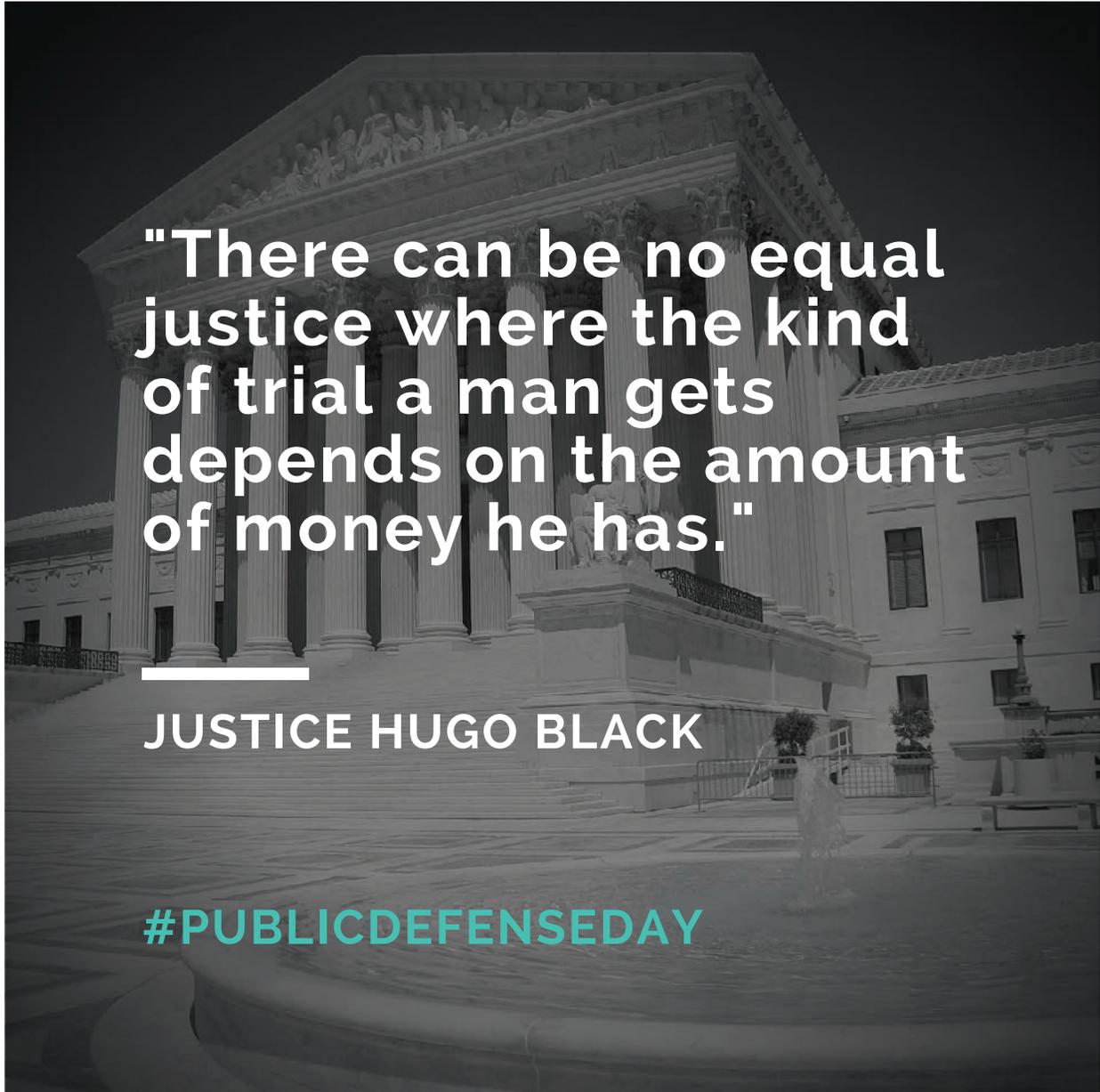


2015 Annual Report of the Lancaster County Public Defender's Office



"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

JUSTICE HUGO BLACK

[#PUBLICDEFENSEDAY](#)



A new era was ushered in at the beginning of 2015 as Dennis Keefe retired and I was sworn into office. Dennis left huge shoes for me to fill, and I will try to not only continue to maintain the strong office he built, but to move it forward and improve it.

2015 was marked by other changes. Christopher (Spike) Eickholt left our office to go into private practice. Spike is an outstanding attorney who made a great contribution to our office, and he will be missed. Nathan Sohriakoff replaced Spike, and we know he will do a fine job.

The biggest change was the retirement of Chief Deputy Scott Helvie. His official retirement was in February 2016, but Scott's last day in the office was in December. Scott Helvie was simply the finest criminal defense attorney in Nebraska. Scott has the finest legal mind of any attorney I know. He is brilliant. Over the years, Scott handled the most difficult cases. He rose to the challenge again and again. Scott was an important mentor to me. I will miss him more than I can say. Paul Cooney is our new Chief Deputy, and he also has huge shoes to fill.

I was able to convince the County Board to let us add a social worker to our staff. I believe this will transform our representation going forward, making it more effective and complete. A social worker will play a significant role in evaluating and connecting clients with services, keeping people out of jail and ultimately making our community safer. The County Board also agreed to make our re-entry attorney position permanent. Terri Nutzman has done an outstanding job as our re-entry attorney.

2015 was a landmark year at the Nebraska Legislature too. L.B. 605, the most significant criminal justice reform legislation since the 1970s was passed to address the problems of prison overcrowding and increasing programming for inmates and offenders on probation, parole, and supervised release. The Legislature also passed legislation repealing the death penalty, a move hailed around the world. I am proud to have been involved in encouraging senators to take both of these gigantic steps forward.

2015 also saw the extension of contracts with Nebraska Legal Services for juvenile representation and the Olson, Zalewski, and Wynner law firm for child support and paternity cases. We look forward to continuing these relationships.

We also look forward to more change in 2016 as we continue to build upon our strong tradition of quality representation.

Joe Nigro  
Lancaster County Public Defender

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## MISSION STATEMENT

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

## PHILOSOPHY AND GOALS

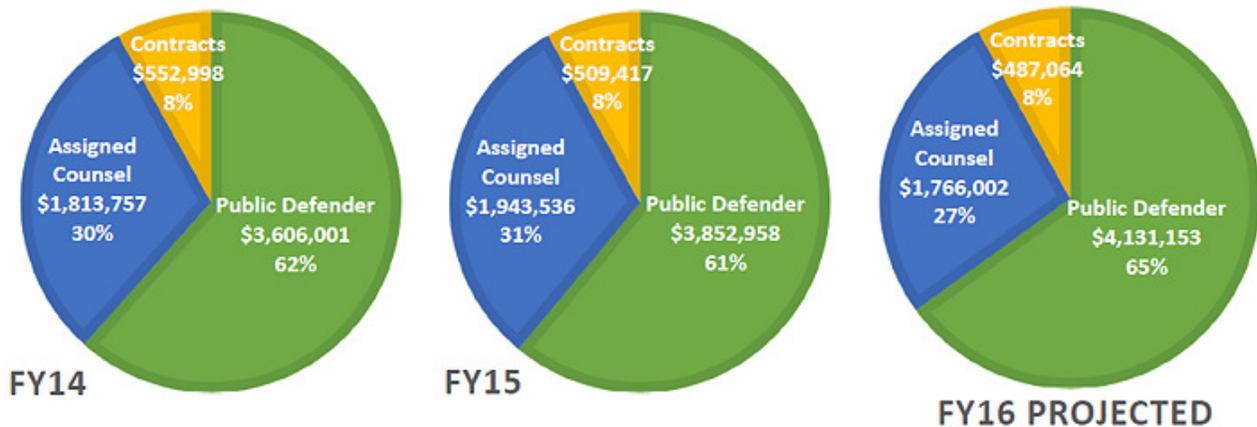
It is the philosophy of the Lancaster County Public Defender's Office to provide client centered legal representation of the highest quality.

## GOALS

1. Recruit and retain attorneys and support staff who will provide high quality legal representation for each client.
2. Maintain reasonable caseload levels for staff attorneys.
3. Provide all resources and ancillary services necessary to represent the client 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 FY16 projected expenditures as of December 31, 2015 (as reported by the Budget and Fiscal Office) for each segment of the system with the FY15 and FY14 Actual Expenditures.



## 2015 ASSIGNED COUNSEL NOTES

- Of the 1,934 felony cases closed by the Public Defender's Office in 2015, 661 of those cases (34%) involved a conflict of interest which required the appointment of private assigned counsel or the commission on Public Advocacy. The 34% figure is the highest it has been. The last three years being 28%. In addition, 130 felony cases (6.7%) were closed in 2015 because they exceeded the office's caseload standards.
- Of the 2,657 misdemeanor cases closed by the Public Defender's Office in 2015, 552 (21%) were closed because of a conflict of interest requiring appointment of assigned counsel. In addition, 13 misdemeanor cases were closed because they were companion cases to felonies that exceeded the public defender's caseload standards. There were 18 misdemeanor excessive caseload cases in 2015 (this compares to 311 in 2009, 18 in 2010, 3 in 2011, 0 in 2012, 0 in 2013, and 34 in 2014).
- Of the 1,225 juvenile law violations and status offender cases closed by the public Defender in 2015, 191 (16%) were closed because of a conflict of interest and either Legal Aid of Nebraska or a private attorney was appointed. In 2015, the Public Defender withdrew from 4 juvenile cases because of our workload standards (compared to 14 in 2009, 27 in 2010, 16 in 2011, 0 in 2012, 0 in 2013, and 37 in 2014).

## CONTRACT NOTES

- The only contract for legal services in the Juvenile Court in 2015 was the contract with Legal Aid of Nebraska.
- According to the Separate Juvenile Court, there were 209 new 3(a) (abuse/neglect) cases (including transfers from other counties) filed in the Separate Juvenile Court of Lancaster County in 2015. This represents a decrease of 18% from 2014 and a 50% reduction from the record high number of new cases in 2010 (415).
- 2015 was the third year of the Child Support/Paternity contract between Lancaster County and the Olson, Zalewski and Wynner Law Firm. The contractor opened 438 Child Support contempt cases (compared to 446 in 2014) and closed 464 (453 in 2014), opened 95 new Paternity cases (87 in 2014) and closed 80 (92 in 2014) and opened 9 other contempt matters (0 in 2014). The firm logged 1111 hours (1730 in 2014), including 723 attorney hours (1108 in 2014) for this work.

## 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. The current committee consists of Sean Brennan, Brad Roth, Jeanelle Lust, Dallas Jones, and Stan Beeder.

## PUBLIC DEFENDER'S OFFICE OPERATIONS

Comings and Goings

2015 saw significant change. Joe Nigro replaced Dennis Keefe as Public Defender. Scott Helvie retired to be replaced by Paul Cooney. Christopher Eickholt left to enter private practice, and was replaced by Nathan Sohriakoff, who came to us from the Platte County Public Defender's Office.

2015 saw several employees reach milestones. Bob Hays, Chief Deputy Public Defender, was honored for 30 years of service. Chief Deputy Margene Timm was

honored for 25 years of service, Deputy Public Defender Webb Bancroft was honored for 25 years of service, Deputy Public Defender Tim Eppler was honored for 15 years of service, Paralegal Kristi Gottberg was honored for 15 years of service. Paralegal Angela Franssen was also honored for 15 years of service.

## THE FELONY DIVISION

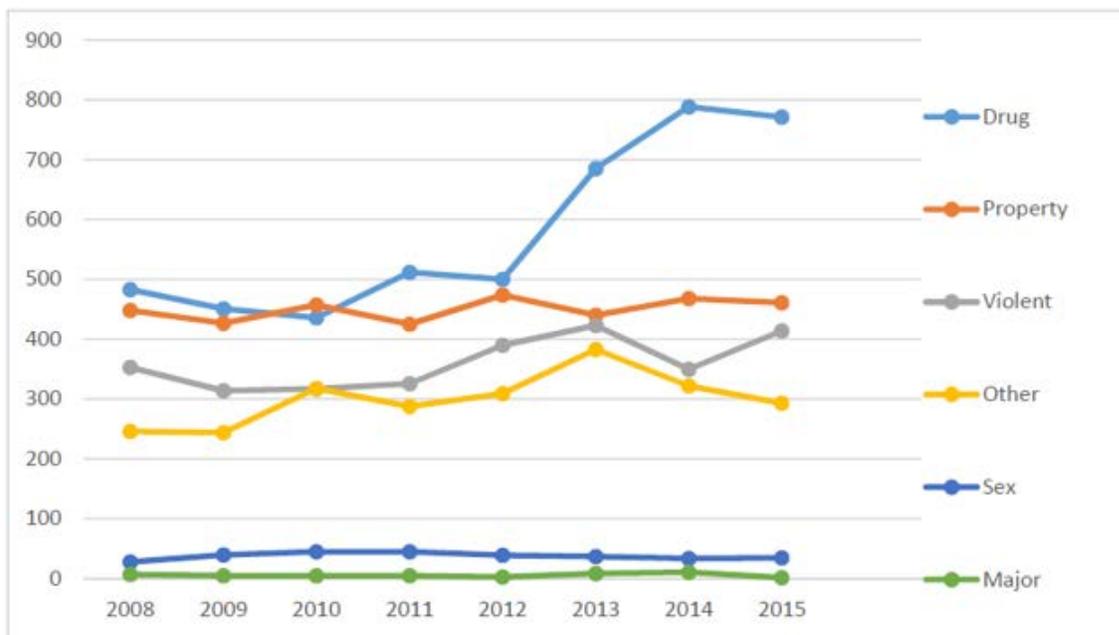
Scott P. Helvie, Chief Deputy  
 Robert G. Hays, Chief Deputy  
 Webb E. Bancroft, Deputy  
 Kristi J. Egger-Brown, Deputy  
 Shawn D. Elliott, Deputy  
 Christopher L. Eickholt, Deputy  
 Timothy M. Eppler, Deputy  
 John C. Jorgensen, Deputy  
 Jennifer M. Houlden, Deputy  
 Paul E. Cooney, Deputy  
 Yohance L. Christie, Deputy  
 Todd C. Molvar, Deputy

Joe Renteria, Investigator  
 Nate Kaiser, Investigator

Steve Schultz, Paralegal  
 Angelia Onuoha, Paralegal

Mark Carraher, Law Clerk  
 Keenan Gallagher, Law Clerk  
 Amy Peters, Law Clerk  
 Megan Theesen-Fenton, Law Clerk  
 Amy Swearer, Law Clerk  
 Haleigh Brockman, Law Clerk

## NEW OPEN FELONIES BY TYPE



## FELONY CASE NOTES

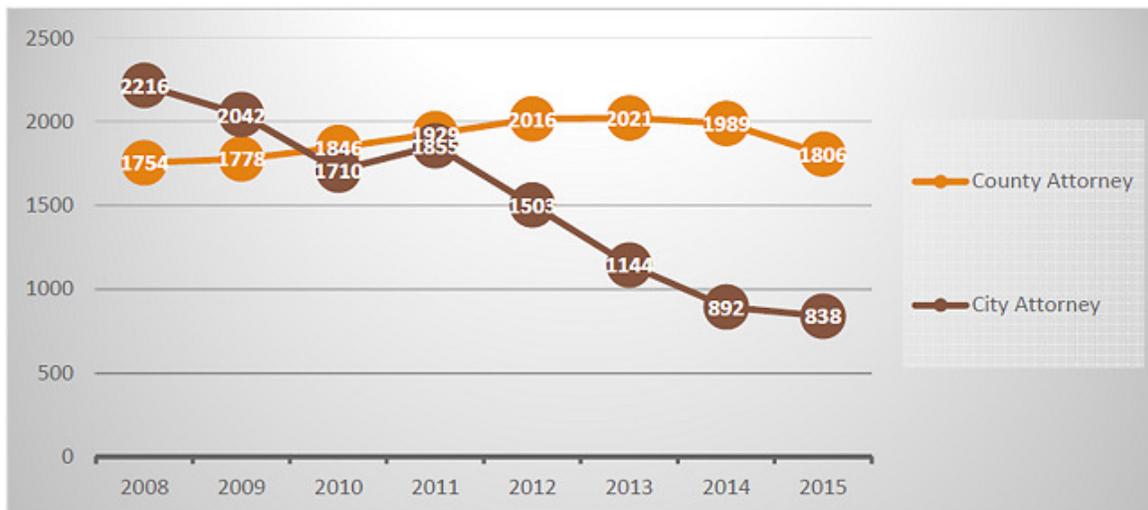
- The state filed about the same number of felony cases in Lancaster County Court in 2013, 2014, and 2015, and our office's felony appointments also stayed about the same.
- In the 6 years since 2009, the number of felonies assigned to the Public Defender has increased by 498 cases or 34% (6% per year on average).
- Major Cases Opened and Closed in 2015: We opened 2 new major cases and closed 5 cases. The office opened 1 case of Kidnapping and 1 case of Attempted Kidnapping. We closed 3 cases of 1<sup>st</sup> Degree Murder, two of which pled guilty and one pled to a lesser felony charge. 1 case of Attempted Kidnapping due to a conflict and 1 Motor Vehicle Homicide due to a plea of guilty.
- In 2015 the Public Defender's Office had 38 clients admitted to the Adult Drug Court program and 34 Public Defender Drug Court clients had their cases closed; half had their cases closed following successful graduation and case dismissal. This is a 15% increase over last year. Half had their cases closed because of unsuccessful participation and the cases were referred back to the regular criminal courts. Joe Nigro and Paul Cooney are the attorneys assigned to Adult Drug Court.

## THE MISDEMEANOR DIVISION

Joe Nigro, Public Defender  
 Amanda R. Baskin, Deputy  
 Abbi R. Romshek, Deputy  
 Paul E. Cooney, Deputy  
 Todd C. Molvar, Deputy

Matthew F. Meyerle, Deputy  
 Chelsie E. Krell, Deputy

Kristi Gottberg, Paralegal  
 Jed Rojewski, Paralegal



## MISDEMEANOR CASE NOTES

- Overall, Public Defender misdemeanor appointments decreased by 8% in 2015. This is the lowest level we have seen in over 15 years. The number of County Attorney filed misdemeanors opened by the Public Defender (the more time intensive cases) decreased by 9%. After a 5 year increase of about 3% each year, the past two years they have dropped 2% in 2014 and 9% in 2015.
- The number of City Attorney filed misdemeanors assigned to our office declined by 6% between 2014 and 2015, reaching the lowest level of new cases in over 15 years.
- The major misdemeanor charge categories that showed significant change in 2015 were: Disturb the Peace (down 32%), Thefts (down 24%), Criminal Mischief (down 20%), and Carry concealed Weapon (down 24%), which was the only case in 2014 to go up significantly.
- There are 3 Deputy Public Defenders and 1.25 paralegals assigned to the County Attorney filed Misdemeanors which totaled 1,806 new cases in 2015.
- There are 1.3 Deputy Public Defenders and 1 paralegal assigned to the City Attorney filed Misdemeanors which totaled 838 new cases in 2015.
- We negotiated a 5% increase with the City for the amount they reimbursed the County for our services. They reimbursed Lancaster County, \$389,741 in 2016.

## MENTAL HEALTH COMMITMENTS AND MISCELLANEOUS CASES

Kristi J. Egger-Brown, Deputy  
Amy Peters, Law Clerk  
Megan Theesen-Fenton, Law Clerk

Mark Carraher, Law Clerk  
Keenan Gallagher, Law Clerk

- There were 155 new petitions filed in 2015, a slight increase from the 151 petitions filed in 2014.
- Only 4 of the new petitions in 2015 involved petitions for commitment under the Sex Offender Commitment Act, compared to 6 in 2013, and 1 in 2014.
- There were 6 appeals filed in the district court from mental health commitment proceedings in 2015.

The Public Defender's office opened 154 miscellaneous cases in 2015 compared to 141 miscellaneous cases in 2014. The 2015 cases included 100 felony revocation of probation cases, 15 fugitive from justice cases, 38 adult drug court cases, and 1 new insanity review.

## THE JUVENILE DIVISION

Margene M. Timm, Chief Deputy  
George Dungan, Deputy  
Teresa Nutzman, Deputy

Brittani Lewit, Deputy  
Sarah Safarik, Deputy  
Angela Franssen, Paralegal

## JUVENILE CASES

In January 2014 we changed the manner in which we counted Juvenile Court cases to we only have one year of comparison. In 2014 we opened 1,133 Juvenile Cases and 1,181 cases in 2015, a 4% increase.

## JUVENILE CASE NOTES

- The Juvenile Court Administrator for Lancaster County reports that there were 1,419 Law Violation filings in the Separate Juvenile Court of Lancaster County, Nebraska, in 2015, an 18% decline from the number of filings in calendar year 2014 (1,169 filings). 2015 Status Offense filings amounted to 309 cases, a 25% decrease from calendar year 2014 (414 filings).
- The Public Defender's Office opened 11 new cases in the Juvenile Drug Court program in 2015 and closed 11. Of the cases closed, 4 were closed following successful completion and graduation and 5 were closed following unsuccessful termination from the program. We conflicted out of 2 cases.

## FUTURE ISSUES

We continue to assess the impact of L.B. 605 and followup criminal justice reform legislation passed by the Nebraska Legislature. We look forward to the impact of adding a social worker to our staff.

APPENDIX A

TABLE 1  
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
OPEN/CLOSED CASELOAD REPORT 2015

| CASETYPE      | PENDING START | OPENED 2015 | CLOSED 2015 | PENDING END 2015 |
|---------------|---------------|-------------|-------------|------------------|
| Appeals       | 35            | 118         | 99          | 54               |
| Felonies      | 667           | 1974        | 1929        | 674              |
| Juveniles     | 440           | 1181        | 1225        | 415              |
| Major Cases   | 7             | 2           | 5           | 4                |
| Mentals       | 7             | 155         | 106         | 18               |
| Miscellaneous | 86            | 153         | 164         | 73               |
| Misdemeanors  | 710           | 2643        | 2657        | 690              |
| Total         | 1952          | 6226        | 6185        | 1928             |

TABLE 2  
LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE  
HISTORICAL COMPARISON OF CASES OPENED SINCE 2005

| Casetype          | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Chg 14-15 |
|-------------------|------|------|------|------|------|------|------|------|------|------|------|-----------|
| Appeals           | 107  | 119  | 110  | 101  | 95   | 98   | 92   | 73   | 66   | 76   | 118  | 55%       |
| Felonies          | 1515 | 1506 | 1566 | 1558 | 1476 | 1573 | 1596 | 1712 | 1968 | 1962 | 1974 | 1%        |
| Juveniles         | 1417 | 1520 | 1517 | 1597 | 1323 | 1346 | 1325 | 1361 | 1048 | 1133 | 1181 | 4%        |
| Major Cases       | 11   | 4    | 11   | 7    | 5    | 5    | 5    | 3    | 9    | 11   | 2    | -82%      |
| Mental Commitment | 415  | 370  | 454  | 289  | 252  | 227  | 176  | 176  | 181  | 151  | 155  | 3%        |
| Miscellaneous     | 187  | 810  | 764  | 749  | 616  | 234  | 230  | 155  | 157  | 141  | 153  | 9%        |
| Misdemeanor       | 3551 | 4101 | 4291 | 3970 | 3820 | 3556 | 3784 | 3519 | 3165 | 2881 | 2643 | -8%       |
| Totals            | 7203 | 8430 | 8713 | 8271 | 7587 | 7039 | 7208 | 6999 | 6594 | 6355 | 6226 | -2%       |

APPENDIX B

LANCASTER COUNTY  
GENERAL FUND EXPENSE BUDGET

LANCASTER COUNTY  
GENERAL FUND EXPENSE BUDGET

| 625 PUBLIC DEFENDER         | ACTUALS<br>2013-14 | ENCUMBR<br>2013-14 | MODIFIED<br>BUDGET<br>2014-15 | ACTUALS<br>2014-15 | ENCUMBR<br>2014-15 | PROPOSED<br>BUDGET<br>2015-16 | ADOPTED<br>BUDGET<br>2015-16 |
|-----------------------------|--------------------|--------------------|-------------------------------|--------------------|--------------------|-------------------------------|------------------------------|
| SALARIES & WAGES            | \$2,421,590        | \$0                | \$2,568,611                   | \$2,638,519        | \$0                | \$2,762,840                   | \$2,762,840                  |
| EMPLOYEE BENEFITS           | \$734,362          | \$0                | \$890,748                     | \$815,157          | \$0                | \$964,985                     | \$964,985                    |
| OFFICE SUPPLIES             | \$14,174           | \$0                | \$14,500                      | \$14,664           | \$0                | \$14,500                      | \$14,500                     |
| OTHER CONTRACTED SERVICES   | \$80,629           | \$0                | \$90,730                      | \$80,540           | \$0                | \$95,192                      | \$95,192                     |
| TRANS, TRAVEL & SUBSISTANCE | \$26,126           | \$0                | \$17,750                      | \$42,170           | \$0                | \$18,750                      | \$18,750                     |
| COMMUNICATIONS              | \$21,360           | \$0                | \$6,043                       | \$5,013            | \$0                | \$5,843                       | \$5,843                      |
| POSTAGE, COURIER & FREIGHT  | \$5,427            | \$0                | \$5,537                       | \$5,311            | \$0                | \$5,537                       | \$5,537                      |
| PRINTING & ADVERTISING      | \$8,055            | \$0                | \$9,590                       | \$10,153           | \$0                | \$9,590                       | \$9,590                      |
| CONTRACTED HEALTH SERVICE   | \$3,170            | \$0                | \$13,500                      | \$13,035           | \$0                | \$13,500                      | \$13,500                     |
| MISC FEES & SERVICES        | \$54,951           | \$0                | \$71,984                      | \$57,601           | \$0                | \$72,453                      | \$72,453                     |
| INSURANCE & SURETY BONDS    | \$6,475            | \$0                | \$7,335                       | \$6,425            | \$0                | \$7,300                       | \$7,300                      |
| REPAIR & MAINTENANCE COST   | \$622              | \$0                | \$500                         | \$649              | \$0                | \$500                         | \$500                        |
| RENTALS                     | \$150,863          | \$0                | \$150,863                     | \$150,863          | \$0                | \$150,863                     | \$150,863                    |
| EQUIPMENT                   | \$7,808            | \$13,513           | \$5,300                       | \$12,859           | \$0                | \$9,300                       | \$9,300                      |
|                             |                    |                    |                               |                    |                    |                               |                              |

## APPENDIX C

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

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

#### **Sixth Amendment Constitution of the United States**

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

#### **Article 1, Section 11 Constitution of the State of Nebraska**

#### **Neb. Rev. Stat. 23-3401 (Reissue 2012) Public defender in certain counties; election; qualifications; prohibited practices; residency.**

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

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

(3) In counties having a population of more than one hundred seventy thousand inhabitants the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time in the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender receives the same annual salary as each deputy county attorney of comparable ability 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 hold office, except that in counties with a population of one hundred thousand or less inhabitants, the public defender shall not be required to reside in the county in which he or she holds office.

## **LANCASTER COUNTY GENERAL FUND EXPENSE BUDGET**

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

#### **Public Defender duties; appointment; prohibitions.**

(1) It shall be the duty of the public defender to represent all indigent felony defendants within the county he or she serves. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing 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 section s71-945 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 2012)**

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

The public defender may appoint as many assistant public defenders, who shall be attorneys 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