

Fiscal Year 2011 Annual Litigation Report

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



Connecting for **J**ustice

Shaping our future to serve
our clients,
our system,
and our Commonwealth.

The Kentucky Public Advocacy Commission

The 12-person Kentucky Public Advocacy Commission consists of a representative from each of the three Kentucky law schools, three members appointed by the Governor from recommendations of the Kentucky Bar Association, one member from recommendations by the Protection and Advocacy Advisory Boards, three at-large members and two members appointed by the Kentucky Supreme Court. The Commission is a critical way the independence of DPA is advanced as required by the American Bar Association.



Jerry J. Cox
Chair
Mount Vernon



John M. Rosenberg
Vice Chair
Prestonsburg



Allison Connelly
Associate Professor, Clinic
Director, UK College of Law



Charles E. English, Jr.
English, Lucas, Priest
& Owsley, LLP
Bowling Green



Darryl W. Durham
Weber & Rose, PSC
Louisville



Debra S. Miller
Director of Health Policy
Counsel of State Government



Dr. Crystal Rae Coel Coleman
Professor, Organizational
Communication, Murray State
University



Lewis G. Paisley
Stoll Keenon Ogden PLLC
Lexington



Luke Milligan
Assistant Professor
Brandeis School of Law
Louisville



Mark Stavsky
Professor
Chase College of Law



Michael D. Bowling
Stephoe & Johnson
Middlesboro

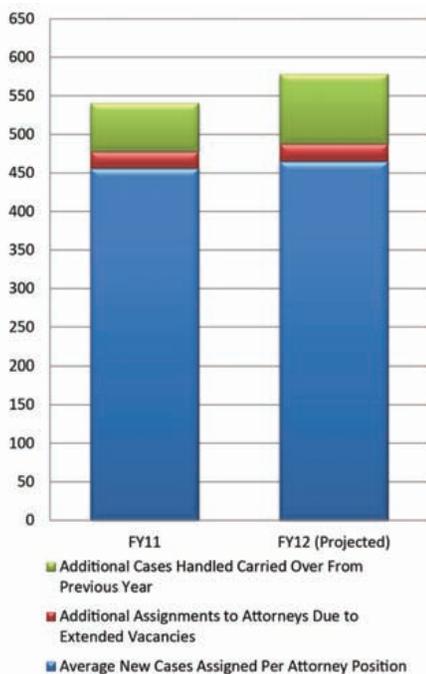


Robert C. Ewald
Wyatt, Tarrant and Combs, LLP
Louisville

ABA Ten Principles Of a Public Defense Delivery System (February 2002)

The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner, and to the same extent, as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

Reality Beyond the Numbers*



*See page 20 for additional information.

Public Value of Trial Division

- ◆ **180,036** Cases handled in 120 counties
- ◆ **152,727** New Cases
 - **24%** Circuit Court Felonies
 - **63%** Adult District and Family Court
 - **13%** Juvenile Cases
- ◆ **\$225.33** Funding per trial case
- ◆ **101** Capital clients represented in 42 counties
- ◆ **470** Alternative sentence plans accepted with over \$1 million in incarceration savings

Public Value of Post-Trial Division

- ◆ **280** Appeals in Court of Appeals or Kentucky Supreme Court
- ◆ **525** New Post-Conviction actions and **47** capital cases handled
- ◆ **150** KIP Cases reviewed
- ◆ **1,591** Juvenile issues handled by Juvenile Post-Disposition Branch
- ◆ **1** Case, *Kentucky v. King*, 131 S. Ct. 1849 (2011), argued before the US Supreme Court

Public Value of Protection and Advocacy

- ◆ **1,959** Persons with disability assisted

Public defense provides public value: Our public value is evident. We are the largest law firm in the state efficiently providing legal service in over 150,000 cases where people have their liberty and sometimes their lives at stake. Each person is entitled to be represented with the assurance that the legal process is fair and the result of his or her case is both valid and reliable. Every time a public defender stands up for a client, our Constitution comes alive. Our Country and Constitution were formed out of a fight to protect individual liberties from arbitrary decision-making of a King. Still, these protections do not implement themselves. To see that liberty is protected and honored within the American court system, an effective public defender is essential.



Edward C. Monahan
Public Advocate

Connecting for justice: Each day throughout our Commonwealth, we shape just results for our clients through vigorous advocacy in the criminal justice system. In addition to courtroom representation, DPA achieves this by connecting with clients, prosecutors, judges, probation and parole officers, jailers, wardens, community treatment providers, and so many more. By working effectively within the justice system, public defenders achieve meaningful results when a person's liberty or life is at stake as well as when those with disabilities or mental illness face barriers in our communities, health care organizations, and school systems.

Our future of serving our clients, the justice system, and the public: We are on the front lines of our justice system advancing the confidence clients and Kentuckians have in the validity of our justice system. Through our statewide experiences, we see first-hand what it means to have a justice system all Kentuckians believe in, one that works to convict the guilty and protect the innocent. We all know that the criminal justice system works best when prosecutors and defenders have a level playing field to present a case based on preparation and understanding of facts and evidence. 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. As we have seen, the entire justice system breaks down when one vital link is not fully functioning, making the system prone to mistakes and risking all of our work and reputations in the community.

I am in my 32nd year of being a public defender and my third year as Public Advocate. This work is a privilege for our entire staff and me. I am very proud of being a part of so many working every day to do the most noble endeavor in life, helping people in need.

Thank you to all who support a fair and balanced criminal justice system.

Edward C. Monahan
Public Advocate

Leadership
Team



Damon Preston
Deputy Public Advocate



B. Scott West
General Counsel



Glenda Edwards
Trial Director



Michael Rodgers
Law Operations Director



Tim Arnold
Post-Trial Director



Jeff Sherr
Education and Strategic
Planning Branch Manager



Marsha Hockensmith
Protection & Advocacy Director

THE 2020 PUBLIC DEFENSE SERVICE PLAN
ADVANCING EFFECTIVENESS, EFFICIENCY, PUBLIC SAFETY

Kentucky residents count on a reliable, effective, and efficient justice system to keep them safe. Public defense - like the prosecution, the courts, and the police - plays a vital role in ensuring the justice system works reliably and efficiently. When the justice system is working right with adequate resources, the guilty are convicted, proportionate sentences are assessed, victims have the closure they deserve, the rights of the innocent are upheld, and our communities are safe.

DPA is in the process of realigning the 30 existing public defender trial offices into 57 trial offices, one for each judicial circuit, to increase the effectiveness and efficiency to clients and the courts, and to increase public safety. In FY11, DPA has made progress on this plan by moving to realign the Kenton Office, which covers Kenton and Campbell counties, into a Kenton Office and a Campbell County Office. This realignment will be complete in 2012. DPA also plans to realign the Laurel County Office that covers five counties and parts of three circuits, into a Laurel County Office that covers 3 counties and a Clay County Office that covers 3 counties of a single circuit. Additionally, DPA has moved its Johnson County office to Floyd County.

The 2020 public defense service plan does the following:

- Provides a defender office in each judicial circuit like prosecutors, law enforcement, and court personnel
- Increases efficiency and effectiveness with attorneys spending more time in the courtroom and less time traveling
- Reduces caseloads to more manageable, ethical levels to allow for more effective representation
- Serves the courts and public more efficiently
- Advances public safety

This plan results in the following efficiencies:

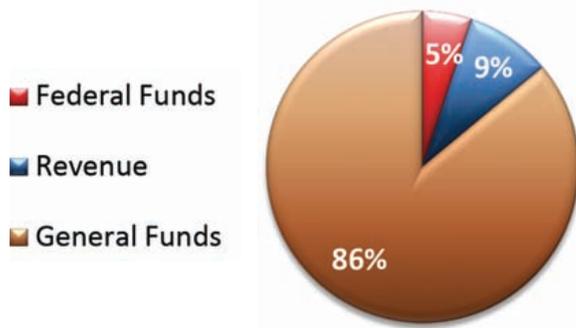
- Better use of time for lawyers (our most expensive resource)
- Better accessibility to DPA offices for clients, families, and witnesses
- Reduction of travel expense for lawyers, investigators, and alternative sentencing social workers
- Greater ability to handle conflicts with a full-time public defender in an adjoining office that is geographically closer to the court and that is supported by a full-time investigator

All of these efficiencies will lead to more effective representation of clients, more efficient service to courts, and more interaction and responsiveness to prosecutors and other criminal justice officials.

Public Defense



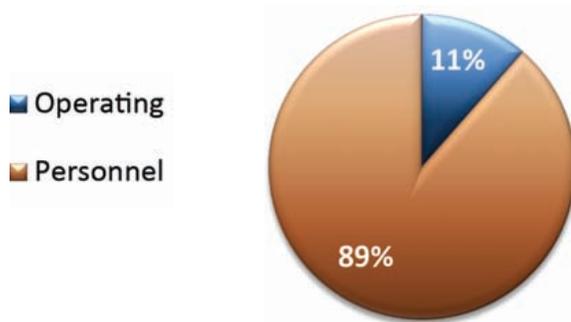
FY11 Revenue



DPA obtains most of its funding from general funds but also almost \$4 million from three revenue sources.

1. **\$1,384,711** Partial Fees paid by defendants DPA is appointed to represent, authorized by KRS 31.211 (formerly called recoupment)
2. **\$1,355,489** 20% of DUI service fees of all defendants convicted of DUI, authorized by KRS 189A.050
3. **\$1,175,150** 3.5% of total court costs collected, with DPA's portion capped by statute at no more than \$1.75 million, authorized by KRS 42.320(2)(f)

FY11 Expenditures

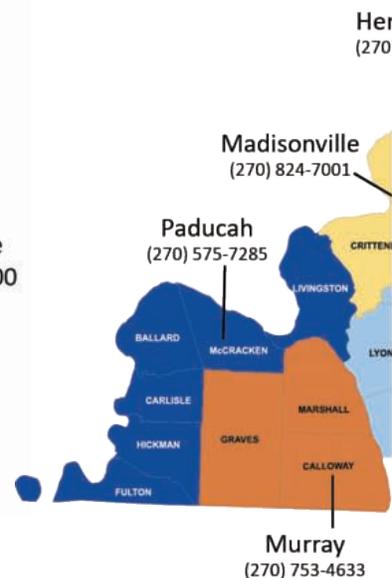
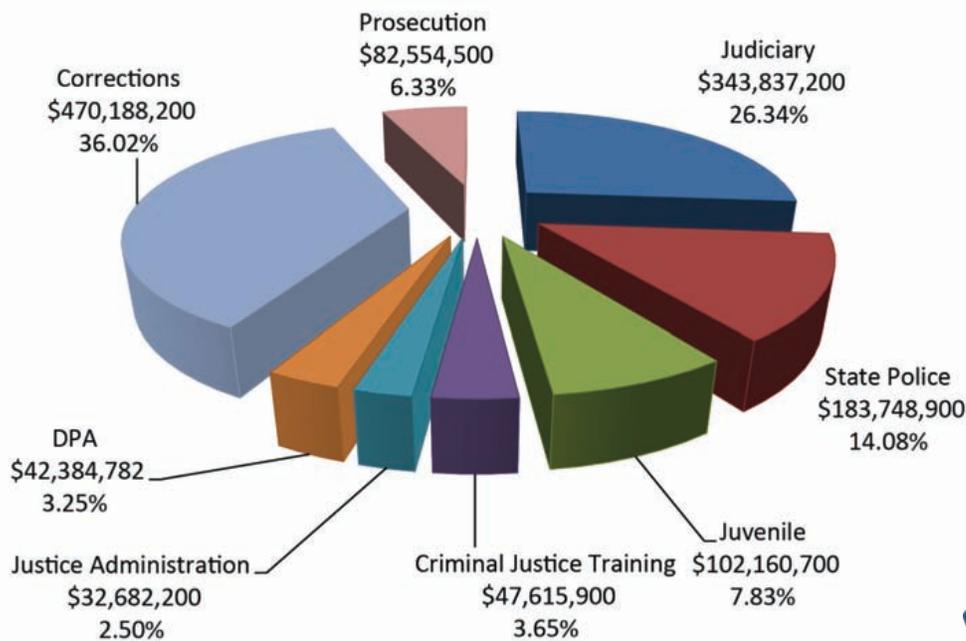


Out of DPA's budget, 89% goes directly to personnel to deliver, administer, and support public defender services. By keeping non-personnel operating expenses to 11% of the budget, DPA strives to maximize services to clients, courts, and communities.

Funding for the Kentucky Criminal Justice System

The real story behind the funding of the state's criminal justice system is that it is 4.8% of the total state budget. Within the Kentucky criminal justice system, DPA receives 3.25% as compared to prosecutors who receive 6.33%. This imbalance affects the quality of the representation of indigent defendants with DPA representing 24.4% of the cases in Circuit Court.

Criminal Justice System FY11



\$225

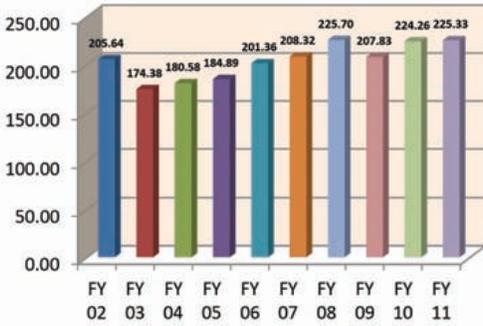
Funding per trial case

By any comparison of the costs of legal services, DPA's funding per trial level case is low. DPA's FY11 funding per newly-assigned trial case was only \$225.33. As a statewide system, DPA handled 152,727 new trial cases as efficiently as possible, but the quality of representation is at risk with inadequate funding.

The minimum national standards require representation be continuously provided by the same lawyer from initial court appearance through trial, sentencing, or dismissal. Further, an attorney representing a criminal defendant must spend sufficient time to accomplish the following:

- interview and counsel clients;
- seek pretrial release of incarcerated clients;
- conduct necessary investigations;
- pursue formal and informal discovery from the prosecution and file appropriate motions;
- undertake sufficient legal research;
- prepare and conduct for pretrial hearings and trials; and
- prepare for and conduct hearings at which clients are sentenced.

See: ABA Formal Opinion 06-441 Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation (May 13, 2006); ABA Eight Guidelines of Public Defense related to Excessive Workloads (2009).



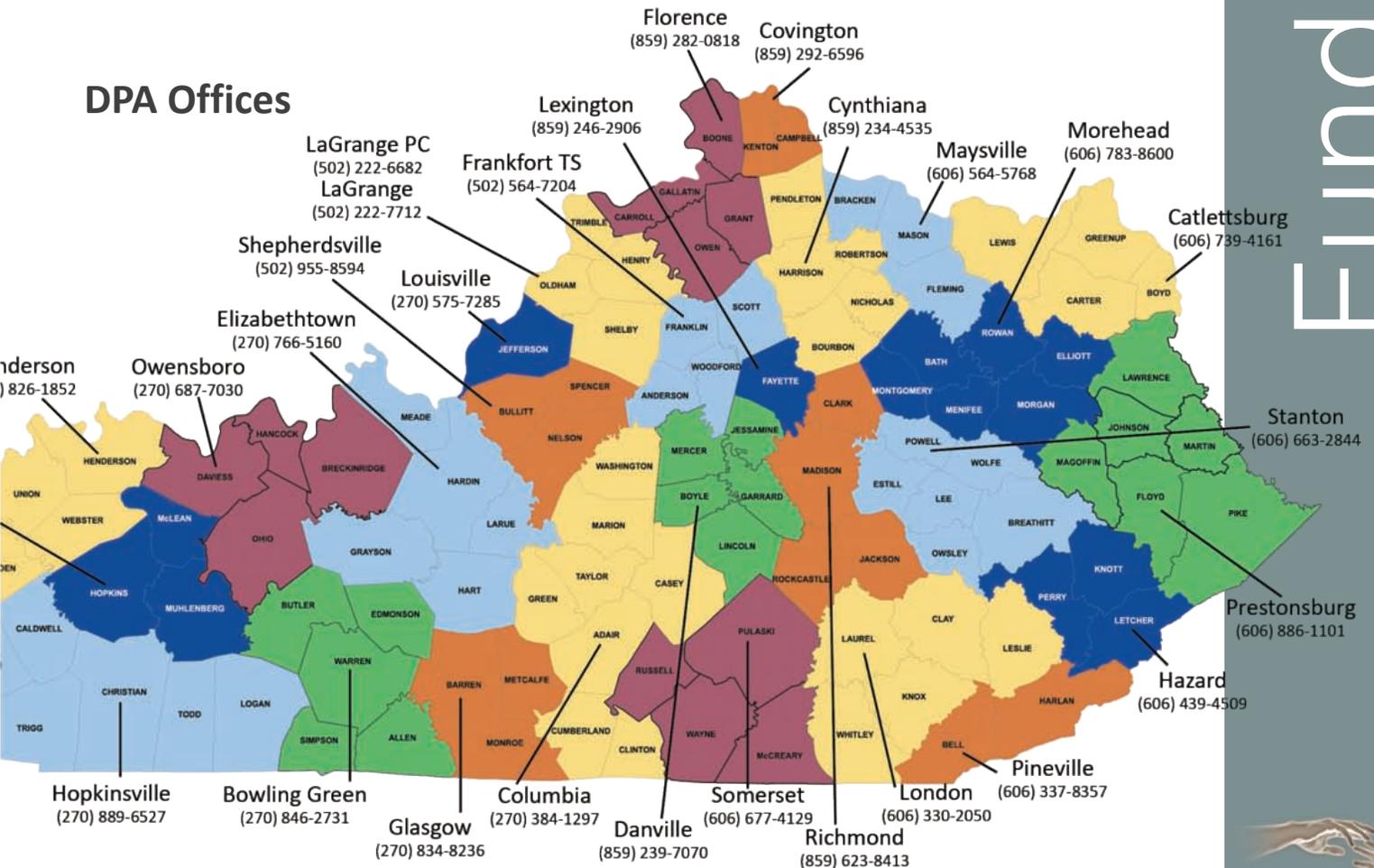
\$406

Funding per conflict case

The Kentucky Supreme Court's Rules of Professional Responsibility, SCR 3.130(1.7) Conflict of Interest, prohibit a lawyer from representing a client if the representation involves a concurrent conflict of interest and no waiver is obtained. In most cases, DPA contracts out cases to private criminal defense lawyers when unable to represent the client due to an ethical conflict. When an adjoining office can ethically represent one of the defendants, DPA sometimes provides counsel, although this adds to the caseload of the adjoining office.

In FY11, DPA contracted out 3,563 cases across the state at a per case average of \$406.09. This level of funding for these cases is not adequate to compensate private attorneys for the work required to provide competent representation. More than 500 cases were handled by other DPA offices and more than 3,000 were maintained by the local office after the client agreed to waive the conflict.

DPA Offices



Funding Per Trial



Agile Attention to our Clients: Clients are the focus of DPA's trial litigators and support staff. Like the customers of any professional, DPA's clients want the most favorable outcome, but also expect high-quality service along the way. They want to be treated with respect and know that the process is fair. To meet our clients' needs inside and outside the courtroom, we are increasing our level of professionalism on all fronts. Delivering quality service is the expectation of every leader in the Trial Division.

Despite heavy caseloads, limited support staff, and large coverage areas, we are proud of what we do each day for clients and we are proud of how we do it... all on the front lines of our justice system where the action is fast paced and requires flexibility and agility. Our skillful litigators are criminal defense specialists. From the district and circuit courts in all 120 counties, our work ensures that the system of law is balanced and fair for all those who come before it.

Efficient Service to Clients and the Criminal Justice System: Kentucky residents count on a reliable, effective, and efficient justice system to keep them safe. Public defense, like the prosecution, the courts, and the police, plays a vital role in ensuring the justice system works reliably and efficiently. When the justice system is working accurately with adequate resources, the guilty are convicted, victims get the closure they deserve, the rights of the innocent are upheld, and our communities are safe.

Public safety depends on a fully functioning justice system where law enforcement, prosecutors, and public defenders have the resources to do their jobs effectively. When lack of resources prevents a public defender from preparing a full defense that results in a wrongful conviction, the real perpetrator remains at large in the community, threatening our safety. Our work for clients is a smart investment in keeping the criminal justice system operating effectively and daily delivers valuable returns in community safety.



Glenda Edwards
Trial Director



Teresa Whitaker
Bluegrass Region Manager



Mike Ruschell
Western Region Manager



Rodney Barnes
Northern Region Manager



Roger Gibbs
Eastern Region Manager



Renae Tuck
Central Region Manager



Tom Griffiths
Lexington Capital & Trials Branch Manager

Counsel in Misdemeanor Cases

The Constitution requires appointment of counsel to an indigent charged with a crime unless waived by the defendant even when a suspended sentence will be imposed.

Alabama v. Shelton, 535 U.S. 654, 658, 674 (2002) held that a person who is being given a suspended sentence and who is indigent is entitled to the guiding hand of counsel.

"We hold that a suspended sentence that may 'end up in the actual deprivation of a person's liberty,' may not be imposed unless the defendant was accorded, 'the guiding hand of counsel' in the prosecution for the crime charged," citing *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972).

"...Shelton is entitled to appointed counsel at the critical stage when his guilt or innocence of the charged crime is decided and his vulnerability to imprisonment is determined...."

The constitutional and practical reasons for this rule of law are evident. Once a plea of guilty is entered, clients waive many things that they likely do not fully understand. They are exposed to further liberty issues, collateral consequences, and future harm.

Few of us would allow our best friend to plead guilty without the benefit of counsel since too much is at stake. Indigent defendants in Kentucky should be advised that they are entitled to the same protections, and DPA stands ready to assist all those who decline to waive this important right.

A Lawyer at First Appearance Makes a Difference

The empirical evidence demonstrates that having counsel at the initial appearance before a judge improves the likely outcome for a criminal defendant. According to a study, a defendant with a lawyer at first appearance:

- Is 2 ½ times more likely to be released on recognizance
- Is 4 ½ times more likely to have the amount of bail significantly reduced
- Serves less time in jail (median reduction from 9 days jailed to 2, saving county jail resources while preserving the clients' liberty interests)
- More likely feels that they are treated fairly by the system

Douglas L. Colbert, Ray Paternoster, and Shawn Bushway, in their article "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," 23 *Cardozo L. Rev.* 1719 (2002).



"[DPA] Social Workers provide much needed support and expertise to judges, attorneys, the defendants and their families."

The Drug Factor - Kentucky Justice and Public Safety Cabinet's Office of Drug Control Policy newsletter



Left to Right: Becky Gary (Hopkinsville), Kita Clement (Bowling Green), Sarah Johnson (Morehead), Heather Bartley (Pikeville), Jessica Dial (Columbia), LeAnne Garland (Paducah), Rena Richardson (Madisonville), Joanne Sizemore (London). Not pictured: Abena Amoah (Covington)

Social Workers

DPA's Alternative Sentencing Social Worker Program Receives National Award



Ed Monahan accepts the National Criminal Justice Association's 2011 Criminal Justice Program Award for the Southern Region from Kristen Mahoney, President of the National Criminal Justice Association.

The National Criminal Justice Association honored the Kentucky Department of Public Advocacy Alternative Sentencing Social Worker Program with its 2011 Outstanding Criminal Justice Program Award for the Southern Region. The NCJA Outstanding Criminal Justice Program Awards are given out annually at the National Forum on Criminal Justice and Public Safety.

Secretary of the KY Justice and Public Safety Cabinet, J. Michael Brown praised the program, "the DPA Alternative Sentencing Social Worker Program has shown itself to be an important tool for the criminal justice system, by guiding offenders into effective treatment programs, and ultimately reducing recidivism and decreasing incarceration costs."

Social Workers Offer Sentencing Courts Options

DPA social workers develop and present evidence-based, individualized, alternative sentencing plans to the court as options to avoid incarceration. Persons who would normally be jailed or imprisoned instead serve their sentence in treatment in the community with more effective and less costly outcomes. DPA represents the vast majority of criminal defendants in the state and is particularly well suited to lead a collaborative effort to create plans for adults and juveniles with mental illness or substance abuse problems.

DPA social workers do what others cannot do:

- Use motivational interviewing within the attorney-client privilege, increasing changed client behavior
- Improve coordination and cooperation among criminal justice agencies and treatment providers
- Intervene early for a more efficient resolution that increases the likelihood of pretrial release or probation
- Understand substance abuse, mental illness, and the undeveloped minds of juveniles

Judges and prosecutors support this program because:

- Sentencing options are provided
- Plans address underlying causes of the criminal behavior
- Clients' motivation for compliance with treatment plans increase

Jail and prison costs are saved:

Each social worker has saved 10,000 days of incarceration and more than \$100,000 in jail and prison costs according to an independent study done by the University Of Louisville Kent School Of Social Work.

The Council of State Governments Recognized DPA's Social Worker Program:

Kentucky's use of federal funding for the DPA social worker program to create evidence-based sentencing options was noted as an innovative way to use USDOJ money in the Council of State Government's July/August 2010 Capitol Ideas publication.

Office	# of Clients referred	# of Alternative plans presented to Judge	# of Alternative plans accepted by Judge
Hopkinsville	59	59	52
Pikeville	102	81	68
Covington	74	52	41
Columbia	48	43	27
London	96	38	20
Bowling Green	135	90	80
Owensboro	181	79	68
Madisonville	95	7	5
Morehead	96	96	76
Paducah	209	77	33

More Savings are Possible

An additional \$3.8 million investment over the biennium in DPA's alternative sentencing social workers will pay for itself and conservatively produce an additional \$5.3 million over the biennium in jail and prison savings.

For more information, see dpa.ky.gov/sw.htm for a video of two clients who have benefited from this program and hear what a judge, prosecutor, and probation and parole officer have to say about it.



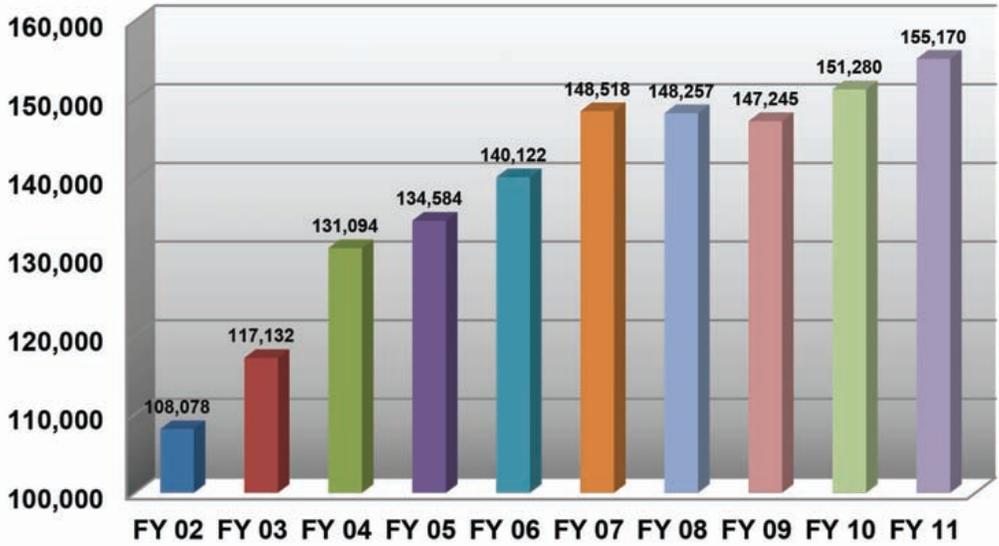
New Cases per Office FY11

Trial Office	Number of Attorney Positions	Total New Cases Assigned to Office*	Cases That Present a Conflict of Interest	Percent of Cases That Present a Conflict	Average FY11 Attorney Caseload (New Cases*)	Cases Handled*	Average Attorney Caseload (Cases Handled*)
Bell Co.	6.5	3,445	298	8.7%	483.1	3,675	526.9
Boone Co.	10	4,407	85	1.9%	432.2	4,858	477.3
Bowling Green	10	5,437	586	10.8%	515.1	8,264	799.8
Boyd Co.	9	4,857	116	2.4%	526.8	6,470	706
Bullitt Co.	8	3,609	156	4.3%	435.3	4,577	559
Columbia	8	2,976	248	8.3%	367.3	3,270	404.1
Covington	15	6,781	288	4.2%	432.9	8,481	546.2
Cynthiana	5	2,474	136	5.5%	467.6	3,161	605
Danville	9	3,932	76	1.9%	429.7	4,931	540.7
Elizabethtown	12	4,789	92	1.9%	391.4	5,176	423.7
Frankfort	8	3,592	96	2.7%	437	4,282	523.3
Glasgow	5	2,184	346	15.8%	427.6	2,642	519.2
Hazard	9	4,352	132	3.0%	462.2	5,362	581.1
Henderson	7	3,189	62	1.9%	446.7	3,693	518.7
Hopkinsville	14	6,362	654	10.3%	441.6	8,094	565.4
LaGrange	6	2,274	47	2.1%	371.2	3,073	504.3
Lexington	23	10,253	694	6.8%	416.4	11,651	477.3
London	10.5	4,560	356	7.8%	397.1	5,494	489.3
Louisville	57	33,616	65	0.2%	588.6	34,482	603.8
Madisonville	7	2,509	68	2.7%	348.7	2,762	384.9
Maysville	5	2,287	204	8.9%	421.6	2,757	517.6
Morehead	10	4,946	199	4.0%	484.8	6,379	630.5
Murray	9	3,440	250	7.3%	372.9	4,194	458.6
Owensboro	11	5,232	507	9.7%	461.7	6,435	571.7
Paducah	11	4,011	103	2.6%	355.3	4,463	396.4
Pikeville	8	3,056	217	7.1%	370.5	3,947	481.9
Prestonsburg	5	1,891	297	15.7%	349.6	2,176	415.4
Richmond	11	5,254	229	4.4%	461.7	6,292	556.5
Somerset	9	3,840	366	9.5%	418.7	4,908	538
Stanton	7	3,172	303	9.6%	438.1	4,087	569.9
TOTALS	325	152,727	7,276	4.8%	455.9	180,036	540.9

* DPA's traditional case counting method includes only new appointments received during the fiscal year, according to DPA's Internal Policy 9.04 which states: "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." In 2009, the KBA Criminal Justice Roundtable, consisting of judges, prosecutors, private and public defense attorneys, law professors, and legislators, unanimously recommended that public defenders and prosecutors identify not just the total cases opened each year, but also cases carried over from the prior year. To maintain consistency with prior DPA Annual Reports and still meet the recommendations of the Roundtable, both New Cases and Cases Handled are reported here.



Total DPA Caseloads



DPA's overall public defender caseload, including Trial and Post-Trial Divisions, continued to rise in FY11. After sharp increases while the statewide system was being completed, DPA now faces steady annual increases.

\$400 for 4 Days of Trial and Effective Advocacy:

Bruce Lominac, a Laurel County private conflict attorney, tried a bank robbery case where the client was convicted after two days of trial and sentenced to 50 years. Bruce filed a motion for a new sentencing hearing due to inaccurate information presented to the jury about parole eligibility. The Judge granted the motion and Bruce retried the sentencing phase another two days. At the end of the second hearing, the jury sentenced the client to 24 years. Bruce received a \$400 payment for all his work. Bruce could have made more flipping burgers for the time that he had put into this case.



Owensboro Trial Attorney Alex De Grand (R), reviews case materials with his client.

Far from Clients and Courts:

As the directing attorney in the Columbia Trial Office, Shanda West-Stiles must meet the needs of clients in eight counties. This is no easy task when one considers that the area her office covers stretches from the Tennessee border northward to past the Bluegrass Parkway in the heart of central Kentucky. When Shanda is at the office, she is almost an hour away from courts in Clinton County and Washington County where attorneys from the Columbia office are assigned. In addition to the cost of travel, such distances affect the attorney's ability to serve clients because time that could be spent on client meetings, legal research, investigation, or preparation is spent in a car on US 68 or Ky. 55. Shanda's clients cannot afford to travel to Columbia so they have less access to their attorney than defendants who can afford private counsel. Under DPA's 2020 Plan, offices would be opened in the future in each judicial circuit, including the 40th (which includes Clinton County) and the 11th (which includes Washington County).



Pikeville Trial Attorney Angela Darcy (R) reviewing case notes with her client.



Marvin Montgomery (Pikeville Investigator) examines a crime scene.



Richmond Trial Attorney Meena Mohanty (R), helps her client understand his rights and paperwork.



Cynthiana Trial Attorney Matt Perdue (L), shares a lighter moment with a client outside of court.



10 Highest Caseloads



Highest Average Caseloads (New Cases)	
Louisville	588.6
Boyd Co.	526.8
Bowling Green	515.1
Morehead	484.8
Bell Co.	483.1
Cynthiana	467.6
Hazard	462.2
Richmond	461.7
Owensboro	461.7
Henderson	446.7
DPA Average	455.9

Highest Increase in Cases FY10 - FY11	
Glasgow	21.9%
Hazard	19.5%
Boyd Co.	19.0%
Danville	12.6%
Frankfort	9.3%
Cynthiana	9.2%
Stanton	8.4%
Morehead	8.2%
Richmond	7.9%
Maysville	7.4%
DPA Average	2.5%

Offices with Highest Number of Juvenile Cases	
Louisville	4,134
Covington	1,778
Owensboro	1,123
Hopkinsville	955
Bowling Green	909
Lexington	792
Elizabethtown	751
London	703
Danville	673
Henderson	639

Offices with Highest Percentage of Juvenile Cases	
Covington	26.2%
Owensboro	21.5%
Henderson	20.0%
LaGrange	18.3%
Danville	17.1%
Bowling Green	16.8%
Frankfort	15.8%
Elizabethtown	15.7%
London	15.5%
Hopkinsville	15.0%
DPA Average	12.9%

Involuntary Hospitalization Hearings*	
Hopkinsville	936
Louisville	909
Lexington	559
Covington	252
Hazard	192
DPA Total	2,994

* DPA represents individuals with mental illnesses for whom involuntary hospitalization is sought under KRS Chapter 202A.

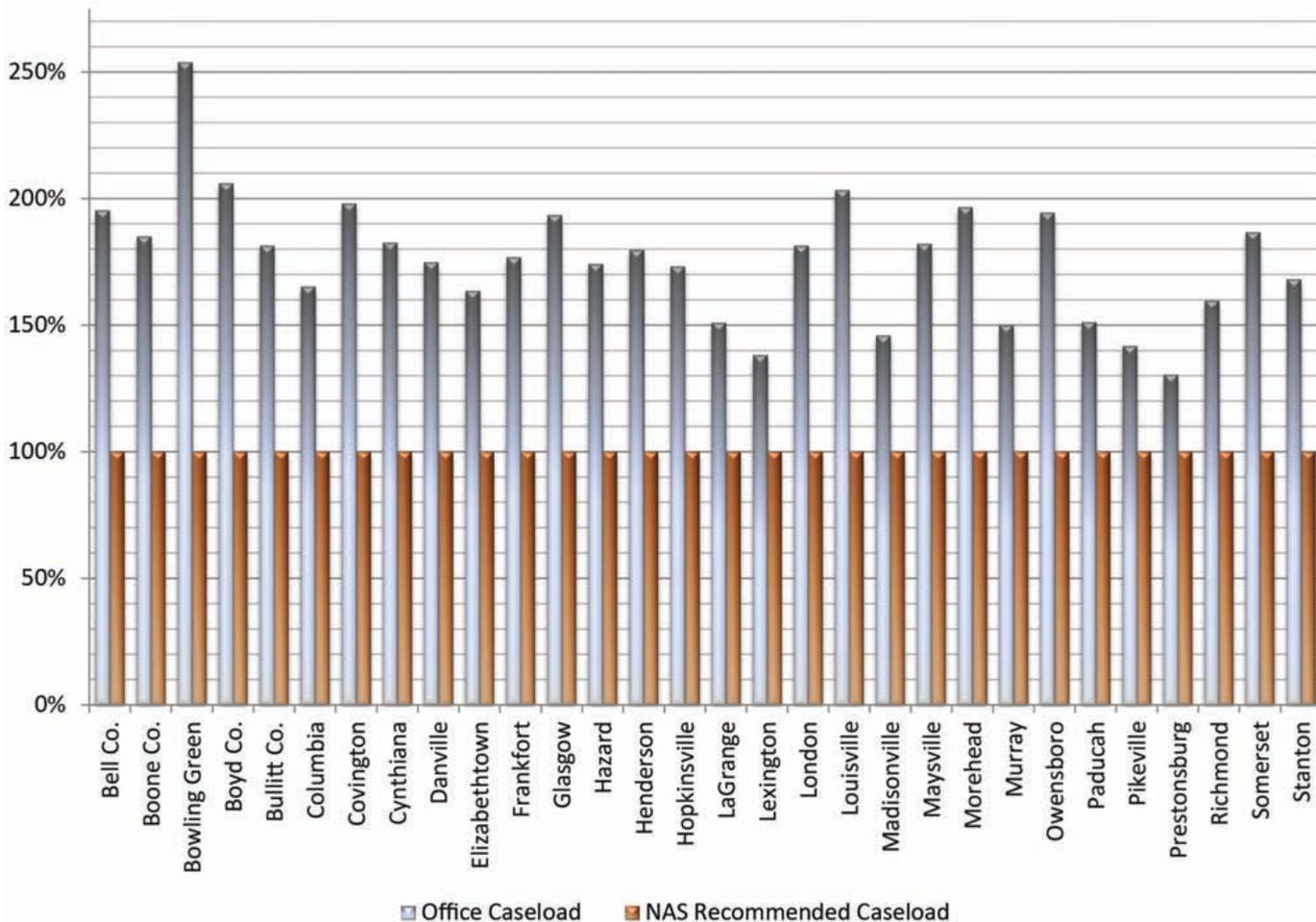
Highest Percentage of Cases in Circuit Court	
Bowling Green	42.4%
Columbia	39.6%
Somerset	39.2%
Glasgow	38.1%
Boone Co.	36.8%
Paducah	33.2%
London	31.7%
Maysville	30.6%
Bullitt Co.	30.5%
Covington	29.5%
DPA Average	24.4%

Highest Percentage of Cases in District and Family Courts	
Lexington	82.5%
Richmond	75.5%
Prestonsburg	72.6%
Louisville	72.3%
Hazard	69.1%
Cynthiana	67.7%
Pikeville	67.3%
Stanton	67.1%
Bell Co.	66.3%
Boyd Co.	64.2%
DPA Average	62.8%

Jury Trials	
Hopkinsville	39
Lexington	36
Covington	23
Boyd	18
Paducah	16
Bullitt	13
Glasgow	13
Maysville	12
Henderson	12
Madisonville	11

Every DPA Office Exceeds National Standards

The National Advisory Commission on Criminal Justice Standards and Goals established maximum caseload standards for public defenders. According to the NAC, public defenders should be assigned annually no more than 400 misdemeanors, 200 juvenile cases, or 150 felonies. Applying those standards to the caseloads and personnel in each DPA office reveals that every DPA office exceeds the NAC standards and most offices exceed the standards by more than 50%.



Administrative Specialist Bridget Satkowski (R), assisting a resident on work release in the Maysville Trial Office.



Bullitt County Administrative Specialist, Susan Dillman, communicating with a client over the phone.

DPA greatly appreciates the submission of photos by investigators for inclusion in this year's publication.



Investigator Warren Allred analyzing finger prints found at a crime scene in Mason County.



Morehead Trial Attorney Brandon Ison, visits a client in jail.



Glasgow Trial Attorney Dane Bowles, reviewing the case with his client.



New DPA Case Assignments by County - FY11

County	Total Cases	Circuit Court Cases	Adult District and Family Court Cases	Juvenile	% Circuit	% Adult District and Family	% Juvenile
Adair	494	162	223	109	32.8%	45.1%	22.1%
Allen	444	159	178	107	35.8%	40.1%	24.1%
Anderson	534	124	337	73	23.2%	63.1%	13.7%
Ballard	321	84	220	17	26.2%	68.5%	5.3%
Barren	1,210	476	554	180	39.3%	45.8%	14.9%
Bath	575	161	362	52	28.0%	63.0%	9.0%
Bell	1,949	509	1,225	215	26.1%	62.9%	11.0%
Boone	2,473	885	1,439	149	35.8%	58.2%	6.0%
Bourbon	736	200	467	69	27.2%	63.5%	9.4%
Boyd	1,903	495	1,245	163	26.0%	65.4%	8.6%
Boyle	842	241	513	88	28.6%	60.9%	10.5%
Bracken	238	56	172	10	23.5%	72.3%	4.2%
Breathitt	547	146	327	74	26.7%	59.8%	13.5%
Breckinridge	485	227	204	54	46.8%	42.1%	11.1%
Bullitt	2,448	601	1,598	249	24.6%	65.3%	10.2%
Butler	375	179	148	48	47.7%	39.5%	12.8%
Caldwell	434	171	235	28	39.4%	54.1%	6.5%
Calloway	817	298	454	65	36.5%	55.6%	8.0%
Campbell	2,399	745	977	677	31.1%	40.7%	28.2%
Carlisle	55	9	40	6	16.4%	72.7%	10.9%
Carroll	531	182	329	20	34.3%	62.0%	3.8%
Carter	1,192	232	780	180	19.5%	65.4%	15.1%
Casey	431	201	176	54	46.6%	40.8%	12.5%
Christian	4,438	743	2,944	751	16.7%	66.3%	16.9%
Clark	1,554	126	1,200	228	8.1%	77.2%	14.7%
Clay	662	123	524	15	18.6%	79.2%	2.3%
Clinton	209	81	114	14	38.8%	54.5%	6.7%
Crittenden	277	94	152	31	33.9%	54.9%	11.2%
Cumberland	175	61	100	14	34.9%	57.1%	8.0%
Daviess	3,889	783	2,176	930	20.1%	56.0%	23.9%
Edmonson	256	145	90	21	56.6%	35.2%	8.2%
Elliott	377	116	156	105	30.8%	41.4%	27.9%
Estill	851	238	561	52	28.0%	65.9%	6.1%
Fayette	10,253	1,009	8,452	792	9.8%	82.4%	7.7%
Fleming	642	210	376	56	32.7%	58.6%	8.7%
Floyd	1,594	385	1,124	85	24.2%	70.5%	5.3%
Franklin	1,385	352	760	273	25.4%	54.9%	19.7%
Fulton	384	162	189	33	42.2%	49.2%	8.6%
Gallatin	407	131	222	54	32.2%	54.5%	13.3%
Garrard	326	107	171	48	32.8%	52.5%	14.7%
Grant	747	324	373	50	43.4%	49.9%	6.7%
Graves	1,711	368	1,201	142	21.5%	70.2%	8.3%
Grayson	728	236	392	100	32.4%	53.8%	13.7%
Green	299	116	154	29	38.8%	51.5%	9.7%
Greenup	869	226	546	97	26.0%	62.8%	11.2%
Hancock	179	64	95	20	35.8%	53.1%	11.2%
Hardin	3,229	860	1,817	552	26.6%	56.3%	17.1%
Harlan	1,442	314	1,023	105	21.8%	70.9%	7.3%
Harrison	858	171	622	65	19.9%	72.5%	7.6%
Hart	532	201	285	46	37.8%	53.6%	8.6%
Henderson	1,850	374	1,064	412	20.2%	57.5%	22.3%
Henry	423	81	286	56	19.1%	67.6%	13.2%
Hickman	147	49	92	6	33.3%	62.6%	4.1%
Hopkins	1,605	399	998	208	24.9%	62.2%	13.0%
Jackson	341	65	263	13	19.1%	77.1%	3.8%
Jefferson	33,616	5,184	24,298	4,134	15.4%	72.3%	12.3%
Jessamine	1,790	476	996	318	26.6%	55.6%	17.8%
Johnson	981	180	752	49	18.3%	76.7%	5.0%
Kenton	4,381	1,256	2,020	1,105	28.7%	46.1%	25.2%



County	Total Cases	Circuit Court Cases	Adult District and Family Court Cases	Juvenile	% Circuit	% Adult District and Family	% Juvenile
Knott	533	130	317	86	24.4%	59.5%	16.1%
Knox	798	309	317	172	38.7%	39.7%	21.6%
Larue	400	143	218	39	35.8%	54.5%	9.8%
Laurel	1,571	565	744	262	36.0%	47.4%	16.7%
Lawrence	590	155	389	46	26.3%	65.9%	7.8%
Lee	281	63	211	7	22.4%	75.1%	2.5%
Leslie	291	48	232	11	16.5%	79.7%	3.8%
Letcher	1,440	343	966	131	23.8%	67.1%	9.1%
Lewis	306	125	159	22	40.8%	52.0%	7.2%
Lincoln	537	88	295	154	16.4%	54.9%	28.7%
Livingston	206	48	145	13	23.3%	70.4%	6.3%
Logan	697	247	364	86	35.4%	52.2%	12.3%
Lyon	222	75	112	35	33.8%	50.5%	15.8%
Madison	3,358	557	2,501	300	16.6%	74.5%	8.9%
Magoffin	274	71	182	21	25.9%	66.4%	7.7%
Marion	454	202	222	30	44.5%	48.9%	6.6%
Marshall	873	326	450	97	37.3%	51.5%	11.1%
Martin	373	106	219	48	28.4%	58.7%	12.9%
Mason	1,397	431	828	138	30.9%	59.3%	9.9%
McCracken	2,903	986	1,565	352	34.0%	53.9%	12.1%
McCreary	662	234	302	126	35.3%	45.6%	19.0%
McLean	165	64	74	27	38.8%	44.8%	16.4%
Meade	421	154	206	61	36.6%	48.9%	14.5%
Menifee	296	86	165	45	29.1%	55.7%	15.2%
Mercer	433	102	267	64	23.6%	61.7%	14.8%
Metcalfe	219	75	98	46	34.2%	44.7%	21.0%
Monroe	224	81	115	28	36.2%	51.3%	12.5%
Montgomery	1,500	520	816	164	34.7%	54.4%	10.9%
Morgan	632	97	445	90	15.3%	70.4%	14.2%
Muhlenberg	744	270	355	119	36.3%	47.7%	16.0%
Nelson	980	459	400	121	46.8%	40.8%	12.3%
Nicholas	304	66	222	16	21.7%	73.0%	5.3%
Ohio	673	251	303	119	37.3%	45.0%	17.7%
Oldham	720	167	395	158	23.2%	54.9%	21.9%
Owen	249	99	131	19	39.8%	52.6%	7.6%
Owsley	329	72	238	19	21.9%	72.3%	5.8%
Pendleton	474	105	296	73	22.2%	62.4%	15.4%
Perry	2,319	512	1,684	123	22.1%	72.6%	5.3%
Pike	1,680	373	1,119	188	22.2%	66.6%	11.2%
Powell	845	164	590	91	19.4%	69.8%	10.8%
Pulaski	1,561	606	817	138	38.8%	52.3%	8.8%
Robertson	99	28	68	3	28.3%	68.7%	3.0%
Rockcastle	461	127	315	19	27.5%	68.3%	4.1%
Rowan	1,542	438	980	124	28.4%	63.6%	8.0%
Russell	509	207	250	52	40.7%	49.1%	10.2%
Scott	1,257	291	836	130	23.2%	66.5%	10.3%
Shelby	897	250	479	168	27.9%	53.4%	18.7%
Simpson	480	184	243	53	38.3%	50.6%	11.0%
Spencer	178	33	118	27	18.5%	66.3%	15.2%
Taylor	758	281	394	83	37.1%	52.0%	10.9%
Todd	264	108	130	26	40.9%	49.2%	9.8%
Trigg	324	94	201	29	29.0%	62.0%	9.0%
Trimble	234	64	136	34	27.4%	58.1%	14.5%
Union	653	154	368	131	23.6%	56.4%	20.1%
Warren	3,856	1,626	1,550	680	42.2%	40.2%	17.6%
Washington	154	73	64	17	47.4%	41.6%	11.0%
Wayne	643	330	263	50	51.3%	40.9%	7.8%
Webster	408	106	237	65	26.0%	58.1%	15.9%
Whitley	1,204	390	571	243	32.4%	47.4%	20.2%
Wolfe	312	70	198	44	22.4%	63.5%	14.1%
Woodford	413	128	192	93	31.0%	46.5%	22.5%
TOTALS	152,727	37,217	95,858	19,652	24.4%	62.8%	12.9%



Post-Trial Division

The Post-Trial Division begins its work after a person has been convicted or adjudicated guilty of a criminal or status offense. Tim Arnold has been the Director of the Post-Trial Division since February 2008.

The Post-Trial Division has three branches, each of which specializes in one area of post-trial practice. When a person has been convicted or adjudicated guilty of a criminal offense, they have a right to appeal that offense to the next highest court. For example, an adult convicted in circuit court of a felony offense resulting in a sentence less than 20 years has a right to appeal to the Kentucky Court of Appeals. A person who receives a death sentence, or a sentence of 20 years or more, has the right to appeal directly to the Kentucky Supreme Court. All such cases on behalf of adult clients are handled by the Appeals Branch. During FY11, the Appeals Branch received 280 cases, including 2 death penalty cases.

If a person did not go to trial but instead pled guilty, or if a person did go to trial but was represented by ineffective counsel, was deprived of discovery, or has some other basis for challenging the judgment which they were not aware of at the time of trial, then they may file a post-conviction action. In adult cases, most of those actions are initially filed by the inmate *pro se*. If the court appoints counsel, then the Post-Conviction Branch provides representation. In FY11, the Post-Conviction Branch opened 525 cases. In addition, it represented 24 clients on death row, and had 47 actions pending on behalf of those clients at the end of FY11.

In some cases, individuals have a substantial basis for saying they are innocent. The Kentucky Innocence Project, which is a unit of the Post-Conviction Branch, assists those individuals. In FY11, KIP conducted significant investigation on 150 cases and filed 4 cases asserting a claim of innocence.

Like adults, juvenile offenders have a right to appeal their conviction or adjudication for a criminal or status offense to a higher court. Such representation generally requires the services of a specialist in juvenile law, who is trained to recognize and address the often technical nature of juvenile proceedings. Moreover, juvenile proceedings are often confidential and expedited, which places additional burdens on appellate counsel. Accordingly, the Department's Juvenile Post-Disposition Branch (JPDB) provides specialized appellate representation to juveniles who have been convicted or adjudicated of a criminal or status offense. JPDB also provides representation to youth who are confined to state institutions on matters related to the fact, duration or conditions of their confinement. In FY11, JPDB had 175 cases, including 81 appeals.

While the total number of cases handled by the Post-Trial Division is considerably less than in the Trial Division, each individual case is on average much more time consuming. Every Post-Trial case requires a thorough independent investigation by Post-Trial's attorneys and staff. With dedicated and highly trained post-trial specialists, DPA is able to assure zealous and effective advocacy for all clients, even those already convicted by a trial court.



Tim Arnold
Post-Trial Director



Kathleen Schmidt
Appeals Branch Manager



Amy Staples
Post-Conviction Supervisor



Linda Smith
KIP Supervisor



La Mer Kyle-Griffiths
JPDB Manager



Emily Rhorer
Appeals Supervisor



Julia Pearson
Appeals Supervisor



David Harshaw
LaGrange Adult Post-Conviction



University of Kentucky students participate in the Crime Scene Investigation Training organized by the Post-Conviction Branch.



KIP investigators, Emily Swintosky (L) and Jim Dudley (R), celebrate the exoneration of Michael VonAllmen (center R) with Barry Scheck (center L), Co-Founder of the Innocence Project.

Things are not always what they seem. As defenders we know that there is usually another side of the story, especially with those who are mentally ill or wrongly accused of being mentally ill. Defenders are telling the story of the humanity and innocence of clients.



Public Defenders Make a Difference: As a senior in high school, Antwain, a juvenile with gang ties, was charged with Robbery and 8 counts of Wanton Endangerment. Although 17 at the time of the alleged crime, Antwain had turned 18 before charged and placed in adult jail. "Antwain will never finish high school," most in the court system said. However, after Antwain's

public defender, Ginger Massamore, spoke with a school administrator, Antwain started receiving tutoring in jail, which continued after his release on bond. On May 27, Antwain became the first member in his family to graduate. He was so proud of himself. In fact, he was only .2 of a point away from honor cords. Antwain was fortunate to have a public defender behind him.

Although being diagnosed with mild mental retardation, Tom had big dreams of traveling. Having very little money, he devised a plan so he could visit new places. He was quite satisfied with sleeping in truck stops where truckers would allow him to ride along. When Tom came to the attention of Eastern State, he was given a questionable diagnosis and had a leg infection that was cited as evidence of danger to self. Bob Friedman in the Lexington Trial Office took the case to a bench trial where he argued that just because no one else in the courtroom would choose to live this unusual lifestyle did not mean that Tom's conditions were evidence of neither mental illness nor danger to self. The trial commissioner found reasonable doubt and sent Tom on his way, making him able to visit other new and interesting places.

Defenders Tell the Rest of the Story for Clients with Mental Illness:

- The state and its systems made concerted efforts to involuntarily commit Dorothy as mentally ill. However, she was not mentally ill and she had unusually good skills at living outside in weather in which few of us could survive. The Constitution and our values do not allow the state to take someone's liberty for being peculiar. DPA fought for Dorothy to keep her liberty.
- Teddy, a deaf client who had been involuntarily committed for years, was making no progress in the institution. It happened that the attending doctor refused to authorize an interpreter for therapy to occur. With the intervention of P&A, an interpreter was authorized, therapy occurred and the client's liberty has been restored.
- George was prosecuted under the guise of being mentally ill and dangerous to himself because he ate out of garbage cans. However, he was quite skilled at selecting the edible food and his behavior was the result of a reaction to medication, not mental illness. He's free because his defender told the rest of his story.

Protecting the Rights of People Not to be Stopped by Police Without Cause:

Adrian Benton was charged with murder, robbery, assault, and wanton endangerment as well as being a persistent felony offender. The Commonwealth sought a death sentence against Benton. Benton's defense team of Casey Holland, Rodney Barnes, and George Sornberger (as well as Investigator Doug Blair and Mitigation Specialist Lesa Watson) worked hard to defend their client not only against possible execution, but against the charge of murder itself. The team was able to demonstrate that Mr. Benton is mentally retarded, eliminating the possibility of a death sentence. At trial, they were able to humanize Mr. Benton through their compassion and dedication. In the end, even though the jury concluded that Mr. Benton had committed a homicide, they acquitted him of murder and found him guilty of second-degree manslaughter and other charges. He was sentenced to 27 years in prison and, in an unusual move for such a serious case, the jury recommended drug treatment, anger management, remedial reading education, and vocational training. In other words, a case that began with a possibility of a death sentence ended with the jury trying to save the life of Mr. Benton after he pays the penalty for the wrong he has done.

While driving, Michael Underwood was pulled over by a police officer despite the officer seeing no violations or having any idea who was driving. The officer just thought the vehicle was one he had seen at a bar earlier. After Mr. Underwood was charged with DUI, Jennifer Lo was appointed to represent him. She asked the court to dismiss the case because the police had no right to stop the vehicle. After the court denied the motion, Ms. Lo took the case to a jury trial, which ended in a mistrial. Seeing the strength of Ms. Lo's defense, the charge was reduced to reckless driving. Not accepting this partial victory, Ms. Lo appealed the court's decision not to dismiss the case and won, leading to a complete dismissal of the charges against Mr. Underwood.



Appeals Branch Attorney Corrects 15 Year Old Mistake: When Anthony Nash served out his sentence for a minor sex offense in 1997, he was mistakenly told he had to register as a sex offender. Like many sex offender registrants, he struggled to find work and maintain a home, and so he was prosecuted and found guilty of misdemeanor charges of failure to register two times before 2006. In October 2007, Mr. Nash entered a conditional guilty plea to a felony charge of failure to register, and was given a 10-year prison sentence. He was later convicted of an additional failure to register charge, which resulted in five additional years being added to his sentence.

Appeals Branch attorney, Samuel Potter, noticed the error while representing Mr. Nash in his appeal from his conditional guilty plea, and immediately informed the Court. On May 19, 2011 the Kentucky Supreme Court issued a decision vacating his conviction, sparing Mr. Nash a possible 10 additional years of wrongful incarceration.

The opinion in *Commonwealth v. Nash*, 338 S.W.3d 264 (Ky. 2011) makes clear that this complicated issue was overlooked by many capable people before Mr. Potter discovered the claim. In a dissenting opinion, Justice Venters noted that:

What seems to be readily apparent to us now escaped the attention of his lawyers, the prosecutors, and the judges three times. If true, that must serve as a sobering reminder to all segments of the criminal justice system, including this Court, how easy it is to overlook the obvious, and how quickly one can fall through the cracks in the system.

On this point we can all agree - Mr. Nash's situation is a reminder of the importance of insuring that competent counsel, with the time and resources to achieve a thorough understanding of the often complicated issues in a case, is essential to preserving our Constitutional and statutory protections. Thanks to Mr. Potter and the good work of Herb West with the Lexington trial office, Mr. Nash is now free and off the sex offender registry for good.



Lexington Trial Attorney Erica Roland (L), and La Mer Kyle-Griffiths (R) (Juvenile Post-Disposition Branch Manager) advocate for a client.

Post-Conviction Branch Attorneys Protect Defendants from Poor Lawyering on Appeal:

Kentucky criminal defendants are entitled to an appeal, and entitled to an attorney for that appeal, but for many years they have not been entitled to ensure that their attorney on appeal provided effective assistance of counsel. Mistakes rendered by the attorneys would not be fixed by state courts, because of a Kentucky Supreme Court ruling that held the state courts would not consider claims of ineffective assistance of appellate counsel. This changed this year when, after many years of litigation, attorneys in the Post Conviction branch successfully resolved the issue in *Hollon v. Commonwealth*. In *Hollon*, the Supreme Court of Kentucky reversed its prior ruling and recognized that litigants are entitled to the effective assistance of appellate counsel not only in perfecting the appeal, but as to the merits brief itself. In addition to recognizing the claim, the Court established a procedure for litigating a claim of IAAC. This is a dramatic shift in Kentucky law and one that is not only consistent with federal law, but one that fits within Kentucky's statutory scheme of post-conviction litigation.

Juvenile Post-Disposition Branch's Truancy Court Initiative Keeps Status Offenders out of Jail:

Kentucky detains more status offenders than almost anybody else in the country. The reasons for this are many, but some of the issues are that alternatives to prosecution of truancy are not well utilized, and court procedures are often unclear. JPDB worked

closely with the trial attorneys in the Lexington Trial Office to attack these issues, with excellent results.

Working closely with JPDB, Lexington trial attorneys met with local court officials and others to identify alternatives to prosecuting status offenders in court. Meanwhile, JPDB also waged a campaign in the appellate courts challenging this practice, receiving favorable rulings in *N.K. v. Commonwealth*, 324 S.W.3d 438 (Ky.App. 2010) and *C.F.C. v. Commonwealth*, 2010 WL 4026099 (Ky.App. 2010). JPDB and the Lexington trial attorneys worked to implement these decisions almost immediately, with additional follow-up meetings, as well as almost-daily phone calls and e-mails passing back and forth.

The results of this collaboration have been striking. Children being sent to jail for contempt became less of a weekly reality, and eventually, ceased to happen at all. New cases slowed, so that a court that which had been running 12 hours per day now was only hearing a couple of cases each day. Kids and families have their lives back, thanks to the collaborative efforts of the Juvenile Post Disposition Branch and the Lexington Trial Office.



Post-Conviction Branch Manager Marguerite Thomas (now retired) plays the role of emotional victim in a training exercise for the Kentucky Innocence Project.

KIP wins Release for Another Wrongfully Convicted Client

"I believe you." Those are the words every innocent person convicted of a crime they did not commit lives to hear. The Kentucky Innocence Project has seen the exoneration of ten individuals since it opened its doors in 2000. Most recently, Michael VonAllmen walked out of a Jefferson Circuit Courtroom on July 15, 2010 a free man after a judge dismissed all charges stemming from the rape of a woman in 1981. Mr. VonAllmen served 11



years of a 35-year sentence for Rape, Sodomy and

Robbery of a 22-year-old-woman. After seeing an article about KIP's receipt of the 2008 National Institute of Justice Bloodsworth Grant, Mr. VonAllmen contacted KIP, despite the fact that he had been on parole for nearly 10 years. His case was vacated after KIP's investigation proved that a serial rapist who strongly resembled Mr. VonAllmen had actually committed the crime for which he was convicted.

Michael VonAllmen's own 29-year nightmare was finally over.

Today, Michael VonAllmen graciously gives of his time to law school classes throughout the Commonwealth, both to discuss the cause of his wrongful conviction, but also to remind the law students of the critical role they will play as future attorneys, "you can mean the difference between life and death to a person like me."

To date, KIP has reviewed the applications of over 2,400 Kentucky inmates and is conducting on-going investigations into 247 cases involving DNA evidence and 157 with other types of exonerating evidence.

In June 2011, the Kentucky Bar Foundation awarded KIP a \$25,000 grant to pay for DNA testing and other experts to assist the effort to free innocent, wrongfully convicted Kentuckians.

Reform is Needed

Kentucky's criminal justice system, like those of other states across the country, is in dire need of reform. On a national level, 269 inmates have been exonerated through DNA testing. An average of 13 years in prison was served by those wrongfully convicted. In 116 of the cases, the true perpetrator of the crimes was identified. Seventeen of the persons wrongfully convicted were on death row at the time of their exoneration. Not only does DNA itself lead to a more accurate determination of guilt and innocence, it also brings attention to problems within the justice system that can be addressed to make truth-finding more accurate going forward. These consistently problematic areas include:

- mistaken witness identification
- faulty forensic science
- the use of jailhouse informants
- coerced false confessions
- suggestive identification procedures
- police malfeasance
- prosecutorial misconduct

The elimination of these problems will lead to a more trustworthy criminal justice system even in cases in which DNA is not involved.

Kentucky Wrongful Convictions

CLIENT	YEAR OF CONVICTION	COUNTY OF CONVICTION	CONVICTIONS	SENTENCE	TIME SERVED	DATE SENTENCE WAS VACATED	REASON SENTENCE WAS VACATED	CAUSE OF WRONGFUL CONVICTION
Herman May	1988	Franklin	Rape & Sodomy	40 years	13 1/2 years	September 18, 2002	DNA testing and improper ID	Invalidated forensic science, bad ID
Ben Kiper	1999	Butler	Sexual Abuse	55 years	7 years	May 6, 2006	Perjury	Perjury
Tim Smith	2000	Kenton	First Degree Sodomy	20 years	7 years	May 5, 2006	Perjury	False expert testimony, perjury
Jacquelyn Green	2000	McCreary	Complicity to Commit Murder under EED	18 years	7 years	December 11, 2007	Clemency	Government misconduct and IAC
Sam Plotnick	2001	Whitley	Sexual Abuse	18 years	7 years	January 1, 2008	Perjury	Government misconduct and perjury
Jason Girts	2004	Bullitt	Sexual Abuse	5 years	3 years	April 29, 2008	Perjury	Perjury
Lacy Bedingfield	1996	Fayette	Rape	25 years	14 years	September 11, 2008	DNA testing and perjury	Coerced confession
Edwin A. Chandler	1995	Jefferson	Robbery & 2nd Degree Manslaughter	30 years	9 years	October 13, 2009	Modern digital fingerprinting technology	Coerced confession
William Gregory	1993	Jefferson	Rape, Attempted Rape and Burglary	70 years	7 years	July 5, 2000	Cross-Racial ID; fabricated hair comparison	Eyewitness misidentification, invalidated forensic science
Michael VonAllmen	1983	Jefferson	Rape, Sodomy, Robbery	25 years	11 years	June 4, 2010	Proof that serial rapist had actually committed rape	Picked out of a photo pack
Larry Osborne	1999	Whitley	Murder (2x), Arson, Burglary, Robbery	Death	4 years	April 26, 2001 (conviction reversed); August 8, 2002 (acquitted on retrial)	Principal evidence at trial was not subject to cross examination	Reliance on coerced testimony of juvenile witness
Denarius Terry	2003	Logan	Murder, Robbery 1st, Wanton Endangerment 1st	45 years	4 1/2 years	January 20, 2005 (conviction reversed); September 2, 2005 (acquitted on retrial)	Principal evidence at trial was not subject to cross examination	Unreliable witness testimony
John Phillips	2005	McCreary	Assault 1st	10 years	4 years	April 20, 2007 (conviction reversed); December 4, 2008 (acquitted on retrial)	Jury was not properly instructed	Unreliable witness testimony and inadequate forensic evidence



Protection and Advocacy

Protection and Advocacy (P&A), a division within the Department of Public Advocacy, is a client-directed agency that advocates for persons with disabilities. The national P&A system was established by federal statute when the federal Developmental Disabilities Act was renewed in 1975.

We were established as the P&A system in Kentucky in 1977. Originally, P&A's job was to protect people with intellectual and other developmental disabilities from abuse and neglect in the facilities where they lived. Now P&A advocates for the rights of all people with disabilities, whether they live in institutions or the community, regardless of the nature or severity of their disabilities.

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

P&A's two advisory boards, the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Council and the Protection and Advocacy for Individuals with Developmental Disabilities (PADD) Board, assisted us in setting annual priorities. They also helped us hold two public forums, where people came and told us what disability rights issues were important to them.

Protection and Advocacy provides services to Kentuckians through three teams of advocates and attorneys: the Information, Training and Outreach (ITO) Team, the Adult Team, and the Children and Youth (CY) Team. In addition, services are provided through multi-team and multi-agency collaborative projects.

Funding

To provide legally-based advocacy to people with disabilities, P&A receives some state funding, but is mostly funded through the following grants from federal agencies, including the US Department of Health and Human Services, the US Department of Education, and the Social Security Administration:

PADD	Protection & Advocacy for Individuals with Developmental Disabilities
PAIMI	Protection & Advocacy for Individuals with Mental Illness
PAIR	Protection & Advocacy for Individual Rights
PAAT	Protection & Advocacy for Assistive Technology
PATBI	Protection & Advocacy for Individuals with Traumatic Brain Injury
PABSS	Protection & Advocacy for Beneficiaries of Social Security

In FY11 P&A staff responded to 1959 requests for information, advice and referral. P&A provided training on disability rights to more than 1,000 individuals with disabilities and their family members and provided outreach to underserved disability groups, minority and geographic populations.

P&A educated 747 individuals about voting, including providing them with information about the process for restoration of voting rights for individuals appointed a legal guardian.

P&A developed new publications, including "Medicaid Denied My Request for Service, Now What?"

Protection and Advocacy staff had a presence in Personal Care Homes, Nursing Homes, Psychiatric Hospitals, Psychiatric Residential Treatment Facilities (PRTFs), Intermediate Care Facilities for Individuals with Mental Retardation (ICFs/MR), Jails, Prisons, Group Homes, Day and Residential programs, and other places where individuals with disabilities reside or receive services.



Marsha Hockensmith
P&A Director



Bill Dolan
Attorney, Adult Team Leader



Heidi Lanham
Legal Director



Janice Powe
Program Coordinator



Jeff Edwards
Federal Program Coordinator



Kevin McManis
Attorney, ITO Team Leader



Lucy Heskins
Attorney, CY Team Leader



Melissa Barlow
Administrative Support Supervisor

Systemic Advocacy: In addition to providing individual advocacy, P&A was involved in numerous systems change efforts in FY11. The Protection and Advocacy for Individuals with Developmental Disabilities (PADD) Program and the Protection and Advocacy for Individuals with Mental Illness Program impacted numerous Kentuckians with disabilities through group advocacy and systems change efforts, including litigation.

Change to the Home Incarceration Program (HIP): The Department of Corrections (DOC) required an individual who had cancer, to sign a Home Incarceration Program (HIP) form prior to being paroled. Part of the HIP agreement prohibited the individual who was in dire need of medical care from applying for Medicaid. DOC agreed that it could not prevent parolees from applying for Medicaid. The individual received a Medicaid card and underwent chemotherapy treatment. Additionally DOC has agreed to change the HIP form to allow parolees to apply for Medicaid. The form now indicates "while on HIP, I may be eligible to receive SSI, SSDI, Medicaid, Medicare, or any other form of Social Security



payments. I understand that I will apply for any benefits for which I may be eligible on my own."

Children and Youth with Disabilities Charged with Status Offenses:

Kentucky has led the nation for over a decade in the number of youth detained for status offenses. P&A with several other entities, documented the overuse of juvenile detention-secured placement for children/youth charged with status offenses. In addition to the overuse of detention, we identified that substantial numbers of students with disabilities were being charged with status offenses by school districts. P&A began work on finding solutions to justice issues affecting youth with disabilities.

During the 2011 General Assembly, legislation was introduced to amend current laws dealing with status offenses. The legislation failed to pass but will be introduced again in the 2012 General Assembly. However, in 2011 the Kentucky Supreme Court did pass new rules of practice and procedure for status offenses.

Key points of both status law and rules of practice included appointment of counsel, establishment of time limitations for valid court orders, establishment of procedures for school districts to follow when filing status charges, and specific direction on using restrictive environments (community) before using secured detention.

These changes to the practice rules are expected to have a significant effect on reducing the number of status charges and the number of youth with status offenses placed in secured detention.

Litigation: In 2011 P&A represented persons who were denied Medicaid services, including waiver services, or whose Medicaid services were reduced or terminated, in administrative hearings.

P&A opposed KVC, a recently incorporated Kentucky corporation from Kansas, and their attempt to build a 50-bed acute child and adolescent hospital in Mt. Sterling, Montgomery County, Kentucky. P&A, along with two individuals and a number of Kentucky hospitals, requested an administrative hearing regarding KVC's Certificate of Need application. P&A believes that Kentucky does not need any more psychiatric institutions, but needs to spend its money on intensive, community-based wraparound services. In addition to the administrative hearing, P&A was prepared to file an action in Franklin Circuit Court, challenging the legality of the regulation that would have allowed KVC to obtain the Certificate of Need. On June 8, 2010, KVC withdrew its Certificate of Need application. In its press release, it cited P&A's legal challenges as part of the reason for the withdrawal, noting that they would "make this a very cost prohibitive legal process that will not likely result in a decision for years to come."

P&A continued to monitor the settlement reached in the 2002 Class Action filed on behalf of individuals with disabilities seeking ICF/MR services. When the case settled in 2006, P&A was forced to further litigate a motion to enforce, early in 2008, as the state had not delivered all that it had promised. With the courts assistance we were eventually able to reach an accommodation that amended the original settlement agreement to require the state to create a new waiver for persons with Intellectual and other Developmental Disabilities (the Michelle P. Waiver), which will provide services for up to 10,000 individuals. There are currently 4,340 individuals receiving these waiver services.

Individual Advocacy

A.J. Clark: In desperation, AJ's mother contacted Protection and Advocacy (P&A) for services for her nine-year-old son. At the time, AJ, eligible for services under the Individuals with Disabilities Education Act (IDEA), was not allowed to enter the school building on his own. As the kids got off the school bus each morning, the driver would call the school and a male teacher and the bus driver would escort AJ to his classroom. As the day wore on, it was not unusual for the school to call AJ's maternal grandfather to come to the school to pick him up early. In addition, the school filed numerous criminal charges against AJ and all but insisted that his mother admit him to a psychiatric hospital. The school also contacted Child Protective Services (CPS) at least twice to investigate AJ's mother for medical neglect because of her refusal to voluntarily admit AJ to a psychiatric hospital. None of the allegations were substantiated by CPS.



James Kearns has worked for Wendy's Restaurant in Ashland, Kentucky for six years. He enjoys his job, the customers and his coworkers. He has received many raises, and was chosen employee of the month on two different occasions. He works one hour a day during the lunch rush. He buses tables, cleans and refills the condiments stands, and refills the ice machine at the drink stand.

P&A became involved after a newly hired restaurant manager assigned James work tasks that he was not physically capable of accomplishing due to orthopedic problems. These tasks included, cleaning out garbage cans, cleaning metal strips under the doors, and cleaning lower windows. This manager reprimanded James in front of the customers for failing to complete these tasks, and eventually his hours were reduced. James felt that Wendy's was pressuring him to quit. He did not understand how he could possibly complete all of the tasks that he was assigned to do within one hour. Eventually he became very depressed about the work environment and turned in a letter of resignation.

Per James's direction, his P&A Advocate spoke with the restaurant manager and was informed that the pressure to complete the tasks was coming from the regional manager. The P&A Advocate then contacted Wendy's corporate office and spoke with the Human Resources Manager who informed her, due to the current economic situation, that all employees were expected to perform more tasks. The P&A Advocate explained that James had worked for Wendy's for six years, and that he was recognized as an employee of the month on two previous occasions. After discussions with James' vocational rehabilitation counselor and P&A, Wendy's Human Resources Manager wrote James a letter stating that he could resume his former job tasks. James rescinded his letter of resignation and resumed his job at Wendy's.

For more information please visit:
www.kypa.net/drupal/node



2011 Kentucky Department of Public Advocacy Awards

On June 15, 2011, the Department of Public Advocacy recognized leaders in Kentucky's criminal justice system. The awards were presented before Kentucky public defenders, the Kentucky Board of Governors, and many other Kentucky criminal justice leaders.



Cat Kelly (L), Missouri State Public Defender, and William T Robinson III (R), President-Elect, ABA (joined by Edward C. Monahan, center) were the featured speakers at the 38th Annual Public Defender Conference Awards Luncheon.

"We [Public Defenders] do not sit down and be silent when we see injustice...Our job is to make people uncomfortable. That's the reason we exist."

Cat Kelly
Missouri State Public Defender

"We thank you for validating in your own way, day in and day out, the dignity and special responsibility of our legal profession to support and preserve our Constitutional democracy."

William T. Robinson III, President-Elect
American Bar Association

2011 Public Advocate Award Senator Tom Jensen and Representative John Tilley

In 2011, the Kentucky General Assembly passed House Bill 463, which made 150 pages of progressive, evidence-based reforms to our drug and penal codes. Several people contributed in significant ways to bring about these reforms, but the two men who led the way were the Chairs of the Senate and House Judiciary Committees, Tom Jensen and John Tilley.

Statesmen John Sherman Cooper and Wendell Ford, following the tradition of statesman Henry Clay, overcame great obstacles to help people and advance Kentucky, even if it was against the winds of the times. These statesmen worked to do what was right, what was best, and what would improve the lot of people. Henry Clay said, "Of all the properties which belong to honorable men, not one is so highly prized as that of character."

To our 2011 statesmen of high character, Tom Jensen and John Tilley, we present special Public Advocate Awards for the passage of House Bill 463.



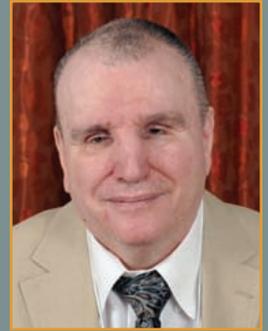


**2011 Gideon Award
B. Scott West, General Counsel**

For his superior motion practice, extensive teaching and numerous legal articles, methodological preparation and aggressive pretrial litigation, Scott West is awarded this year's Gideon Award.

**2011 Nelson Mandela Lifetime Achievement Award
David Murrell**

For his tireless work in helping create a statewide public defender system in the various counties of KY, and his assistance in creating the appellate section and its procedures for representing clients on appeal as well as the post-conviction programs at the prisons, David Murrell is awarded this year's Nelson Mandela Lifetime Achievement Award.



**2011 Furman Award
David Barron, Capital Post-Conviction**

For his creative litigation strategy, moral passion and focused perseverance, David Barron is awarded this year's 2011 Furman Award.



**2011 Professionalism & Excellence Award
Mark Solomon, Boyd County Public Defender Office**

For exemplifying professionalism and excellence in the service of public defender clients, Mark Solomon is presented the 2011 Professionalism & Excellence Award.



**2011 Public Advocate Award
Bruce Davis, KBA President**

For courageously advancing the integrity of the justice system through the Kentucky Bar Association, Bruce Davis is awarded a Public Advocate Award.



**2011 Rosa Parks Award - Rosie Nunn
Jefferson County Public Defender Office Investigator**

For her professionalism, persistence and positive attitude, combined with her terrific work ethic, attention to detail and exceptional people skills, Rosie is awarded this year's Rosa Parks Award.



**2011 In re Gault Award
Nathan Shirley, Somerset Office**

For making a positive impact for juveniles, Nathan Shirley is awarded the 2011 *In re Gault* Award.

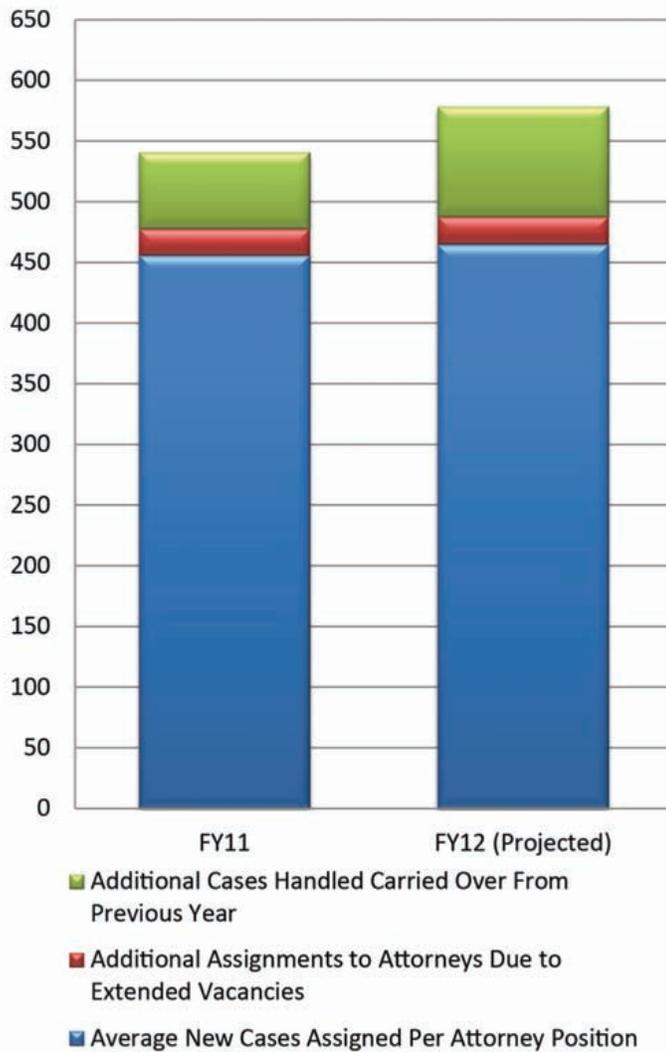


**2011 Anthony Lewis Media Award
Andy Wolfson, Courier-Journal**

For his extraordinary article entitled "Kentucky Death Row Inmate's Trial Littered with Problems," which describes the details of the Gregory Wilson case, Andy Wolfson is awarded this year's Anthony Lewis Media Award.



Challenges Now and Into the Future...



The Department of Public Advocacy has long faced funding challenges. Each year, in the Annual Report, DPA conservatively reports the workload carried by public defenders throughout the state. For FY11, the average number of new cases per attorney position in the Trial Division is 456 cases. Though this far exceeds national standards, this number understates the real burden on staff attorneys.

For FY11 and looking forward into FY12, DPA has had to maintain vacancies for an extended period of time to stay within its allotted budget, which was reduced from FY10. For FY11, when considering the cases that must be assigned to existing staff when attorney positions are vacant, the average caseload rises to 478 cases per attorney. For FY12, in which DPA faces an additional budget reduction of \$947,900, this real caseload will rise to a projected 488 cases or higher.

Further, as explained at the bottom of Page 6, DPA traditionally only reports the number of new case assignments. This number does not take into account the high number of cases that continue from one year to the next, most notably capital cases or other complex felony cases. As vacant attorney positions remain open for an extended period of time, cases are often delayed even more. In FY11, when carryover cases from FY10 are considered, DPA's average caseload rises to 541. For FY12, because of the additional budget reduction, it is projected to rise to 579 cases handled per attorney.

Common Justice Demands

Over a half century ago, the Kentucky Supreme Court held that "common justice demands" that an attorney must be appointed when a person charged with a felony is too poor to hire his own counsel, *Gholson v. Commonwealth*, 212 S.W.2d 537, 540 (Ky. 1948) ("In addition to legal rights and guarantees common justice demands that every person accused of a felony be given a fair and impartial trial"). In the 1960s Kentucky attorneys began to request compensation when they were forced to represent indigents charged with a crime. In 1963, the United States Supreme Court determined that if a state wants to take away a person's liberty, it had to provide an attorney to those persons too poor to hire their own in order to comply with the Sixth Amendment right to counsel. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) ("The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."). While consistently unsuccessful in convincing Kentucky's highest Court that the judiciary should order payment, Kentucky's appointed attorneys did persuade the Kentucky Supreme Court to the point that the Court began to directly encourage the General Assembly to provide a systematic solution for paying the attorneys who were being made to represent the indigent accused.

On September 22, 1972, Kentucky's highest Court characterized the forced representation of indigents as an "intolerable condition" and held it was an unconstitutional taking of an attorney's property - his service to the client - without compensation. Since then no Kentucky attorney can be required to represent an indigent without being reasonably compensated. *Bradshaw v. Ball*, 487 S.W.2d 294 (Ky. 1972).

While the appeal in *Bradshaw* was pending, the 1972 Legislature, at the request of Governor Wendell Ford, created the Office of Public Defender, currently the Department of Public Advocacy (DPA), and gave it the responsibility to represent all persons in Kentucky charged with or convicted of a crime. House Bill 461 sponsored by Representatives Kenton, Graves and Swinford passed the House 60-18 on March 7, 1972 and the Senate 26-5 on March 14, 1972 and Kentucky's statewide defender system was born. It allocated \$1,287,000 for FY73 and FY74.

Announcing the establishment of the statewide public defender office and appointment of Anthony Wilhoit as the first chief defender on October 17, 1972 in Louisville Governor Ford said, "We know the unhappy result of the law's failure to meet the just expectations of those governed by it. Law loses its stabilizing influence; at best the result is alienation and lack of trust of the legal system. At worst, there is unrest and violence. ...It has been said the quality of a nation's civilization depends on the way it enforces its criminal laws. And there can be no civilized enforcement of criminal law without full legal assistance to the accused. This we shall have!"

In 1977, the Protection and Advocacy Division was added to DPA as an independent federally funded Division protecting and promoting the rights of Kentuckians with disabilities through legally based individual and systemic advocacy, and education.

DPA is an independent agency operating a public defender program in all 120 Kentucky counties, and is administratively attached to the Justice and Public Safety Cabinet headed by Secretary J. Michael Brown, from Louisville, Kentucky.



Governor Wendell Ford



Anthony Wilhoit



Secretary J. Michael Brown
Justice & Public
Safety Cabinet

Your job, just as mine, is to serve the people. You must be prepared, and I know you will be, to champion the causes of many whose cases are not popular. You must be prepared to seek the truth wherever it takes you and to devote all of your professional skill and competence to your client. In terms of money, your rewards will not be great, though professionally, your rewards should be. You will know that you have lived up to those high standards long established by the legal profession.

You are all qualified to do a professional job in meeting the commitments of a public defender, but professional ability cannot alone achieve the kind of justice we are seeking. The best public defender system in the world is rendered useless if nobody knows about it. I wonder what the results would be if a poll were taken today, asking people what a public defender is or if they know whether there is one in their state? My question to you then is, "How are you going to make yourself visible to the public you serve?" Without the visibility, all of the good intentions we have will be in vain. We have the potential to show the nation how justice can and should work. The mechanism has been established, the program has been funded. Now it is up to you to see that it becomes a reality.

Wendell H. Ford
From Papers of Wendell H. Ford
Public Defenders Seminar Luncheon, Lexington, Kentucky

Trial Leaders



Linda West
Bell County



Jason Gilbert
Boone County



Renae Tuck
Bowling Green



Brian Hewlett
Boyd County



Mark Hardy
Bullitt County



Sandra Downs
Capital Trials East



Jim Gibson
Capital Trials West



Shanda West-Stiles
Columbia



John Delaney
Covington



Jennifer Wittmeyer
Cynthiana



Susanne McCollough
Danville



Susie Hurst
Elizabethtown



Rodney Barnes
Frankfort



Greg Berry
Glasgow



Will Collins
Hazard



Tina McFarland
Henderson



Ginger Massamore
Hopkinsville



Dan Goyette
Jefferson County



Liz Curtin
LaGrange



Bob Friedman
Lexington (Acting)



Tom Griffiths
Lexington



Matt Ryan
Lexington



Deaidra Douglas
London



Eric Stovall
Madisonville



Amanda Mullins
Maysville



Jay Barrett
Morehead



Robin Irwin
Murray



Jerry Johnson
Owensboro



Chris McNeill
Paducah



Traci Hancock
Pikeville



Steve Goble
Prestonsburg (Acting)



Valetta Browne
Richmond



Teresa Whitaker
Somerset



Lisa Whisman
Stanton (Acting)



Department of Public Advocacy

100 Fair Oaks Lane, Suite 302 • Frankfort, Kentucky 40601 • 502-564-8006, Fax: 502-564-7890