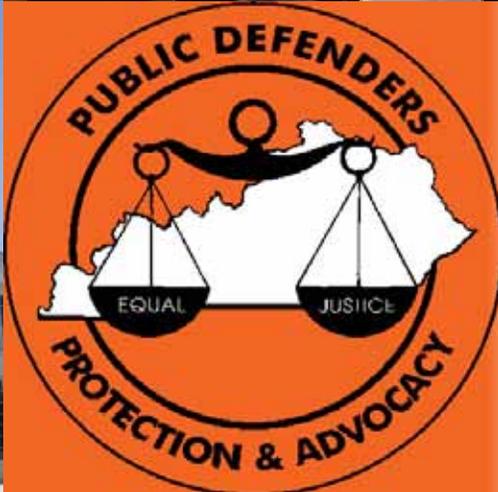




Fiscal Year 2010 Annual Report

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

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The Public Advocacy Commission protects the professional independence of public advocates representing individual clients.

The Kentucky Department of Public Advocacy does not discriminate in the employment of individuals regardless of race, color, national origin, sex, age, religion, sexual orientation, gender identity, or disability.



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Connecting for Justice: Shaping our future of serving our clients, our criminal justice system and our Commonwealth

We cannot live for ourselves alone. Our lives are connected by a thousand invisible threads, and along these sympathetic fibers, our actions run as causes and return to us as results. - Herman Melville

Connecting is key to success. Connecting is a way to a better future. The advances in neuroscience reveal that the highest performing brains are those that excel at making connections. The mystery and power of an emergent, complex system such as the brain makes possible the imagination, abstract reasoning, human culture itself. For those of us not immersed in the science of the brain, we nevertheless know from our experience that those who excel at creating and nurturing relationships and networks in their personal and professional lives succeed at higher rates than others who work alone or who are disconnected. Connections create a whole greater than the sum of the parts.

The primary focus of good leaders is shaping a better future. We have a choice: we can stand on the sidelines and complain, or we can be part of connecting with others

around well thought out, deliberate goals that are propelled by our values. We have chosen that latter course at the Department of Public Advocacy (DPA).

Our value-centered planning provides us a clear set of goals and a clear strategy for achieving the goals. DPA enlisted the aid of future thinkers throughout the organization, as well as the former Dean of the Business School at the University of Louisville, Robert Taylor, and Jim Clark, Associate Dean for Research, University of Kentucky College of Social Work, in the development of our plan for our future. They helped us further clarify our values and set ourselves on goals to develop the organization to better serve Kentuckians.

We clarified our values: 1) Unyielding commitment to clients and each other and to the profession of which we are a member; 2) Expecting that everything we do will be of the highest quality; 3) Treating everyone with integrity by word and deed; 4) Serving with passion and dedication to protecting individual freedoms.

We set our goals: 1) Grow our culture of mutual support; 2) Increase understanding of our value for our constituents; 3) Enhance information technology/resources.

We connect to protect the life and

liberty of our clients. DPA is not 540 people, or 300 attorneys, or 30 offices. Rather, DPA is a group of talented professionals, a team, working together for our clients, propelled by our hallowed beliefs. Together, we support each other and promote a better Kentucky where persons are represented in all our courts with integrated professionals. Because of our collaborative advocacy, each person we represent has a process that is fairer and a result that we can rely on with confidence.

In the last fiscal year, we served over 150,000 clients, lessening barriers for those with a disability, helping a juvenile get back on the right path, obtaining alternative sentences with treatment in the community, saving the state expensive incarceration costs and reducing recidivism, litigating for those facing death, appealing convictions that are unfair, working collaboratively with prosecutors and judges on needed resources, and succeeding in the United States Supreme Court when our Constitution was violated...and so much more.

Connections are enhanced in a healthy, nutrient-rich environment. In the brain that means good food and safe places for children. In organizations the nutrients are enacted values animated by a higher purpose, lived out by colleagues who support, challenge, and inspire.

Throughout the following pages of our annual report for FY10 (July 1, 2009 - June 30, 2010), we highlight some of the year's service produced by the connections DPA made.

Edward C. Monahan
Public Advocate

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

al 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

To provide accountability to Kentuckians for the work of the Department.

To continue working cooperatively with all agencies and stakeholders in the criminal justice system to ensure safety for our communities.

To support continuous study



From Left to Right: Warren Allred, Serah Wiedenhofer, Amanda Mullins, Bridget Satkowski, Chris Kippley.

justice system.”

During FY 10, the Department of Public Advocacy provided representation in 151,280 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 constitution-

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:

of the effectiveness of the Commonwealth's criminal justice system.

The Department of Public Advocacy continually examines its data entry processes and data entry definitions to ensure the reliability of our published reports.

DPA is committed to the best technology and training for the purpose of data integrity.



Shaping our future service to our clients, our criminal justice system and our Commonwealth

GOAL ONE - GROW OUR CULTURE OF MUTUAL SUPPORT

The Department is committed to creating and sustaining a culture of performance and development. Our culture will be one that intentionally focuses on results and on fostering an expectation of high performance at all levels. To ensure high quality client representation, we must focus on the measurement of outcomes and expect our supervisors to coach and develop our staff to peak performance. We will promote the team concept of case development and recognize team performance at every opportunity. Training opportunities, both formal and informal, will be sought and taken advantage of as frequently as possible. We must cultivate and celebrate our greatest asset, our people, for without them, we do not exist to provide client service.

GOAL TWO - INCREASE UNDERSTANDING OF OUR VALUE FOR OUR CONSTITUENTS

Since its establishment under KRS Chapter 31, DPA has provided representation for the indigent accused of crimes in this Commonwealth while simultaneously pursuing legal, administrative and other remedies to ensure the protection of constitutional rights. The Department's dedication and energy is focused upon its individual clients; but experience teaches us the long term impact of legislative and community-based advocacy is essential, as well. For without effective rules and laws, the judicial advocacy will be more difficult and costly. The Department is spending additional time and energy on legislative reform by participating in committee work, bill drafting, and hearings as it is important to an efficient and effective criminal justice system.

GOAL THREE - ENHANCE INFORMATION TECHNOLOGY/RESOURCES

The Department has struggled with insufficient funding for years. As a result, many of the trial offices are in inadequate locations with clients unable to find the offices. There is inadequate signage, the furniture is shabby and the appearance is such that clients doubt the office is a law office. The computer system has been seriously outdated, the attorneys did not have a way to work while sitting in court for hours (no laptop), and most of the offices do not have voicemail. Since client representation and communication are of utmost importance, the Department is focusing upon improving the resources available to our staff to enhance client representation.

Goal 2020 - Realign 30 offices into 57 Judicial Circuit Offices

To better efficiently and effectively provide public defense, realign the 30 existing trial offices into 57 trial offices, one for each judicial district and each Commonwealth Attorney Office. This will also improve public safety, reduce travel, provide greater ability to handle conflicts with a full-time public defender in an adjoining office that is geographically closer to the court, reduce caseloads, and improve our service to the Courts and criminal justice professionals.

Alternative Sentencing Social Worker Program

Creating individualized alternatives to incarceration

DPA continues to attract national recognition for its alternative sentencing social worker program. In its 2010 report on Community Oriented Defense, the Brennan Center for Justice identified Kentucky's program as a model of

• "I have found that our Social Worker with our local DPA office is one of our greatest assets in dealing with our plethora of drug cases, primarily prescription pills.... I believe that given the extent of drug problems in this state that

criminal justice system. However, the need to help defendants rid their problems, which may cause them to reoffend is equally important. While I cannot personally solicit funding for any project or issue, I can say that the money being spent for [your social worker's] service is desperately needed and is being used to maximum benefit."- Judge John P Chappell, 27th Judicial District, Division 2

DPA's alternative sentencing program seeks alternatives to incarceration. The Program found that placement of social workers in defender offices helped clients to secure treatment and identified alternative sentencing plans. This helps to reduce incarceration rates because it helps individuals to obtain and abide by the terms of supervised probation. Today, due in part to funding from a two year Department of Justice JAG/AARA grant, there are DPA social workers in 12 trial offices.

The University of Louisville - Kent School of Social Work, in its independent evaluation of the pilot program, observed that an encouraging 82 percent of adult defendants who received social worker services were still in the community at six months after their release from incarceration. Additionally, the number of defendants that participated in AA, NA or other self-help groups tripled in six months.

The program saves the Commonwealth more than \$100,000 per social worker annually. The benefits of the program are to the State Treasury; but also to our clients as they receive treatment for the underlying issues that landed them in trouble in the first place. This reduces recidivism and consequently eliminates prison costs.



Front Left to Right: Kita Clement, Whitney Johnson, Jessica Dial, Joanne Sizemore.
Back Left to Right: Sarah Johnson, Heather Bartley, LeAnne Garland, Rena Richardson.

one of its 10 Principles of Community Oriented Defense. "This approach -an explicitly multidisciplinary approach- does a better job of meeting clients' needs and advances the goal of reducing recidivism and promoting re-entry, objectives that are in the larger public interest." Building on last year's recognition by Equal Justice Works as being on the cutting edge in leading the way toward addressing the whole client issues that exist today, Kentucky's program has been noticed for the impact it is having on the lives of its clients.

The program is receiving praise from those in the criminal justice system who see the impact of social workers as a part of the defense team day in and day out:

defendants, the Court, as well as all other court related agencies would benefit greatly from the addition of a Social Worker in all the DPA offices."

– Judge William E. Lane, 21st Judicial Circuit

• "As a Judge, I truly appreciate the social worker program....To work on healing and problem-solving, to participate in motivating rather than punishing, and in changing lives for the better is why I love my job. The work done by [your social worker] and the social work pilot program gives me the opportunity to better serve the community and the justice system."

– Judge Lisa Payne Jones Daviess District Court, Division I

• "I recognize that a great deal of money is being spent on the law enforcement and penal end of the

Alternative Sentencing Benefits Our Clients and the System

MARY

“Mary” is a 37 year old African American mother of 3 small children. When our social worker began working with Mary she was married but in jail and estranged from her husband and children. Despite the fact that she had completed graduate school and had a strong work history, her life was falling apart. She was facing 1-5 years on the Wanton Endangerment charge and 5-10 years on the Criminal Abuse charge. Although previously diagnosed Bipolar, Mary was not receiving treatment and she had an extensive history of drug addiction that started at age 16. By the time of Mary’s arrest, she had been using crack cocaine almost daily for 9 years. As a result of her arrest she was fired from her job. Child protective services had petitioned the Judge to restrict Mary’s access to her children.

Our DPA Social Worker was able to arrange a long term substance abuse treatment program for Mary that would address her substance dependence, her mental health needs, and get her parenting classes. As a result, she was released on a surety bond with the condition that she complete the treatment program. Mary was at the treatment program for 14 months. During her time in treatment, her mental health condition was stabilized and she completed parenting classes. The DPA Social Worker obtained copies of Mary’s negative drug screens, letters of support from the treatment center, the child protective worker and the client’s primary therapist. The DPA attorney and Social Worker worked as a team to use these documents to persuade the prosecutor to amend the client’s charges to Class D felonies and agree to diversion. Mary was given a 3 year diversion in December of 2008. Mary continued to comply with her

child protective services worker’s case plan and her custody rights were restored. She was also hired on as a substance abuse counselor and is currently working towards her certification as a Certified Alcohol and Drug Counselor (CADC). Based on her probation officer’s recommendation of early termination of supervision, she was



only supervised for 6 months. In December 2009 Mary’s case was dismissed early. The motion was granted.

Mary now has no criminal history. Mary works full time as a counselor and she has been re-employed in her profession. She has now been clean and sober for 2 ½ years, has custody of her children, has reunited with her husband, and is sponsoring other women in the area working the 12 steps of recovery.

JOHN

Our DPA Social Worker was first asked to work with “John” after he had been convicted of Trafficking in Controlled Substance 1st. He was sentenced to 5 years. John’s attorney wanted to make a motion for shock probation and enlisted the Social Worker’s assistance to come up with a treatment plan that would be persuasive to the court. The Social Worker met with John, a 28 year old white male, and conducted a comprehensive assessment. She also contacted his family. As a result of these contacts

the Social Worker learned that John had been working in New York in 2001 where he suffered a work place injury. John fell over 25 feet and injured his back. After his injury he was prescribed pain medication and quickly became addicted. John also suffered from uncontrolled Tourette’s syndrome – a problem that was worsened by stress. When the Social Worker first met with John at the jail, he displayed both verbal and physical tics that were caused by his Tourette’s syndrome. He had uncontrollable urges to clear his throat, twitch his eyes, hold his breath, grind his teeth, and scratch his head. These tics severely interfered with his interactions with others especially in a work environment. John also dealt with chronic pain due to his back injury. As a part of the defense team, John’s Social Worker worked with him and his family to set up a treatment plan. The plan called for John to be sent to a short term residential substance abuse treatment program that offered dual diagnosis treatment to address John’s uncontrolled Tourette’s syndrome as well as his addiction and chronic pain. The treatment plan was attached to a motion for shock probation and submitted to the Judge. The Judge granted shock probation and ordered John to comply with the treatment plan. John underwent nerve blockage on his back that helped relieve the chronic pain and he successfully completed treatment after which he was accepted into Drug Court. Today, John not only has full time employment, but also employs other drug court participants. John has participated in several recovery service work projects including speaking at schools, churches, and community forums. His Tourette’s syndrome is now controlled and he has over a year of sobriety.

Criminal Justice News



Kentucky Defenders Awarded NCADP 2010 Outstanding Legal Service Award

In what may come to be remembered as the seminal speech in the march toward equal justice for poor people, the United States Department of Justice yesterday called on state chief justices to take a proactive role in the reform of our nation's broken public defense and civil legal aid systems. The speech continually challenged the chief justices with the refrain: "if not you, who?" On July 26, 2010, in those keynote remarks at the Annual Conference of Chief Justices in Vail, CO, Laurence H. Tribe, (Pictured Above) Senior Counselor for Access to Justice, U.S. Department of Justice, stated, "I would urge every state's highest court, led by every state's chief justice, to establish an exploratory committee or task force with the goal of surveying the performance and evaluating the adequacy of the way your state is discharging its federal constitutional duty under Gideon. Judicial leadership of the sort shown in Nevada and New York and elsewhere is necessary if Gideon's promise is to become more than what Robert Jackson once called a "promise to the ear to be broken to the hope, like a munificent bequest in a pauper's will."



(Louisville, Kentucky, January 20, 2010)

At the National Coalition Against the Death Penalty 2010 Awards Dinner in Louisville, Kentucky on Saturday, January 16, 2010, Kentucky Defenders were presented the Outstanding Legal Service Award for its 3+ decades of dedicated representation of indigent capital clients. The Award was presented to Public Advocate Ed Monahan and Louisville Metro Chief Public Defender Dan Goyette by one of the nation's leading capital litigators, Stephen B. Bright, president and senior counsel of the Southern Center for Human Rights and teacher at Yale Law School and Georgetown University Law Center.

KENTUCKY BAR ASSOCIATION ROUNDTABLE SEEKS ADEQUATE FUNDING FOR CRIMINAL JUSTICE SYSTEM

FRANKFORT, KY — An advisory group of judges, prosecutors, defense lawyers and law professors seeking common ground to ensure proper funding of the state's criminal justice system forwarded its findings today to Gov. Steve Beshear and the leadership of the Kentucky General Assembly for their consideration in the budget-

making process.

The Kentucky Bar Association's Criminal Justice Roundtable recommended the development of a common effort to seek adequate funding for prosecutors and public defenders and outlined several "common principles" for reporting case numbers

presented by the Kentucky Department of Public Advocacy (DPA), the state's Unified Prosecutorial System comprised of County Attorneys and Commonwealth's Attorneys under the chairmanship of the state Attorney General's Office, and the state Administrative Office of the Courts (AOC).

IN KENTUCKY CASE, US SUPREME COURT DECIDES A CLIENT DESERVES CORRECT ADVICE FROM HIS ATTORNEY

On March 31, 2010, the United States Supreme Court ruled that there is an affirmative obligation on the part of defense counsel to advise defendants regarding immigration consequences of guilty pleas. On behalf of the majority, Justice Stevens wrote: "[A]s a matter of federal law, deportation is an integral part — indeed, sometimes the most important part — of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." He further held that "[d]

eportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence," and that advice regarding it thus falls within the Sixth Amendment's right to counsel. The ABA Standards and NLADA Performance Guidelines are cited in Justice Stevens' opinion. Commenting on the court's decision, Tim Arnold, DPA's Post-Trial Division Director said, "Criminal defendants

deserve accurate advice. Mr. Padilla came to this nation legally as a child, he graduated from an American high school, he served this country honorably in Vietnam, he paid his taxes and worked hard. He made a bad decision and I think was always willing to do his time for that. The only thing he cared about is that he not be removed from his country, the USA. In that moment he needed his attorney to give him accurate advice

Trial Division

Efficiently serving clients in more than 148,000 cases with funding of \$224 per case



Damon Preston

DPA's Trial Division serves as the front line of indigent criminal defense in Kentucky. The more than 300 full-time trial public defenders in DPA and the Louisville Public Defenders Office

them fighting for their cause until the trial case ends with acquittal, conviction, or dismissal. As full-time public servants, these criminal defense specialists are motivated solely by the needs and interests of their clients.

Kentucky Public Defenders are distributed among 30 local trial offices providing indigent defense services in all 120 counties and two offices of the Capital Trial Branch, providing support and representation in cases where the death penalty is being sought. This statewide network of full-time offices provides consistent service for courts and

and only 30 DPA offices, public defenders must often juggle schedules and responsibilities to meet the needs of multiple circuits, districts, courts, and judges. Despite the challenges, DPA leaders, attorneys, and staff place top priority in providing excellent representation for every client.

In FY10, trial attorneys were appointed to represent defendants in 148,641 cases. At the staffing levels the Department was able to fund in FY10, this amounted to an average caseload of 454.6 new cases assigned per trial attorney during the year. A breakdown of caseloads by office and case numbers by county is provided in the appendix.

The Trial Division's leadership consists of a division director, Damon Preston, and six regional managers overseeing the West (Mike Ruschell), Central (Glenda Edwards), East (Roger Gibbs), Bluegrass (Scott West), North (Rodney Barnes), and Lexington/Capital branches (Tom Griffiths).



meet their clients within hours or very few days of an arrest or appointment and stand beside

cost efficiency for taxpayers. Still, challenges arise. Because there are 57 judicial circuits

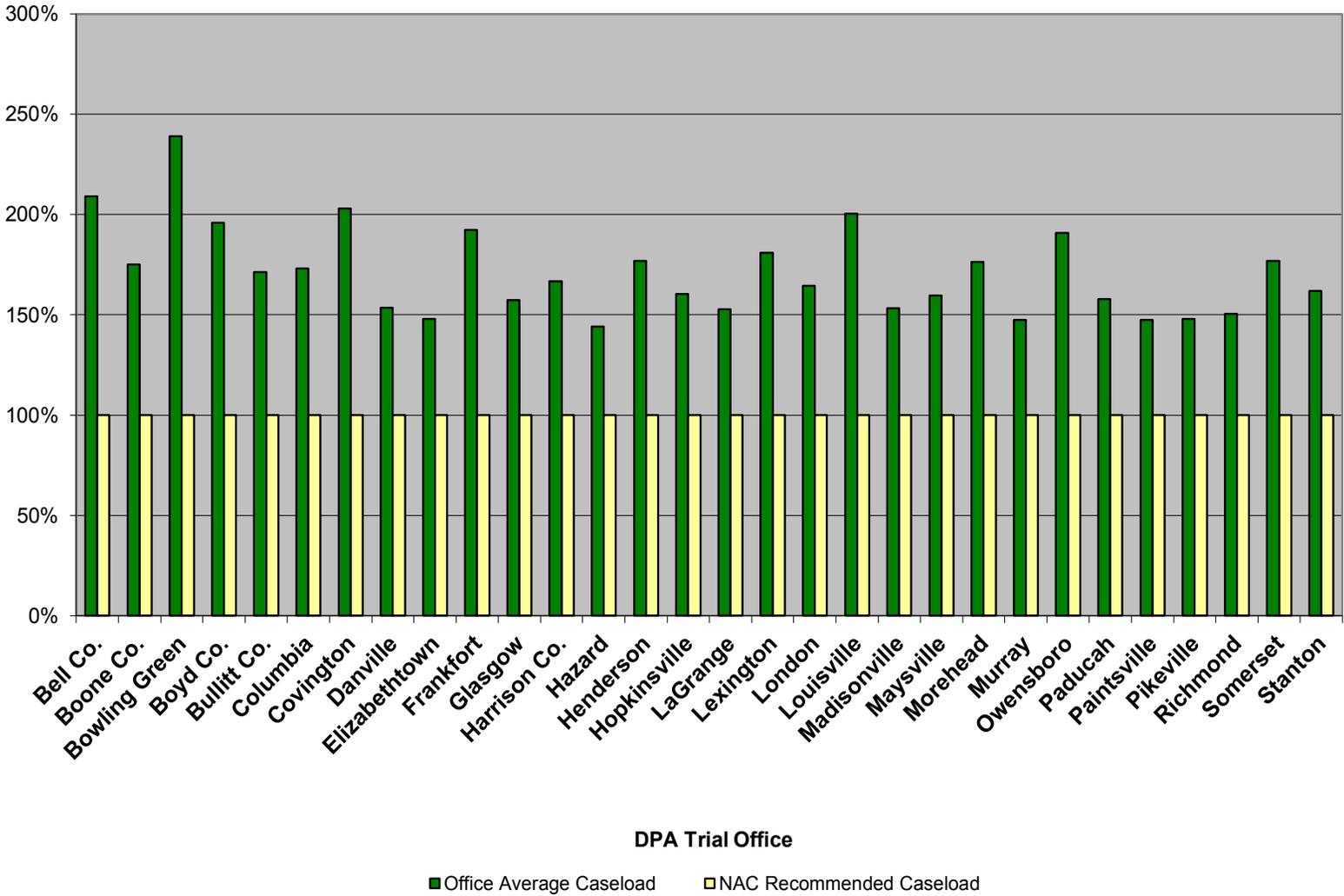
Defender Cases For FY10

Trial Case 148,641

Funding per Trial Case \$224.00

DPA Office Caseloads Exceed NAC

DPA Office Caseloads vs. 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.

Post-Trial Division

Efficiently ensuring the correction of erroneous results



Tim Arnold

The Post-Trial Division handles virtually every issue arising after a person has been convicted or adjudicated guilty of a criminal or status offense. Its current director, Tim Arnold, took over in FY 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 constitutional right to appeal that offense to the next highest court. So, 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 FY 2010, the Appeals Branch had 288 cases, including 8 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, or 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 *prose*. If the court appoints counsel, then the Post-Conviction Branch provides representation. In FY 2009, the Post-Conviction Branch opened 408 cases. In addition, it represented 32 clients on death row, and had 40 actions pending on behalf of those clients at the end of the year.

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 FY 10, KIP reviewed 947 applications requesting assistance, conducted significant investigation on 232 of those applications, filed three cases asserting a claim of innocence, and obtained two exonerations.

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 FY 09, JPDB had 1,903 cases.

In all, the Division handled 2,639 cases in FY 09. While the total number of cases is considerably less than in the trial division, each individual case is on average much more time consuming. Every Post-Trials case requires a thorough independent investigation by the Post-Trials attorney. This process is made more time-consuming by the fact that Kentucky records its court proceedings on videotape, rather than written transcript.

Defender Cases For FY 10

Post-Trial Cases 2,639

Post-Trial successfully represents clients

Post-trials litigators have a tradition of high quality representation, which often results in successful client outcomes. Fiscal Year 2010 was another successful year for the Post-Trial Division. The Post-Trial Division won roughly one in three appellate cases, and a high percentage of post-conviction and juvenile post-disposition cases. In addition to *Cochran*, described on page 12, here are some of the other important decisions from the Post-Trial Division:

Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473 (2010) – Mr. Padilla is a legal resident of the United States and an honorably discharged veteran of the Vietnam Conflict, but not a United States citizen. He was charged with marijuana trafficking and other offenses, and was represented by private counsel, who advised him to plead guilty. Counsel did not advise Mr. Padilla that deportation was a mandatory consequence of his plea. In a landmark decision, the United States Supreme Court held that attorneys are required to be aware of serious and apparent mandatory consequences of a criminal conviction, such as deportation, and to advise their clients of those consequences as part of their advice regarding the guilty plea.

Hobson v. Commonwealth, 306 S.W.3d 478 (Ky. 2010) – The Supreme Court overruled two prior opinions and held that force used by defendant for the first time in parking lot, after attempted theft had been foiled and abandoned, was not in the course of a theft, so robbery charge could not be sustained.

Simmons v. Parker – In response to an order by the federal judge to permit the defense to investigate a *Batson* challenge, the Commonwealth agreed to vacate the death sentences and give Simmons a sentence of Life without the Possibility of Parole.

J.A., a Child Under Eighteen v. Commonwealth (Calloway Circuit Court) – Successful in Remanding to juvenile court.

McNabb v. Commonwealth, 2010 WL 476023 (Ky.App.) – The Kentucky Court of Appeals vacated that conviction, finding that Mr. McNabb had received ineffective assistance of counsel.

Beard v. Commonwealth, 302 S.W.3d 643 (Ky. 2010) – The Kentucky Supreme Court reversed Mr. Beard's conviction, finding that the conflict of interest prevented Mr. Beard from getting a fair trial.

King v. Commonwealth, 302 S.W.3d 649 (Ky. 2010) – The Kentucky Supreme Court invalidated a search, finding that police cannot create their own "exigent circumstances."

A.C., a Child Under Eighteen v. Commonwealth, 314 S.W.3d 319 (2010) – Finding that "juvenile proceedings must meet constitutional muster", the Kentucky Court of Appeals reversed.

Jennings v. Morgan, 2009 WL 5125438 (W.D.Ky.) – The United States District Court for the Western District of Kentucky vacated that conviction, and ordered a new trial.

Brown v. Commonwealth, 313 S.W.3d 577 (Ky. 2010) – Mr. Brown had been tried for murder, but not given a death sentence. After the Kentucky Supreme Court ordered a retrial, he was tried and sentenced to death. The Kentucky Supreme Court found that once a person has been tried and given a sentence less-than-death, he cannot face a death sentence again upon retrial.

Public Defenders Successfully Advocate for enforcement of Maternal Health Act

A recent decision by the Kentucky Supreme Court makes clear the importance of high quality public defender representation on appeal. In *Ina Cochran v. Commonwealth*, No. 2008-SC-95-DG, 2010 WL 2470870 (Ky., 2010) the Kentucky Supreme Court considered a case where a mother was being prosecuted for wanton endangerment based on an allegation that she had used cocaine while pregnant. The allegation came about because of medical tests conducted after the child was delivered. At issue was the application of the Maternal Health Act, a statute which prohibited the use of medical tests such as these for the purposes of prosecution.

The Kentucky General Assembly passed the Maternal Health Act in part to address concerns that if

mothers and expectant mothers feared prosecution for drug use during pregnancy, then they would be less likely to seek needed medical care, including drug treatment. Dr. Sharron Barron, an associate professor at the University of Kentucky who researches the effects of drug and alcohol use during pregnancy, says that laws intended to permit prosecution of women for drug use during pregnancy, will not help babies, because we know the number one risk factor is lack of prenatal care. Therefore, women will not seek such care if they fear prosecution.

DPA Appellate defender Jamesa Drake and Appeals Branch Manager Kathleen Schmidt argued to the Kentucky Supreme Court that the Maternal Health Act was clearly

intended to prohibit Ms. Cochran's prosecution, and that the Supreme Court should uphold the Act. In defending the Maternal Health Act, Ms. Drake and Ms. Schmidt had the assistance of nearly three dozen organizations and 27 bioethicists, who filed a total of six amicus curie briefs supporting Ms. Cochran's position. The Kentucky Supreme Court decided to uphold the Act, and prohibit the prosecution. The decision is a victory for ensuring high quality care for expectant mothers and their children. As Katherine Jack of the National Advocates for Pregnant Women states: "It's once again clear that Kentucky doesn't want to be an outlier in the United States or in the world by punishing women that may overcome drug problems during pregnancy."

Innocent Kentuckians who spent significant years in prison before being exonerated

Michael VonAllmen 13 years

Edwin Chandler 16 years

Herman May served 13 ½ years

Ben Kiper served 7 years

Tim Smith served 20 years

Jaquelyn Green served 7 years

Sam Plotnick served 7 years

Jason Girts served 3 years

Lacy Bedingfield served 14 years

Edwin A Chandler served 9 years

William Gregory served 7 years

Kentucky Innocence Project

The Kentucky Innocence Project enjoyed two tremendous wins this past year. The first exoneration was a case that had been investigated by a law student through KIP's partnership with Chase College of Law. The other was a result of an investigation funded by a National Institute of Justice grant which KIP and DPA received for DNA

testing of physical evidence. Both cases were out of Jefferson County and involved many of the same troubling issues found in other exonerations in Kentucky and across the country in recent years.

"You are a free man." Those are the words every innocent person convicted of a crime lives to hear.

Edwin Chandler heard them on October 13, 2009 as a Jefferson Circuit Court judge vacated his conviction. Edwin was convicted of manslaughter and robbery in connection with the shooting death of a convenience store clerk in 1993, a crime that Edwin confessed to under pressure from the Louisville police detectives. According to Edwin, the detectives interrogated him for hours and he finally relented when they threatened to jail his sister and take her children away. Even though he recanted the confession at trial, he was still convicted in large part due to that confession.

Even more troubling is the fact eyewitnesses testified at trial that Edwin was the wrong man. One

eyewitness at the scene gave police a description that did not match Edwin's. Witnesses contacted police after Edwin's conviction with information that another man had admitted to them that he had killed the clerk. An officer even interviewed someone who told him that another man had confessed to the

murder. No action was taken until KIP took the

case to the Louisville Metro Police Department's Cold Case Unit. The unit conducted its own investigation using the information provided by KIP and reached the same conclu-



Edwin Chandler, Attorney Marguerite Thomas

sion: Edwin Chandler did not commit the murder, which led to the words Edwin had dreamed about hearing for years. "You are a free man."

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. VonAllmen had

been out on parole since 1994 but contacted the Kentucky Innocence Project in 2009 after learning about the creation of the DNA unit through the NIJ Bloodsworth Grant. Aware of the possibility of a retrial and an even longer sentence, Michael nonetheless wanted to prove his innocence and clear his name. DNA testing was done on hairs recovered from the victim but all tests were inconclusive. However, while waiting for the test results, KIP continued its investigation and identified an alternative suspect who had committed a similar crime in the same area. The similarities between Michael and the alternative suspect were eerie, including the type and color of car each drove, body build, hair style, etc. The victim in Michael's case said her attacker had blue eyes; Michael's eyes are brown but the alternative suspect had blue eyes. Mistaken eyewitness identification, the leading factor in almost 80% of the country's exonerations, sent another innocent man to prison.

The Jefferson Circuit Court agreed that the new evidence presented by KIP would have led to a different verdict if it had been presented to the jury at Michael's trial and acknowledged that the wrong man was convicted and sent to prison. The Court vacated Michael's conviction in June and in July, the Commonwealth's Attorney agreed to dismiss the indictment with prejudice. Michael VonAllmen's own 29 year nightmare was finally over.

Protection & Advocacy

Effectively advocating for Kentuckians with disabilities



Marsha Hockensmith

Protection and Advocacy (P&A), a division within the Department of Public Advocacy, is a client-driven agency that advocates for persons with disabilities. The federal P&A system was created in response to a series of local New York City television news broadcasts by Geraldo Rivera in the 1970s. Rivera exposed abuse, neglect and wasting away at Willowbrook, a state institution on Staten Island where people with intellectual and developmental disabilities lived.

Originally, the P&A job was to protect people with intellectual and developmental disabilities from abuse and neglect in the facilities where they lived. Now P&As advocates for the rights of all people with disabilities, whether they live in institutions or the community, and regardless of the nature or severity

of their disabilities. 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.

Two advisory boards, the PAIMI Council and the PADD Board, assist Protection and Advocacy's Director, Marsha Hockensmith, and P & A staff in setting annual priorities. They also provide feedback and input on current disability rights issues. Most members of the advisory boards are people with disabilities or parents of people with disabilities.

Protection and Advocacy provides services to Kentuckians through three teams of advocates. In addition, services are provided through multi-team and multi-agency collaborative projects.

The Information, Training and Outreach Team responded to 1,653 requests for information, advice and referral. We provided 65 trainings on disability rights, and provided outreach to the general public, and underserved disability groups, as well as ethnic and geographic minorities. We developed many new publications, including the disability rights coloring book for children, *Everybody Does Things Differently*, and distributed 2,897 P&A publications. We created a YouTube channel with self-advocacy materials and began a Twitter feed

for alerts on topics of interest to the disability community. Protection and Advocacy's Children and Youth Team provided legally based advocacy services to hundreds of children and youth with a wide variety of developmental, intellectual, and physical disabilities. Our advocates and attorneys worked in multiple settings to ensure our clients obtained a free and appropriate education, received needed assistive technology, and had access to services in the least restrictive environment. We investigated allegations of institutional abuse and neglect, including advocating for one child through the trial of her alleged perpetrator. We monitored child psychiatric residential institutions and maintain a presence in child psychiatric hospitals. We look forward to continuing our advocacy efforts on behalf of children and youth with disabilities.

Protection and Advocacy's Adult Team provided legally based advocacy services to hundreds of individuals with varying disabilities, including brain injuries, behavioral health issues, and intellectual and physical disabilities. We helped our clients restore voting rights, access assistive technology, and leave institutions like psychiatric hospitals, nursing homes, and intermediate care facilities for individuals with intellectual disabilities (ICF/MRs). We investi-

gated allegations of abuse and neglect in the institutions and the community. Protection and Advocacy's Adult Team had a presence in personal care homes, nursing homes, psychiatric hospitals, ICF/MRs, jails, prisons, and group homes. As a result of our litigation efforts, more than 3,000 individuals, both children and adults, are now receiving Michelle P. Waiver services. We will continue to build on these successes in 2011 and address other systemic issues such as finding alternatives to personal care homes.

Case File Organization and Review System

This year, Protection and Advocacy instituted a new filing and case review system. The purpose of the new system was to promote uniformity, increase access to case information, ensure compliance with federal requirements, assist in supervision, and create a client-centered focus. Our new filing system provides a uniform framework for the organization of vital case documents. Team supervisors review all hard files two weeks after case opening to ensure that all required documents have been obtained. Additionally, team supervisors complete a monthly review of case progress in the central database files as documented through

case notes. Finally, attorneys and advocates strategize through collaborative case reviews during team meetings, ad hoc meetings, and informal meetings.

Project Re-Entry Protection and Advocacy

spent the last year gathering research on services available to ex-offenders with disabilities who are returning to their home communities. Although we found that a lot of information is available to ex-offenders, the format is not necessarily user friendly. In addition, we discovered that little data had been gathered by referral sources as to what ex-offenders with disabilities actually wanted. To that end, Protection and Advocacy surveyed inmates. Protection and Advocacy intends to compile information on community resources for our eligible clients, and then ask the Department of Corrections and the Community Mental Health Centers to disseminate this information as ex-offenders leave the criminal justice system.



Trey Whitehead

In September of 2006 Trey's parents contacted Kentucky Protection & Advocacy. He was attending a regular class at the middle school and was receiving accommodations via an Individual Education Plan (IEP). As Trey prepared to transition to high school his parents were informed by the school district that he would be placed in a segregated classroom. Further they informed Trey's parents that he would not graduate with a diploma, but rather a certificate of attendance. The certificate of attendance would not qualify him for any jobs requiring a high school education.

Trey's P & A advocate ensured he received his education in an integrated setting and remained involved until Trey's graduation.

Trey graduated from Blazer High School in Ashland, Kentucky in May of 2010 with his diploma.

DPA 2010 Distinguished Service Awards



From Left to Right, Bruce Hackett, Diamond Stargel accepting for her Grandmother Kathy Grant, Charles E. English, Jr. (Buzz), Bill Robinson, Brian Hewlett, Tim Shull, Bill Goodman, Ray Clooney, Ed Monahan

On June 15, 2010 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.

William T. Robinson, III, President Elect Nominee of the American Bar Association, expressed admiration for the representation provided by defenders to client's day in and day out, assuring access to justice for so many in Kentucky.

Anthony Lewis Media Award
On June 15, 2010 the Department of Public Advocacy (DPA) presented KET's Bill Goodman with the 2010 Anthony Lewis Media Award for his work to inform the public on criminal justice issues. His programs educate the public and those who make decisions concerning DPA, about the value of public defense and the role public defenders play in providing counsel to the accused. Kentucky Tonight programs have included a focus on penal code reform, the death penalty,

restoration of voting rights for ex-felons, and domestic violence legislation.

Gideon Award

DPA presented Brian Hewlett with the 2010 Gideon Award in recognition of his courageously advancing the right to counsel for the accused. In presenting the recognition, Public Advocate Ed Monahan said, "Brian Hewlett is in his 13th year of doing public defender work. He is a courageous litigator. Since November 2008, Brian has had 9 felony jury trials, 5 acquittals or dismissals, including a 7-count sex abuse case, a sodomy first case, and a rape first case. The recent difficult *Drown* capital case shows that he will not stop until he gets the result he knows is just. Brian has the insight to get the help of others to make sure his clients have the best perspectives." In accepting the award, Brian said, "The most important thing we can do is have passion. I like to think I have passion in everything I do. I also want to remember my clients today because this is about their journey."

Public Advocate Award

DPA presented Buzz English with the 2010 Public Advocate Award in recognition of his advancing the integrity of the justice system by creating and leading the KBA Criminal Justice Roundtable. In presenting the recognition, Public Advocate Ed Monahan said, "This KBA Criminal Justice Roundtable was a remarkable effort to bring public defenders and prosecutors to the table, resulting in common policy recommendations – unprecedented in Kentucky."

Monahan also said, "Life is a series of choices. Statesmen make choices around values. Buzz chose the value of doing what is best for others. He chose to use his political capital and held the context to a successful resolution...for the benefit of public defenders, our criminal justice system, and Kentuckians. Ralph Waldo Emerson observed that 'The one thing in the world of value is the active soul.' The soul of a statesman is ever active. So today we honor the active soul of a Kentucky statesman, Buzz English."

In accepting, Buzz said, "I am very honored and humbled by this award. I have had a great group of people to work with on the Board of Governors and at the KBA. They have been supportive in every way. The most important thing given to us is our liberty. The fact of the matter is that there is no greater calling in the practice of the law than representing people charged with crimes where their liberty is at stake. Each of you deserves the honor. We all thank you for upholding our system of justice."

Rosa Parks Award

DPA posthumously presented

Kathy Grant with the 2010 Rosa Parks Award in recognition of her investigation on behalf of clients.



Kathy Grant (Pictured below) worked as an investigator for the DPA Columbia office from October 4, 1999, until she died on Friday, October 30, 2009, at the age of 55. Her tragic death resulted from being struck by a vehicle a block from the Columbia Office on her way to testify at the courthouse.

Kathy's husband and family were present for the award. In presenting the recognition, Public Advocate Ed Monahan said, "Kathy understood the plight of poor people accused of a crime. She honored their human dignity with her dedicated, indefatigable work for them.

We at DPA resolve to carry on in honor of Kathy with her spirit of helping others. In memory of her fight for adequate tools for investigators, a memorial Kathy Grant Tool Kit has been created and distributed to all defender investigators."

Professionalism & Excellence Award

Bruce Hackett, Chief of the Appellate Division of the Louisville Metro Public Defender's office was presented this award by KBA President-Elect Bruce Davis. Since graduating from the U of L School of Law in 1978, Bruce has devoted the bulk of his legal career to

public defender work in Jefferson County, interrupted only by a 7-year stint in the United States Navy Judge Advocate General Corps. He is universally respected by his adversaries and presiding judges. His record of achievement on behalf of his clients has made a mark on the development of the law in Kentucky in cases such as *Hayes v. Commonwealth*, *Turner v. Commonwealth*, *Kennedy v. Commonwealth*, *Holloman v. Commonwealth* and, more recently, *Rankins v. Commonwealth* and *McClanahan v. Commonwealth*. He is currently advocating the post-conviction cases of two death row inmates, Gregory Wilson and Randy Haight. Despite his many successes, he has maintained genuine modesty, a wry sense of humor, and a principled commitment to the best interests of his clients.

In re Gault Award

Tim Shull, formerly DPA Juvenile Post-Disposition Branch, received this award for his long service to high quality representation of Kentucky's kids. At the time when many Kentucky courts refused to appoint counsel for kids, Tim won a habeas for a kid incarcerated without counsel. The message went out and within three years most Kentucky courts had begun to routinely appoint attorneys. Tim's recipe for helping clients was pretty simple: take a pound of original thinking, add a sprinkling of outrage, throw it in the microwave to cook it quickly, and voila! Tim cares about kids.

Furman Award

Ray Clooney, Jefferson County Public Defender Office, Louisville, Kentucky was presented this

recognition for his courageous representation of capital clients over the past decade. During his two career stints in the Louisville office, Ray has represented scores of clients whose lives hung in the balance, handling an average of 12-14 capital defendants each year during the past decade. In some of the most challenging cases in Jefferson County legal history, Ray persevered against the forces of the Commonwealth. In the last year Ray tried two capital cases before death-qualified juries and avoided the death penalty in each, including *Commonwealth v. Kenneth Williams*, in which the defendant allegedly executed a young mother and shot her infant child.

Public Advocate Award

Stephen Kinnaird, Paul, Hastings, Janofsky & Walker LLP, Washington D.C., was singled out for successfully litigating pro bono *Jose Padilla v. Kentucky*, No. 08-651, argued October 13, 2009, decided March 31, 2010 in United States Supreme Court. Kentucky Supreme Court Justice Bill Cunningham was right in 2008 when he said about this case, "Counsel who gives erroneous advice to a client which influences a felony conviction is worse than no lawyer at all. Common sense dictates that such deficient lawyering goes to effectiveness." *Commonwealth v. Padilla*, 253 S.W.3d 482, 485 (Ky. 2008).

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.

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 slightly 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 because each requires separate investigation and often is years after the original charge.

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 function. 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 withdraw 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 terminate 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 Division Caseloads

Trial Office	Number of Attorneys	FY10 Cases	FY10 Conflict Cases	FY10 Attorney Average Caseload per Number of Attorneys
Bell Co.	7.5	3,372	383	398.5
Boone Co.	10	4,147	130	401.7
Bowling Green	10	5,129	199	493.0
Boyd Co.	9	4,083	132	439.0
Bullitt Co.	8	3,458	64	424.3
Columbia	8	3,104	41	382.9
Covington	15	6,519	217	420.1
Cynthiana	5	2,266	72	438.8
Danville	9	3,493	58	381.7
Elizabethtown	13	4,925	140	368.1
Frankfort	7	3,287	62	460.7
Glasgow	5	1,791	37	350.8
Hazard	9	3,592	65	391.9
Henderson	7	3,172	91	440.1
Hopkinsville	14	6,011	137	419.6
Jefferson	57	33,156	60	580.6
Lexington	21	11,483	381	528.7
LaGrange	5	2,274	48	445.2
London	10.5	4,295	273	383.0
Madisonville	7	2,688	27	380.1
Maysville	5	2,121	150	394.2
Morehead	9	4,551	106	493.9
Murray	9	3,436	99	370.8
Owensboro	11	4,970	148	438.4
Paducah	11	4,141	108	366.6
Paintsville	4	2,349	52	574.3
Pikeville	8	3,346	73	409.1
Richmond	10	4,865	136	472.9
Somerset	8	3,698	46	456.5
Stanton	7	2,919	85	404.9
TOTAL**	319	148,641	3,620	454.6

* Complement as of 7/1/10.

** The Capital Trial Branch defended 35 cases in FY10. These cases are included in the total FY10 caseload to recognize the services of its attorneys and staff, but its cases are excluded from average cases per attorney.

Overview of Expenditures and Costs per Trial Division Case

The FY 2010 DPA cost per Trial Division case was \$224.26, well below the hourly rate for many private attorneys.

	<u>Expenditures</u>	<u>Cases</u>	<u>Cost per case</u>
Trial Division cases:	\$33,333,683	148,641	\$224.26

Overview of Expenditures and Costs per Conflict

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 less than \$550 per case.

	<u>Expenditures</u>	<u>Cases</u>	<u>Cost per case</u>
Trial Division conflict cases:	\$1,466,505	2,855	\$513.66

FY 2010 Trial Case Openings by Court Type & County

The numbers below include new cases opened during FY10, beginning July 1, 2009. On December 4, 2009, the Kentucky Bar Association Criminal Justice roundtable recommended that DPA's caseload reports include cases carried over from previous fiscal years. The Department endorses the work of the Roundtable and will amend future caseload reports in accord with the Roundtable's recommendations. As the Fiscal Year covered by this report had already begun at the time of the Roundtable's report, the new method of counting will be implemented and explained fully in the FY11 report.

County	TOTAL	Circuit	Circuit%	District	District%	Family	Family%	Other	Other%	Juvenile*
Adair	478	144	30.13%	333	69.67%	1	0.21%	0	0.00%	153
Allen	339	142	41.89%	159	46.90%	38	11.21%	0	0.00%	96
Anderson	501	112	22.36%	386	77.05%	2	0.40%	1	0.20%	112
Ballard	270	78	28.89%	191	70.74%	1	0.37%	0	0.00%	21
Barren	980	377	38.47%	587	59.90%	15	1.53%	1	0.10%	115
Bath	534	135	25.28%	399	74.72%	0	0.00%	0	0.00%	58
Bell	1,703	387	22.72%	1,316	77.28%	0	0.00%	0	0.00%	211
Boone	2,514	849	33.77%	1,665	66.23%	0	0.00%	0	0.00%	325
Bourbon	766	201	26.24%	558	72.85%	6	0.78%	1	0.13%	95
Boyd	2,103	689	32.76%	1,411	67.09%	1	0.05%	2	0.10%	165
Boyle	662	137	20.69%	518	78.25%	7	1.06%	0	0.00%	93
Bracken	218	51	23.39%	167	76.61%	0	0.00%	0	0.00%	12
Breathitt	488	135	27.66%	353	72.34%	0	0.00%	0	0.00%	47
Breckinridge	437	167	38.22%	269	61.56%	0	0.00%	1	0.23%	102
Bullitt	2,340	571	24.40%	1,758	75.13%	9	0.38%	2	0.09%	211
Butler	321	119	37.07%	201	62.62%	1	0.31%	0	0.00%	55
Caldwell	298	83	27.85%	214	71.81%	0	0.00%	1	0.34%	27
Calloway	805	258	32.05%	547	67.95%	0	0.00%	0	0.00%	78
Campbell	2,153	736	34.18%	1,258	58.43%	129	5.99%	30	1.39%	770
Carlisle	84	11	13.10%	71	84.52%	2	2.38%	0	0.00%	9
Carroll	441	162	36.73%	279	63.27%	0	0.00%	0	0.00%	19
Carter	1,062	232	21.85%	719	67.70%	111	10.45%	0	0.00%	138
Casey	393	129	32.82%	264	67.18%	0	0.00%	0	0.00%	59
Christian	4,349	797	18.33%	3,504	80.57%	32	0.74%	16	0.37%	608
Clark	1,457	202	13.86%	1,206	82.77%	48	3.29%	1	0.07%	243
Clay	523	122	23.33%	401	76.67%	0	0.00%	0	0.00%	35
Clinton	279	137	49.10%	142	50.90%	0	0.00%	0	0.00%	28
Crittenden	329	108	32.83%	220	66.87%	1	0.30%	0	0.00%	30
Cumberland	136	48	35.29%	88	64.71%	0	0.00%	0	0.00%	8
Daviess	3,669	756	20.61%	2,912	79.37%	0	0.00%	1	0.03%	1,087
Edmonson	186	91	48.92%	88	47.31%	7	3.76%	0	0.00%	32
Elliott	250	70	28.00%	177	70.80%	3	1.20%	0	0.00%	37
Estill	739	204	27.60%	535	72.40%	0	0.00%	0	0.00%	60
Fayette	11,483	2,504	21.81%	7,647	66.59%	640	5.57%	692	6.03%	977
Fleming	616	159	25.81%	457	74.19%	0	0.00%	0	0.00%	92
Floyd	1,507	296	19.64%	1,193	79.16%	18	1.19%	0	0.00%	118
Franklin	1,338	430	32.14%	867	64.80%	35	2.62%	6	0.45%	240
Fulton	388	145	37.37%	240	61.86%	3	0.77%	0	0.00%	41
Gallatin	297	68	22.90%	229	77.10%	0	0.00%	0	0.00%	43
Garrard	345	101	29.28%	242	70.14%	2	0.58%	0	0.00%	65
Grant	619	221	35.70%	398	64.30%	0	0.00%	0	0.00%	86
Graves	1,674	368	21.98%	1,306	78.02%	0	0.00%	0	0.00%	138
Grayson	681	224	32.89%	454	66.67%	1	0.15%	2	0.29%	106
Green	314	97	30.89%	217	69.11%	0	0.00%	0	0.00%	45
Greenup	652	217	33.28%	428	65.64%	2	0.31%	5	0.77%	27

*Juvenile case totals are excluded from the overall total as they are included in District Court Or Family Court totals.

FY 2010 Trial Case Openings by Court Type & County

County	TOTAL	Circuit	Circuit%	District	District%	Family	Family%	Other	Other%	Juvenile*
Hancock	157	36	22.93%	121	77.07%	0	0.00%	0	0.00%	23
Hardin	3,422	802	23.44%	2,596	75.86%	20	0.58%	4	0.12%	430
Harlan	1,669	612	36.67%	1,057	63.33%	0	0.00%	0	0.00%	186
Harrison	685	123	17.96%	559	81.61%	3	0.44%	0	0.00%	113
Hart	413	174	42.13%	239	57.87%	0	0.00%	0	0.00%	16
Henderson	1,894	347	18.32%	1,486	78.46%	61	3.22%	0	0.00%	463
Henry	480	81	16.88%	397	82.71%	2	0.42%	0	0.00%	83
Hickman	163	43	26.38%	120	73.62%	0	0.00%	0	0.00%	15
Hopkins	1,799	418	23.24%	1,363	75.76%	18	1.00%	0	0.00%	288
Jackson	375	77	20.53%	298	79.47%	0	0.00%	0	0.00%	34
Jefferson	33,156	4,539	13.69%	28,617	86.31%	0	0.00%	0	0.00%	4,133
Jessamine	1,467	409	27.88%	1,036	70.62%	22	1.50%	0	0.00%	274
Johnson	1,109	209	18.85%	881	79.44%	18	1.62%	1	0.09%	76
Kenton	4,366	1,112	25.47%	2,830	64.82%	417	9.55%	7	0.16%	1,817
Knott	343	60	17.49%	282	82.22%	1	0.29%	0	0.00%	65
Knox	882	189	21.43%	665	75.40%	28	3.17%	0	0.00%	227
Larue	347	98	28.24%	249	71.76%	0	0.00%	0	0.00%	41
Laurel	1,550	465	30.00%	1,048	67.61%	37	2.39%	0	0.00%	284
Lawrence	357	64	17.93%	285	79.83%	8	2.24%	0	0.00%	49
Lee	329	95	28.88%	234	71.12%	0	0.00%	0	0.00%	8
Leslie	245	49	20.00%	196	80.00%	0	0.00%	0	0.00%	10
Letcher	1,316	276	20.97%	1,040	79.03%	0	0.00%	0	0.00%	114
Lewis	266	135	50.75%	131	49.25%	0	0.00%	0	0.00%	8
Lincoln	534	76	14.23%	456	85.39%	2	0.37%	0	0.00%	133
Livingston	252	84	33.33%	168	66.67%	0	0.00%	0	0.00%	20
Logan	653	252	38.59%	399	61.10%	0	0.00%	2	0.31%	40
Lyon	145	52	35.86%	93	64.14%	0	0.00%	0	0.00%	7
Madison	3,033	427	14.08%	2,575	84.90%	29	0.96%	2	0.07%	307
Magoffin	374	92	24.60%	267	71.39%	15	4.01%	0	0.00%	36
Marion	552	230	41.67%	322	58.33%	0	0.00%	0	0.00%	55
Marshall	957	301	31.45%	656	68.55%	0	0.00%	0	0.00%	114
Martin	509	169	33.20%	312	61.30%	28	5.50%	0	0.00%	62
Mason	1,287	269	20.90%	1,017	79.02%	0	0.00%	1	0.08%	167
McCracken	2,984	995	33.34%	1,932	64.75%	29	0.97%	28	0.94%	440
McCreary	521	231	44.34%	288	55.28%	1	0.19%	1	0.19%	88
McLean	155	40	25.81%	115	74.19%	0	0.00%	0	0.00%	37
Meade	475	149	31.37%	326	68.63%	0	0.00%	0	0.00%	73
Menifee	280	96	34.29%	184	65.71%	0	0.00%	0	0.00%	22
Mercer	485	119	24.54%	364	75.05%	2	0.41%	0	0.00%	64
Metcalfe	159	44	27.67%	115	72.33%	0	0.00%	0	0.00%	30
Monroe	239	112	46.86%	127	53.14%	0	0.00%	0	0.00%	16
Montgomery	1,467	447	30.47%	1,012	68.98%	0	0.00%	8	0.55%	221
Morgan	578	105	18.17%	453	78.37%	20	3.46%	0	0.00%	126
Muhlenberg	734	248	33.79%	486	66.21%	0	0.00%	0	0.00%	102
Nelson	927	385	41.53%	542	58.47%	0	0.00%	0	0.00%	103

*Juvenile case totals are excluded from the overall total as they are included in District Court Or Family Court totals.

FY 2010 Trial Case Openings by Court Type & County

County	TOTAL	Circuit	Circuit%	District	District%	Family	Family%	Other	Other%	Juvenile*
Nicholas	292	38	13.01%	247	84.59%	7	2.40%	0	0.00%	48
Ohio	707	298	42.15%	409	57.85%	0	0.00%	0	0.00%	124
Oldham	754	172	22.81%	575	76.26%	7	0.93%	0	0.00%	149
Owen	276	117	42.39%	159	57.61%	0	0.00%	0	0.00%	26
Owsley	276	41	14.86%	235	85.14%	0	0.00%	0	0.00%	20
Pendleton	455	58	12.75%	393	86.37%	4	0.88%	0	0.00%	95
Perry	1,933	434	22.45%	1,499	77.55%	0	0.00%	0	0.00%	133
Pike	1,839	366	19.90%	1,450	78.85%	23	1.25%	0	0.00%	169
Powell	824	211	25.61%	590	71.60%	23	2.79%	0	0.00%	119
Pulaski	1,530	562	36.73%	959	62.68%	6	0.39%	3	0.20%	152
Robertson	68	10	14.71%	58	85.29%	0	0.00%	0	0.00%	2
Rockcastle	494	140	28.34%	354	71.66%	0	0.00%	0	0.00%	29
Rowan	1,442	300	20.80%	1,140	79.06%	2	0.14%	0	0.00%	119
Russell	417	158	37.89%	254	60.91%	5	1.20%	0	0.00%	41
Scott	1,020	232	22.75%	785	76.96%	1	0.10%	2	0.20%	131
Shelby	857	249	29.05%	596	69.54%	12	1.40%	0	0.00%	217
Simpson	299	148	49.50%	149	49.83%	2	0.67%	0	0.00%	38
Spencer	191	48	25.13%	143	74.87%	0	0.00%	0	0.00%	34
Taylor	705	239	33.90%	465	65.96%	0	0.00%	1	0.14%	121
Todd	284	110	38.73%	171	60.21%	1	0.35%	2	0.70%	27
Trigg	282	61	21.63%	221	78.37%	0	0.00%	0	0.00%	10
Trimble	183	42	22.95%	138	75.41%	3	1.64%	0	0.00%	37
Union	470	107	22.77%	356	75.74%	7	1.49%	0	0.00%	84
Warren	3,984	1,553	38.98%	2,245	56.35%	164	4.12%	22	0.55%	788
Washington	247	144	58.30%	103	41.70%	0	0.00%	0	0.00%	16
Wayne	736	289	39.27%	446	60.60%	0	0.00%	1	0.14%	60
Webster	479	127	26.51%	342	71.40%	10	2.09%	0	0.00%	54
Whitley	1,095	241	22.01%	854	77.99%	0	0.00%	0	0.00%	282
Wolfe	263	107	40.68%	156	59.32%	0	0.00%	0	0.00%	40
Woodford	428	136	31.78%	289	67.52%	3	0.70%	0	0.00%	97
TOTALS	148,641	35,344	23.78%	110,294	74.20%	2,156	1.45%	847	0.57%	21,399

*Juvenile case totals are excluded from the overall total as they are included in District Court Or Family Court totals.

Ten Highest Caseload Counties

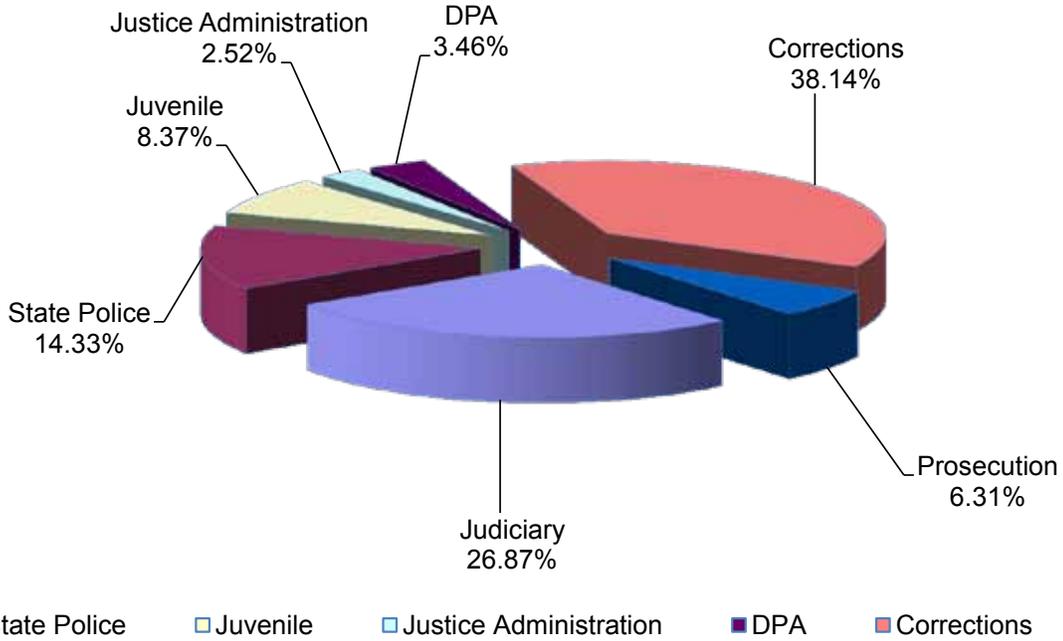
1. Jefferson	33,156
2. Fayette	11,483
3. Christian	4,349
4. Kenton	4,336
5. Warren	3,984
6. Daviess	3,669
7. Hardin	3,422
8. Madison	3,033
9. McCracken	2,984
10. Boone	2,514

Fiscal Year 2010 Defender Trial Cases

Circuit	35,344	23.8%
District	110,294	74.2%
Family	2,156	1.5%
Juvenile	21,399	14.4%
Other	847	.6%

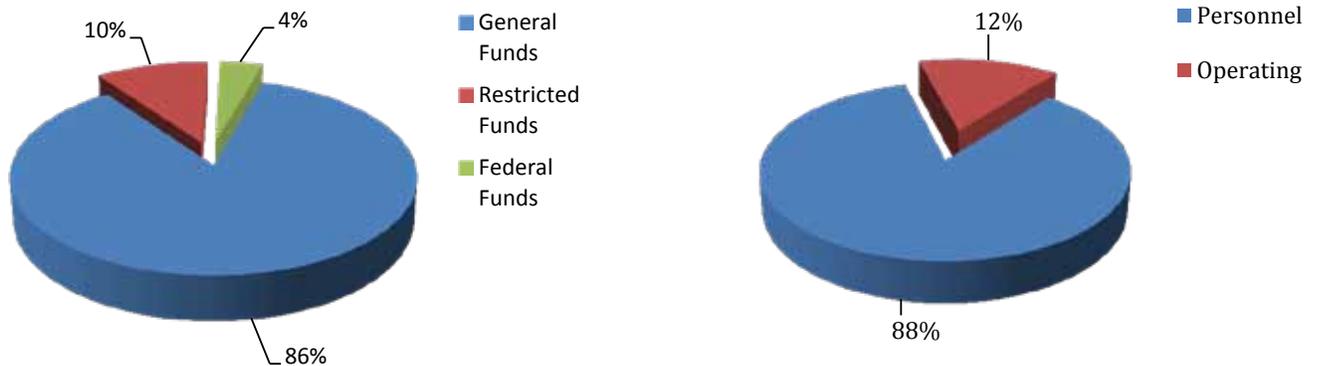
Total 148,641

Criminal Justice System 2010 Actual Expenditures - All Funds

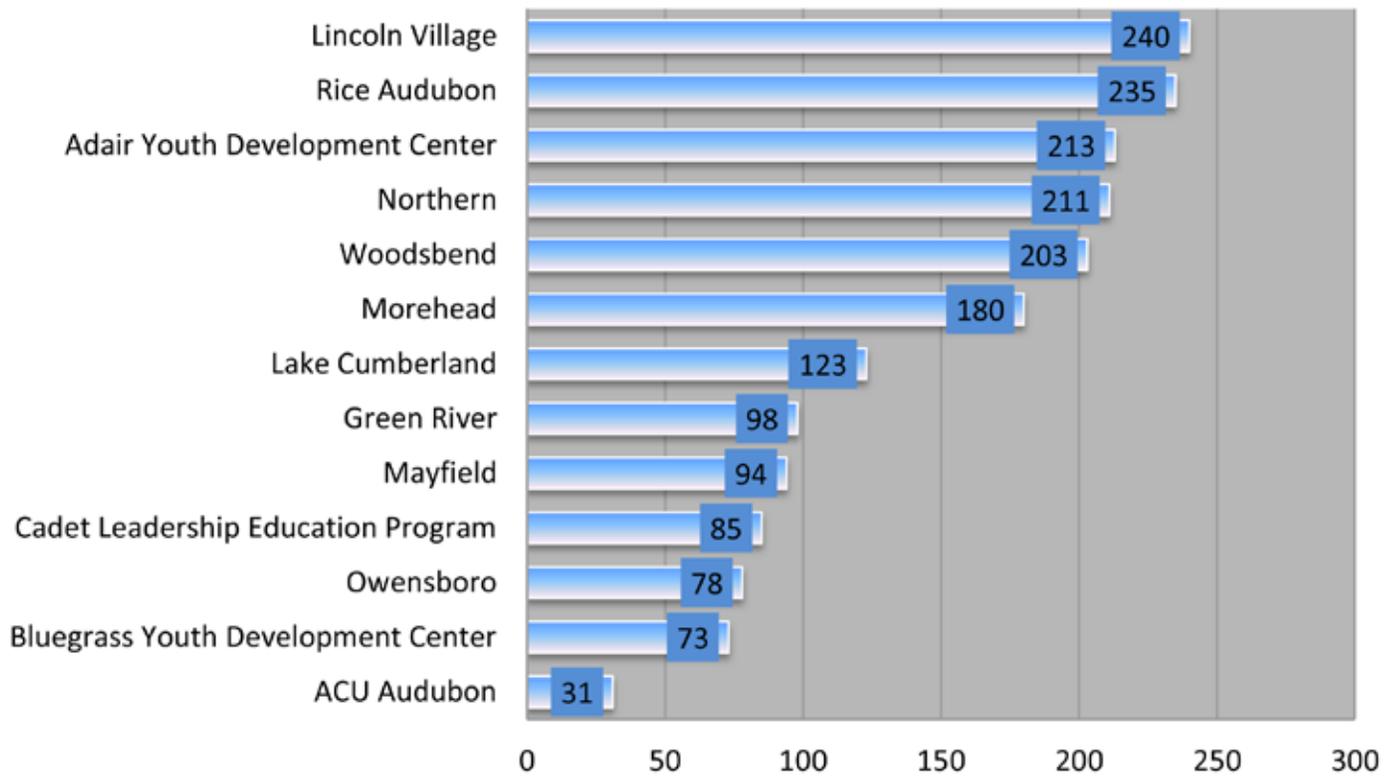


REVENUES & EXPENDITURES

FY 2010 Budget by Fund Source and Program



FY 2010 New Juvenile Claims by Institution



American Bar Association reviews administration of the penalty of death in Kentucky

In November 2009 the ABA Assessment Team began a process of reviewing the way the death penalty in Kentucky has been administered in light of established national minimum standards. The assessment is conducted by a state-based team responsible for collecting and analyzing various laws, rules, procedures, standards, and guidelines relating to the administration of capital punishment in the Commonwealth. It is the Kentucky Assessment Team's responsibility to determine whether the Commonwealth is in compliance with the ABA Protocols and make any other additional recommendations it feels are needed to improve the fairness and accuracy of Kentucky's death penalty system. The Kentucky Assessment Team is comprised of the following individuals:

-Linda Ewald, Co-Chair
University of Louisville
Louis D. Brandeis School of Law
Louisville, KY

-Hon. Martin E. Johnstone
Kentucky Supreme Court (Retired)
Prospect, KY

-Michael J. Z. Mannheimer, Co-Chair
Northern Kentucky University
Salmon P. Chase College of Law
Highland Heights, KY

-Hon. James Keller
Kentucky Supreme Court (Retired)
Lexington, KY

-Hon. Michael Bowling
Steptoe & Johnson PLLC
Middlesboro, KY

-Frank Hampton Moore, Jr.
Cole & Moore, P.S.C.
Bowling Green, KY

-Don Cetrulo
Knox & Cetrulo PLLC
Lexington, KY

-Marcia Milby Ridings
Hamm, Milby & Ridings
London, KY

-Allison Connelly
University of Kentucky
College of Law
Lexington, KY

-Hon. Gordie Shaw
Commonwealth's Attorney
Fourteenth Judicial Circuit
Versailles, KY

Kentucky lawyers call for moratorium

A number of Kentucky lawyers have called for a moratorium while this ABA study is underway, including T. Kennedy Helm III, Ernie Lewis, Jason M. Nemes, William G. Deatherage, Jr., John R. Rhorer, Jr. Thomas M. Williams, Janet P. Jakubowicz, Robert F. Houlihan, Jr., Robert L. Elliott, William H. Fortune, Stephanie Hawkins Smith, Peter H. Wayne, IV. In their November 2009 letter to the Governor they stated:

The American Bar Association (ABA) has announced the appointment of a blue ribbon assessment team comprised of distinguished Kentucky legal experts to independently evaluate the use of the death penalty in Kentucky. In our capacity as members of the bar, we respectfully request that you declare a moratorium on executions in Kentucky while the ABA assessment team is doing its work.

A moratorium would not cause a disruption of Kentucky's recent decades of administration of justice. Since 1957, there have been only 4 executions in Kentucky and 2 of those involved people who refused to pursue their appeals. Given Kentucky's limited use of the death penalty and concerns over the costs and administrative issues, a well-defined moratorium would be consistent with that history, with public policy and public opinion.

This effort to independently evaluate death penalty usage in Kentucky also has legislative precedent. In 2002, the Kentucky House of Representatives voted 97-0 to evaluate the death penalty usage in Kentucky, although the bill did not emerge from the Senate Judiciary Committee. The ABA assessment team is the functional equivalent of the idea endorsed without dissent by the Kentucky House of Representatives.

The group assembled by the ABA will inspire the confidence of the public in its expertise and fairness. Two retired Kentucky Supreme Court Justices, the former director of the Legislative Research Commission and Administrative Office of the Courts, an incumbent Commonwealth Attorney, a former legislator, distinguished law professors and bar leaders make up the team. The assessment team will be supported by ABA staff lawyers and other legal support personnel. Usually, ABA death penalty assessment projects (six states have been assessed since 2004) take about 24 months. The examination entails a comparison of a state's laws and practices on the death penalty to a series of ABA protocols that seek to improve fairness and accuracy of capital punishment.

Public Advocate and Louisville Metro Chief Public Defender call for moratorium on executions

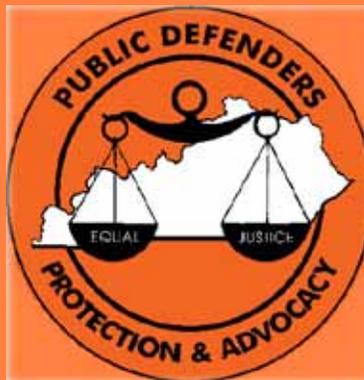
On November 23, 2009 Public Advocate Ed Monahan and Louisville Metro Chief Public Defender Dan Goyette called for a moratorium on executions in Kentucky until the ABA objectively reviews the fairness, accuracy and reliability of Kentucky's system for imposing and administering the death penalty. Goyette and Monahan sent a request to the Governor asking that he not sign any execution warrant while the study is being conducted and a similar request to the Attorney General asking that he withdraw his three requests for execution warrants he made today until the review is completed and the ABA Assessment Team issues its report.

Public Defenders are appointed to represent the vast majority of those who are currently on Kentucky's death row. Defenders play a critical role in ensuring full due process of law for their clients. There are individuals on death row who are severely mentally ill, who had lawyers that were ineffective, and who had trials in which serious errors occurred that remain uncorrected.

"There are serious and disturbing questions about the convictions of a number of inmates facing execution, particularly in those cases that were tried years ago by unqualified lawyers lacking adequate resources," Dan Goyette said. "We should not proceed with executions until this independent evaluation is completed and we are assured that due process has been fully and properly provided in each and every case. To do otherwise would cast significant doubt on the fairness and propriety of imposing the ultimate punishment. We all have a fundamental responsibility to avoid at all costs the possibility of making an unjust and irreversible mistake."

Since 1967 Kentucky has executed three people (two were volunteers) and three KY Governors have granted clemency to five people sentenced to death. As of November 2009, 92 death sentences have been returned in Kentucky state courts since 1976. As of November 2009, there were 35 people on KY's death row. Of the 50 Kentucky capital cases that have exhausted review by the Kentucky Supreme Court and the Sixth Circuit Court of Appeals as of November 2009, 42 have been reversed.

"The error rate in KY capital cases over the last 33 years is stunning and unacceptably high," said Ed Monahan. "It is compelling evidence that indicates the system is broken. This excessive rate of error shows that the system cannot get it right. A moratorium will prevent the execution of an individual whose conviction and death sentence has been imposed by an unfair and arbitrary system."



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In All Criminal Prosecutions The Accused Has The Right To Be Heard By Himself And Counsel
Section 11, Kentucky Constitution