



LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

WINTER 2007, No. 25

DEPARTMENT OF PUBLIC ADVOCACY

THE TIME IS NOW FOR LAW STUDENT LOAN ASSISTANCE

By Margaret Case, General Counsel

All indications are that 2007 is the year for Kentucky's passage of law student loan assistance.

This is a program that encourages and supports those lawyers who want to use their legal training for the direct benefit of the public, (as prosecutors, public defenders, and civil legal services practitioners), rather than entering private practice.

Over the last several years, law student loan assistance legislation has passed both chambers of the Kentucky General Assembly at one time or another. It has enjoyed strong bipartisan support from legislators all across the state. Despite such support, the bills have met with various problems in the past. But, the final hurdle that surfaced in the 2006 General Assembly has now been leveled.

As Jefferson Commonwealth's Attorney Dave Stengel said a few years ago: "It is normal that legislation of any significance such as student loan forgiveness requires several attempts before passage I believe that a student loan forgiveness schedule is essential for us to attract and keep top qualified young prosecutors, just as I am sure that DPA needs such legislation to keep effective young defenders."

Those familiar with this legislation see it as being primed for enactment into law this time around.

Why is the Legislation Needed?

1. The world faced by new law school graduates today is vastly different from the one faced by those of us who graduated some time ago. Borrowing money has become an absolute necessity, as tuition and expenses have skyrocketed.

a. Many new law school graduates, who have a great desire to be prosecutors or public defenders, are forced to enter the private sector instead, because of the need to pay off tens of thousands of dollars in student loans. They know they could never do it on a state government salary. The public loses all the talent and enthusiasm that these lawyers would bring to public service.

DPA Recruiter Londa Adkins speaks with many prospective public defenders. They tell her that a loan assistance program would make indigent defense a much more viable career choice. Indeed, there is real-life data to prove that point. Two counties in Arizona recently began a loan assistance program for public defenders. They report that, where a vacant position previously would have attracted a handful of applicants, they are now attracting scores or even hundreds of applicants. The quality and diversity of the applicant pool have gone up exponentially.



Margaret Case

b. Other graduates do choose public service careers but discover, too late, that their salaries are insufficient to make ends meet. The public sector then loses those lawyers. The public then also loses all the resources that were invested in those lawyers' recruitment, training, and professional development.

There are Department of Public Advocacy employees carrying law school loan debts of up to \$130,000. These staff members are unable to participate in the state employee deferred compensation plans. They are delaying the start of families. They have to borrow money from their parents in order to make student loan payments that exceed their mortgage payments.

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For many, it is just a matter of time before they are forced to leave state government, in order to avoid bankruptcy.

2. The citizens of Kentucky deserve a justice system in which the public is served by capable professionals who are dedicated to public service, not merely biding their time until they leave for greener pastures. The citizens of Kentucky deserve better than a revolving door system, where new lawyers enter public service, get training and experience at public expense, and then leave to put their training and experience to use in the private sector. But, that is the type of system we have, given the lethal combination of staggering student debt and low salaries.

In the recent past, DPA has been losing an average of 3-4 lawyers per month. That high rate of turnover is expensive:

- Every time DPA brings on a new lawyer, the agency has already spent over \$1,500 in recruitment and hiring costs.
- Then, the new lawyer must be educated and trained in the specifics of indigent criminal defense, which costs about \$5,600 per lawyer.

But, the revolving door costs us more than just dollars and cents. Criminal justice is a matter of public safety and public fairness. Our criminal laws become more complex and numerous every year, so the system needs to recruit the best and needs to retain experienced lawyers. If the public is to be served by a fair and reliable criminal justice system, the system must do better than rely upon a succession of novice lawyers who come and go.

Bob Ewald, KBA president and chair of the Public Advocacy Commission, has noted the burden placed on other lawyers in an office when one of their co-workers resigns. "The remaining lawyers have to take responsibility for their former colleague's cases, over and above their own already huge caseloads. It's hard to put a dollar figure on the problem, but it clearly puts a strain on everybody in the system."

Jay Barrett, Director of DPA's Trial Services Division has also pointed out: "An additional factor would be the time we spend interviewing candidates to fill vacancies. An interview with the local directing attorney and staff can last anywhere from an hour to over half a day, where applicants are taken to see court and the jail. Then, our regional manager and I conduct the next two rounds of interviews. When you multiply this by as many as 9 or 10 applicants who are interviewed for a single position, you can see the huge investment of time we put into finding people who we believe will be good public defenders and who will stay with us. It really hurts when they leave us after learning that they can't pay their loans on the salary they earn with us."

I gave up on buying a home, and rent instead. Because I have to pay on my student loan debt, I can't take part in the state deferred comp plan.

– Marcus Jones



Marcus Jones

Law school loan assistance will slow down the revolving door and the reduce some of the problems that the revolving door causes.

3. The 2007 law school loan assistance bill also addresses a sad inequity in our commonwealth's assistance to higher education students. The Kentucky Higher Education Assistance Authority offers much-needed help for students, but KHEAA's guidelines exclude a considerable number of individuals, through no fault of their own. For example, KHEAA's "Best in Law" program is not available to students whose loans are with other lenders, such as those who went to school outside Kentucky and those who previously made the fiscally-responsible decision to consolidate their student loans with some other lender. In addition, there are attorneys who were students at the UK College of Law when UK students were not allowed to get KHEAA loans.

My partner is a school teacher. Because of my student loans, she and I have delayed having children. I make far less money than I would in the private sector.

—Theodore Shouse

The University of Kentucky College of Law offers grants through its Rural Drug Prosecution Assistance Project. But that funding is limited to just a few participants (varying from three to six at DPA), and is scheduled to

end completely in the not-too-distant future.

So, the 2007 law school loan assistance bill is designed to fill a gaping hole in the state's plan for student loan assistance.

Who Supports the Legislation?

Among the supporters of law student loan assistance are the following:

- American Bar Association
- Kentucky Bar Association
- Prosecutors Advisory Council
- Commonwealth's Attorneys Association
- County Attorneys Association
- UK, U of L, and Chase Law Schools
- Public Advocacy Commission
- Access to Justice, Civil Legal Services

How Does the Kentucky Program Work?

The law student loan assistance program offers annual reimbursement of loan payments that the participating lawyer has made during the past year.

- For a full-time lawyer, the amount is capped at \$500 per month, with an annual limit of \$6,000.
- For a part-time lawyer, the amount is capped at \$250 per month, with an annual limit of \$3,000.

These amounts compare with \$10,000 available annually to those who are lucky enough to qualify for KHEAA's "Best in Law" program or UK's Rural Drug Prosecution Assistance Project.

The program is not available to any individual who already participates in another program for payment of law school loan expenses. No double-dipping.

In order to qualify for the new program, the lawyer must sign a two-year commitment to remain in his or her current employment. At the end of that two-year period, the lawyer is allowed to apply for assistance during a new two-year period.

Should the lawyer voluntarily leave public service without fulfilling this two-year commitment, the lawyer would have to repay all money he or she received, with interest.

The program is administered by the Kentucky Higher Education Assistance Authority, which is authorized to promulgate regulations for the program.

The program is funded by 2% of the Court Cost Distribution Fund, with an annual maximum total amount of \$1.2 million.

How is the Current Situation Different from the Past?

In the 2006 General Assembly, law student loan assistance enjoyed its usual broad support. However, balancing the budget was difficult and even a mere \$1.2 million was scrutinized very carefully. The bill did not leave the House Appropriations and Revenue Committee.

My husband and I are both public servants with DPA. Our student loan payments are more than our mortgage payments. My mother has to give me money each month to help pay my student loans.

—Trisha Brunk



Trisha Brunk

Things will be different in the next session. The financial horizon is brighter now than it was during the 2006 session. Allocating part of the Court Cost Distribution Fund for improvement of the justice system will be easier this time around.

Why will this Program Work?

1. It is fiscally responsible. The amounts available to students are modest, yet substantial enough to be meaningful to the recipients. And, the public gets greater direct benefit from the tax dollars that support our state's law schools.
2. It saves the state money. No longer will we watch so many recruitment and training dollars walk out the door with each departing attorney who must leave in order to earn a higher salary elsewhere.
3. Recipients of assistance are held accountable.
4. Money for the program comes out of a fund generated by the justice system itself; the justice system pays for improving itself.

The law school student loan assistance program is a win-win proposition for all concerned. And, 2007 is proving to be the year for its passage. ■

FOR YOUNG COUPLE, BUDGET MAKEOVER IS TIME WELL SPENT

**By Karla Ward
Herald-Leader Business Writer**

Nick and Becca Haynes are a model example of a perfectly paired, sensible young couple.

They both take their lunches to work each day to save money.

They both drive modest, dependable Toyota Corollas.

They share practical hobbies — both enjoy cooking and reading.

He's 27, an attorney at the Kentucky Department of Public Advocacy in Richmond.

She's 26, an English teacher at Franklin County High School.

Having grown up as the eldest child in each of their families, they both have a responsible attitude.

But when Nick and Becca signed up for a budget makeover, they weren't very comfortable with their financial circumstances.

"We have no regrets about choosing public service careers, but they don't make our financial situation easy," Nick wrote.

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“As relative newcomers to the ‘grownup’ financial scene, we believe that we have much to learn about planning for our economic future.”

Their teacher was Patty Breeze, a certified financial planner, securities representative and licensed insurance consultant who owns Patty M. Breeze & Associates.

The Hayneses met with Breeze four times over the course of a month and came away from the experience with a more focused picture of their financial status. (Breeze offered her services pro bono for this article. The work she did for the Hayneses would typically cost \$125 an hour, or about \$500 total. An initial consultation with Breeze is free.)

First, the couple learned they aren’t as hard up as they thought.

Breeze put together a list of a typical month’s expenses, compared it with their monthly take-home pay and discovered that the couple have a monthly surplus of more than \$1,500.

“Seeing all of our finances on paper ... we didn’t realize that we had that much probably to work with,” Becca said.

But there were still issues.

Both have college debt — especially Nick, who just graduated from law school last year and owes more than \$112,000.

Becca owes \$16,310 on her student loans. The couple also owe \$7,286 on one of the cars and have a small amount of credit card debt that they accumulated during their move to Lexington, Becca’s hometown, last year.

“My main concern for you all is to get out of debt,” Breeze said.

To address that issue, Breeze recommended that the Hayneses set aside \$500 to \$700 of their extra \$1,500 a month for paying down student loan debt, with a goal of having the loans paid off in five years.

To help decrease the debt load, Nick can also take six hours of graduate school classes to have his \$78,000 Stafford loan transferred to the Kentucky Higher Education Assistance Authority’s student loan program. After that, he can have \$10,000 of the loan forgiven each year, as long as he is employed by the Public Advocacy Department. That’s something Nick said he definitely plans to take advantage of.

Breeze was also concerned that the couple are underinsured.

They have no dental or disability insurance coverage, and their employers provide only \$20,000 each in group term life insurance.

“The biggest financial asset you have is your income,” Breeze said, noting that if one of them should die or become disabled, it could place the other’s financial situation in peril.

She suggested life insurance policies that would insure Becca for \$100,000 and Nick for \$150,000 and disability policies that would cover them both until age 65. The total cost would be \$126 a month.

Nick and Becca said in a later interview that they will consider adding to their life insurance in the future, when they have more assets, such as a home.

“Right now it wasn’t (at) the top of our list,” Nick said.

They also said they’re considering disability insurance, but they will probably purchase a plan that does not cover them to age 65, since Breeze said statistics indicate that disabilities seldom last longer than five years.

Saving was also on the to-do list.

“We need to work on saving more money,” Becca said. “Since I’ve been the sole provider on a teacher’s salary (while Nick was in law school), we haven’t had the opportunity to put aside.”

While they’re happy with the duplex they rent, they’d like to buy a house within two or three years.

Breeze suggested that they set aside \$200 to \$400 a month for a down payment on a home.

Nick and Becca also want to begin putting aside more money for retirement, and Breeze said they should take advantage of tax-deferred savings programs offered through their employers and begin with a total of about \$200 a month.

They’re already on the right track — Becca has more than \$27,000 in the Ohio teachers retirement system from her three years of work there. Because of their jobs, they also are enrolled in the Kentucky retirement systems.

“It just basically boils down to budgeting the money,” Breeze said. “I think you’re both in great shape and (have) a great future ahead of you.”

Finally, even though Nick and Becca aren’t wild spenders, she counseled them to avoid the trap of “keeping up with the Joneses” — something the couple said they’re already seeing some of their peers falling into.

“The more money you have, the more you spend,” Breeze said.

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Kentucky Deputy Chief Justice Will T. Scott on the importance of passing law school student loan assistance:

“I believe the current system is fundamentally flawed. It provides loan assistance for some public service attorneys and not others. Unless an attorney financed with the right lender, they are out of luck. We need to make public interest work affordable. We need to make loan assistance fair and equitable in the 2007 General Assembly.”

PUBLIC DEFENDER CASELOADS RISE BY 4%

By Ernie Lewis, Public Advocate

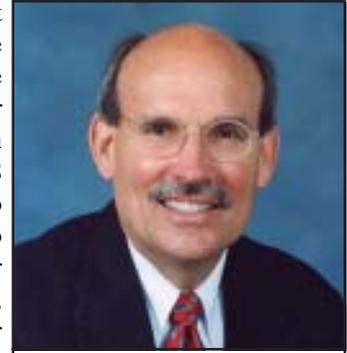
The ABA has recognized that excessive caseloads are a significant issue for public defenders and public defender supervisors and managers. The American Bar Association has recently recognized in a formal opinion the ethical ramifications of excessive caseloads for public defenders. Entitled *Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, (May 13, 2006), this opinion states clearly that public defenders are like all other lawyers: they simply cannot represent more cases than they can handle ethically. "If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients." The opinion also recognizes that supervisors and managers of defenders carry ethical responsibilities as well. "Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by individual lawyers."

Caseloads have been a chronic problem for the Department.

Excessive caseloads have been a problem for DPA over the past twenty years. In 1997, Bob Spangenberg, on behalf of the American Bar Association Bar Information Program, stated that: "overshadowing all of the problems facing and the solutions proposed by DPA is that of burgeoning caseloads. Over the past decade DPA's caseloads have increased dramatically, while funding has failed to keep pace."

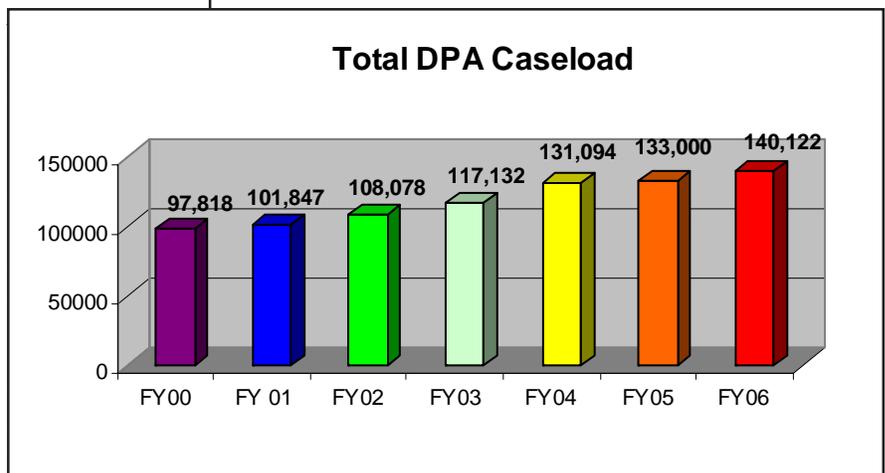
Two years later, the *Blue Ribbon Group Report* (1999) found that "[t]he Department of Public Advocacy per attorney caseload far exceeds national caseload standards." The Blue Ribbon Group recommended that "[f]ull time trial staff should be increased to bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas."

Despite significant budget increases following these reports, caseloads have continued to increase for DPA's trial attorneys. In FY00, DPA handled 97,818 cases. This increased to 117,132 in FY03, and to 134,584 by FY05. Cases per lawyer increased similarly, from 420 new cases per lawyer in FY01 to 483 in FY05. As of FY05, DPA trial lawyers had fewer than 4 hours to spend on each individual case.



Ernie Lewis, Public Advocate

Caseloads for the Department of Public Advocacy exceeded 140,000 for the first time. The Department of Public Advocacy has just issued its annual caseload report, entitled *Realizing Justice: Defender Caseload Report Fiscal year 2006*. This report reflects the number of new cases opened by public defenders in the trial and post-trial division during the previous fiscal year. It demonstrates that public defenders in Kentucky represented 140,122 cases in FY06. This is the first time DPA represented over 140,000 cases in a fiscal year. It marks the sixth consecutive year that overall cases have risen. This constituted a 4.3% increase over the previous year.



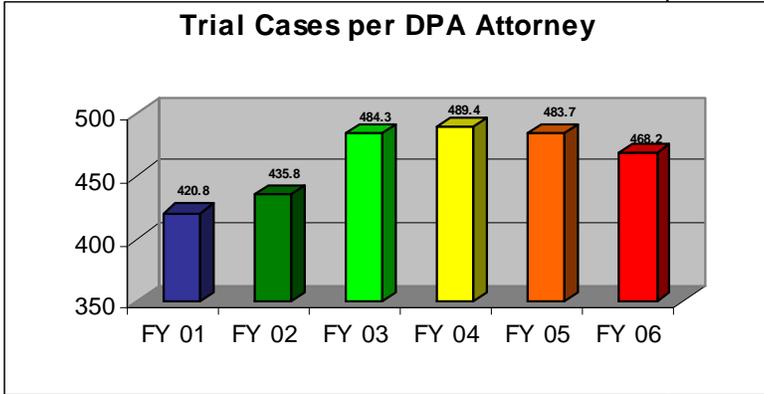
The Governor and General Assembly funded DPA for 21 new attorneys in FY06. Policy makers in Kentucky have been responsive to these caseload trends. In the 2005 General Assembly, Governor Fletcher authorized, and the General Assembly passed, a budget that authorized the hiring of 21 "caseload reduction lawyers." These lawyers were hired during FY06 and placed in the offices with the highest caseloads.

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Caseloads per attorney declined in FY06. As FY06 began, public defenders were carrying 483 new open cases per lawyer per year. With the additional 21 new attorneys, caseloads were expected to drop below 450 during FY06. However, with the 4.3% increase in overall cases handled by the DPA, individual trial attorneys' caseloads did not decrease as much as was hoped. DPA had 5,538 more cases in FY06 than it handled in FY05. As a result, caseloads declined from 483.7 new cases per lawyer to 468.2 cases per lawyer.

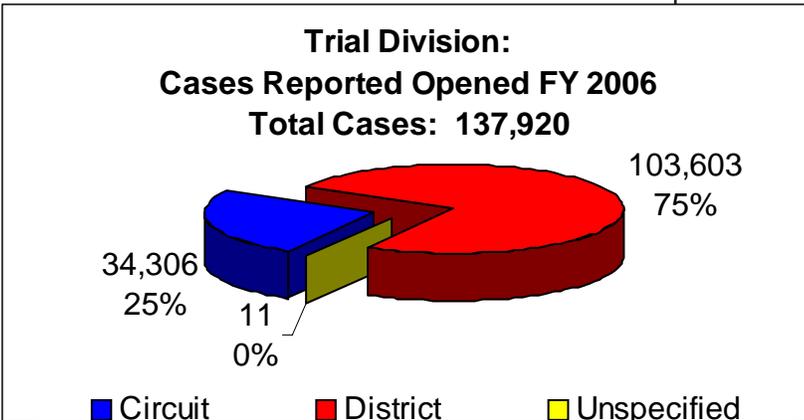
14% of the cases are in juvenile court. DPA trial attorneys opened 19,830 cases in juvenile court in FY 06. This compares to 18,420 in FY05, an increase of over 1400 cases. In FY05, 13.87% of the trial level caseload consisted of juvenile cases. This rose in FY06 to 14.38%. In FY00, DPA opened 16,178 cases, which comprised 16.97% of the overall trial level caseload. Thus, while there are more cases in juvenile court today, the percentage of the overall public defender's caseload consisting of juvenile cases has declined over the past 6 years.



24% of the cases are in circuit court. DPA trial attorneys averaged 468 new cases per lawyer in FY06. 34,306 cases or 24.875% of the 137,920 trial level cases were opened in circuit court. This is almost 5% higher than FY00, when 20% of the cases handled by public defenders were in circuit court. And back in FY 97, only 16% of the cases were handled in circuit court. It is clear that most circuit cases are more time consuming than cases handled in district court. Thus, there is a trend over the past decade of an increasing number of public defender cases being opened in circuit court.

Defender caseloads continue to exceed nationally recognized standards. In FY05, the Public Advocacy Commission began its public campaign entitled *Justice Jeopardized* after receiving the annual caseload report indicating that public defenders in Kentucky were at 189% of nationally recognized standards. Since that time, significant resources have been spent to reduce caseloads. So where are we in FY06? The National Advisory Commission set standards in 1973 that have become nationally recognized and accepted over time. These standards establish that a public defender should open no more than 150 felonies, no more than 200 juveniles, or no more than 400 misdemeanors in a year. Because Kentucky defenders have mixed caseloads of 25% circuit and 14% in juvenile court, a Kentucky public defender caseload meeting national standards would consist of 309 (37 felonies, 28 juveniles, 244 misdemeanors). Thus, at 468, Kentucky public defenders were at 151% of national standards in FY06.

Caseloads in excess of 500 new cases per lawyer have declined from 15 offices to 6. One of the ways we have looked at the caseload issue has been to determine how many of our offices averaged over 500 new cases per lawyer. These were deemed to be "in crisis." Fifteen of our 30 offices were burdened with caseloads over 500 in FY05. Sixteen had caseloads over 500 in FY04. Real progress was made in FY06, when the number of offices in crisis was reduced to six. Those offices were Louisville (604), Boone County (563), Hopkinsville (561), Bullitt County (531), Murray (528), and Bell County (512). With 36 new lawyers being hired in FY07, it is hoped that this number will drop to zero.



Three offices experienced dramatic increases. There were three offices in which significant increase occurred. Those offices were Bullitt and Pikeville, with 22% increases, and Bell County, with a 15% increase.

Three offices experienced dramatic decreases. Morehead (18%), Columbia (18%), and Somerset (19%) all experienced decreases in caseload. Morehead and Columbia can be understood due to some of their counties being transferred to another office during the fiscal year.

Conflict cases represent 2.2% of the caseload. Now that Kentucky has a full-time system at the trial level, an important piece of data that we will be tracking is the number of conflict cases. Conflicts occur in our field offices for a variety of reasons, but primarily due to the arrests of multiple defendants often with antagonistic defenses. In FY 06, there were 3,094 conflict cases, which constituted 2.24% of the overall trial caseload. In FY05, there were 3283 cases, or 2.48% of the overall trial caseload.

There are significant regional differences. Another interesting facet of the annual caseload report is the regional differences reflected there. DPA divides its trial regions roughly along similar lines to Congressional districts. The highest regional caseload was the Louisville Metro Office with 45 cases per 1000 population. The lowest occurred in the Northern Region, with 25 cases per 1000. The Western Region had 41 cases, the Central Region 26 cases, the Bluegrass Region 28 cases, and the Eastern Region 35 cases per 1000 population. Relatively speaking the regional differences break down roughly according to poverty and unemployment percentages.

The Department delivers a cost-efficient service looking at cost-per-case and cost-per-capita. There are three basic benchmarks that indigent defense systems use for comparison purposes. One of the three benchmarks is that of “cost-per-case.” It is also expressed as “funding-per-case.” This is useful in that it allows one state to compare itself to other states. It is particularly useful in conjunction with a second benchmark, “funding-per-capita,” which allows states to compare how much they are investing in indigent defense irrespective of caseload. In 1999, the *Blue Ribbon Group Report* used both of these figures to highlight that Kentucky was at the bottom of the states in spending for indigent defense. Finding # 4 was that DPA “ranks at, or near, the bottom of public defender agencies nationwide in indigent defense cost-per-capita and cost-per-case.” At the time of the *Blue Ribbon Group Report*, DPA was spending \$4.90 per capita and \$187 per case. This was as of FY98. Today, Kentucky is spending \$8.42 per capita. The cost-per-case is \$250.

The \$250 cost-per-case is particularly interesting. The Spangenberg Group reported in 2002 the cost-per-case figures for a number of states. A sampling of nearby states shows that in 2002 Ohio was spending \$719 per case, Alabama \$603, West Virginia \$513, North Carolina \$435, Missouri \$384, Georgia \$310, and Maryland \$306. In 2002, Kentucky was spending \$252 per case.

The Governor and General Assembly funded DPA at \$6.2 million additional General Fund dollars over the biennium. FY 07 has begun. The Governor recommended an additional \$6.2 million to be placed into DPA’s General Fund allocation during the 2006 Session. The General Assembly agreed with the Governor’s budget. As a result, DPA is presently funded at \$38.2 million for FY07. \$36.2 million goes to indigent defense, while \$1.9 million goes to the federally funded P&A Division, an independent division of DPA that advocates for the rights of persons with developmental disabilities and mental illness. With the additional \$3.2 million in FY07, DPA is hiring 36 additional caseload reduction lawyers, 14 support staff, and 3 social workers. DPA will be able to hire an additional 3 lawyers, 1 support staff, and 1 social worker in FY08.

The Department expects per attorney caseloads to continue to decline in FY07. As a result of this increase of \$6.2 million over the biennium, we are hopeful that caseloads for trial attorneys will decline. If caseloads were to level off with no additional increase during FY07, we estimate that the addition of 36 new lawyers will result in a caseload of approximately 409 cases per lawyer. This includes the 7 lawyers that DPA has received as a result of the University of Kentucky Law School’s Rural Drug Prosecution Grant.

Unless caseloads level off, excessive caseloads will continue to be a problem. This highlights one of DPA’s budget challenges. When DPA goes to the General Assembly with a budget request, we ask the General Assembly to provide sufficient attorneys to handle a caseload from the previous fiscal year. For example, in the 2006 General Assembly, we used caseload figures from FY05. We were projecting what caseloads would be like in FY07 and FY08. It is difficult at best to anticipate economic trends, unemployment, new laws to be passed, the funding of new police officers, drug task forces, and the other factors that drive up a public defender’s caseload. ■

Ours is a government of laws, not men, John Adams said. American society is founded on the commitment to law, binding the rulers as it does the ruled. Our willingness to assure the least among us the guiding hand of counsel is a test of our American faith.

**Anthony Lewis
Renowned former New York Times journalist,
Pulitzer Prize winner, and author of GIDEON’S TRUMPET**

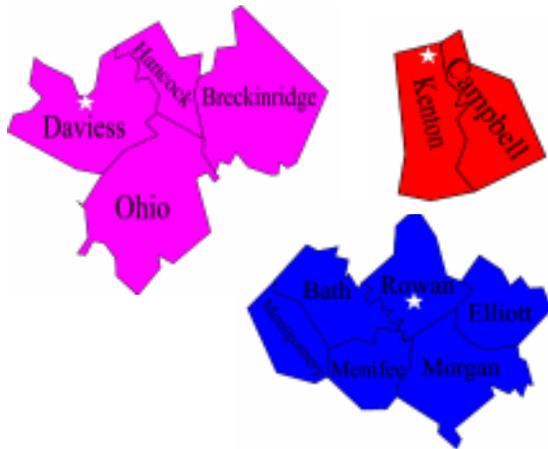
REALIZING JUSTICE THROUGH SOCIAL WORKERS

By Dawn Jenkins, Executive Advisor, and
Rebecca DiLoreto, Post Trial Division Director

The Department of Public Advocacy implemented a one year Social Worker Pilot Project beginning October 2006 to October 2007.

DPA Social Worker Pilot is One Solution to the Growing Problems of Over incarceration and Jail Overcrowding.

- Through the public relations campaign called Justice Jeopardized, DPA was able to convince the 2006 Kentucky General Assembly to appropriate \$3 million to DPA for the first year of the biennium. The Social Worker Pilot Project was part of its budget.
- The Social Worker Pilot will place a social worker in the Morehead, Covington and Owensboro DPA field offices.



- Social workers will work with indigent clients upon arrest and until they are fully integrated and functioning in their community.
- Each social worker will work with those clients with mental illness, developmental disabilities, substance abuse and mental retardation, and find each client the individualized treatment they need in order to travel the road to recovery and rehabilitation.

Who is Kentucky incarcerating?

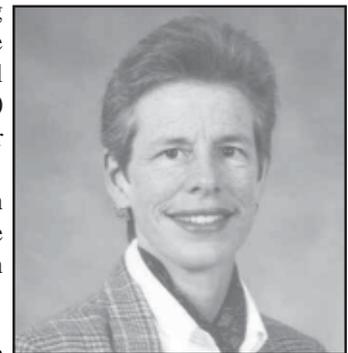
- 68% of jail inmates have substance abuse dependence prior to incarceration and less than 20% receive treatment.
- 56% of state prison inmates are mentally ill (Bureau of Justice Statistics) and 64% of jail inmates are mentally ill (BJS). Persons formerly treated in state mental hospital are now being warehoused in Kentucky's jails and prisons. In 1950, 560,000 persons were in US mental hospitals while today only 72,000 are treated there.
- 50% are functionally illiterate
- 1/2 of inmates have incomes under \$10,000
- 3-10% of jailed population has mental retardation

Incarceration Rates in Kentucky are Skyrocketing

- The US incarcerates 7 times as many people as in 1970 (110 out of 100,000 in 1970 compared to 726 out of 100,000 today.)
- KY prison population has risen from 12,000 in 1995 to 20,465 today.
- While the rate of incarceration is growing rapidly, Kentucky's crime rate is below the national average at 2783 per 100,000 (national rate is 3983 per 100,000).
- The incarceration projection for 2015 is close to 30,000 Kentucky men, women, and children.



Dawn Jenkins



Rebecca DiLoreto

Every day a Kentucky inmate is treated rather than imprisoned is a savings of \$47.12 per day for the Commonwealth. Everyday a Kentucky inmate is treated rather than jailed is a \$26.19 per day savings in jail costs. Colorado saved \$4.5 million from implementing a social worker pilot while Rhode Island realized an even more significant savings, \$15 million.

- DPA social workers will enable the attorneys in these offices to be more efficient.
- These social workers will also make a significant difference in the lives of persons charged with crime and their families. Social workers can be a resource that will allow persons charged with a crime to be treated for their substance abuse and mental illness, to make restitution to their victims, and eventually to be restored to their communities and families better able to live a crime-free life.
- DPA fully expects to demonstrate significant savings through the use of these social workers, and looks forward to demonstrating these savings to policy makers.

Realizing Justice is Creating Communities of Hope and Justice and Ending the Revolving Door of Incarceration!

DPA hired the first three social workers and they received 30 hours of training at Faubush, DPA’s defender development program, along with their directing attorneys. Simmie Baer and David Feige, former attorney with Bronx Defenders - - - an agency on the forefront of incorporating social workers in defender services, were on faculty. DPA will begin tracking social worker’s cases through our case tracking system in order to report to policy-makers both the value of this new and effective interdisciplinary approach and the efficiency to the Commonwealth.



Jacqueline Joiner

Jacqueline B. Joiner MSW, LSW, is hired in the Covington Field Office

Jacque has her MSW from University of Cincinnati with 16 years of experience in mediation and training. She served on the Mental Health Board of Hamilton County and facilitated services for criminal offenders with mental health disorders. She has vast

experience working with both adults and youth. She is an important addition to the Covington office, where the average caseload last year was 493, a 12% increase. Her vision is to “identify underlying factors that contribute to our client’s criminal behavior. By making appropriate referrals to community resources and treatment programs, I will be able to assist the client in successful reintegration into society, and in turn reduce recidivism.”



Sarah Grimes

Sarah Grimes, MSW, is hired in the Morehead Field Office

Sarah is from Bath County located in the heart of the Morehead service area. Sarah has her MSW from the University of Kentucky and undergraduate degree from Morehead State. Sarah has a deep understanding of the fundamental problems most of our clients face because she has worked with many of them.

Since graduation, she has been a social worker for persons struggling to overcome addiction. Sarah comes highly recommended by Professor Lynn Geurin, a member of the Social Work Pilot Committee who helped design the program.

As a criminal justice community, it is our responsibility to find the root problems and fix them. Social workers, working beside our attorneys, are a proven solution. I believe this will result in the slowing of the revolving door of incarceration.

— Ernie Lewis, Public Advocate

Rachel Pate, BSW, is hired in the Owensboro Field Office

Rachel Pate is a Brescia University graduate who interned with DPA for two years in the Owensboro Office. She assisted Jerry Johnson, Assistant Public Advocate, in finding successful treatment alternatives for juveniles. While working on her bachelors in social work she also worked as a probation officer for an Indiana judge. She found a remarkable difference between the DPA internship and her work as an assistant probation officer, only enforcing the rules. Rachel has already been successful in her work with DPA clients.



Rachel Pate

Making a Difference

DPA social workers are already making a difference in the lives of DPA’s clients. Jacqueline Joiner described one of her clients as having multiple problems including dual diagnoses of substance abuse and mental illness. The result of her assessment of his problem and intervention resulted in an alternative sentencing plan on a motion to reconsider sentence. When supervised housing is found, shock probation will be granted.

Ms. Joiner identified the client’s barriers to success in the community. While the client was diagnosed with chronic schizophrenia, he neither had the money nor assistance needed in complying with medications as prescribed, and he self medicated.

Ms. Joiner made an assessment of his needs including that he be placed in an assisted-living facility that assisted him in complying with medication. She developed a plan that he be educated on how drugs and alcohol interact with his psychiatric medications and mental illness.

Through Ms. Joiner’s advocacy, the client will be placed in a Personal Care Facility in Jonesville, Ky. The staff will monitor drug compliance and will implement consequences for noncompliance. Consequences (after 3 non-compliances) include being sent to the behavioral unit for 72 hours. He will receive outpatient therapy, on site, for his mental health issues. Ms. Joiner will facilitate re-instatement of Mr. Stovall’s Social Security benefits via the Welcome House (guardian) and perform a 6 month follow-up on the client. Ms. Joiner will routinely follow-up on his status until he is stable.

Demonstrate Support for a Social Worker in Every Field Office

DPA fully expects to demonstrate the effectiveness of our Social Worker Pilot to policy makers. We believe that treatment works, treatment saves money, and treatment is the way to end the revolving door of incarceration. We look forward to demonstrating the need for a social worker in every DPA field office to policy makers in the 2008 General Assembly. ■

REALIZING JUSTICE IN THE CRIMINAL JUSTICE BUDGET

By Dawn Jenkins, Executive Advisor

The Department of Public Advocacy is faced with the ongoing challenge of delivering quality indigent defense services to a larger number of clients than ever before. According to the Bureau of Justice Administration, a large majority of clients within the criminal justice system are mentally ill (54%) and/or addicted (60% to 70%). These facts make DPA's job even more challenging. The DPA 2006 Caseload Report shows that DPA represented 140,122 defender cases during the previous fiscal year, which is a 4.3% increase from FY 05. The challenge is for DPA's budget to keep up with the demands of an ever-growing caseload and clients with complex problems. The public safety interest of the Commonwealth as well as the efficient and just operation of the criminal justice system depends on it.

DPA believes that one of the black letter principles of an efficient and just criminal justice system is the need for parity. That is, that the criminal justice system operates best when there is adequate funding for the judiciary, the prosecution and defense functions. DPA has over time looked at the relative funding levels of different parts of the criminal justice system in order to ensure that Kentucky was committing sufficient funding to indigent defense. Over time, DPA has consistently received an inadequate share of the criminal justice budget. See, for example, the November 1997 issue of *The Advocate*, where a chart similar to the below demonstrated that at that time, DPA was receiving 3% of the criminal justice budget.

In comparing the budgets of agencies and departments within the criminal justice system, it is apparent that the funding allotment for the Justice Cabinet and criminal justice system¹ has grown significantly. While DPA's budget has also grown, it is not comparable with the overall growth of the criminal justice system. Since DPA has been consistently underfunded, this reflects the fact that DPA is falling behind the rest of the system.

Justice and Public Safety Cabinet (JPSC) General Fund Budget, Grew by 41% since FY 2000

The Kentucky Justice and Public Safety Cabinet (JPSC), with close to 8,000 employees, is the second largest agency in state government. It is the state entity responsible for criminal justice services encompassing law enforcement and training; prevention-education and treatment involving substance abuse; adult and juvenile incarceration; autopsies, death certifications and toxicology analyses; special investigations; paroling of eligible convicted felons; and long range planning on statewide criminal justice reform issues. (Justice Cabinet, 2006)

The Justice and Public Safety Cabinet was one of the three largest single areas of state dollar increases in the General Fund enacted appropriations from 2004-2006 Biennium to the 2006-2008 Biennium. The other largest single dollar increases were public education (K-12) human services and Medicaid (health) services. (*Money Matters: Two Year Budget*, KYA, May 2006).

The growth in the JPSC budget is driven by the increased number and cost of inmates in jails and prisons. Kentucky housed 2,838 inmates in 1970 compared to 20,465 inmates today. DOC estimates by the year 2014, Kentucky will have 31,057 inmates. (Robert Lawson, *Turning Jails into Prisons*, 2006) **The general fund budget allotment for JPSC increased by 41%** from the enacted FY 2000 budget to the enacted FY 2008 budget, according to *Money Matters: Two Year Budget*, KYA, May 2006. Compared to other states in 2005, Kentucky's prison population increase of 10.4 % led the nation. (Bureau of Justice Statistics, *Prisoners in 2005*, Nov. 2006)

Ironically, while the number of Kentuckians incarcerated has increased, the crime rate in Kentucky has remained constant. (Sentencing Project, 2006) Kentucky crime rate is below the national average at 2,783 per 100,000 compared to the national rate of 3,983 per 100,000.

Criminal Justice System Budget² Overall Growth Since FY 2000 is 33 %

Criminal justice expenditures have increased across time in the Commonwealth of Kentucky. The growth appears to be accelerating with time. The criminal justice budget for FY 2000 was nearly \$810 million and for FY 2003 was \$937 million a 13.5 % increase in just three years. FY 2003 criminal justice spending was divided as follows:

Criminal Justice System FY 2003

Corrections	\$324,022,600	34.57%
Judiciary	\$200,368,100	21.38%
State Police	\$133,018,300	14.19%
Juvenile	\$115,105,100	12.28%
Prosecution	\$71,152,500	7.59%
Criminal Justice Trng.	\$41,777,100	4.46%
DPA	<u>\$28,219,300</u>	<u>3.01%</u>
Total	\$937,235,600	100.00%

In more recent years, the criminal justice system budget growth is staggering. For FY 2008, the overall budget grew to \$1.2 billion dollars, a 28 % increase over the FY 2003 budget. The FY 2008 criminal justice enacted budget of \$1,201,471,700.00 is divided as follows:

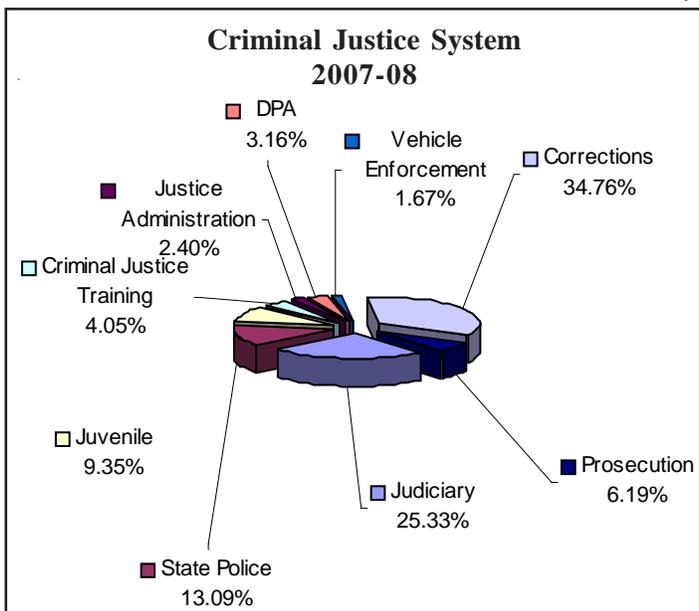
Criminal Justice System

FY 2008

Judiciary	\$304,300,800.00	25.33%
State Police	\$157,294,200.00	13.09%
Juvenile	\$112,344,900.00	9.35%
Criminal Justice Training	\$48,631,100.00	4.05%
Justice Administration	\$28,852,600.00	2.40%
DPA	\$38,005,300.00	3.16%
Vehicle Enforcement	\$20,087,200.00	1.67%
Corrections	\$417,615,800.00	34.76%
Prosecution	\$74,339,800.00	6.19%
Total Budget	\$1,201,471,700.00	100.00%

Given the trend of increased spending within the criminal justice budget, the capacity of the Commonwealth to also meet other growth budget needs is potentially impaired. Postsecondary funding rose by only 1.5 % for the fiscal year 2006-2007. It will increase 7.5% in 2007-08. (*Courier-Journal*, December 17, 2006) In addition, the K-12 education is generally recognized as under funded to fulfill the commitments of Kentucky Education Reform Act of 1990.

The Department of Public Advocacy makes up only 3.16 % of the total FY 2008 criminal justice system budget or \$38 million out of \$1.2 billion. This is only a slight increase from the 3.01 % in FY 2003 despite the 16.4 % growth in DPA caseloads during the same period.



The Department of Public Advocacy’s Average General Fund Growth Since FY 2004 is 6.05 %

Following the *Blue Ribbon Group*, DPA’s budget increased. DPA’s enacted appropriations increased from \$22.8 million in FY 2000 to \$27.4 million in FY 2002. However, subsequent to that increase the budget for the next biennium was constricted by the gloomy revenues of the state. Despite a documented need for \$5.7 in additional General Fund appropriation due to increased caseloads, DPA received a virtually flat-lined budget. As revenues recovered, Governor Fletcher and the legislature were able to meet the need for an additional appropriation because of steady caseload increases and put

\$6.2 million in DPA’s budget for FY06-FY08 biennium. This includes \$3.2 million in FY 2007 and \$3.0 million in FY 2008 allowing DPA to hire 36 lawyers, 14 support staff, and 3 social workers.

Department of Public Advocacy’s Budget Growth % increase

FY '04	31,692,100	11.37%
FY '05	32,531,400	2.65%
FY '06	35,359,300	8.70%
FY '07	38,204,500	8.05%
FY '08	38,005,300	-.05%

6.05 % Average growth

The fact remains, DPA’s overall funding has increased along with most all other criminal justice agencies, but not at a rate that is adequate given the caseload and incarceration predictions.

DPA believes in a balanced and adequately funded criminal justice system. Further, there is evidence that the public supports the parity of resources per case.³ A balanced criminal justice system includes an independent and fair judiciary, a reasonably funded prosecution function, and an adequately funded system of indigent defense. When any part of that system is under funded, problems may result that can impair the fairness of verdicts and dispositions. We must continue to challenge policy-makers to make certain our criminal justice system is adequate and fair for all Kentuckians including those who cannot afford representation. Until then, justice will not be fully realized.

Endnotes:

1. Criminal justice system refers to those agencies and departments created by the Commonwealth to maintain social control, prevent crime, enforce laws and administer justice. The challenge, as in all forms of justice, is to create a balanced system that protects individuals in the pursuit of these ideals.
2. For the last decade, DPA has tracked the budgets of agencies and departments whose job is to administer justice. These include the Justice and Public Safety Cabinet, select line-items from the County Attorney’s and Commonwealth’s Attorney’s Offices, all within the executive branch, and the Judiciary. For purpose of this analysis, DPA uses a conservative methodology and includes only DOC Corrections Management, DOC Adult Corrections, DOC Community Corrections and Jails. In addition to DOC, DPA includes JPSC Administration and Criminal Justice Training, Department of Juvenile Justice, Department of Vehicle Enforcement, Department of Kentucky State Police, Department of Criminal Justice Training, Department of Public Advocacy. Line items within the not directly related to the administration of justice are excluded.
3. 88% of the public polled by Belden Russonello & Stewart in 2002 believe “the quality of justice a person receives should not be determined by how much money a person has,” and 88% support public defenders and prosecutors having “equal resources per case.” ■



Legislative Update

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