in the Separate Juvenile Court in 2012 was the contract with Legal Aid of Nebraska. The contract was renegotiated for FY13 to increase the number of cases that could be assigned to 266 new 3(a) abuse/neglect cases and 200 new law violation or status offense cases.
- According to the Separate Juvenile Court, there were 292 new 3(a) abuse/neglect cases (including transfers from other counties) filed in the Separate Juvenile Court of Lancaster County in 2012. This represents a decrease of 15% from 2011 and a 30% reduction from the record high number of new cases in 2010 (415). This 30% decrease over a 2 year period reduced the number of attorney appointments needed in such cases by approximately 295.
- According to the State Court Administrator, the total number of filings in the Separate Juvenile Court of Lancaster County in 2012 represented only 68% of the total number of filings in Douglas County's Separate Juvenile Court (down from 83% in 2011). Lancaster County Law Violation filings were 64% of Douglas County's numbers (down from 90% in 2011), Abuse and Neglect Cases were 75% of Douglas County's numbers (up from 73% in 2011), and Lancaster County's Status offense cases were 76% of Douglas County's filings (down from 77% in 2011).
- In the third year of the Child Support/Paternity contract between Lancaster County and the DeMars Gordon Law Firm, the contractor opened 302 Child Support contempt cases and closed 288, opened 117 new Paternity cases and closed 119, and opened 14 other Orders To Show Cause matters. The firm logged 1,331 hours total for this work, including 903 attorney hours.

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. In 2012, Brad Roth was reappointed to a new 3 year term and Stan Beeder was appointed to a 3 year term, replacing Andy Strotman. We want to thank the volunteer members of this committee who served during 2012. They are Randy Goyette, Sean Brennan, Brad Roth, Jeanelle Lust, and Stan Beeder.

ASSIGNED COUNSEL REPORT AND FOLLOW UP

In 2011, the Lancaster County Indigent Defense Advisory Committee was charged by the Lancaster County Board of Commissioners with undertaking an assessment of the cost of legal services in Lancaster County. The County contracted with Elizabeth Neeley, PhD. of Objective Advantage to act as the primary researcher on the project.

During 2012, to identify both the factors that contribute to the rising costs of indigent defense and ways in which the justice system can control costs, focus group discussions were conducted with a variety of justice system stakeholders. The advisory committee then reviewed the factors and strategies identified through focus group discussions. When applicable and available, the advisory committee compiled and reviewed relevant data and national research regarding proposed cost reduction strategies. Elizabeth Neeley presented the results of the study along with the recommendations of the Board of Commissioners. The Board then contracted with Neeley to help the advisory committee implement the recommendations. The full report can be found on the web page of the Lancaster County Public Defender here lancaster.ne.gov/pdefen/pdf/idac.pdf.

PUBLIC DEFENDER'S OFFICE OPERATIONS

OVERVIEW

The overall number of new cases for the Lancaster County Public Defender's Office decreased by 3% in 2012 over 2011 numbers, driven mainly by a 7% decline in misdemeanor appointments. Felony cases actually increased by 7% and juvenile cases increased by 3%.

8 PUBLIC DEFENDER STAFF HONORED FOR YEARS OF SERVICE

In May of 2012, the following 7 employees of the Public Defender's Office were honored by Lancaster County for their years of service:



Monica Ross-Williams was honored for her 35 years of service to the office. Monica, who is originally from Scottsbluff, Nebraska, started in the office as a legal secretary, was eventually promoted to paralegal and has been the Administrative Services Officer for the past 12 years.



Jed Rojewski was honored for his 15 years of service to the office as a paralegal. Jed and his family live in Seward.



Scott Helvie was honored for his 30 years of service to the office. Scott, who is originally from the Chicago area, served a term of office as the Public Defender for Lincoln County in North Platte, Nebraska, before joining our office as an attorney. He is currently Chief Deputy Public Defender.



Joe Renteria was honored for his 15 years of service to the office as our only investigator. He is originally from western Nebraska.



Paul Cooney was honored for his 15 years of service to the office. Paul, who is originally from Boston, MA, was a law clerk with the office and practiced with the Hall County Public Defender in Grand Island, Nebraska before joining our staff as a staff attorney. He has worked in every docket in the office.



Steve Schultz was honored for 10 years of service to the office as a paralegal. Steve is a graduate of the University of Nebraska at Kearney and is originally from Curtis, Nebraska.



Shawn Elliott was also honored for 15 years of service. He is originally from Kearney, Nebraska, and worked in private practice before joining our office. He is currently a Deputy Public Defender in the felony division.



Marge Shepard was honored for 10 years of service to the office as a Client Services Associate. Marge is originally from Stratton.



YEAR TWO OF FEDERAL GRANT HELPS WITH TRAINING

The office 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 500 attorneys were provided with the training in state and the grant also provided funds to send 6 county public defenders to national immigration training in Denver, Colorado. 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, purchase 7 additional mini laptop computers for attorneys to take to court and update their case files, and send all of the attorneys in the office to national premier training programs for criminal defense attorneys.



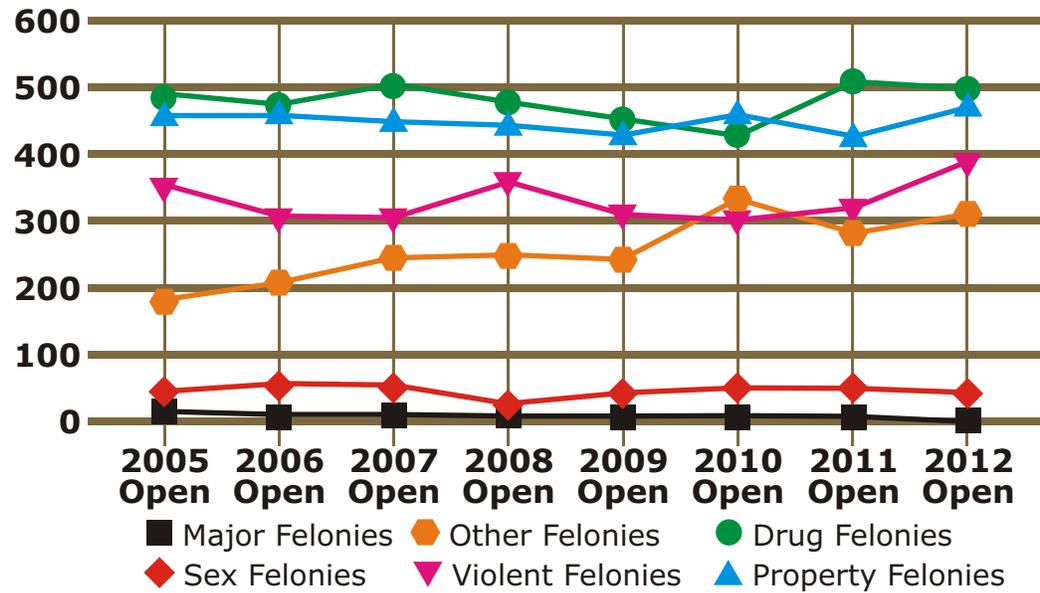
THE FELONY DIVISION

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

Angela Franssen, Paralegal
 Kristi Gottberg, Paralegal
 Claire Bazata, Law Clerk
 Sarah Safarik, Law Clerk
 Luke Henderson, Law Clerk
 Ariel Johnson, Law Clerk
 Leroy Scott, Law Clerk
 Abbi Romshek, Law Clerk

NEW OPEN FELONIES BY TYPE



FELONY CASE NOTES

- The state filed 8% more felony cases in Lancaster County Court in 2012 while our office's felony appointments increased by 7%.¹ 83% of the filed felony cases required court appointed counsel in 2012.
- Violent Felonies showed a 20% increase most probably due to enhanced misdemeanor offenses. Property Felonies increased by 12%, due, at least in part, to enhanced misdemeanors and Other Felonies increased by 7%. Drug felonies and Sex Felonies showed decreases.
- The 1,715 felony cases opened by the public defender in 2012 represent an all time high in terms of new open felony cases for the third year in a row.
- Major Cases Opened and Closed in 2012: We opened 3 new major cases and closed 2 cases. The office opened 1 case of Attempted 2nd Degree Murder, 1 case of Second Degree Murder and 1 case of Manslaughter. We closed 1 case of First Degree Murder and 1 case of Second Degree Murder, both of which involved pleas to lesser felonies.
- In 2012, the Public Defender's Office had 23 clients admitted to the Adult Drug Court Program and 26 public defender Drug Court clients had their cases closed; 10 clients (38%) had their cases closed following successful graduation and case dismissal and 16 of the clients (62%) 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 2012.

1. The figures for new filed felonies have been provided by the Nebraska Administrative Office of the Courts.



MISDEMEANOR DIVISION

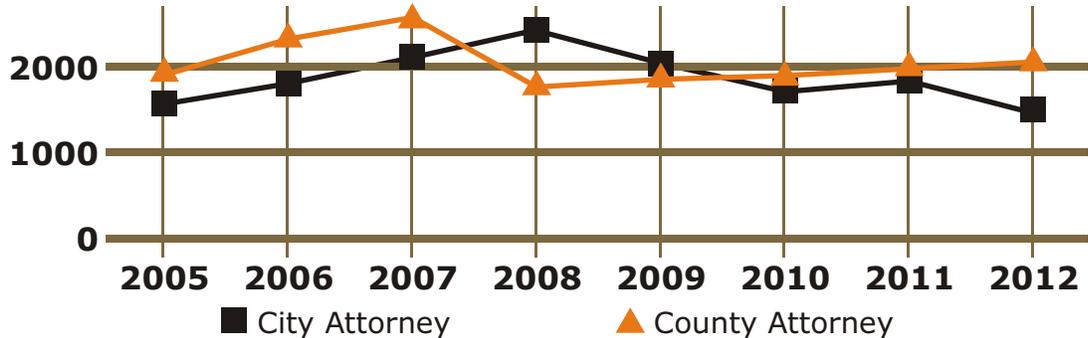
Susan R. Tast, Deputy
Joseph D. Nigro, Deputy
Yohance L. Christie, Deputy

Jennifer M. Houlden, Deputy
Valerie R. McHargue, Deputy

Angelia Onuoha, Paralegal
Steve Schultz, Paralegal

GROWTH IN PUBLIC DEFENDER MISDEMEANOR CASES FILED BY THE CITY AND COUNTY ATTORNEYS FROM 2005-2012

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



MISDEMEANOR CASE NOTES

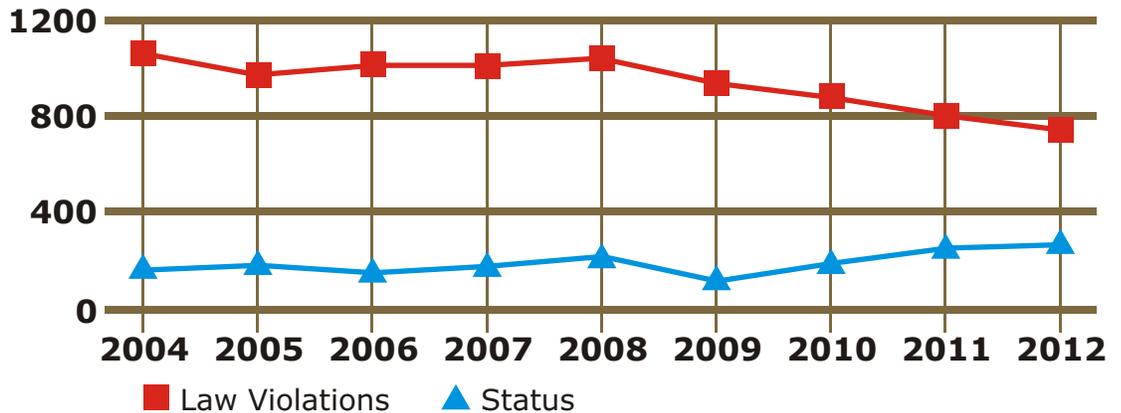
- Non traffic misdemeanor filings in Lancaster County Court, including filings by the City Attorney and the County Attorney, declined by 2.5% in 2012, for the second year in a row.²
- Overall, public defender misdemeanor appointments decreased by 7% in 2012, to the lowest level since 2004. The number of County Attorney filed misdemeanors opened by the public defender (the more time intensive cases) increased by 5%. Since 2008, these misdemeanor cases have increased on an average of 4% per year.
- The number of City Attorney filed misdemeanors assigned to our office declined by 19% between 2011 and 2012, reaching the lowest number of cases since 2004.
- Overall, certain misdemeanor charge categories showed significant change: Drunk Driving misdemeanors decreased by 19% in 2012 (to 641 cases), a 35% decline from the all time high of 989 cases in 2009. Driving on Suspended License cases decreased by 30% in 2012 reaching a 15 year low in the number of new cases (312). Meanwhile, misdemeanor theft cases increased by 27% in 2012 reaching a 15 year high for that type of case (589). The category of assaults (which includes domestic assaults and violations of protective orders) increased by 3% overall.
- There are 3 Deputy Public Defenders and 1.25 paralegals assigned to the County Attorney filed Misdemeanors which totaled 2,016 new cases in 2012.
- There are 1.3 Deputy Public Defenders and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 1,503 new cases in 2012.

2. These figures are from the Nebraska Administrative Office of the Courts.

JUVENILE DIVISION

Margene M. Timm, Chief Deputy Jed Rojewski, Paralegal
Todd C. Molvar, Deputy
Paul E. Cooney, Deputy

JUVENILE CASE OPENINGS BY CASE TYPE



JUVENILE CASE NOTES

- The State Court Administrator Office's report shows that law violation filings in the Separate Juvenile Court of Lancaster County decreased by approximately 8% from 2011 to 2012. That represents an almost 14% decline in 2 years. Law violation filings in Lancaster County have declined by 29% from the 2008 high.
- The State Court Administrator Office's report also shows that status filings (mostly school trancies) declined by almost 17% in Lancaster County in 2012, but this follows an almost 56% increase in 2011.
- For the second year in a row our office has recorded an all time low in the number of juvenile law violation appointments (783 cases) representing a 2% decrease. This means that law violation appointments for our office have declined by 30% from the 2008 high number (1115 cases). Our appointments in cases filed by the County Attorney have declined by 25% from the 2008 numbers and the appointments in cases filed by the City Attorney have declined by 40% in that time period. The Public Defender's Office experienced a 5% increase in appointments in status cases in 2012, but in 2 years this docket has increased by 45%.
- The Public Defender's Office opened 12 new cases in the Juvenile Drug Court program in 2012 and closed 19. Of the 19 cases closed, 6 were closed following successful completion and graduation and 13 were closed following unsuccessful termination from the program.



MENTAL HEALTH COMMITMENTS AND MISCELLANEOUS CASES

Joseph D. Nigro, Deputy
Luke Henderson, Law Clerk
Ariel Johnson, Law Clerk
Leroy Scott, Law Clerk
Abbi Romshek, Law Clerk

- There were 176 new petitions filed in 2012, the exact same number as last year.
- 5 of the new petitions in 2012 involved petitions for commitment under the Sex Offender Commitment Act.
- There was 1 appeal filed in the district court from mental health commitment proceedings in 2012.
- The public defender's office opened 155 miscellaneous cases in 2012 compared to 229 miscellaneous cases in 2011 and 234 miscellaneous cases in 2010. The 2012 cases included 116 felony revocation of probation cases; 14 fugitive from justice cases; 23 adult drug court cases; and 2 new cases involving representation in out of state witness proceedings.

FUTURE ISSUES

NEW JAIL WILL OPEN. The Lancaster County jail is currently scheduled to open in late summer or early fall of 2013. 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 LEGISLATION. In the session of the Nebraska Legislature that began in January of 2013, a number of major pieces of legislation relating to Nebraska's Juvenile Code were introduced. Passage of any of them would have far ranging consequences not only in the manner that the State of Nebraska responds to juveniles but also to the juvenile justice systems in the 93 counties. One proposal is to follow the example of most other states by requiring the filing of charges in the juvenile court rather than adult court with provisions to allow waiver to adult court under certain conditions. This would have a major impact on the resources of this office because many of the charges that are filed against juveniles in adult court do not merit the appointment of counsel but in the juvenile system, the appointment of counsel would be much more likely to occur.

APPENDIX A

TABLE 1

**LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE
OPEN/CLOSED CASELOAD REPORT 2012**

CASETYPE	PENDING START	OPENED 2012	CLOSED 2012	PENDING END 2012
Appeals	38	73	75	35
Felonies	592	1712	1633	690
Juveniles	553	1361	1361	566
Major Cases	2	3	2	4
Mentals	4	176	136	6
Miscellaneous	111	155	176	100
Misdemeanors	685	3519	3669	588
Totals	1985	6999	7052	1989

TABLE 2

**LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE
HISTORICAL COMPARISON OF CASES OPENED SINCE 2002**

CASETYPE	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Chg. 11-12
Appeals	95	109	110	107	119	110	101	95	98	92	73	-21%
Felonies	1404	1368	1415	1515	1506	1566	1558	1476	1573	1596	1712	7%
Juveniles	1487	1331	1467	1417	1520	1517	1597	1323	1346	1325	1361	3%
Major Cases	10	15	12	11	4	11	7	5	5	5	3	-40%
Mental Comm.	533	471	416	415	370	454	289	252	227	176	176	0%
Miscellaneous	202	210	178	187	810	764	749	616	234	230	155	-33%
Misdemeanors	2955	2749	3157	3551	4101	4291	3970	3820	3556	3784	3519	-7%
Totals	6686	6253	6755	7203	8430	8713	8271	7587	7039	7208	6999	-3%

APPENDIX B

LANCASTER COUNTY GENERAL FUND EXPENSE BUDGET

Public Defender EXPENDITURES	ACTUALS 2010-11	MODIFIED BUDGET 2011-12	ACTUALS 2011-12	PROPOSED BUDGET 2012-13	ADOPTED BUDGET 2012-13
SALARIES & WAGES	2,289,508	2,276,585	2,293,847	2,309,212	2,309,212
EMPLOYEE BENEFITS	651,986	664,245	659,924	696,228	696,228
OFFICE SUPPLIES	15,225	16,750	14,175	15,750	15,750
OTHER CONTRACTED SERVICES	58,851	68,307	72,863	68,800	68,800
TRANS, TRAVEL & SUBSISTANCE	7,616	8,290	8,783	13,790	13,790
COMMUNICATIONS	23,386	18,943	22,227	23,743	23,743
POSTAGE, COURIER & FREIGHT	5,674	5,537	5,476	5,537	5,537
PRINTING & ADVERTISING	9,373	9,590	9,424	9,590	9,590
CONTRACTED HEALTH SERVICE	11,181	15,000	2,566	15,000	15,000
OTHER CLIENT SERVICES	0	0	15	0	0
MISC FEES & SERVICES	76,467	80,274	61,441	80,504	80,504
INSURANCE & SURETY BONDS	7,755	8,422	6,618	7,300	7,300
REPAIR & MAINTENANCE COST	0	500	677	500	500
RENTALS	151,223	151,223	151,223	151,223	151,223
EQUIPMENT	212	0	419	0	0
TOTAL PUBLIC DEFENDER	3,308,457	3,323,666	3,309,678	3,397,177	3,397,177



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 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 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