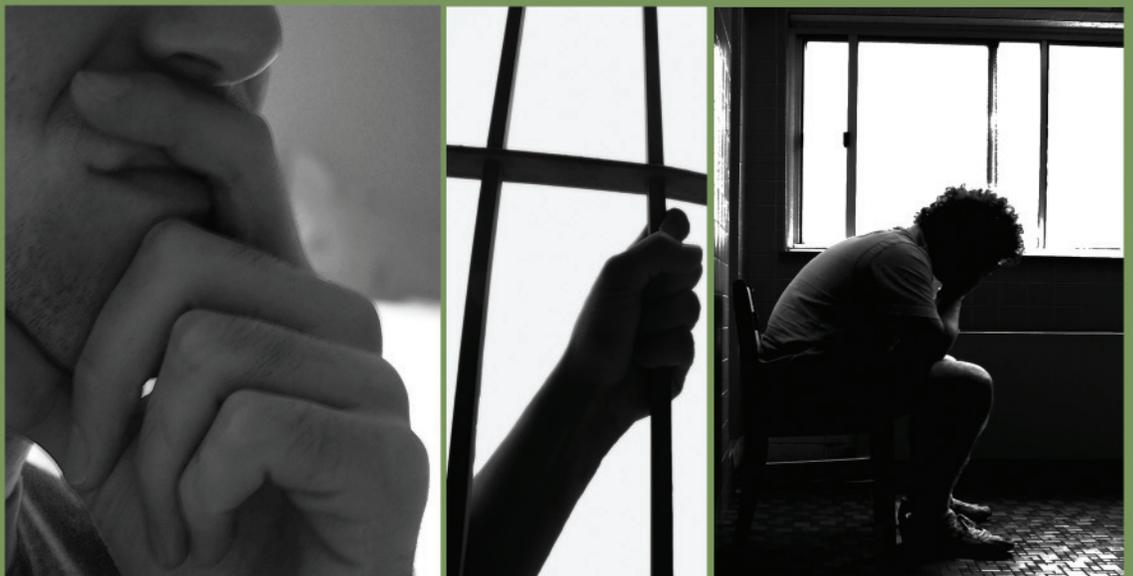


Annual Litigation Report

Fiscal Year 2008



Commonwealth of Kentucky
Department of Public Advocacy
Edward C. Monahan, Public Advocate

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF PUBLIC ADVOCACY

100 FAIR OAKS LANE, SUITE 302 ♦ FRANKFORT, KENTUCKY 40601 ♦ 502-564-8006 ♦ FAX: 502-564-7890

“Thy sea is so great and my boat is so small.”

John F. Kennedy kept this quote, a line from a French fishermen’s prayer, on a plaque in his White House office. It epitomizes the work the Department of Public Advocacy confronts daily. In these tough economic times, there are more Kentuckians than ever before who are at risk of losing their liberty because they are accused of crimes and cannot afford to pay an attorney for a legal defense.

For justice to occur, both sides of the legal system must be prepared and competent to present all the facts and evidence so a jury of one’s peers can decide the truth. Without a lawyer, an innocent person may

be convicted, a person with a disability or addiction may be denied the opportunity to obtain treatment in lieu of incarceration, or a juvenile may be denied the chance for a fresh start in life.

We are grateful to the men and women who attend law schools and criminal justice programs for the purpose of defending the poor. We are fortunate to work with criminal justice organizations to see that justice is served in an efficient and competent manner.

From July 1, 2007 through June 30, 2008, the Department of Public Advocacy represented Kentuckians who otherwise could not afford an attorney in 148,257 cases that involved the potential loss of liberty or life.

The Protection and Advocacy Division of DPA provided information or referrals to individuals with disabilities, family members, and service providers

in 1,950 cases. P&A provided legal advocacy to 650 individuals with disabilities. In addition to these services, P&A group advocacy efforts affected more than 400,000 individuals with intellectual or other developmental disabilities and mental illness in Kentucky. In the course of monitoring facilities and providing services to persons with disabilities, P&A resolved rights issues for more than 600 Kentuckians at facilities across the Commonwealth.



DPA does not control which cases it gets; instead, judges appoint public defenders.

The person before the court fills out an Affidavit of Indigency with the assistance of a Pretrial Services Officer. Judges review these affidavits prior to making findings of indigency. This appointment process has been improved by the efforts of a Workgroup composed of circuit and district Judges, representatives of the Administrative Office of the Courts and DPA leaders.

Since 1972, public defenders have provided significant value to the people of Kentucky. Each day, defenders are on the front lines of our justice system. We see firsthand what it means to have a system of justice that all Kentuckians believe in, one that works reliably to convict the guilty and protect the innocent—ensuring safety in our communities. The *New York Times* Pulitzer Prize winning columnist Anthony Lewis has observed that “The lawyers

who make Kentucky’s indigent defense system work are in a great tradition. They prove what Justice Holmes said long ago: ‘It is possible to live greatly in the law’.”

The value that public defenders provide to Kentucky’s citizens adds to its wealth in uncommon ways. From the district and circuit courts in all 120 counties to the Kentucky Supreme Court and Court of Appeals, our work ensures that the system of law is balanced and fair for all those who come before it.

Whether through indigent criminal defense or advocacy for the disabled, the Department of Public Advocacy stands with and for those who cannot stand for themselves. A strong public defense system meets the constitutional obligations imposed on the Commonwealth and saves money for the Commonwealth by eliminating inefficiencies. It is a privilege for our Public Defender and Protection and Advocacy leaders to provide Kentuckians with a system that insures fair and reliable results in criminal cases and the protection of the rights of persons with disabilities.

Sincerely,

A handwritten signature in blue ink that reads "Edward C. Monahan". The signature is fluid and cursive, written over a white background.

Edward C. Monahan
Public Advocate, Commissioner
Department of Public Advocacy

The Kentucky Public Advocacy Commission

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The Public Advocacy Commission is established consistent with KRS Chapter 31 and the duties set forth therein.

The Kentucky Department of Public Advocacy does not discriminate in employment of individuals or provision of services with regard to race, color, religion, national origin, disability, sex, age, or sexual orientation.

This report was published June 2, 2009.

Funds to cover the cost of the publication were donated by members of the Kentucky Public Advocacy Commission.

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Mission

The mission of the Department of Public Advocacy's defender services is to *"provide each client with high quality services through an effective delivery system which ensures a defender staff dedicated to the interests of their clients and the improvement of the criminal justice system."*

During FY 08, the Department of Public Advocacy provided representation in 148,257 cases to persons who would not otherwise have had an attorney. This representation ensures the poor and most vulnerable citizens of Kentucky are provided their constitutional protections. Both the Trial Division and Post-Trial Division directly provide services to the poor.

The Protection and Advocacy Division's purpose is to protect and promote the rights of Kentuckians with disabilities through legally based individual and systemic advocacy, and education.

DPA's Kentucky Innocence Project made great strides this year in supporting our mission of improving the criminal justice system.

The purposes for which DPA collects and publishes data include:

- To provide accountability to Kentuckians for the work of the Department.
- To continue working cooperatively with all agencies and

entry definitions to ensure the reliability of our published reports. In FY 2007, the Department purchased an upgraded software package for collecting information about its work. DPA is committed to the best technology and training for the purpose of data integrity.



"William Shakespeare, said, 'Oh what a goodly outside falsehood hath.' It was true then and now that falsehood can be paraded around as truth and truth can be hidden. We, as Public Defenders, make the system step back and look truth right in the eye and ultimately that is what justice should be all about. Seeing the whole truth. Both sides of an argument, the justification, the mitigation, the provocation and anything else that drives human emotion and fuels the reasoning behind the alleged crimes that place our clients in jeopardy."

**Brian Ruff, Directing Attorney
LaGrange Post Conviction**

stakeholders in the criminal justice system to ensure safety for our communities.

- To support continuous study of the effectiveness of the Commonwealth's criminal justice system.

The Department of Public Advocacy continually examines its data entry processes and data

Trial Division

A number of studies have demonstrated that full-time defense offices provide higher quality legal services at a more efficient cost than where indigent defense is provided by part-time contractors.

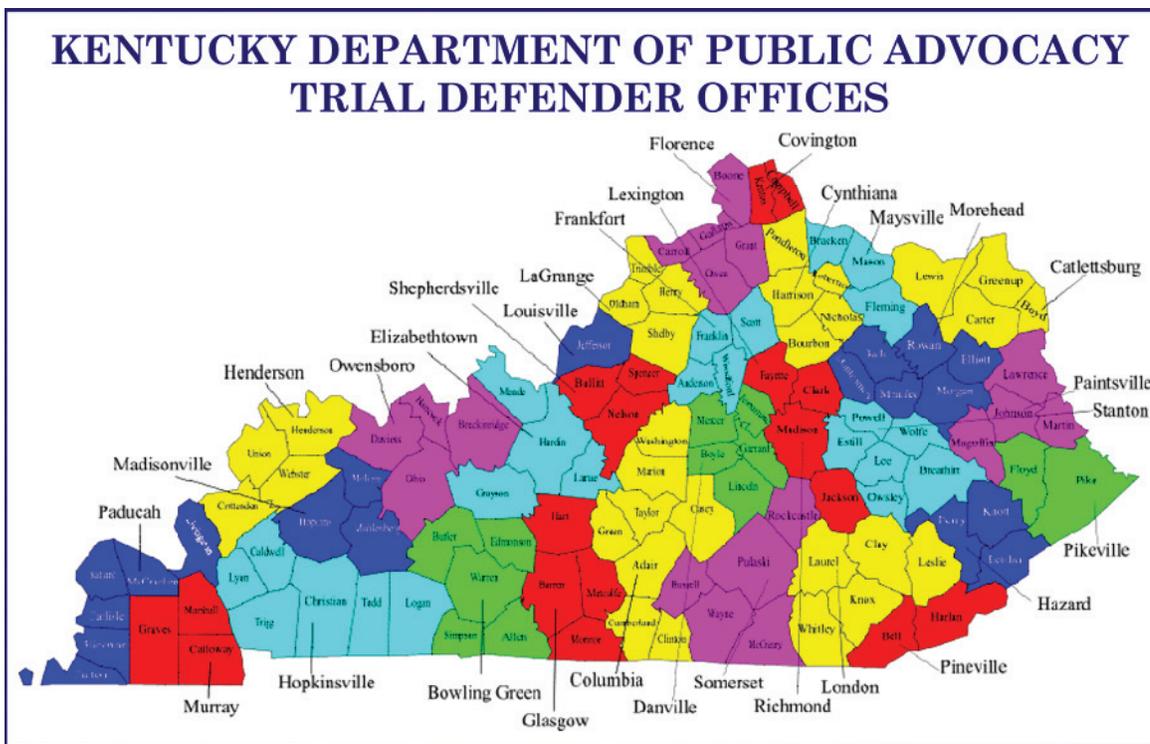
The Trial Division provides representation in all 120 Kentucky counties in the most effective and efficient manner in order to fulfill the Commonwealth's obligation to protect the constitutional rights of indigent defendants. A full-time

public defender system has proven to be the least expensive and most effective system for a state to use. Since its inception in 1972, DPA has grown exponentially. The caseload has risen to 145,812, amounting, on average, to 437 cases per attorney position.*

DPA's trial division covers 30 offices across the Commonwealth.** Of the 145,812 cases handled by the Trial Division in FY 2008, 22 percent were Circuit Court cases, 59

percent were handled in Adult District Courts, and 16 percent were Juvenile cases. A breakdown of case numbers by county is provided in the appendix. (Also in the appendix is a list of the ten counties with the highest caseloads for each of the courts listed above.)

The Trial Division's Director is Damon Preston. Five regional directors report to him, as does the supervisor of the Capital Trial Division.



In the last ten years DPA has grown from 18 trial offices serving 66 counties to 29 trial offices serving all 120 counties of the Commonwealth.

*DPA was understaffed throughout the fiscal year, resulting in an actual average caseload per attorney of 487.
 **During FY 2008, DPA assumed full responsibility for operations and financial obligations in Fayette County.



“After 10 years of working as a Public Defender, I have come to know the familiar stories behind clients with mental illnesses or learning disabilities. I have seen that sometimes it is not that someone just falls through the crack, but instead, it is like the crack swallows the person whole. This client is one such client; Brian has been swallowed whole.”

Shanda West-Stiles
Staff Attorney, Columbia office

Post-Trial Division

The Post-Trial Division handled 2,445 cases in FY 2008. There are three branches within the division—Appeals, Juvenile Post-Disposition and Post-Conviction. All divisions are managed by Tim Arnold, who became Division Director during FY 2008.

The Appeals Branch handles direct appeals from felony convictions and final judgments. Appeals assigned 465 cases in FY 2008. This total includes all capital cases that are on appeal. These appeals are taken to the Kentucky Court of Appeals, the Kentucky Supreme Court and, where appropriate, into federal court and the U.S. Supreme Court for appellate review. Indigency determinations and decisions to appoint counsel are made by the trial court and reviewed by the appellate courts.

The Juvenile Post-Disposition Branch represents children and youth who were found at the trial

court level to be status, public or youthful offenders in cases dealing with fact, duration and condition of confinement issues in state and federal court and in administrative hearings. In addition, the Juvenile Post-Disposition Branch handled almost all appeals involving youthful offenders, public offenders, or status offenders.

The Post-Conviction Branch represents adult felons on their post-conviction cases, and litigates in state and federal court on behalf of their state-sentenced clients. As there are approximately 20,000 incarcerated persons in Kentucky jails and prisons and only 13 attorneys in the Post-Conviction Branch responsible for non-capital post conviction cases, the agency is not able to provide counsel to all persons in prison in Kentucky on felony convictions in post conviction matters. The Post-Conviction Branch is also responsible for all

capital post conviction cases. FY 2008 placed significant demands on the division as 29 persons on death row required extensive litigation in 66 actions in state and federal court. The division provided representation in 418 non-capital cases.

The division also worked to provide training to legal aides in the prisons across the Commonwealth and to update post-conviction manuals and forms distributed in all prisons and regional jails.

All of the cases handled by the Appeals Branch and Post Conviction Branch are felony cases involving prison sentences of from one year to life in prison without opportunity of parole, to the death penalty.

Reviewing the records in appellate and post conviction cases is time-consuming. This is especially true in Kentucky, which uses only video records.

Kentucky Public Defender cases before the U. S. Supreme Court

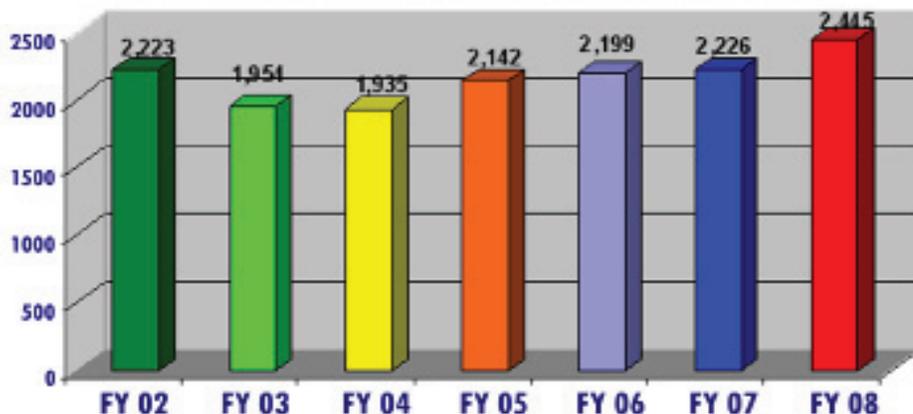
- Baze v. Rees*, 553 U.S. __; 128 S.Ct. 1520 (2008)
- Standford v. Kentucky*, 492 U.S. 361 (1989)
- Olden v. Kentucky*, 488 U.S. 227 (1988)
- Buchanan v. Kentucky*, 483 U.S. 402 (1987)
- Griffith v. Kentucky*, 479 U.S. 314 (1987)
- Kentucky v. Stincer*, 482 U.S. 730 (1987)
- Batson v. Kentucky*, 476 U.S. 79 (1986)
- Crane v. Kentucky*, 476 U.S. 683 (1986)
- Evitts v. Lucy*, 469 U.S. 387 (1985)
- James v. Kentucky*, 466 US 341 (1984)
- Fletcher v. Wier*, 455 U.S. 603 (1982)
- Watkins v. Sowders*, 449 U.S. 341 (1981)
- Carter v. Kentucky*, 450 U.S. 288 (1981)
- Rawlings v. Kentucky*, 448 U.S. 98 (1980)
- Pilon v. Borderkircher*, 444 U.S. 1 (1979)
- Kentucky v. Whorton*, 441 U.S. 786 (1979)
- Bordenkircher v. Hayes*, 434 U.S. 357 (1978)
- Taylor v. Kentucky*, 436 U.S. 478 (1978)



“Often we hear teachers tell about how they learn as much and get as much from classes as their students. It works that way when you represent poor people. I am proud to be an advocate because it gives me the chance every day to help other people who really need our assistance. A lot of people struggle to find meaning in the work they do. Being a DPA advocate starts and ends with meaning every day.”

**Tim Shull, Staff Attorney,
Juvenile Post Disposition Branch**

POST-TRIAL TOTAL CASELOAD



Kentucky Innocence Project

The Post-Trial Division of DPA also includes The Kentucky Innocence Project. Since the inception of KIP, eight people have been identified and released from prison because they were wrongfully convicted. Over a thousand applications have been reviewed and processed from individuals claiming actual innocence.

The court system allows appeals but does not really provide a mechanism for proving innocence. KIP applied for and received \$1.16 million in federal aid from the National Institute for Justice to provide DNA testing assistance. The funds are being used to establish a program to test post-conviction cases with available physical evidence that was never tested. The grant is intended to be a collaborative effort with all parts of the criminal justice system.

In the Fall of 2007, KIP brought together various members of the criminal justice system for the purpose of discussing issues within the criminal justice system, at the local, state and national levels. The focus was on those issues that can lead to the conviction

of innocent people, thus allowing the truly guilty party(s) to remain free, and to explore ideas on how to improve the criminal justice system to minimize such mistakes. The University of Louisville Brandeis School of Law hosted the Advancing Justice Conference on November 16, 2007 with more than 75 people attending the day long conference. The event was co-sponsored by the Salmon P. Chase College of Law at Northern Kentucky University, the University of Kentucky College of Law, the Masters Program of the College of Justice and Safety at Eastern Kentucky University and DNA Diagnostics Center of Fairfield, Ohio.

As of the day of the conference, 208 men and women across the country had been exonerated by post-conviction DNA testing. A review of the exonerations indicates that almost 80 percent of the cases involved mistaken eyewitness identifications. One such case involved five eyewitnesses who were mistaken in their identification of a suspect convicted but later exonerated by DNA. The forum found many similari-

ties between the identification and evidence issues seen locally and those seen at a national level.

Proper storage and preservation of evidence is important not only in the investigative stages of the case but also for post-conviction review. Obviously, without proper storage and preservation, particularly of biological evidence, over 200 innocent people would still be in prison today. Unfortunately, however, many, many more post-conviction cases are closed than are actually taken to court with innocence claims because evidence has been lost or destroyed, or contaminated by improper storage procedures.

The ultimate goal in any investigation and prosecution of a case is to convict the truly guilty person; when an innocent person is convicted of a crime, the guilty person has “gotten away with it” and the safety of the community is at risk. Unfortunately, that is another lesson learned—the guilty party, when later found, has indeed committed other offenses.

Providing hope, or righting a wrong

“My first client was not charged with a list of traffic offenses or for causing a public disturbance. My first client, through the Kentucky Innocence Project, was serving an eighteen year sentence for the death of her infant daughter.

As a third year law student, Jacquelyn was my only client so I was able to devote my full attention to her case. Her husband was charged with murder for shaking and beating the infant, while Jacquelyn was charged with complicity to commit murder for “failing in her legal duty to prevent the baby’s death.”

On the advice of her attorney, she entered a guilty plea to “Complicity to Commit Murder Under Extreme Emotional Disturbance.” I did not realize such a crime did not even exist in the Kentucky Penal Code until I noticed that the Court had entered the UOR number for Manslaughter First Degree to her file. The Commonwealth had essentially created a crime and determined what sentence would be appropriate. The Court then had to work backwards, based on the sentence, to determine what crime the penalty fit within. Although I wasn’t sure how to fix it, I knew it was wrong.

My KIP supervisor, Marguerite Thomas, and I made the trip to Kentucky Correctional Institute for Women to visit Jacquelyn. We sat in the otherwise empty visitation room as Jacquelyn began pouring her heart to us. Immediately, I connected with her. We were the same age, but our lives had taken drastically different paths. During our first meeting, I was less than four months pregnant, with a due date the same as her baby’s birthday. Jacquelyn detailed the horrific abuse she had endured at the hands of her husband, who was serving a sentence only six years longer for the murder of their daughter. Later, when I met with her mother and sister, I listened to numerous accounts of witnessed abuse by her husband. I was astounded that she was in prison

over the actions of her abusive husband. Although I wasn’t sure if we could fix it, I knew it was wrong.

There was no resolution to the case by the time I completed my third year of law school. However, I agreed to continue assisting with the case as it progressed through DPA’s Post Conviction Branch. I helped prepare and argue a CR 60.02 motion before the trial court. We called an expert on domestic violence as well as the husband, who signed an affidavit swearing that Jacquelyn had no involvement in the death of their daughter. Despite our best efforts, the judge overruled the motion, and we lost on appeal. It appeared as if Jacquelyn would spend the next 18 years locked away for something over which she had no control. Although we weren’t able to fix it, I still knew it was wrong.

It was not until December of 2007 her name once again resurfaced.

Jacquelyn was one of the women pardoned by Governor Fletcher before he left office, due in part to the irregularities in how the plea was recorded, as well as the severe and persistent violence she suffered at the hands of her husband. Jacquelyn’s case was a great example of holistic client representation. The collaborative efforts of the Innocence Project and the Post Conviction Branch convinced me early on that I wanted to devote my legal career to public defense.

This experience shaped the way I view the individuals with whom I work every day; not as case numbers but as people with often complicated histories. Although winning is good, I don’t simply look at whether I won or lost a case, but instead focus on how I made that person’s life better as a whole. And three years after my first visit with Jacquelyn, we finally fixed it and made it right.”

Amanda Jarrels Mullins
Attorney, Maysville Trial Office



Protection & Advocacy

Protection and Advocacy, a division within the Department of Public Advocacy, is a client-driven agency providing advocates for persons with disabilities. P&A was established in 1977 as the result of federal legislation mandating protection of the rights of persons with disabilities through legal advocacy. It is primarily funded through grants from several Federal agencies.

Two advisory boards (Protection and Advocacy for Developmental Disabilities and Protection and Advocacy for Individuals with Mental Illness) assist the Executive Director, Marsha Hockensmith, in setting annual priorities and providing feedback and input on current disability rights issues. Most members of the advisory boards are people with disabilities or parents of people with disabilities.

Services are provided through three teams of advocates:

The Adult Team

provides legal advocacy services to individuals age 25 and up. In FY 2008 this team:

- Monitored numerous Supports for Community Living adult day training sites and staffed residences providing support to individuals with intellectual and other developmental disabilities;
- Represented individuals whose consumer directed

option home and community-based waiver services were terminated or reduced;

- Helped many individuals live in the least-restrictive setting and avoid or leave an institution;
- Represented individuals who expressed an interest in terminating or modifying their guardianship status or restoration of their right to vote;
- Served on the Olmstead transition committees, which help individuals at each of the state psychiatric hospitals move to the community;
- Represented several individuals whose rights under the Americans with Disabilities Act were violated; and
- Worked with the traumatic brain injury community in supporting a long-term care Medicaid waiver for individuals with brain injuries.

The Information, Training and Outreach Team

responds to requests from anyone who has a disability rights related legal question. In FY 2008, this team:

- Responded to more than 1,300 requests for information, advice, and referral;
- Provided trainings on disability rights, exhibited at numerous disability related conferences across the state;

- Converted numerous existing outreach materials into large print and other alternative formats; and
- Provided outreach to underserved or underserved disability, minority, and geographic populations.

The Children and Youth Team

provides legal advocacy services to children and youth through age 25. In FY 2008 this team:

- Represented students who were not receiving an appropriate free public education under IDEA or who were not receiving appropriate accommodations under Section 504;
- Represented children who were aging out of the foster care system not receiving appropriate transition services;
- Helped many children/youth live in the least-restrictive setting and avoid or leave an institution;
- Presented programs to youth and guardians on services available for youth transitioning from foster care;
- Developed a tool kit with other agency partners for transitioning students from school to work, post-secondary education and adulthood;
- Provided training, information, and publications to various groups; and
- Conducted onsite moni-

toring visits at various institutions.

During FY2007 P&A continued to monitor the terms of the Michelle P. settlement. The Michelle P. case alleged that the law requires the state to provide services to persons with developmental disabilities and related conditions in a reasonably prompt manner and in a more integrated community setting when that is their choice. P&A was later successful in having the suit certified as a class action on behalf of all Kentuckians with intellectual disabilities and other developmental disabilities and re-

lated conditions who were seeking community based Medicaid services. The case was settled in 2006. The settlement required the state to double its current funding for community supports over five years and to take other steps to increase consumer directed services and downsize institutions.

In 2007, the state notified P&A that it no longer had the money to provide services negotiated under the settlement. P&A filed a Motion to Enforce the Settlement in December 2007 and on March 4, 2008 the District Court granted the motion. Under the new terms, the state agrees to serve 3,000

class members in the first year. This is 7,000 less than the original settlement required; however, the Amendment also requires the state to serve an additional 1,500 individuals each year until reaching 10,000 in year six. The state also extends the waiver from a minimum of three years to a minimum of eight. Plaintiffs permitted the defendants to reduce the current 50 hour per week maximum for certain waiver services to a 40 hour per week maximum. The state further agreed not to appeal the March 4 ruling, and P&A agreed not to pursue attorney fees.



This painting, entitled, "Your Time," was a collaborative effort among persons with disabilities, including individuals with mental health issues, individuals with intellectual and other developmental disabilities, individuals with physical disabilities, individuals with acquired brain injuries and other members of the community.

Social Work Pilot Program

The Kentucky Department of Public Advocacy conducted a Social Work Pilot Program between October 2006 and October 2007 in three regions to measure the impact of social workers in a public defender office. Among other services, the social workers helped clients to secure treatment and identified alternative sentencing plans, and helped them to obtain and abide by the terms of supervised probation.

The University of Louisville Kent School of Social Work, in its report on the program, said 229 defendants were served by three social workers. of that number, the Kent School tracked 181 individuals (141 adults and 40 juveniles) for the purposes of statistical reporting.

Prior to the introduction of social workers, 86 percent of adults and 52 percent of juveniles reported factors that indicated substance abuse and a similarly disturbing percentage reported signs of mental distress: 73 percent of adults and juveniles.

An encouraging 82 percent of adult defendants who received social worker services were still in the community after their release from incarceration. Recidivism among these adult defendants was an extremely low 15 to 18 percent. The average rate of recidivism for all offenders, as reported by the the Kentucky Department of Corrections, was approximately 34 percent.

Each social worker in the pi-

lot program, therefore, saved 10,000 days of incarceration annually—or 27 years each.

Additionally, 93 percent of the defendants abstained from prohibited substances. The number of defendants that participated in AA, NA or other self-help groups tripled in six months.

The program saved the Commonwealth more than \$100,000 per social worker annually (after operating costs and costs for treatment). That amounted to \$3.25 of incarceration costs saved for every \$1 invested in social workers' salaries.

If this program were funded for statewide implementation, the estimated taxpayer savings would be between \$3.1 million and \$4 million per year.



“We all know that many times in the course of our work, we are often underappreciated or not appreciated at all. That’s when, often times, we must look to the small things as victories or gratifying. These are often never courtroom victories. Getting a client into a rehab facility or a child back home are viewed in my mind as major victories.”

Brandi McEldowney, Staff Attorney, Hopkinsville Trial Office

“You don’t become a public defender because it is a glamorous job with a big paycheck and travel opportunities. The hours are long, the clients are not always happy and many times you deal with the darkest side humanity has to offer. You are forced to deal with prosecutors and judges who treat you with little respect because you are ‘the public defender’ or clients who would rather have a ‘real attorney.’ You deal with family members who are at times needy or belligerent or, even worse, completely disinterested in your client. And yet after all this time I have learned that the victories I experience don’t necessarily come from winning in court.

The greatest rewards are much less tangible:

Feeling tired and frustrated after having worked a 60-hour week, I come to work on Friday morning to pick up a phone message from a client who just called to say “thanks” for helping to get him into a drug treatment program.

Taking the time to speak with the mother whose son was recently diagnosed with a mental illness and to assure her there is help available to him, I share her relief that her son will finally get the help he needs.

Helping the mother of an autistic child who was charged with assaulting a classmate, and getting the charges against him dismissed because the school did not follow federal law.”

Elizabeth Curtin, Directing Attorney, LaGrange Trial Office

Appendices

Trial Cases and Case Counting Methods

The case definition adopted by DPA is consistent with national standards and is conservative. Yet, the average per attorney caseload exceeds the national standards by over 200 percent. Total cases listed for a branch, division, or DPA as a whole are only those cases that were opened during the fiscal year being reported.

The totals do not include the numerous, ongoing cases handled by DPA that were opened in previous fiscal years. Following is a chart showing average DPA caseloads using the method of calculation which DPA has used in previous caseload reports. This is the most conservative way of calculating caseloads

To understand what the case numbers represent, one must understand what was and was not included. The Administrative Office of the Courts, the Prosecutors Advisory Council, and DPA all use case counting in order to monitor the workloads of their employees. Since the work performed by the employees of these different agencies is not the same, each agency counts cases differently. Consequently, the numbers used by these different agencies do not match. For example, DPA counts probation and parole revocations, contempt

hearings and Persistent Felony Offender charges as separate cases. AOC opens a case at the time of the indictment and the time lag before DPA is assigned the case may result in DPA opening the case in a different fiscal year. Each agency counts what should be counted for its own employees, in a way that fits the needs of each agency. Consistency of definition is ensured through the use of the agency's case management system, and in-house database.

Throughout this document, the following definitions and methods of case counting are used consistently.

Trial Division Cases

A case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events. These charges must be brought contemporaneously against the defendant, stemming from the same course of conduct, and involving proof of the same facts. Some cases assigned to individual attorneys are conducted, either wholly or in part, outside the confines of state courts. To be counted as a "case" for Trial Division statistical purposes, a formal appointment by

a court with appropriate jurisdiction is required. An individual attorney's actions do not constitute a "case" (for agency statistical purposes) if the activity is brief, strictly routine (e.g., standing in for arraignment purposes as a regularly scheduled motion hour, responding to inmate correspondence), and performed as a courtesy to the court.

In addition to adhering to the general agency definition of a "case," to be counted as a capital eligible case, an accused individual must be charged with at least one count of kidnapping or murder, with a qualifying KRS aggravator identified. The number of attorneys assigned to the case has no bearing on the agency's counting of capital cases, and, because cases must be entered and categorized upon assignment, the agency does not require prior receipt of notice from the Commonwealth's Attorney that the death penalty will be sought. Although death penalty cases are always very labor-intensive, DPA does not normally count death penalty cases as anything more than single felony cases.

Post-Trial Division Cases

The Post-Trial Division has three branches, each of which has a different mission and func-

tion. The division has developed a common definition for a case. As with the Trial Division, all cases are only counted during the year that the case is opened. The Post-Trial Division case counting system records multiple counts tried together at the trial level as a single case for appellate or post-conviction purposes. Most post-trial cases remain open and require work over several years.

Across the division, a case is assigned and counted as a case at the following points in the process:

a. When a direct appeal is received and the case is assigned to counsel to brief;

b. When a post-conviction appeal is received and the case is assigned to counsel to brief. These include appeals from RCr 11.42 denials, CR 60.02 denials, state habeas denials, conditional guilty pleas, probation revocations, denials of requests to with-

draw guilty pleas, jail credit denials, sentence reduction denials, and *Lewis* hearing appeals;

c. When a petition for habeas corpus is filed in the federal U.S. District Court;

d. When a final (versus proof) brief is filed in a habeas case in the Sixth Circuit Court of Appeals;

e. When a petition for writ of certiorari is granted and briefing is ordered;

f. When a motion for discretionary review is granted and briefing is ordered;

g. When original actions are filed and extraordinary writs are filed in a circuit court, court of appeals, supreme court, or federal court;

h. When fact, duration or condition-of-confinement cases are pursued on behalf of clients under eighteen years of age who are in the juvenile system. (These include *inter alia* motions to termi-

nate commitment, cases pursued as Section 1983 litigation, ARC hearings, YO sentencing hearings where JPDB lawyers do not enter the case until the sentencing stage as the attorneys for the child in circuit court, supervised placement revocation hearings);

i. When state habeas actions are filed in circuit courts;

j. When RCr 11.42 pleadings are filed in circuit courts and juvenile courts;

k. When CR 60.02 pleadings are filed in circuit courts and juvenile courts;

l. When section 1983 litigation is filed;

m. When clemency petitions are filed on behalf of capital and non-capital clients;

n. When motions are filed post-conviction to correct the sentence; and

o. When motions are filed to reopen cases pursuant to claims of factual innocence.

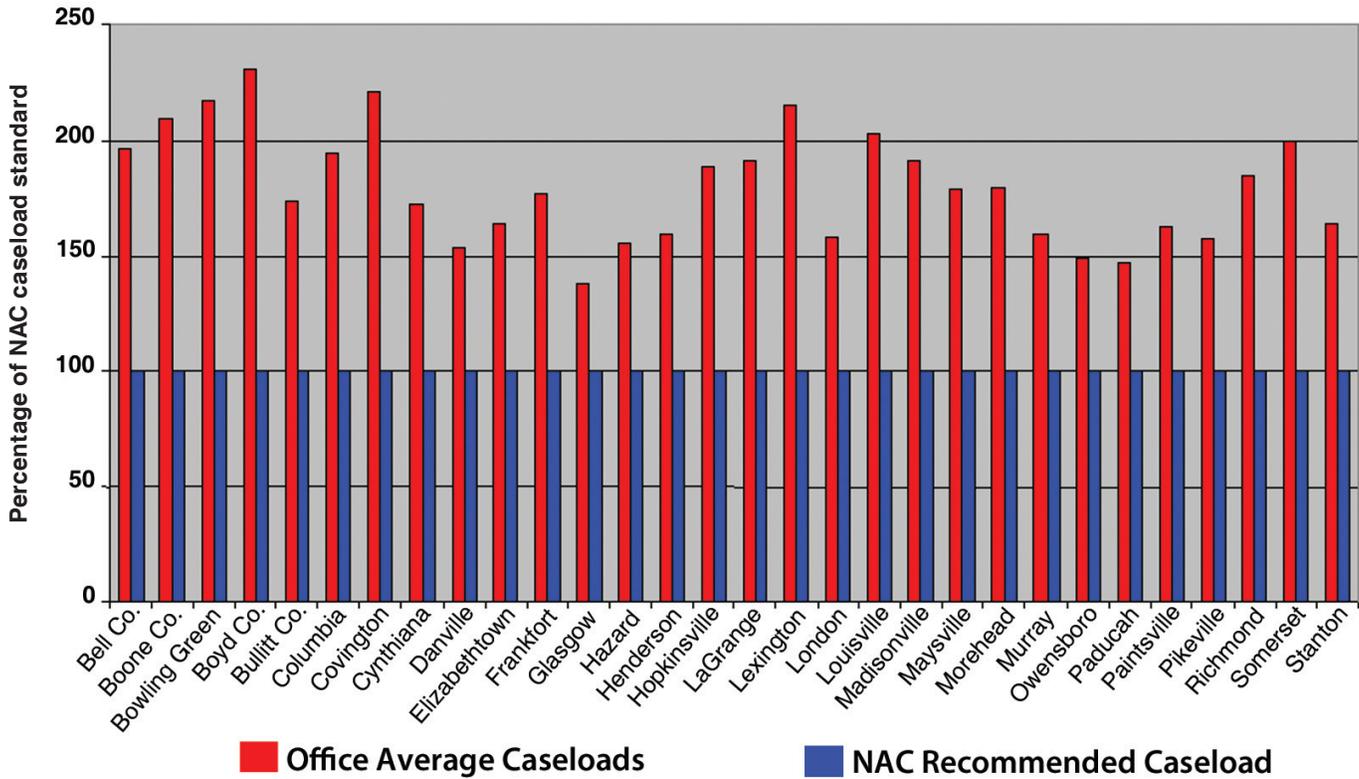
Trial Office Caseloads by Positions, Actual Attorneys and Total Cases Handled

Office	FY08 Attorney Positions	FY08 Actual Attorneys *	FY08 Cases Opened	Conflict Cases	Average Office Caseload Per Positions	Average Office Caseload Per Actual Attorney
Bell Co.	6	6	3,184	45	523.2	523.2
Boone Co.	11	9	4,722	160	414.7	506.9
Bowling Green	10	9	4,346	173	417.3	463.7
Boyd Co.	7	6	3,660	138	503.1	587.0
Bullitt Co.	7	7	3,261	125	448.0	448.0
Columbia	8	7	3,171	110	382.6	437.3
Covington	15	14	7,337	268	471.3	504.9
Cynthiana	6	4	2,130	135	332.5	498.8
Danville	9	9	3,671	55	401.8	401.8
Elizabethtown	13	12	5,284	110	398.0	431.2
Frankfort	8	7	3,045	100	368.1	420.7
Glasgow	6	6	1,986	47	323.2	323.2
Hazard	9	8	3,540	59	386.8	435.1
Henderson	8	7	2,946	87	357.4	408.4
Hopkinsville	14	13	6,605	142	461.6	497.2
LaGrange	5	4	1,931	49	376.4	470.5
Lexington	22	16	10,990	123	494.0	679.2
London	10	10	4,297	189	410.8	410.8
Louisville	62	57	33,506	41	539.8	587.1
Madisonville	7	5	2,452	53	342.7	479.8
Maysville	5	4	2,098	187	382.2	477.8
Morehead	8	8	3,822	110	464.0	464.0
Murray	9	9	3,851	79	419.1	419.1
Owensboro	12	12	4,491	113	364.8	364.8
Paducah	14	12	4,452	76	312.6	364.7
Paintsville	4	4	1,822	52	442.5	442.5
Pikeville	7	7	3,191	113	439.7	439.7
Richmond	10	8	4,161	95	406.6	508.3
Somerset	8	7	3,296	75	402.6	460.1
Stanton	6	6	2,550	96	409.0	409.0
TOTAL:	326	293	145,798	3,205	437.4	486.7

* Actual attorneys in position as of June 30, 2008.

This report is a snapshot taken at a particular point in time and is accurate as of that date based upon the information put into DPA's case management system.

DPA Office Caseloads Exceed NAC Standards*



* NAC is the National Advisory Commission, which adopted the first national standards for the maximum number of cases public defenders can handle and provide competent and ethical representation. As shown above, the caseload in every DPA office exceeds these standards.

FY 2008 Trial Case Openings by Court Type & County

COUNTY	TOTAL	CIRCUIT	CIRCUIT %	DISTRICT	DISTRICT %	FAMILY	FAMILY %	OTHER	OTHER %	JUVENILE
ADAIR	534	154	29%	378	71%	1	0%	1	0%	138
ALLEN	231	95	41%	99	43%	37	16%	0	0%	58
ANDERSON	443	130	29%	309	70%	4	1%	0	0%	59
BALLARD	276	89	32%	186	67%	0	0%	1	0%	21
BARREN	1,000	376	38%	550	55%	74	7%	0	0%	164
BATH	489	114	23%	375	77%	0	0%	0	0%	61
BELL	1,936	408	21%	1528	79%	0	0%	0	0%	241
BOONE	3,091	865	28%	2183	71%	41	1%	2	0%	595
BOURBON	797	124	16%	635	80%	38	5%	0	0%	100
BOYD	1,586	448	28%	1137	72%	0	0%	1	0%	231
BOYLE	987	211	21%	729	74%	47	5%	0	0%	117
BRACKEN	259	52	20%	207	80%	0	0%	0	0%	20
BREATHITT	445	148	33%	297	67%	0	0%	0	0%	30
BRECKINRIDGE	435	163	37%	272	63%	0	0%	0	0%	50
BULLITT	2,154	411	19%	1688	78%	55	3%	0	0%	348
BUTLER	202	64	32%	132	65%	6	3%	0	0%	28
CALDWELL	378	89	24%	283	75%	5	1%	1	0%	65
CALLOWAY	898	319	36%	574	64%	1	0%	4	0%	113
CAMPBELL	2,575	777	30%	1493	58%	297	12%	8	0%	910
CARLISLE	111	35	32%	75	68%	1	1%	0	0%	5
CARROLL	494	114	23%	374	76%	0	0%	6	1%	69
CARTER	833	151	18%	612	73%	70	8%	0	0%	116
CASEY	372	178	48%	194	52%	0	0%	0	0%	62
CHRISTIAN	4,694	858	18%	3729	79%	77	2%	30	1%	869
CLARK	1,261	191	15%	930	74%	134	11%	6	0%	237
CLAY	545	106	19%	438	80%	0	0%	1	0%	38
CLINTON	357	160	45%	197	55%	0	0%	0	0%	23
CRITTENDEN	280	70	25%	193	69%	15	5%	2	1%	33
CUMBERLAND	262	74	28%	187	71%	0	0%	1	0%	22
DAVISS	3,296	687	21%	2603	79%	0	0%	6	0%	803
EDMONSON	125	55	44%	59	47%	11	9%	0	0%	9
ELLIOTT	222	47	21%	171	77%	4	2%	0	0%	28
ESTILL	599	199	33%	400	67%	0	0%	0	0%	51
FAYETTE	10,994	1279	12%	9179	83%	483	4%	53	0%	762
FLEMING	554	161	29%	393	71%	0	0%	0	0%	38
FLOYD	1,389	260	19%	1059	76%	70	5%	0	0%	124
FRANKLIN	1,236	438	35%	775	63%	15	1%	8	1%	251
FULTON	588	211	36%	365	62%	3	1%	9	2%	61
GALLATIN	259	55	21%	197	76%	7	3%	0	0%	45
GARRARD	400	82	21%	292	73%	26	7%	0	0%	59
GRANT	668	211	32%	457	68%	0	0%	0	0%	153
GRAVES	1,967	397	20%	1558	79%	0	0%	12	1%	164
GRAYSON	667	192	29%	474	71%	1	0%	0	0%	144
GREEN	221	63	29%	158	71%	0	0%	0	0%	31
GREENUP	815	240	29%	559	69%	15	2%	1	0%	82
HANCOCK	158	44	28%	110	70%	4	3%	0	0%	21

COUNTY	TOTAL	CIRCUIT	CIRCUIT %	DISTRICT	DISTRICT %	FAMILY	FAMILY %	OTHER	OTHER %	JUVENILE
HARDIN	3,704	771	21%	2685	72%	240	6%	8	0%	472
HARLAN	1,237	281	23%	956	77%	0	0%	0	0%	195
HARRISON	697	97	14%	561	80%	39	6%	0	0%	124
HART	479	165	34%	311	65%	2	0%	1	0%	25
HENDERSON	1,878	379	20%	1369	73%	129	7%	1	0%	435
HENRY	403	92	23%	295	73%	16	4%	0	0%	41
HICKMAN	106	20	19%	85	80%	0	0%	1	1%	22
HOPKINS	1,529	376	25%	1127	74%	23	2%	3	0%	248
JACKSON	325	76	23%	246	76%	3	1%	0	0%	34
JEFFERSON	33,514	4436	13%	29078	87%	0	0%	0	0%	5,463
JESSAMINE	1,305	299	23%	953	73%	53	4%	0	0%	280
JOHNSON	654	102	16%	516	79%	36	6%	0	0%	91
KENTON	4,751	1064	22%	2934	62%	736	15%	17	0%	1,520
KNOTT	502	76	15%	422	84%	4	1%	0	0%	121
KNOX	923	193	21%	689	75%	41	4%	0	0%	162
LARUE	260	65	25%	193	74%	2	1%	0	0%	30
LAUREL	1,514	348	23%	1018	67%	146	10%	2	0%	352
LAWRENCE	455	99	22%	322	71%	34	7%	0	0%	61
LEE	378	102	27%	275	73%	0	0%	1	0%	19
LESLIE	236	36	15%	200	85%	0	0%	0	0%	17
LETCHER	1,013	217	21%	796	79%	0	0%	0	0%	162
LEWIS	430	112	26%	276	64%	42	10%	0	0%	75
LINCOLN	464	101	22%	347	75%	16	3%	0	0%	89
LIVINGSTON	161	31	19%	125	78%	5	3%	0	0%	15
LOGAN	739	239	32%	497	67%	0	0%	3	0%	79
LYON	179	60	34%	118	66%	1	1%	0	0%	4
MADISON	2,203	375	17%	1558	71%	267	12%	3	0%	400
MAGOFFIN	450	83	18%	317	70%	50	11%	0	0%	89
MARION	542	243	45%	297	55%	0	0%	2	0%	31
MARSHALL	968	268	28%	682	70%	13	1%	5	1%	80
MARTIN	272	42	15%	185	68%	45	17%	0	0%	69
MASON	1,285	322	25%	962	75%	0	0%	1	0%	93
MCCRACKEN	3,243	851	26%	2291	71%	78	2%	23	1%	545
MCCREARY	538	244	45%	289	54%	0	0%	5	1%	144
MCLEAN	162	52	32%	110	68%	0	0%	0	0%	24
MEADE	653	166	25%	485	74%	2	0%	0	0%	99
MENIFEE	202	71	35%	131	65%	0	0%	0	0%	20
MERCER	499	97	19%	355	71%	47	9%	0	0%	86
METCALFE	167	49	29%	102	61%	16	10%	0	0%	24
MONROE	340	107	31%	233	69%	0	0%	0	0%	24
MONTGOMERY	1,155	402	35%	753	65%	0	0%	0	0%	209
MORGAN	364	93	26%	258	71%	13	4%	0	0%	49
MUHLENBERG	763	228	30%	535	70%	0	0%	0	0%	93
NELSON	933	344	37%	588	63%	1	0%	0	0%	107
NICHOLAS	247	36	15%	186	75%	25	10%	0	0%	39
OHIO	606	248	41%	350	58%	8	1%	0	0%	66

FY 2008 Trial Case Openings by Court Type & County

COUNTY	TOTAL	CIRCUIT	CIRCUIT %	DISTRICT	DISTRICT %	FAMILY	FAMILY %	OTHER	OTHER %	JUVENILE
OLDHAM	609	134	22%	447	73%	27	4%	1	0%	157
OWEN	210	76	36%	132	63%	1	0%	1	0%	17
OWSLEY	288	91	32%	197	68%	0	0%	0	0%	29
PENDLETON	335	27	8%	292	87%	16	5%	0	0%	58
PERRY	2,026	364	18%	1662	82%	0	0%	0	0%	152
PIKE	1,803	361	20%	1341	74%	101	6%	0	0%	203
POWELL	617	207	34%	404	65%	5	1%	1	0%	51
PULASKI	1,557	530	34%	957	61%	58	4%	12	1%	199
ROBERTSON	57	9	16%	47	82%	1	2%	0	0%	5
ROCKCASTLE	382	88	23%	288	75%	5	1%	1	0%	14
ROWAN	1,402	262	19%	1140	81%	0	0%	0	0%	85
RUSSELL	586	186	32%	396	68%	4	1%	0	0%	57
SCOTT	980	305	31%	674	69%	0	0%	1	0%	78
SHELBY	728	253	35%	469	64%	4	1%	2	0%	88
SIMPSON	300	181	60%	99	33%	19	6%	1	0%	41
SPENCER	177	40	23%	131	74%	6	3%	0	0%	22
TAYLOR	686	263	38%	419	61%	0	0%	4	1%	102
TODD	367	121	33%	243	66%	2	1%	1	0%	56
TRIGG	238	34	14%	201	84%	0	0%	3	1%	10
TRIMBLE	194	49	25%	139	72%	6	3%	0	0%	32
UNION	456	99	22%	333	73%	24	5%	0	0%	84
WARREN	3,481	1449	42%	1745	50%	286	8%	1	0%	573
WASHINGTON	204	91	45%	113	55%	0	0%	0	0%	15
WAYNE	603	223	37%	367	61%	4	1%	9	1%	39
WEBSTER	329	101	31%	227	69%	1	0%	0	0%	25
WHITLEY	1,079	194	18%	885	82%	0	0%	0	0%	284
WOLFE	225	51	23%	174	77%	0	0%	0	0%	33
WOODFORD	382	98	26%	284	74%	0	0%	0	0%	73
TOTAL	145,812	31640	22%	109,660	75%	4,245	3%	267	0%	22,658

The 14 Capital Trial Branch cases are included in the counts for the counties in which they were opened.

Counties with Highest Caseloads by Court

Top 10 Circuit Court Caseloads

JEFFERSON	4,436
WARREN	1,449
FAYETTE	1,279
KENTON	1,064
BOONE	865
CHRISTIAN	858
MCCRACKEN	851
CAMPBELL	777
HARDIN	771
DAVIESS	687

Top 10 District Court Caseloads

JEFFERSON	29,078
FAYETTE	9,179
CHRISTIAN	3,729
KENTON	2,934
HARDIN	2,685
DAVISS	2,603
MCCRACKEN	2,291
BOONE	2,183
WARREN	1,745
BULLITT	1,688

Top 10 Juvenile Caseloads

JEFFERSON	5,463
KENTON	1,520
CAMPBELL	910
CHRISTIAN	869
DAVISS	803
FAYETTE	762
BOONE	595
WARREN	573
MCCRACKEN	545
HARDIN	472

Top 10 Involuntary Commitment Caseloads

JEFFERSON	1,127
CHRISTIAN	842
FAYETTE	747
BOONE	225
KENTON	219
PERRY	155
HARDIN	64
CAMPBELL	38
DAVISS	5
LARUE	3

Overview of Expenditures and Costs per Trial Case

The FY08 DPA cost per Trial Division case was \$225.70, well below the hourly rate for many private attorneys.

	<u>Expenditures</u>	<u>Cases</u>	<u>Cost per case</u>
Trial Division cases:	\$ 32,909,297.84	145,812	\$225.70

Overview of Expenditures and Costs per Contract Conflict Case

When multiple co-defendants are involved in a case, DPA many times must seek “conflict” representation. A single DPA office can only represent one of that set of defendants because of attorney ethical rules unless there is a waiver of the conflict. Without such a waiver, the other indigent clients from that same incident must be represented either by other DPA offices or by outside counsel. In these instances, DPA contracts with outside “conflict” attorneys at hourly rates well below standard hourly rates. Without this partnership between DPA and the private bar, the cost of providing indigent defense would escalate tremendously.

Typically, DPA has been able to contract with “conflict” attorneys to handle the defense in a criminal case for approximately \$500 per case.

	<u>Expenditures</u>	<u>Cases</u>	<u>Cost per case</u>
Trial Division conflict cases:	\$1,585,347.57	2,822	\$561.78

Juvenile Post Disposition Branch

Documents Filed and Hearings Attended Post Disposition

	<u>1Q</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>	<u>Total</u>
Original Actions Filed	2	1	0	1	4
State Habeas Corpus Actions Filed	0	1	0	0	1
Federal Habeas Corpus Actions Filed	0	0	0	0	0
11.42s Filed	3	0	1	3	7
610.120 Motions Filed	11	8	9	8	36
Motions for Belated Appeal Filed	0	0	0	3	3
Cases Resolved By Agreed Order, Without Filing one of the Above-Listed Motions	2	3	3	5	13
YO Sentencing Related Motions Filed	1	0	7	3	11
Alternative Sentencing Plans Filed	3	7	6	4	20
Other Motions Filed	12	13	20	16	61
PC Evidentiary Hearings Held	7	2	3	2	14
Sentencing Hearings Held	2	0	1	1	4
Other Non-SPR Hearings Held	17	21	19	19	76
Claims Administratively Resolved	0	0	16	13	29
Supervised Placement Revocation Cases	4	2	0	0	6
TOTAL	64	58	85	78	285

	<u>1Q</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>	<u>Total</u>
Motions Filed	24	15	17	16	72
Original Briefs Filed	17	9	5	14	45
Reply Briefs Filed	5	9	2	3	19
Oral Arguments Held	4	6	1	2	13
Petitions for Rehearing Filed	0	0	0	2	2
Motions for Discretionary Review Filed	7	2	5	5	19
Petitions for Certiorari Filed	0	0	0	0	0
TOTAL	57	41	30	42	170

Juvenile Post Disposition Branch

FY 2008 Open Issues

FACILITY	FACT	DURATION	CONDITION	TOTAL
ACU Audubon	9	1	2	12
Adair Youth Development Center	64	111	30	205
Bluegrass Youth Development Center	49	27	18	94
Cadet Leadership Education Program	50	5	2	57
Green River	48	13	12	73
Lake Cumberland	92	9	7	108
Lincoln Village	125	81	30	236
Mayfield	26	21	9	56
Morehead	56	23	26	105
Northern	84	36	25	145
Owensboro	31	15	8	54
Rice Audubon	99	37	34	170
Woodsbend	64	26	29	119
TOTAL	797	405	232	1,434

FY 2008 New Juvenile Claims by Institution

