



## THE KENTUCKY PUBLIC ADVOCACY COMMISSION



Left to Right: Robert C. Ewald (Wyatt, Tarrant and Combs, LLP, Louisville), Michael D. Bowling (Bowling Law Office, Middlesboro), Darryl W. Durham (Weber & Rose, PSC, Louisville), Charles E. English, Jr (English, Lucas, Priest & Owsley, LLP, Bowling Green), Dr. Crystal Rae Coel Coleman (Professor, Organizational Communication, Murray State University), Lewis G. Paisley (Stoll Keenon Ogden PLLC, Lexington), Jerry J. Cox (Chair, Cox Law Office, Mount Vernon), Mark Stavsky (Professor, Chase College of Law), John M. Rosenberg (Vice Chair, Prestonsburg). Not pictured: Allison Connelly (Associate Professor, Clinic Director, UK College of Law), Debra S. Miller (Director of Health Policy, Counsel of State Government), and Luke Milligan (Assistant Professor, Brandeis School of Law, Louisville).

### Public Advocacy Commission Charged with Ensuring Professional and Political Independence

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

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

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

## DEFENDER BUDGET ADVOCACY



William E. "Bill" Johnson, Johnson, True & Guarnieri, Chair of the KY Bar Association Task Force on the Provision and Compensation of Conflict Counsel for Indigents (November 2011), testifies at the DPA hearing before the 2012 Justice and Judiciary Budget Review Subcommittee asking the General Assembly to adequately fund public defender conflict cases.



Public Advocate Ed Monahan testifies before the 2012 Justice and Judiciary Budget Review Subcommittee seeking funding for public defenders. Secretary Michael Brown testifies on behalf of the DPA Alternative Sentencing Social Workers and the services of DPA being a necessary governmental expense. Bryan Sunderland, KY Chamber of Commerce Vice President of Public Affairs, testifies on behalf of the DPA Alternative Sentencing Social Worker Program as a way to reduce incarceration costs for the state and counties.

## THE DEPARTMENT OF PUBLIC ADVOCACY LEADERSHIP TEAM



Left to Right: Damon Preston (Deputy Public Advocate), Tim Arnold (Post-Trial Director), Marsha Hockensmith (Protection & Advocacy Director), Glenda Edwards (Trial Director), Ed Monahan (Public Advocate), B. Scott West (General Counsel), Michael Rodgers (Law Operations Director), Jeff Sherr (Education and Strategic Planning Branch Manager).



## Defenders and Protection and Advocacy Advocates protect our freedom:

Our Constitution and its Bill of Rights are not self-effectuating. Out of our value of liberty, public defenders and P&A bring the individual constitutional guarantees to life case by case, day by day. So as we publish our annual communication about our work, this is a "Day of Affirmation, a celebration of liberty," as stated by Robert F. Kennedy on June 6, 1966 in Capetown, South Africa, amidst apartheid, an official social system of racial segregation. Kennedy spoke of the fundamental importance liberty has to our concept of a society: "We stand here in the name of freedom. At the heart of that Western freedom and democracy is the belief that the individual man, the child of God, is the touchstone of value, and all society, groups, the state, exist for his benefit. Therefore the enlargement of liberty for individual human beings must be the supreme goal and the abiding practice of any Western society."



Edward C. Monahan  
Public Advocate

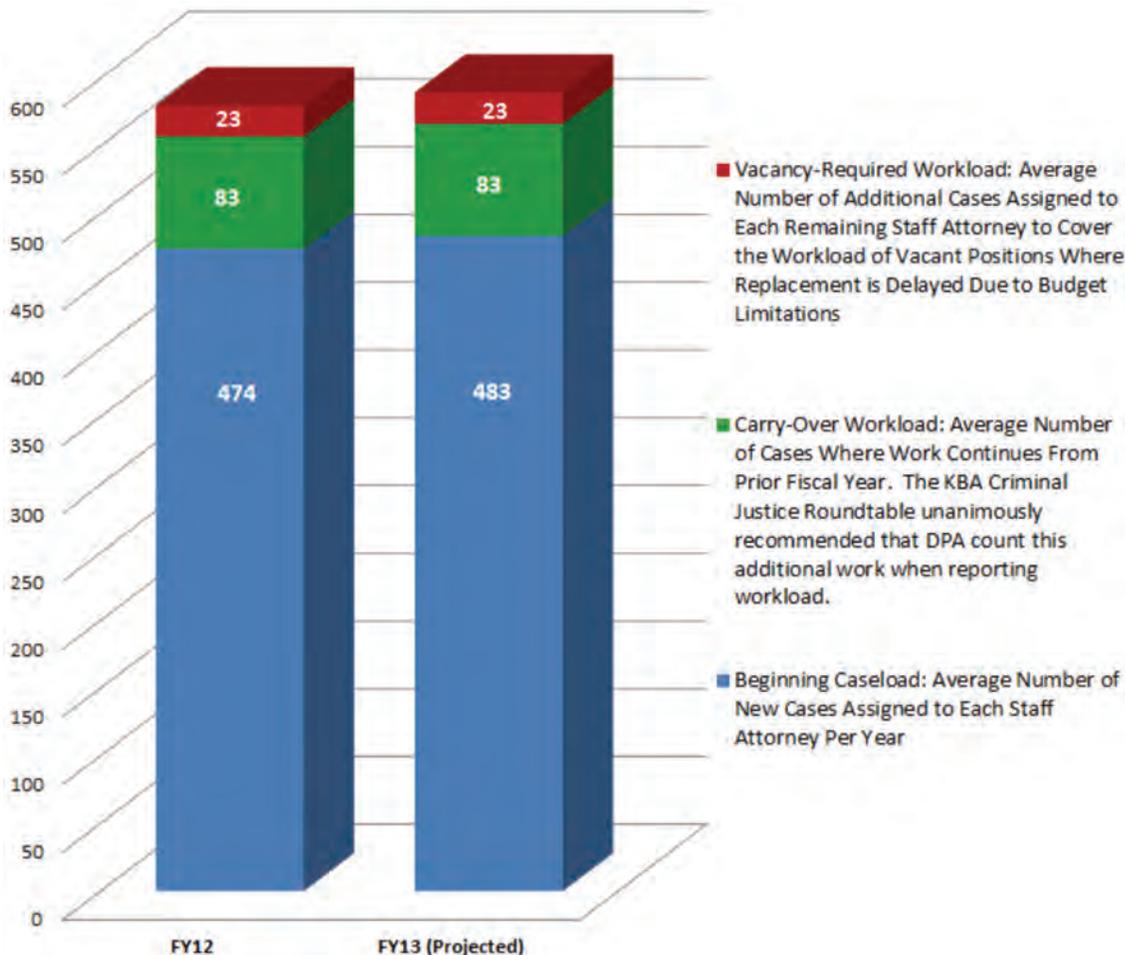
In the 40<sup>th</sup> year of advancing liberty by providing the right to counsel for the clients in the 170,000 cases handled when courts appoint us to represent these clients, we reflect on our history in this Annual Report.

In 1966 Robert Kennedy spoke to the perils of progress, futility, expediency and timidity. These threats face us still today and are the reason we advocate for liberty on behalf of a client who is wrongly accused, overcharged, who faces the grip of addiction or struggles with mental illness. Yet, RFK offered a way for us to understand the nobility of our daily work on behalf of our clients saying, "Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance."

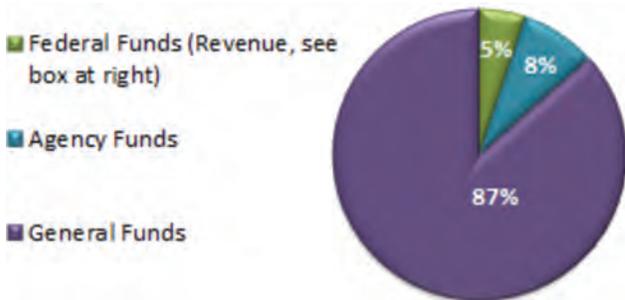
As we celebrate the 40<sup>th</sup> anniversary of our statewide public defender program's providing counsel to indigent clients and as we look forward to the 50<sup>th</sup> anniversary of *Gideon*, we know there is much more for us to do to fulfill the constitutional requirement that everyone has a right to counsel in our Commonwealth, no matter their financial status.

Edward C. Monahan  
Public Advocate

## Reality Beyond the Numbers



## FY12 Funding



DPA obtains most of its funding from general funds but also just over \$3.6 million from three revenue sources.

1. **\$1,205,430** Partial Fees paid by defendants DPA is appointed to represent, authorized by KRS 31.211 (formerly called recoupment)
2. **\$1,272,910** 20% of DUI service fees of all defendants convicted of DUI, authorized by KRS 189A.050
3. **\$1,137,368** 3.5% of total court costs collected, with DPA's portion capped by statute at no more than \$1.75 million, authorized by KRS 42.320(2)(f)

Although DPA was budgeted to receive \$4,044,000 from these three revenue sources, only \$3,615,708 was actually received, leaving DPA with a shortfall of \$428,292.

## FY12 Expenditures

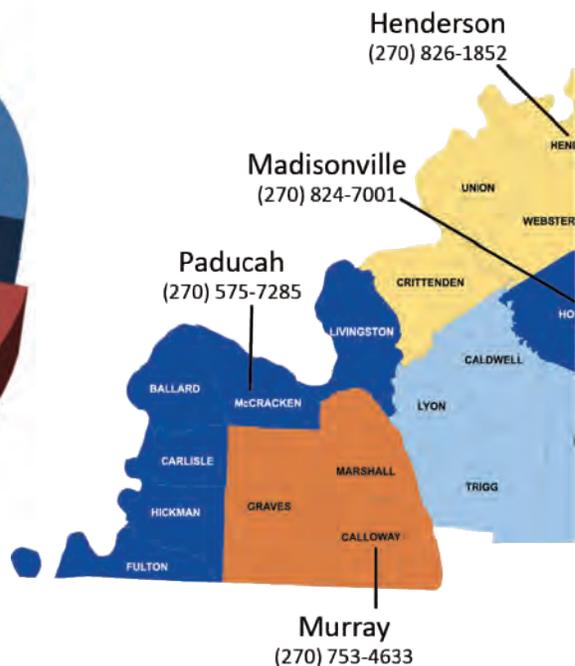
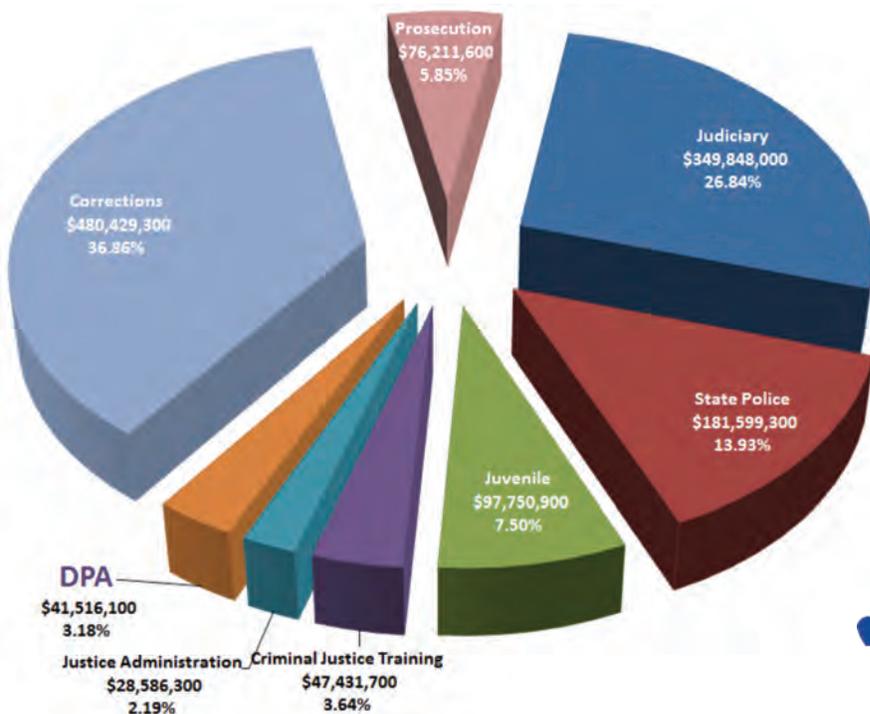


88% of DPA's budget goes directly to personnel to deliver, administer and support public defender services. By keeping non-personnel operating expenses to 12% of the budget, DPA strives to maximize services to clients, courts and communities.

### Funding for the Kentucky Criminal Justice System

The real story behind the funding of the state's criminal justice system is that it is 5.2% of the total state budget. Within the Kentucky criminal justice system, DPA receives 3.18% as compared to prosecutors who receive 5.85%.

## Criminal Justice System FY12 Actual Expenditures



### Public Value of Trial Division Representation

- ◆ **185,702** Cases handled in 120 counties
- ◆ **158,758** New Cases
  - **35,965 (23%)** Circuit Court Felonies
  - **96,890 (61%)** Adult District and Family Court
  - **22,054 (14%)** Juvenile Cases
- ◆ **\$211.87** Funding per new trial case
- ◆ **80** clients represented who were eligible for the death penalty in 47 counties
- ◆ **526** Public defender proposed alternative sentence plans accepted with over \$1 million in incarceration savings

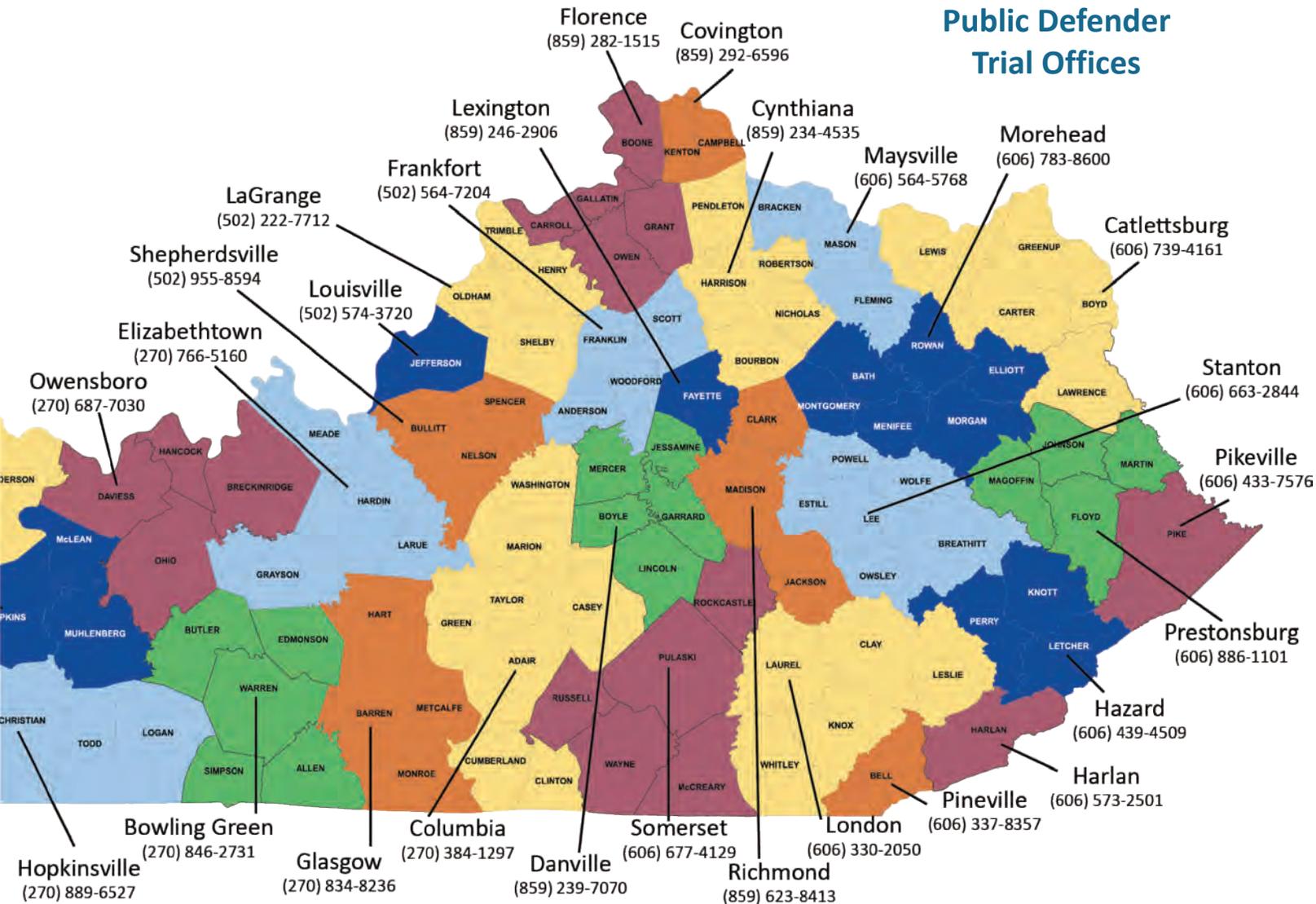
### Public Value of Post-Trial Division Representation

- ◆ **311** Appeals in Court of Appeals or Kentucky Supreme Court
- ◆ **551** New Post-Conviction actions
- ◆ **323** Innocence cases reviewed
- ◆ **1,667** Juvenile issues handled by Juvenile Post-Disposition Branch
- ◆ **31** Capital Clients Represented Post-Trial

### Public Value of Protection and Advocacy

- ◆ **2,589** Persons with disability assisted

### Public Defender Trial Offices



## This we shall have!

### Common Justice Demands the Right to Counsel for Indigent Accused

In the 40<sup>th</sup> year of advancing liberty by providing the right to counsel in 170,000 cases handled, we reflect on our history.

In May 1947, 22 year-old Ward Gholson was indicted in Pulaski County for carrying a concealed pistol. When Gholson was brought to trial in September 1947, he entered a plea of guilty without counsel and was sentenced to two years in prison. In his unsuccessful motion for a new trial, he stated that he was not advised of his legal rights, did not have money to hire an attorney and was not assigned counsel by the Court. On appeal, the Court reviewed its prior cases which held that *“a trial court is under no duty or obligation to assign counsel to a defendant where he fails to make a request therefor,”* and its prior contrary cases that held *“a trial court should appoint counsel where its attention is called to the fact that the defendant is not represented by counsel, unless the defendant for some reason does not desire the appointment of counsel.”* *Gholson v. Commonwealth*, 212 S.W.2d 537, 540 (Ky June 25, 1948).

Overruling prior cases, the Court reversed Gholson’s conviction and stated, *“In addition to legal rights and guarantees common justice demands that every person accused of a felony be given a fair and impartial trial. This would include the informing of an accused at the beginning of his trial by the judge relative to his legal rights and guarantees; and especially is this true where a plea of guilty is offered and entertained. It is incumbent upon the trial judge to determine whether the waiver of a right to be represented by counsel is made ‘intelligently, competently, understandingly and voluntarily.’* *Id.* at 540.

This legal mandate to ensure an indigent is affirmatively advised of his right to counsel and that any waiver can only occur upon a specific finding by the judge, did not settle the provision of counsel for the Commonwealth’s poor. Coerced, uncompensated representation continued. In the 1960’s Kentucky attorneys began to request compensation when forced to represent indigents charged with a crime.

In 1963, the United States Supreme Court determined that if a state wants to take away a person’s liberty, the state had to provide an attorney to those persons too poor to hire their own in order to comply with the Sixth Amendment right to counsel. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). According to the Court, *“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”*

While consistently unsuccessful in convincing Kentucky’s highest Court that the judiciary should order payment, Kentucky’s appointed attorneys did persuade the Court to the point that it began to directly encourage the General Assembly to provide a systematic solution for paying the attorneys who were being made to represent the indigent accused.

It took nine years after *Gideon* before Kentucky prohibited uncompensated involuntary representation of indigents. On September 22, 1972, Kentucky’s highest Court characterized the involuntary representation of indigents as an *“intolerable condition”* and held it was an unconstitutional taking of an attorney’s property – *his service to the client* – without compensation. Since then no Kentucky attorney can be required to represent an indigent without being reasonably compensated. *Bradshaw v. Ball*, 487 S.W.2d 294 (Ky. 1972).

#### Statewide public defender program created 1972

While the appeal in *Bradshaw* was pending, the 1972 General Assembly, at the request of Governor Wendell H. Ford, created the Office of Public Defender, now the Department of Public Advocacy (DPA), and gave it the responsibility to represent all indigent persons in Kentucky charged with or convicted of a crime. House Bill 461 sponsored by Representatives Kenton, Graves and Swinford passed the House 60-18 on March 7, 1972 and the Senate 26-5 on March 14, 1972. Kentucky’s statewide defender system was born.

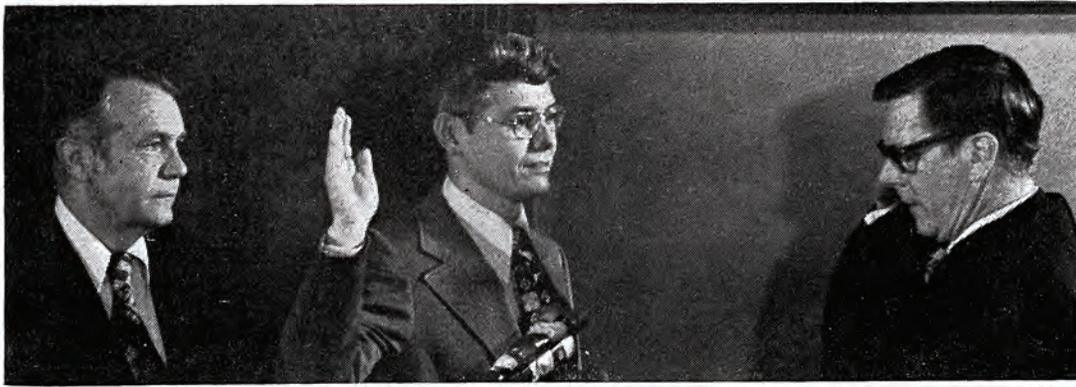
#### This we shall have!

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

#### Protection and Advocacy

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

# FIRST KENTUCKY PUBLIC DEFENDER



**GOVERNOR WENDELL FORD**

**ANTHONY WILHOIT**

**JUDGE JAMES CHENAULT**

Anthony Wilhoit is sworn in as Kentucky's first chief defender on October 17, 1972

## Public Advocacy Commission Chairs

- Jerry J. Cox, Mount Vernon, 2010 - present
- Robert C. Ewald, Wyatt, Tarrant & Combs, Louisville, 1993-2010
- William R Jones, Professor of Chase Law School and formerly its Dean
- Anthony M. Wilhoit, former Kentucky Court of Appeals Chief Judge, currently Executive Director of the Legislative Ethics Commission
- Max Smith, Frankfort criminal defense attorney
- Paula M. Raines, Lexington attorney and psychologist



Jerry J. Cox, Commission Chair 2010 - Present



Litigation Persuasion Institute



Administrative Professionals Training



New Attorney Training



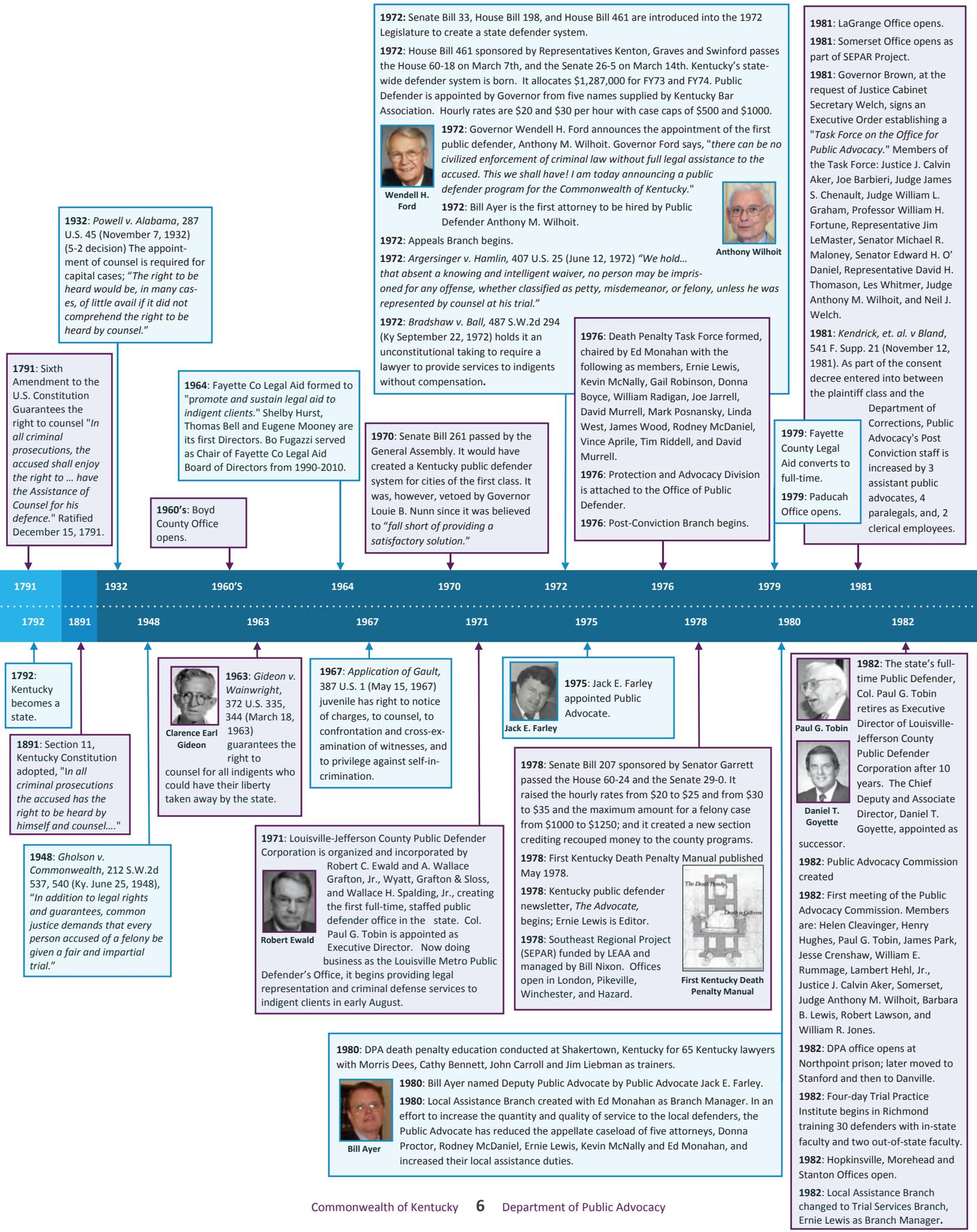
Essentials of Defense Investigation Training



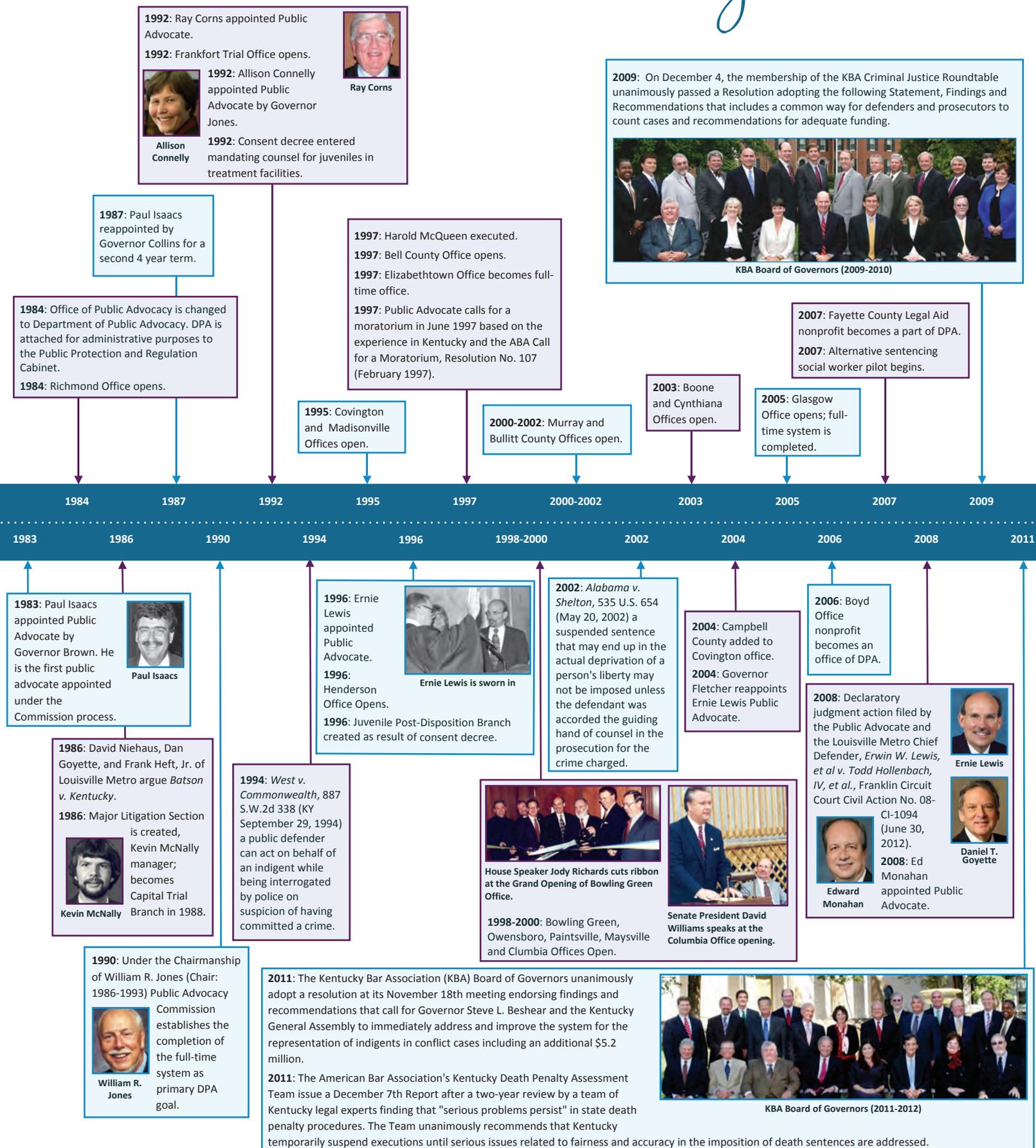
Left to Right: Jack Farley (Public Advocate 1975-1983), Ernie Lewis (Public Advocate 1996-2008), Edward Monahan (Public Advocate 2008-Present), Anthony Wilhoit (Public Advocate 1972-74).

## Public Advocates

- Anthony M. Wilhoit, 1972-1974
- Jack E. Farley, 1975-1983
- Paul F. Isaacs, 1983-December 31, 1991
- Ray Corns, 1992
- Allison Connelly, 1992-1996
- Ernie W. Lewis, October 1, 1996-August 31, 2008
- Edward C. Monahan, September 1, 2008-present



# DPA Through the Years



## TRIAL DIVISION DIRECTOR AND REGIONAL MANAGERS



Left to Right: Teresa Whitaker (Bluegrass Region), Tom Griffiths (Lexington Trial and Capital), Rodney Barnes (Northern Region), Glenda Edwards (Trial Division Director), Eric Stovall (Western Region), Renae Tuck (Central Region), Roger Gibbs (Eastern Region).

**Defenders bring liberty to life:** Wars have been fought to protect our American ideals, our individual liberties, the rule of law, and our constitutional guarantees. One of these ideals is foundational to the American justice system: *each person facing a loss of liberty is entitled to counsel and due process—even those without money.* The existence and nobility of our American values are exceptional. In practice though, the *application* of our values involves a web of complexities.

Statewide, public defender caseloads in FY12 averaged 474 newly opened cases per attorney, but for the staff attorneys, the actual workload is higher. When the ongoing cases from FY11 are included, the average number of cases each attorney handled during the year rises to 557. Further, because of long-term vacancies caused by funding reductions, DPA has held many attorney vacancies open for several months causing attorneys to cover cases that would otherwise be handled by new attorneys. When the length of vacancies is factored into the workloads, each DPA trial attorney was responsible for an average of 580 cases last year.

The average funding per trial case in FY12 was \$211.88. The amount DPA pays private attorneys to do conflict cases is obscenely inadequate at an average of \$341.15 per case.

Across the system, this level of work and underfunding can have tragic consequences. All over Kentucky, persons are convicted when represented by defenders who are able to spend but a few minutes with them before their fate is decided or their liberty taken. This falls short of our American ideal of justice.

Lawyers make a difference. The empirical evidence demonstrates that having a lawyer at the very beginning of a case improves the likely outcome for a criminal defendant. According to a study, a defendant with a lawyer at first appearance:

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

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

One of the most important outcomes for our clients is pretrial release, as clients on release receive better ultimate outcomes. Studies show that, holding all other factors constant, individuals who are detained prior to trial suffer from greater conviction rates and more severe sentencing than those who are released prior to trial. See Mary T. Phillips, Ph.D., *Bail, Detention, and Nonfelony case Outcomes*, Research Brief Series no. 14, New York City Criminal Justice Agency, Inc. (2007).

Because of this empirical data and our statutory and constitutional responsibilities, DPA is working to have defenders present advocating for pretrial release at all first appearances.

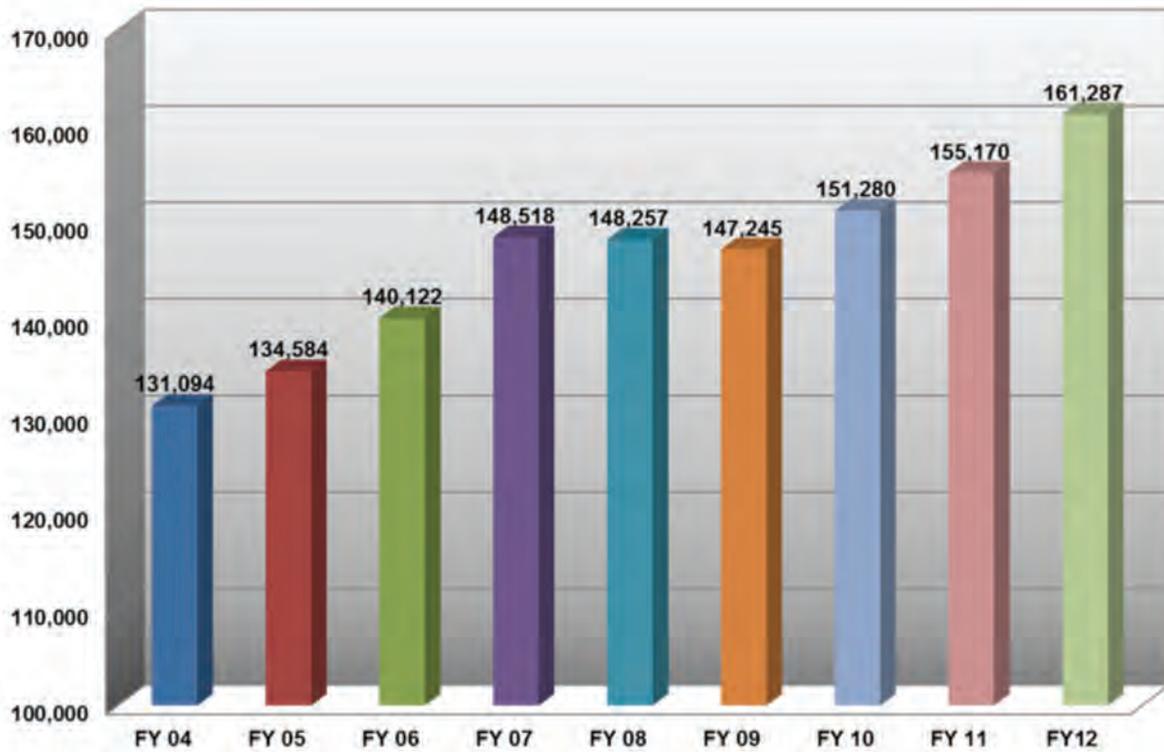
## PUBLIC DEFENDER CORPS (PDC) FELLOWSHIP PROGRAM



Left to Right: Damon Preston (Deputy Public Advocate), Andrea Kendall (Boone County), Ashley Graham (Covington), Ray Ibarra (Covington), Adam Braunbeck (Louisville), Kathryn Gravely (Program Manager, Indigent Defense Fellowships, Equal Justice Works), Kate Benward (LaGrange), Ed Monahan (Public Advocate).

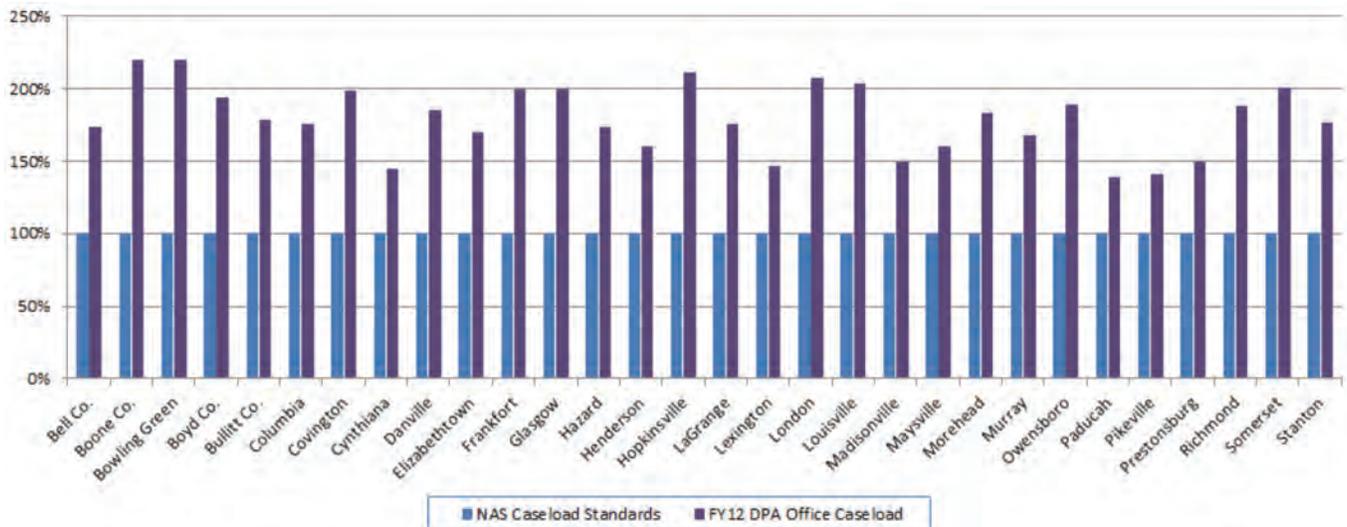
DPA is committed to recruiting the best attorneys to represent indigent criminal defendants in Kentucky and the Public Defender Corps (PDC) Fellowship Program is a vital part of that effort. The PDC Program recruits third-year law students, recent law school graduates, and attorneys with less than three years' legal experience in indigent defense to work in host site offices for a three-year term. These candidates demonstrate a commitment to social justice and as part of the Fellowship, participants must attend a 14-day summer institute and 5 subsequent 2-day trainings every six months through the duration of their term. Through the Public Defender Corps Fellowship, participants receive the skills needed to provide the highest quality representation to clients and instill in them a commitment to indigent defense reform. The Department of Public Advocacy employs five Fellows in four trial offices throughout Kentucky.

## Total DPA Caseloads



The above chart includes all cases in the Trial and Post-Trial Divisions. DPA's overall public defender caseload rose 3.9% in FY12 and has risen 10% in the past 4 years.

## Every DPA Office Exceeds National Standards



The National Advisory Commission on Criminal Justice Standards and Goals (NAC) established maximum caseload standards for public defenders. Applying those standards to the caseloads and personnel in each DPA office reveals that every DPA office far exceeds the NAC standards. According to the NAC, public defenders should be assigned no more than 400 misdemeanors, or 200 juvenile cases or 150 felonies annually. The average DPA trial attorney is assigned yearly 301 misdemeanors (75% caseload), and 66 juvenile cases (33% caseload) and 107 felonies (71% caseload) for a total caseload that is 80% higher than the recommended maximum.

# SOCIAL WORKERS

## Award-winning defender program promotes reduced jail and prison costs; more can be saved

**Addiction rages:** The scope of the drug problem in Kentucky is enormous. Kentucky over-incarcerates substance abusers at great expense. The abuse of drugs reflects the presence of an addictive disease that is more cost effectively managed through the use of treatment and other social services - not simply incarceration. Defenders play an important role in responding to this crisis.



Left to Right: Becky Gary (Hopkinsville), Joanne Sizemore (London), Jessica Dial (Columbia), Heather Stapleton (Prestonsburg), Rena Richardson (Madisonville), Abena Amoah (Covington), Rachel Pate (Owensboro), Kita Clement (Bowling Green).

**Social Workers provide sentencing options:** DPA began a pilot program in 2006 paring social workers with attorneys to facilitate more efficient use of court time and probation resources, and reduce incarceration costs. We began this pilot to assess defendants' mental health and substance abuse needs and to plan viable community treatment options to relieve the courts' burden and potentially the burden of custody for corrections and jails. Our social workers assess clients then propose an alternative sentence to the prosecutor and court. When approved, the social worker seeks to have the client placed in treatment and other social services to address their addictions, mental health issues and social problems. We use case management approaches like Motivational Interviewing within the attorney/client privilege, which are consistent with the evidence-based practices used in the state's mental health programs. In 2012, Kentucky courts accepted 85% of all the alternative sentencing plans prepared by our social workers.

**Defender alternative sentencing program reduces jail and prison costs:** Findings from evaluators from the University of Louisville have evaluated the initial project that has demonstrated substantial savings and positive outcomes. DPA is receiving consultation from the University of Kentucky Center on Drug and Alcohol Research to help us better identify the specific effects of our program on the incarceration problems affecting our state.

In other studies in the state, an active substance user of alcohol and other drugs costs the nation about \$40,000 per year according to estimates from the Substance Abuse and Mental Health Administration (SAMHSA). Once an individual achieves abstinence, he becomes less of a burden on society and, if employed, contributes to society. The return on the investment is a savings of \$3.25 for every dollar invested or a net of \$100,000 per DPA social worker. More critically for this project, is the potential reduction in costs of incarceration that will result from diverting individuals from jail or prison to community-based services.

**More savings are possible:** Many clients benefit from treatment provided by the Department of Corrections. However, many clients who are not yet incarcerated might be good candidates for diversion so they never wind up in prison for drug related and similar offenses. This is where the defense attorneys can work within a therapeutic justice model to offer the courts a way to divert potential inmates into community service users instead. By achieving sound referrals and follow-up for our clients we can not only get them out of jail, but hopefully prevent them from going to jail. Thus we are picking up a greater level of responsibility for our clients. DPA is doing its share toward responsibly managing the demand on prison resources in Kentucky. More funding is necessary if DPA is to realize the full potential of its alternative sentencing program. Each full-time social worker hired in this program needs only to prevent 2.5 person years of prison to cover the salary and fringe benefit cost for an entire year. Savings greatly in excess of that have already been achieved through the current program.

**Kentucky Justice and Public Safety Cabinet Social Worker Grant:** DPA received a federal stimulus grant in 2009 to hire five alternative sentencing social workers placed in the following offices: Columbia, Lexington, London, Madisonville and Pikeville. When the grant expired in March 2012, DPA hired four of these social workers into positions vacated by DPA social workers who retired or took employment elsewhere. DPA now has eight social workers. The data from their work in FY12 is below.

### DPA Alternative Sentencing Social Worker Cases, July 1, 2011 - June 30, 2012

Social Worker	Location	# Clients Referred	# Plans Presented	# Plans Accepted	Veterans Served	Involuntary w/DeNovo
Rachel Pate	Owensboro	242	117	88	6	4
Joanne Sizemore	London	111	105	105	3	0
Heather Bartley	Pikeville	111	51	37	6	0
Abena Amoah	Covington	141	80	68	4	0
Cherl Richardson	Madisonville	96	96	85	2	0
Jessica Dial	Columbia	79	41	35	0	0
Becky Gary	Hopkinsville	73	62	56	4	56
Lillie Adams(Intern)	Morehead	32	17	12	0	0
Kita Clement	Bowling Green	168	51	40	2	0
<b>TOTAL</b>		<b>1053</b>	<b>620</b>	<b>526</b>	<b>27</b>	<b>60</b>
<b>Adults Served</b>		<b>931</b>	<b>555</b>	<b>471</b>		
<b>Juveniles Served</b>		<b>122</b>	<b>65</b>	<b>55</b>		

DPA's Program received National Criminal Justice Association's 2011 Outstanding Criminal Justice Program Award for the Southern Region.

**KY criminal justice leaders support the alternative sentencing program:** One way to evaluate the quality of a Kentucky criminal justice program is to hear what people throughout the system think of it from the Justice Cabinet, Judges, Prosecutors, Jailers, Legislators and statewide organizations looking at the state's budget decisions. Some of their thoughts follow:



J. Michael Brown

"The Kentucky Alternative Sentencing Social Worker Program received a national award from the National Criminal Justice Association as an innovative means to help promote criminal justice initiatives in the country, including a reduction in incarceration costs. There is no doubt that the DPA Alternative Sentencing Social Worker Program is one that actually does work and does produce."

**J. Michael Brown**, Secretary, Justice and Public Safety Cabinet, Frankfort



Rep. Jesse Crenshaw

"The public defender Alternative Sentencing Social Worker Program is an excellent program."

**Representative Jesse Crenshaw**, Lexington



Rep. John Tilley

"Good ideas don't implement themselves. The first time I heard the idea of the defender alternative sentencing pilot program, and saw it in action myself, I knew it was a winner and I think the numbers bear that out. So count me in on support for it."

**Representative John Tilley**, Hopkinsville



Rep. Brent Yonts

"I fully support the DPA Alternative Sentencing Social Worker Program and its ability to save money and lives. We need to fund it across the state."

**Representative Brent Yonts**, Greenville



Rep. Johnny Bell

"I would like to see the DPA Alternative Sentencing Social Worker Program go into effect across the state. The return on it is \$3.52 for every \$1.00 invested. To think about anything we can invest a dollar in and get three and a quarter return goes right along with the spirit of what we are doing with 2011's HB 463. If we don't try to find the ability to implement a program with such great return, and move forward to a system of fairness and equality, I think we are not completing the cycle. I think [the DPA Alternative Sentencing Social Work Program] is one of the best ideas and best things that I've heard, aside from HB 463, and I think it flows right along with it. I really hope that we can get that implemented and I think the return on that would be tremendous. In the end I believe that actually spending that money would cause us to save a great deal. I'm strongly in support. I really think it's a wonderful idea and I support it wholeheartedly. I hope we can get this implemented."

**Representative Johnny Bell**, Glasgow



Andrew C. Self

"It is my privilege to work with an outstanding DPA staff here in Christian County. In my experience, the excellent work performed by the local DPA social worker is extremely beneficial to the court and certainly to the attorneys in that office as well. On a regular basis, I communicate with and often rely on the information obtained by the social worker in making important decisions regarding probation, treatment and incarceration. It would be a tremendous loss to my court and our community if the local DPA office did not have a social worker to provide so many essential services."

**Andrew C. Self**, Judge, Christian Circuit Court, Hopkinsville



Mary Hammons

"If inmates have someone like the DPA alternative sentencing social worker, they can get out of jail and go on to rehab or other treatment. DPA social worker interventions with inmates who have mental illness and who are charged with misdemeanors, often because of their (untreated) illness, help reduce the chance that they will end up with more serious charges without treatment. Adults, who are mentally challenged often go in the general population and are often taken advantage of by others- their family or other inmates. If they have a social worker to plead their case" often more appropriate placements or treatment for them is arranged."

**Mary Hammons**, Knox County Jailer



John Paul Chappell

"I love the DPA Alternative Sentencing Social Worker, Joanne Sizemore. If we had more Joanne Sizemores we could do so much more about drugs and other problems that plague those on court dockets. Having a social worker involved is making a difference, leading to genuine reform in people's lives, which is what we want." Judge Chappell and Knox County Assistant Attorney Gilbert Hollin estimated that "80 to 95%" of Knox County District Court cases are a result of addiction issues.

**John Paul Chappell**, Chief Judge, Knox and Laurel District Courts



Jay Wethington

"DPA alternative sentencing social worker Rachel Pate continues to provide invaluable service to the court in Owensboro. Her work is consistently exemplary."

**Jay Wethington**, Chief Circuit Judge, Owensboro



James C. Brantley

"Our DPA social work program has been instrumental in locating and accessing treatment programs. Rena Richardson, MSW, is an integral part of our drug court staff, whose input is always appreciated and valued. In short it appears that this is a program that works, and should be maintained."

**James C. Brantley**, Circuit Judge, 4th Judicial Circuit, Madisonville



Chris Cohron

"Mrs. Clement has built an excellent track record on finding treatment options for defendants that had exhausted all traditional avenues. Her work has provided all parties and the Court another viable option to appropriately address the issues of defendants."

**Chris Cohron**, Commonwealth Attorney, Bowling Green



John R. Grise

"The DPA social work program gives Warren Circuit Court options other than jail to deal with drug addiction and the crimes from it. Kita Clement's keen ability to find scarce in-patient and long term treatment options allows us to tailor a more effective response to drug crimes than incarceration alone, ultimately making communities safer and saving taxpayers the high cost of prison."

**John R. Grise**, Circuit Judge, 8th Judicial Circuit, Division 2, Bowling Green



Van Ingram

"The DPA alternative sentencing social workers provide much needed individualized sentencing options to prosecutors and judges. The DPA program is a proven way to help defendants change behavior and not re-offend, saving the state significant incarceration costs. If the program is expanded, more defendants would be helped and more savings would result."

**Van Ingram**, Executive Director, Kentucky Office of Drug Control Policy, Frankfort



Brian Wiggins

"The social work program has provided invaluable assistance to the judicial system. Ms. Richardson has routinely furnished this Court with evaluations and assessments of criminal defendants suffering from drug dependency. These assessments have assisted the Court in determining appropriate alternatives to incarceration. In addition, Ms. Richardson serves as a member of our drug court team and her insight during staff meetings is highly valued. For these reasons alone, the social worker program should continue."

**Brian Wiggins**, Circuit Judge, 45th Judicial Circuit, Greenville



Bryan Sunderland

"Our members are interested in it from a budgetary standpoint, as you all well know from our Leaky Bucket Report and our work in support of HB463, in support of that. We want to look at it as making sure our spending priorities in the state are in order. When the public advocate came to the Kentucky Chamber of Commerce, I think my initial reaction when Dave Adkisson and I met with him was, we don't come asking for line item appropriations, we look at the big picture, how the state operates and how that impacts the businesses across the state. But one thing that we've shared with you is our spending principles and the idea that state government ought to be investing and we ought to be looking at a fact based, results first, type approach, like we worked with the PEW Foundation. We reviewed the materials from the U of L study and this is completely consistent with HB 463, the idea that we can invest a small amount for a larger return. This is a way to honestly help implement HB 463, so I don't stand here as a member of the business community asking for a specific dollar amount, but I do encourage you as you all look at the budget to seriously consider this program because it certainly looks like a way to help continue implement HB 463."

**Bryan Sunderland**, Vice President of Public Affairs, Kentucky Chamber of Commerce

# NEW DPA CASE ASSIGNMENTS BY COUNTY - FY12

## TRIAL CASES BY COUNTY

County	Total New Cases Opened	Circuit Court (-CR-) Cases	Juvenile (-J-) Cases	District Ct. Misdemeanor (-M-) Cases	District Ct. Felony (-F-) Cases	District Ct. Traffic (-T-) Cases	Adult Contempt Cases (non-criminal)	District Ct. Hospitalization Cases	Parole Revocation
Adair	476	160	81	107	95	25	1	0	7
Allen	613	191	100	140	137	29	14	0	2
Anderson	573	154	73	122	167	57	0	0	0
Ballard	291	75	28	86	61	40	0	0	1
Barren	1,070	411	180	225	138	87	19	0	10
Bath	476	137	58	117	103	42	19	0	0
Bell	1,796	411	228	578	348	231	0	0	0
Boone	3,135	931	322	600	827	272	0	176	7
Bourbon	668	139	66	150	242	67	4	0	0
Boyd	2,019	564	149	500	525	270	10	0	0
Boyle	891	173	71	227	313	81	20	1	5
Bracken	231	71	25	56	25	48	6	0	0
Breathitt	601	135	55	225	101	80	5	0	0
Breckinridge	447	178	74	79	93	18	5	0	0
Bullitt	2,442	579	285	607	652	282	34	0	3
Butler	341	154	43	59	48	22	15	0	0
Caldwell	283	72	27	87	74	15	5	3	0
Calloway	798	276	69	179	202	57	9	0	5
Campbell	2,511	720	596	323	718	81	9	32	32
Carlisle	104	37	3	30	22	12	0	0	0
Carroll	762	284	55	188	184	51	0	0	0
Carter	1,512	257	281	361	302	181	130	0	0
Casey	393	151	52	71	100	18	0	0	1
Christian	5,590	630	1,581	877	719	465	325	984	9
Clark	1,885	164	277	696	553	157	36	0	2
Clay	989	203	36	335	313	86	0	0	16
Clinton	263	79	22	83	66	13	0	0	0
Crittenden	288	94	39	72	58	18	7	0	0
Cumberland	187	50	47	38	43	9	0	0	0
Daviess	3,796	707	783	912	808	501	53	7	25
Edmonson	222	106	24	30	42	5	15	0	0
Elliott	317	70	93	58	39	41	16	0	0
Estill	799	132	52	309	181	71	54	0	0
Fayette	10,271	1,110	794	4,112*	3,079	*	562	541	73
Fleming	643	161	52	182	82	147	19	0	0
Floyd	2,124	393	95	790	462	348	33	0	3
Franklin	1,574	464	278	310	320	90	99	0	13
Fulton	391	182	35	78	70	23	1	0	2
Gallatin	401	119	43	78	118	43	0	0	0
Garrard	353	102	61	67	96	24	3	0	0
Grant	689	267	69	146	147	58	0	2	0
Graves	2,253	474	134	698	594	342	6	0	5
Grayson	656	166	96	192	139	53	2	0	8
Green	317	103	38	83	71	22	0	0	0
Greenup	879	308	85	220	192	71	3	0	0
Hancock	211	67	32	37	54	19	2	0	0
Hardin	3,728	666	631	1,033	702	438	197	41	20
Harlan	1,225	265	130	288	294	244	4	0	0
Harrison	681	107	95	208	177	89	5	0	0
Hart	689	260	80	107	180	58	0	0	4
Henderson	1,678	257	338	470	363	187	56	0	7
Henry	544	116	35	158	185	50	0	0	0
Hickman	104	44	10	25	17	8	0	0	0
Hopkins	1,669	385	227	438	447	133	24	0	15
Jackson	533	174	20	160	153	24	0	0	2
Jefferson	33,659	5,302	5,675	8,289*	7,800	*	5,439	1154	*
Jessamine	2,035	574	379	458	470	135	16	0	3
Johnson	752	198	52	277	137	77	11	0	0
Kenton	4,392	1,239	929	639	1,119	111	150	197	8

\*Cases in Fayette and Jefferson County are not tracked in office systems other than DPA's case management system. As a result, the number of appointments in Traffic (-T-) and Misdemeanor (-M-) cases could not be determined. For these counties, all misdemeanor and traffic appointments are included in the District Court Misdemeanor Cases column.

County	Total New Cases Opened	Circuit Court (-CR-) Cases	Juvenile (-J-) Cases	District Ct. Misdemeanor (-M-) Cases	District Ct. Felony (-F-) Cases	District Ct. Traffic (-T-) Cases	Adult Contempt Cases (non-criminal)	District Ct. Hospitalization Cases	Parole Revocation
Knott	363	84	43	69	103	47	17	0	0
Knox	1,340	315	205	303	409	96	12	0	0
Larue	449	140	47	99	127	36	0	0	0
Laurel	1,664	459	237	304	535	113	4	0	12
Lawrence	435	102	47	112	117	32	25	0	0
Lee	534	90	29	206	149	51	8	0	1
Leslie	333	74	3	87	132	32	0	0	5
Letcher	1,302	390	126	414	216	151	0	2	3
Lewis	459	153	47	139	78	23	19	0	0
Lincoln	517	74	93	143	153	50	1	0	3
Livingston	184	36	7	47	66	23	5	0	0
Logan	632	256	62	146	84	59	19	5	1
Lyon	166	45	11	40	47	21	2	0	0
Madison	3,795	531	328	1,420	945	512	45	0	13
Magoffin	254	60	33	42	76	17	26	0	0
Marion	568	241	43	140	97	46	0	0	1
Marshall	960	282	86	275	172	136	2	0	7
Martin	335	103	37	72	62	51	10	0	0
Mason	1,248	313	103	366	198	212	54	0	2
McCracken	2,635	863	284	623	507	272	47	0	39
McCreary	476	141	132	54	119	30	0	0	0
McLean	149	37	30	24	51	5	2	0	0
Meade	521	172	78	119	120	31	1	0	0
Menifee	277	85	35	68	54	27	8	0	0
Mercer	457	129	45	82	159	17	25	0	0
Metcalfe	204	75	48	18	45	15	3	0	0
Monroe	318	83	31	68	105	30	0	0	1
Montgomery	1,627	571	140	414	234	122	144	0	2
Morgan	751	139	74	248	115	106	69	0	0
Muhlenberg	814	303	96	87	280	33	9	0	6
Nelson	1,102	498	123	238	145	93	1	0	4
Nicholas	243	71	7	50	91	24	0	0	0
Ohio	800	279	107	138	218	47	11	0	0
Oldham	753	205	169	131	203	31	1	0	13
Owen	269	83	20	81	66	18	0	1	0
Owsley	371	74	18	115	111	53	0	0	0
Pendleton	327	62	57	69	85	54	0	0	0
Perry	2,446	486	154	821	294	440	40	211	0
Pike	1,880	339	208	676	267	382	1	0	7
Powell	811	206	65	294	172	65	8	0	1
Pulaski	1,590	629	135	250	425	138	4	0	9
Robertson	61	23	1	9	23	5	0	0	0
Rockcastle	556	189	25	97	185	55	2	0	3
Rowan	1,637	413	201	580	270	110	55	0	8
Russell	614	212	68	121	167	37	5	0	4
Scott	1,367	351	139	355	428	57	37	0	0
Shelby	1,008	321	154	203	239	85	0	0	6
Simpson	549	193	67	92	168	25	3	0	1
Spencer	198	38	36	47	62	15	0	0	0
Taylor	788	276	95	203	150	58	0	0	6
Todd	248	82	21	57	59	16	10	0	3
Trigg	327	51	9	109	112	40	6	0	0
Trimble	288	98	29	61	80	20	0	0	0
Union	646	147	119	165	159	36	20	0	0
Warren	3,352	1,108	583	637	635	272	89	0	28
Washington	221	113	20	41	29	17	0	0	1
Wayne	968	353	110	229	226	38	4	0	8
Webster	377	78	48	95	111	27	18	0	0
Whitley	1,203	398	274	86	411	33	0	0	1
Wolfe	332	97	44	110	54	27	0	0	0
Woodford	457	155	82	67	109	23	16	0	5
<b>TOTALS</b>	<b>158,758</b>	<b>35,972</b>	<b>22,056</b>	<b>40,508</b>	<b>37,076</b>	<b>10,963</b>	<b>8,331</b>	<b>3,357</b>	<b>492</b>
<b>Percentage of DPA Assignments</b>	<b>100%</b>	<b>23%</b>	<b>14%</b>	<b>26%</b>	<b>23%</b>	<b>7%</b>	<b>5%</b>	<b>2%</b>	<b>0%</b>

## TRIAL FUNDING PER CASE FALLS TO \$212

**\$212**

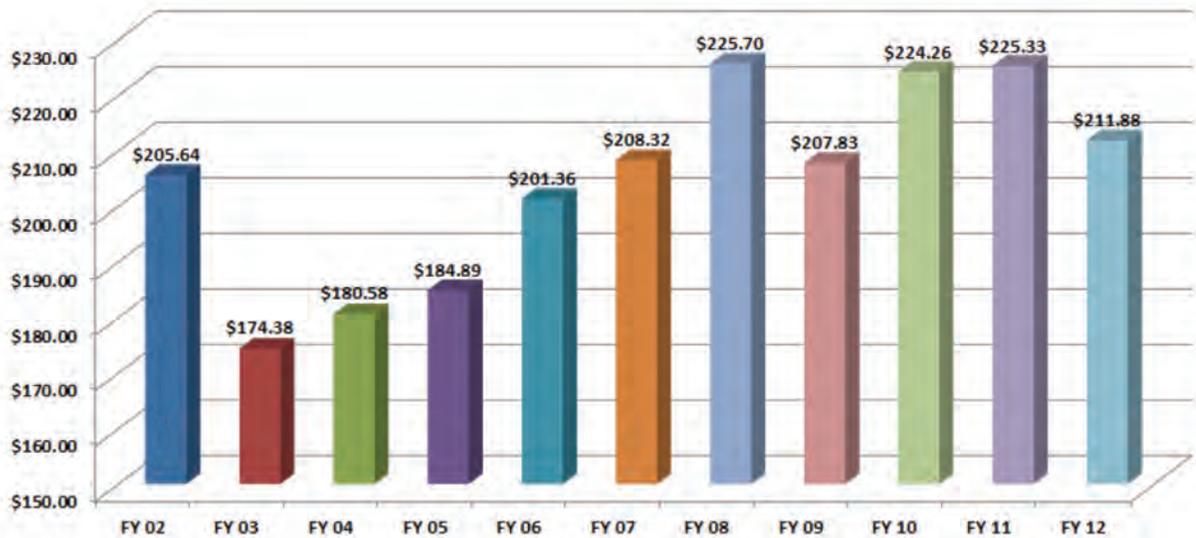
Funding per trial case

By any comparison of the costs of legal services, DPA's funding per trial level case is low. DPA's FY12 funding per newly-assigned trial case was \$211.88. As a statewide system, DPA handled 158,758 new trial cases as efficiently as possible, but the quality of representation is at risk with inadequate funding.

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

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

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



## TRIAL FUNDING PER CONFLICT CASE FALLS TO \$341

**\$341**

Funding per conflict case

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

In FY12, DPA contracted 3,937 cases to private lawyers across the state at a per case cost average of \$341.15. This level of funding for these cases is not adequate to compensate private attorneys for the work required to provide competent representation. More than 700 cases were handled by other DPA offices and more than 3,500 were maintained by the local office after the client agreed to waive the conflict.

## Adequate Funding Sought for Proper Representation of Indigents in Conflict Cases KBA Board of Governors Calls for Improvements in the Provision and Compensation of Conflict Counsel for Indigents

Additional funding is needed to allow for increased compensation of private attorneys who are willing to take cases where a defendant has a constitutional right to conflict-free counsel and DPA's local office is ethically prohibited from representation.

The Kentucky Bar Association (KBA) Board of Governors unanimously adopted a resolution at its November 18, 2011 meeting endorsing findings and recommendations that call for the Governor and the Kentucky General Assembly to improve the system for the representation of indigents in conflict cases.

The nine recommendations relate to the funding and structure of the system, including allocation of an additional \$5.2 million to implement changes that will bring the system into compliance with the ethical and constitutional requirements of the Kentucky Supreme Court and with the professional standards set out by the American Bar Association. In September, 2011, KBA President Margaret E. "Maggie" Keane appointed a special KBA task force comprised of bar leaders, current and former judges, current and former legislators, a former Commonwealth's Attorney and public defenders, in response to concerns expressed by many members of the bench and bar regarding chronic problems in cases involving conflicts and the appointment of counsel. The KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents was asked to review those concerns, study the system and make recommendations that would improve the administration of justice in the courts of the Commonwealth of Kentucky.

The report produced by the task force emphasized that it is important to guarantee that there is equal justice for the poor and that due process is ensured by competent, conflict-free counsel. Its findings, which resulted from a comprehensive review of Kentucky's current system for providing counsel to indigents in conflict cases, indicated significant problems and serious deficiencies. Its recommendations reflect reforms and improvements necessary to correct those issues in keeping with recognized standards and best practices.

William E. "Bill" Johnson, a prominent criminal defense lawyer who chaired the Task Force and who is a member of the Frankfort law firm of Johnson, True and Guarnieri, said *"both justice and public safety are advanced by the provision and compensation of conflict counsel for indigents. Our recommendations are common sense steps to bring reform to a system that is currently inadequate in its compensation levels. We are also recommending improvements in the structure used to provide conflict counsel. Additional funding of \$5.2 million is needed to properly accomplish those objectives. We presented these recommendations in person to the Governor in December 2011, and the Legislature in February 2012."*

KBA President Keane said, *"it is axiomatic that counsel provided to indigent defendants must be conflict-free and properly compensated in order for justice to be achieved. As an integrated bar representing all Kentucky lawyers, the Kentucky Bar Association is interested in improving access to qualified lawyers and obtaining just results for all parties in criminal cases. By forming this task force, conducting this study and facilitating discussion of problems and solutions, the KBA hoped to promote professionalism and provision of the funding necessary for a proper conflict representation system. It is our responsibility as lawyers and officers of the court to take a leadership role and work toward that end, and we have resolved to do so."*

National standards require Kentucky to address the current ethical and financial problems with the conflict system. The Kentucky Association of Criminal Defense Lawyers endorsed the recommendations in a November 29, 2011 Resolution stating, *"the American Bar Association's Ten Principles of a Public Defense Delivery System (2002) contain the most widely accepted and cited standards for the establishment and administration of public defense systems in the country. U.S. Attorney General Eric Holder termed the ABA's ten principles the 'basic building blocks' of a properly functioning public defense system."* The KACDL Resolution quoted the eighth of the ABA Ten Principles which states: *"Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload [and] provide an overflow or funding mechanism for excess, unusual, or complex cases."*

*Members of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents:*

**Julia H. Adams**, Retired Judge, 25<sup>th</sup> Judicial Circuit

**Michael D. Bowling**, Former Chair, House Judiciary Committee

**Jerry J. Cox**, Chair, Kentucky Public Advocacy Commission

**Charles E. (Buzz) English, Jr.**, Past-President, Kentucky Bar Association

**Jeff Hoover**, Minority Floor Leader, Kentucky House of Representatives

**William E. Johnson**, Chair, Johnson, True & Guarnieri

**Margaret E. "Maggie" Keane**, President, Kentucky Bar Association

**W. Douglas Myers**, President-Elect, Kentucky Bar Association

**Lewis G. Paisley**, Retired Judge, 22<sup>nd</sup> Judicial Circuit

**Phillip R. Patton**, Circuit Court Judge, 43<sup>rd</sup> Judicial Circuit

**Daniel T. Goyette**, Chief Public Defender, Louisville-Jefferson County Public Defender Corp.

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

The Task Force Report and the KBA Board of Governors resolution is at [www.kybar.org](http://www.kybar.org).

## NEW CASES AND CASES HANDLED BY OFFICE FY12

Office	Attorney Positions	Average FY12 Attorney Caseload (New Cases*)	Total New Cases Assigned to Office*	Total Cases Handled by Office*	Average FY12 Attorney Caseload (Cases Handled*)	Cases that Present a Conflict of Interest	Percent of Cases that Present a Conflict	Circuit Court Case %	Juvenile Court Case %	District/ Family Court Case % (Adult Criminal Cases)	Other Cases %
Bell County	7	415.4	3,021	3,544	490.1	218	7.2%	22%	12%	66%	0%
Boone County	10	505.4	5,267	5,925	571.2	290	5.5%	32%	10%	55%	4%
Bowling Green	10	484.3	5,071	5,773	554.5	432	8.5%	34%	16%	49%	1%
Boyd County	10	526.0	5,486	6,845	661.9	305	5.6%	27%	11%	62%	0%
Bullitt County	8	429.5	3,545	4,213	513	158	4.5%	29%	12%	58%	0%
Columbia	8	397.9	3,231	3,821	471.6	190	5.9%	37%	12%	50%	0%
Covington	15	442.7	6,902	7,857	506.4	312	4.5%	28%	22%	46%	4%
Cynthiana	5	373.2	1,983	2,517	480	221	11.1%	20%	11%	68%	0%
Danville	9	464.2	4,254	4,863	531.9	121	2.8%	25%	15%	60%	0%
Elizabethtown	12	433.2	5,352	5,306	429.3	616	11.5%	21%	16%	61%	1%
Frankfort	8	481.3	3,950	5,708	701	303	7.7%	28%	14%	57%	0%
Glasgow	5	442.2	2,278	2,782	543	157	6.9%	36%	15%	48%	1%
Hazard	9	460.2	4,111	4,758	532.1	149	3.6%	23%	8%	64%	5%
Henderson	7	416.7	2,987	3,142	438.9	213	7.1%	19%	18%	62%	0%
Hopkinsville	14	505.1	7,250	7,766	541.9	382	5.3%	16%	24%	47%	14%
LaGrange	6	422.5	2,593	3,255	532.8	202	7.8%	29%	15%	56%	1%
Lexington	23	433.3	10,271	11,790	499.3	480	4.7%	11%	8%	75%	6%
London	10	496.3	5,528	6,336	577.1	687	12.4%	26%	14%	60%	1%
Louisville	57	589.0	33,659	40,564	710.2	84	0.2%	16%	17%	64%	3%
Madisonville	7	367.3	2,632	2,849	398.3	115	4.4%	28%	13%	58%	1%
Maysville	5	392.2	2,120	2,553	478.8	198	9.3%	26%	8%	66%	0%
Morehead	11	451.8	5,085	6,359	567.6	257	5.1%	28%	12%	60%	0%
Murray	9	436.9	4,014	4,565	498.1	227	5.7%	26%	7%	67%	0%
Owensboro	11	465.8	5,254	6,120	544.5	361	6.9%	23%	19%	57%	1%
Paducah	10	357.6	3,705	4,415	428.6	335	9.0%	33%	10%	56%	1%
Pikeville	5	388.4	1,960	2,459	488.2	93	4.7%	17%	15%	68%	0%
Prestonsburg	8	402.6	3,384	3,575	426.5	304	9.0%	22%	4%	74%	0%
Richmond	11	549.6	6,205	7,020	623.7	336	5.4%	14%	10%	76%	0%
Somerset	9	458.2	4,212	5,017	547.7	240	5.7%	36%	11%	52%	1%
Stanton	7	477.7	3,448	4,005	557.3	311	9.0%	21%	8%	71%	0%
<b>TOTAL</b>	<b>326</b>	<b>474</b>	<b>158,758</b>	<b>185,702</b>	<b>556.9</b>	<b>8,297</b>	<b>5.2%</b>	<b>23%</b>	<b>14%</b>	<b>61%</b>	<b>2%</b>

\* DPA's traditional case counting method includes only new appointments received during the fiscal year, according to DPA's Internal Policy 9.04 which states: "A case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events." In 2009, the KBA Criminal Justice Roundtable, consisting of judges, prosecutors, private and public defense attorneys, law professors, and legislators, unanimously recommended that public defenders and prosecutors identify not just the total cases opened each year, but also cases carried over from the prior year. To maintain consistency with prior DPA Annual Reports and still meet the recommendations of the Roundtable, both New Cases and Cases Handled are reported here.



Bowling Green attorney Eric Clark meeting with his client



DPA attorney John Landon discussing the case with his incarcerated client



Paducah attorney Jamey Mills tweaking his closing argument



London Investigator Mike Parks collecting evidence on a Laurel County Case

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

### ***DPA attorneys fight for disabled clients...***

Amie, a thirty-four year old client, suffers from a rare neurological disorder known as Fredrick's Ataxia. Wheelchair bound, Amie not only struggles with the physical limitations associated with the disorder, but also has mental health issues. DPA attorney Erica Austin became involved in her case after Amie was committed involuntarily to Western State Hospital. While there, Amie refused to take her prescribed psychotropic medication, for fear of the interaction the medication may have with her physical disability. The hospital sought a forced medication order, which Erica adamantly opposed. In a victory for Amie, the court sided with Erica and determined that Amie should be permitted to make her own decisions about whether or not to take the prescribed psychotropic medication.

### ***Much time and effort spent on a five minute verdict...***

Jeff Cox knew the jury might come back quickly regarding his case, but five minutes? DPA attorney Audrey Woosnam thought the prosecution had a weak case, but she had never seen anything like it. The verdict was read - not guilty.

Jeff had been charged with First Degree Trafficking in Methamphetamine and had refused a last minute offer from the prosecution. Though he had already served 260 days, to be credited to his sentence, Jeff declined to accept a five-year deal.

The Jackson County Sheriff's Department had executed a controlled buy with the use of a cooperating witness. The cooperating witness testified that Jeff, along with Erica a co-defendant, sold him methamphetamine from their home. The alleged buy took over two hours to complete. Not only was the alleged buy exceptionally long in duration, but the video recording device, installed to record the transaction, failed to function after the first hour. No direct evidence linked the defendant to the sale. More startling, no direct evidence indicated that Jeff was even home during the time the alleged buy took place.

During the trial, Audrey highlighted for the jury these facts. Neither Jeff nor Erica ever appeared on the tape. Further, the cooperating witness' testimony was far from credible. When the witness took the stand, he stated that his motivation to testify was neither payment nor the fact that he had pending charges of his own. Rather, the witness simply wanted to "clean up the mess" in his county. Attorney Audrey Woosnam was skeptical. The jury was too.

**Juvenile Task Force:** House Concurrent Resolution 129 created the Unified Juvenile Code Task Force in the 2012 session. Its purpose is to review the juvenile code and make recommendations to improve its consistency and to reform the juvenile system in a number of specified areas including alternatives to incarceration, creating a minimum age of responsibility, protection and treatment of special needs children, and how best to address the needs of status offenders. One of the eleven members of the Task Force is Pete Schuler, who has been the Juvenile and Mental Health Division Chief of the Louisville Metro Public Defender's Office for thirty years. Pete is working with defenders across the state to bring information and perspective to the Task Force on the deficiencies of the current system and how reform may best be accomplished. Pete and DPA will advocate for the Task Force to make recommendations that would, among other results, reduce or eliminate incarceration of status offenders, increase diversion opportunities for juveniles, and reduce the number of school-related activities that are resolved in the court system rather than a school disciplinary system. The Task Force is to produce a draft of proposed changes to the juvenile code no later than January 7, 2013.



Pete Schuler

**Efforts to Expand Pretrial Release Finds Success**

House Bill 463 from 2011 required judges to release most defendants without a cash bond unless a defendant is found to be a flight risk or a danger to the public. According to the Administrative Office of the Courts, the pretrial release rate has risen from 65% to 70%, saving counties millions of dollars. The best news is that this increased release rate has not impacted public safety as the percentage of released defendants who commit crimes has actually decreased from 9% to 8% and the number that fail to appear in court has declined from 11% to 10%.

To achieve full statewide implementation of HB 463, DPA attorneys have engaged in aggressive pretrial litigation to make sure the new law is followed, filing more than 45 appeals from district court bond decisions and more than a dozen appeals from circuit court rulings. In 2012, DPA supported House Bill 296, which would have required bond decisions to be based upon "clear and convincing" evidence. Under the United States Supreme Court case of *U.S. v. Salerno*, 481 U.S. 739 (1987), this is already the appropriate standard. As House Bill 296 failed to pass, DPA will continue to litigate this issue in the courts of the Commonwealth.

**DNA Testing to Identify Wrongful Convictions Expansion Fails**



Rep. Johnny Bell

Kentucky failed once again to pass an expansion of DNA testing to include inmates serving lengthy prison sentences who may be innocent of the crimes for which they are serving time. House Bill 178, sponsored by Representative Johnny Bell (Glasgow), would have allowed defendants convicted of A or B felonies or violent felonies to have access to DNA testing if all of the following conditions are met: 1) evidence exists which has not been tested and which could be tested, 2) testing of the evidence, if favorable to the defendant, would create a probability of innocence, and 3) the defendant is still serving time for the offense. In response to concerns about the volume of frivolous requests if the bill passed, DPA agreed to serve as a gateway for claims, reviewing all applications and filing a motion in support if the claims had merit. Claims that did not have merit, and for which a defendant could not pay the costs of testing, would be dismissed and require no response from a prosecutor. Nevertheless, despite passing the House Judiciary Committee unanimously, House Bill 178 died without a vote on the House floor.

**State Needs to Change DNA Testing Law**

*Louisville Courier-Journal*, May 17, 2012

It has been 23 years since the first person wrongly convicted of a crime was exonerated through the science of DNA testing. Since then, 289 people in 35 states found guilty of offenses have been exonerated through DNA tests, according to the Innocence Project website.

Yet Kentucky stands squarely behind the times when it comes to updating its laws and policies on DNA testing in cases where people claim they have been wrongly convicted for serious offenses.

Kentucky could - and should - do much better.

Convincing evidence comes from Jefferson County, where Commonwealth's Attorney Dave Stengel has a policy of allowing post-conviction DNA testing for any crimes as long as the testing is relevant and the offender pays for it. Such testing has exonerated two men convicted of rape and another of murder.

But some prosecutors around the state oppose expanding DNA testing, citing the costs if the state had to pay for it, and the increased workload for the already burdened state crime lab.

Lawmakers had a chance to address this issue in the 2012 session with House Bill 178, which would have expanded post-conviction DNA testing beyond current limits of state law. It also would have allowed testing after convictions on serious felonies and any crime designated as a violent offense.

But HB 178 ... got scant attention and died in the House.

The Supreme Court could well decide the issue in Kentucky. But if not, lawmakers need to act next year to bring Kentucky into the current century when it comes to forensic science.

# CAPITAL TRIAL AND CAPITAL POST-TRIAL

**Trial:** Between July 1, 2011 and June 30, 2012, Kentucky defenders were appointed to represent 13 new clients at trial who had a prosecutor notice their case as capital. This representation was in addition to 37 capital clients already being represented when the year began July 1, 2011. During this period, 13 cases pled to non-death sentences; 3 cases went to trial with death as a possible sentence resulting in 1 non-death sentence and 2 death sentences.

**Post-Trial:** As of August 2012, there are 34 persons on Kentucky's death row sentenced to death. Between July 1, 2011 and June 30, 2012, one client was granted relief from the sentence of death in state court based on issues that included ineffective assistance of counsel during the sentencing phase. Four cases are pending before the Kentucky Supreme Court on appeal from their initial verdict.

## ABA Kentucky Death Penalty Assessment Team Report on the Administration of the Death Penalty in Kentucky Issues Report

The American Bar Association's *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Kentucky Death Penalty Assessment Report* was issued December 7, 2011 after two years of research and analysis by an independent team of respected Kentucky professionals and criminal justice experts. It is an historic, comprehensive, evidence-based review of the way capital cases are conducted and the death penalty is administered in our state. The Report found major deficiencies in Kentucky that undermine the integrity and reliability of our state's system. Reforms are proposed in twelve key areas: (1) the collection, preservation, and testing of DNA and other types of evidence; (2) law enforcement identifications and interrogations; (3) crime laboratories and medical examiner offices; (4) prosecutorial professionalism; (5) defense services; (6) the direct appeal process; (7) state post-conviction proceedings; (8) clemency; (9) jury instructions; (10) judicial independence; (11) treatment of racial and ethnic minorities; and (12) mental retardation and mental illness.

The members of the Kentucky Death Penalty Assessment Team:

- ◆ Prof. Linda Sorenson Ewald, Co-Chair, Louis D. Brandeis School of Law at the University of Louisville, Louisville, KY;
- ◆ Prof. Michael J. Z. Mannheimer, Co-Chair, Northern Kentucky University Salmon P. Chase College of Law, Highland Heights, KY;
- ◆ Hon. Michael Bowling, Bowling Law Office, Middlesboro, KY;
- ◆ Prof. Allison Connelly, University of Kentucky College of Law, Lexington, KY;
- ◆ Hon. Martin E. Johnstone, Kentucky Supreme Court (Retired), Prospect, KY;
- ◆ Hon. James Keller, Kentucky Supreme Court (Retired), Lexington, KY;
- ◆ Frank Hampton Moore, Jr., Cole & Moore, P.S.C., Bowling Green, KY;
- ◆ Marcia Milby Ridings, Hamm, Milby & Ridings, London, KY.

Since 1967, Kentucky has executed three people, two of whom were volunteers. During that same period of time, three Kentucky Governors granted clemency to five people sentenced to death. The ABA report found a troubling error rate of 60%.

The report's recommendations are in line with the views of Kentuckians. "*Widespread support for capital punishment no longer exists*" in Kentucky. See Gennaro F. Vito, *Attitudes Toward the Death Penalty in Kentucky: A Comparison of results – 1989, 1997, 1999*, Kentucky Justice and Public Safety Bulletin, Volume 3, No. 1 (September 2001) p 3.

The American Bar Association and the Kentucky Death Penalty Assessment Team called for a suspension of executions in Kentucky until the recommendations in its December 7, 2011 report are fully implemented. For the last 15 years, Public Defender leaders have sought adequate resources, the implementation of national standards of practice in capital cases, and a moratorium pending reforms. Defenders issued a call for a moratorium in June 1997 based on the experience in Kentucky and the ABA Call for a Moratorium, Resolution No. 107 (February 1997). Defenders have repeatedly renewed the call for a moratorium. See *The Advocate* Volume 19, No. 4 (July 1997) p. 9-14; Volume 23, No. 1 (January 2001) pp. 52, 53; *The Death Penalty in Kentucky: the System is Broken* KBA Bench and Bar (November 2003) pp. 8-13; DPA Press Release November 2009.



*"It's our obligation as prosecutors to do justice, not simply to convict and I think it would be wrong, horribly wrong, to allow somebody that we had very strong evidence that they didn't commit the crime, to let them sit there and suffer in prison. That is probably the highest level of injustice."*

**Dave Stengel**  
Jefferson County Commonwealth's Attorney



*"I believe Kentuckians would be distressed to learn that not only are deserving inmates denied access to [DNA] testing, but the statute - as it is currently written - denies the ability to identify the true perpetrators of violent crimes by failing to include a provision in the law that affirms judicial discretion in comparing crime scene evidence to relevant DNA databases... Kentucky stands alone with Alabama in permitting only those who are convicted of capital crimes to seek testing."*

**Barry Scheck**  
Co-Director, Innocence Project

# POST-TRIAL DIVISION



Left to Right: Linda Smith (KIP Supervisor), Julia Pearson (Appeals Supervisor), Amy Staples (Post-Conviction Branch Manager), Brooke Buchanan (Frankfort Adult Post-Conviction Supervisor), Tim Arnold (Post-Trial Director), La Mer Kyle-Griffiths (Juvenile Post-Disposition Branch Manager), Emily Rhorer (Appeals Supervisor), Meggan Smith (LaGrange Adult Post-Conviction Supervisor), Kathleen Schmidt (Appeals Branch Manager).

## Liberty and justice for all, including the wrongly convicted:

America is about fairness and freedom. If you have been wronged, American values are that you have a right to prove the mistake and have it corrected. Some fear in our complex society that we cannot reconcile fairness in process while protecting liberty, as the process undermines finality. However, as stated by Pulitzer Prize-winning historian David Hackett Fisher in *Fairness and Freedom*

(2012), in “actual operation, freedom and liberty and fairness can be mutually reinforcing . . . [each with] the power to reinforce the other’s virtues and correct its vices.”

**The Post-Trial Division advances fair process and liberty:** In Kentucky’s criminal justice system, DPA’s Post-Trial Division serves the necessary and critical function of identifying and seeking correction of mistakes that affect someone’s life or liberty. The Division provides important representation after the completion of a trial case, handling appeals as guaranteed by our state constitution, post-conviction challenges to improper juvenile convictions, sentences, or conditions of confinement, and post-conviction challenges of adult convictions or sentences. It also maintains the Department of Public Advocacy Kentucky Innocence Project working to exonerate the wrongly convicted.

### In FY12 DPA’s:

- ◆ Appeals Branch filed 269 original briefs in the Kentucky Supreme Court and the Court of Appeals and orally argued 9 cases;
- ◆ Juvenile Post-Disposition Branch represented 1,667 juvenile issues;
- ◆ Post-Conviction Branch represented 615 clients;
- ◆ Kentucky Innocence Project represented 37 clients.

**Our assurance of fairness and freedom:** Through our nation’s Pledge of Allegiance, we celebrate America’s provision of “liberty and justice for all.” That pledge of liberty and justice includes those against whom a mistake was made in our justice system. Our Post-Trial staff works each day to bring to life the critical American values of fair process and correction of wrongs.

## Kentucky Wrongful Convictions

	CLIENT	YEAR OF CONVICTION	COUNTY OF CONVICTION	CONVICTIONS	SENTENCE	TIME SERVED	DATE SENTENCE WAS VACATED	REASON SENTENCE WAS VACATED	CAUSE OF WRONGFUL CONVICTION
1	William Gregory	1993	Jefferson	Rape, Attempted Rape and Burglary	70 years	7 years	July 5, 2000	Cross-Racial ID; fabricated hair comparison	Eyewitness misidentification, invalidated forensic science
2	Larry Osborne	1999	Whitley	Murder (2x), Arson, Burglary, Robbery	Death	4 years	April 26, 2001 (conviction reversed); August 8, 2002 (acquitted on retrial)	Principal evidence at trial was not subject to cross examination	Reliance on coerced testimony of juvenile witness
3	Herman May	1988	Franklin	Rape & Sodomy	40 years	13 1/2 years	September 18, 2002	DNA testing and improper ID	Invalidated forensic science, eyewitness misidentification
4	Denarrius Terry	2003	Logan	Murder, Robbery 1st, Wanton Endangerment 1st	45 years	4 1/2 years	January 20, 2005 (conviction reversed); September 2, 2005 (acquitted on retrial)	Principal evidence at trial was not subject to cross examination	Unreliable witness testimony
5	Tim Smith	2000	Kenton	First Degree Sodomy	20 years	7 years	May 5, 2006	Perjury	False expert testimony, perjury
6	Ben Kiper	1999	Butler	Sexual Abuse	55 years	7 years	May 6, 2006	Perjury	Perjury
7	John Phillips	2005	McCreary	Assault 1st	10 years	4 years	April 20, 2007 (conviction reversed); December 4, 2008 (acquitted on retrial)	Jury was not properly instructed	Unreliable witness testimony and inadequate forensic evidence
8	Jacquelyn Green	2000	McCreary	Complicity to Commit Murder under EED	18 years	7 years	December 11, 2007	Clemency	Government misconduct and IAC
9	Sam Plotnick	2001	Whitley	Sexual Abuse	18 years	7 years	January 1, 2008	Perjury	Government misconduct and perjury
10	Jason Girts	2004	Bullitt	Sexual Abuse	5 years	3 years	April 29, 2008	Perjury	Perjury
11	Lacy Bedingfield	1996	Fayette	Rape	25 years	14 years	September 11, 2008	DNA testing and perjury	Coerced confession
12	Edwin A. Chandler	1995	Jefferson	Robbery & 2nd Degree Manslaughter	30 years	9 years	October 13, 2009	Modern digital fingerprinting technology	Coerced confession
13	Michael VonAllmen	1983	Jefferson	Rape, Sodomy, Robbery	25 years	11 years	June 4, 2010	Proof that serial rapist had actually committed rape	Picked out of a photo pack
14	Kerry Porter	1998	Jefferson	Murder	60 years	14 years	December 19, 2011	DNA testing, eye witness misidentification, and perjury	Eyewitness misidentification, perjury

## Kentucky Public Defender Cases before the U. S. Supreme Court

Kentucky public defenders influence development of constitutional law

22 decisions and grants of writs from 1978 – 2012

1. **Bordenkircher v. Hayes**, 434 U.S. 357 (1978). The Due Process Clause of the Fourteenth Amendment is not violated when a prosecutor carries out a threat made during plea negotiations to charge the accused with more serious charges if he does not plead guilty to the original charges.
2. **Taylor v. Kentucky**, 436 U.S. 478 (1978). Under the facts of the case, the Due Process Clause required the trial court, upon request, to instruct the jury on the presumption of innocence.
3. **Kentucky v. Whorton**, 441 U.S. 786 (1979). Distinguished from *Taylor*, the Court found no error in failing to instruct on the presumption of innocence in light of the totality of the circumstances.
4. **Pilon v. Bordenkircher**, 444 U.S. 1 (1979) (per curiam). The Constitution prohibits a criminal conviction except upon proof of guilt beyond reasonable doubt. This standard can only be put into effect if a reviewing court “*inquires whether, after viewing evidence in light most favorable to prosecution, any rational trier of fact could have found essential elements of crime beyond reasonable doubt.*”
5. **Rawlings v. Kentucky**, 448 U.S. 98 (1980). The defendant could not challenge a search of a woman’s purse where he had hidden drugs, given his brief acquaintanceship with the woman, the access of other people to the purse, and the defendant’s admission that he had no expectation of privacy in the purse.
6. **Watkins v. Sowders**, 449 U.S. 341 (1981). The Constitution does not require a judicial determination outside the presence of the jury of the admissibility of identification evidence.
7. **Carter v. Kentucky**, 450 U.S. 288 (1981). A “*state trial judge has the constitutional obligation, upon proper request, to minimize the danger that the jury will give evidentiary weight to a defendant's failure to testify.*”
8. **Fletcher v. Weir**, 455 U.S. 603 (1982). Due process is not violated when a prosecutor cross-examines a defendant about his post-arrest silence when the defendant chooses to take the stand.
9. **James v. Kentucky**, 466 US 341 (1984). The Constitution requires a trial judge to tell the jury not to draw an inference from the defendant’s decision not to testify if the defendant so requests, but the instruction does not have to be in the form requested by the defendant.
10. **Evitts v. Lucey**, 469 U.S. 387 (1985). A criminal defendant is entitled under the Due Process Clause to the effective assistance of counsel on his first appeal from his conviction.
11. **Batson v. Kentucky**, 476 U.S. 79 (1986). This landmark decision established that the Equal Protection Clause prevents a prosecutor from striking jurors because of their race. When a *Batson* claim is raised and possible discrimination demonstrated, a prosecutor must give race-neutral explanations for the juror challenges in question.
12. **Crane v. Kentucky**, 476 U.S. 683 (1986). “*The Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’*” A court cannot exclude testimony at trial concerning the circumstances of a defendant's confession, even though the legal issue of whether the statement was voluntary was resolved against the defendant prior to trial.
13. **Griffith v. Kentucky**, 479 U.S. 314 (1987). The ruling in *Batson* was a “*clear break*” from prior decisions and therefore applies retroactively to all cases, state or federal, not yet final.
14. **Kentucky v. Stincer**, 482 U.S. 730 (1987). Neither the Sixth Amendment Confrontation Clause nor the Fourteenth Amendment Due Process Clause were violated by excluding the defendant from a competency hearing of two child witnesses in a sexual abuse case.
15. **Buchanan v. Kentucky**, 483 U.S. 402 (1987). Use of a death-qualified jury for a joint trial in which death penalty was sought only against a codefendant did not violate the defendant's Sixth Amendment right to an impartial jury, and the State's use of a psychiatric report solely to rebut defendant's “*mental status*” defense did not violate defendant's Fifth or Sixth Amendment rights.
16. **Olden v. Kentucky**, 488 U.S. 227 (1988) (per curiam). Refusal to permit black defendant in kidnapping, rape and sodomy trial to cross-examine white complainant regarding her cohabitation with black boyfriend violated the Sixth Amendment right to confrontation of witnesses.
17. **Stanford v. Kentucky**, 492 U.S. 361 (1989) The Eighth Amendment precludes the death penalty for individuals who commit crimes at 16 or 17 years of age.
18. **Baze v. Rees**, 553 U.S. 35 (2008) (Plurality opinion). Kentucky’s three-drug protocol was not cruel and unusual punishment in violation of the Eighth Amendment.
19. **Owens v. Kentucky**, 129 S.Ct. 2155 (2009). Petition for writ of certiorari granted. Judgment vacated, and case remanded to the Supreme Court of Kentucky for further consideration in light of *Arizona v. Gant*, 556 U.S. 332 (2009).
20. **Padilla v. Kentucky**, 559 U.S. \_\_\_, 130 S.Ct. 1473 (2010). The Sixth Amendment right to effective assistance requires counsel to inform clients of the possibility that a guilty plea may result in adverse consequences, including deportation.
21. **Kentucky v. King**, 563 U.S. \_\_\_, 131 S.Ct. 1849 (2011). Warrantless entry to prevent the destruction of evidence is allowed where police do not create the exigency through actual or threatened Fourth Amendment violation. On remand to the Kentucky Supreme Court, the Court determined that the prosecution did not show that an exigency based on destruction of evidence existed when police officers conducted a warrantless entry of an apartment. *King v. Commonwealth*, --- S.W.3d ---, 2012 WL 1450081, (Ky. April 26, 2012) (not final).
22. **Parker v. Matthews**, 567 U.S. \_\_\_, 2012 WL 2076341 (June 11, 2012) (per curiam). In assessing reasonableness of Kentucky Supreme Court's decision, Sixth Circuit erred by consulting its own precedents, rather than those of Supreme Court, in determining what was “*clearly established Federal law*” within meaning of Antiterrorism and Effective Death Penalty Act (AEDPA).

# PROTECTION & ADVOCACY



Left to Right: Kevin McManis (Attorney, ITO Team Leader), Leslie Jones (Senior Attorney), Marsha Hockensmith (Director), Melissa Barlow (Administrative Support Supervisor), Lucy Heskins (Attorney, CY Team Leader), Heidi Lanham (Legal Director), Janice Powe (PAIMI Program Coordinator), Bill Dolan (Attorney, Adult Team Leader). Not Pictured: Jeff Edwards, (PADD Program Coordinator).

## Promoting the Rights of Individuals with Disabilities

Kentucky Protection & Advocacy (P&A) is an independent state agency that protects and promotes the rights of individuals with disabilities. P&A is attached, for administrative purposes only, to the Department of Public Advocacy. The national protection & advocacy system was established by federal statute in 1975, and we were designated as the protection and advocacy system in Kentucky in 1977.

Kentucky P&A, a client-directed agency, advocates for the rights of all people with disabilities, whether they live in institutions or the community, regardless of the nature or severity of their disabilities.

During 2011, the staff of Kentucky Protection & Advocacy worked hard to enhance the civil rights of people with disabilities. P&A staff did this through the provision of information and referral and legal representation of persons with disabilities. P&A staff also provided training so that people with disabilities understood their rights and learned to advocate for themselves.

In addition to providing individual advocacy P&A was also involved in system change efforts including litigation, which impacted numerous Kentuckians with disabilities in FY12.

### Provision of Information and Referral and Legal Advocacy

In 2011, P&A's Information, Training, and Outreach (ITO) Team responded to 2,380 requests for information, advice, and referral. Members of the ITO Team and other P&A staff provided rights training and information about voting to more than 1,000 individuals with disabilities.

In 2011, P&A'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. Advocate and attorney members of the adult team helped persons with disabilities 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). Members of the adult team investigated allegations of abuse and neglect in institutions and the community.

In 2011, P&A'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, as well as behavioral health issues. Advocate

and attorney members of the Children and Youth Team worked in multiple settings to ensure our children and youth with disabilities obtained a free and appropriate education, received needed assistive technology, and had access to services in the most integrated setting. We investigated allegations of institutional abuse and neglect, including advocating for one child through the trial of her alleged perpetrator.

### Individual Advocacy

In 2011, P&A successfully completed a settlement agreement with the US Army to allow for the administration of Diastat, a medication used to control epileptic seizures, in Army day care centers. P&A represented a young man in a lawsuit in federal court who was unable to attend daycare on base at Ft. Campbell because the daycare refused to agree to administer the medication if he should have a seizure. Settlement was reached after the Army agreed to change its interpretation of an Army regulation regarding the administration of medicines at daycare programs.



"Tex" goes to daycare

Aaron is a 27 year old man with cerebral palsy and intellectual

disabilities. A P&A advocate met him at a nursing home, which was an 85 mile drive for his grandmother to visit. He has spent most of his life in bed, and in and out of facilities. P&A and Aaron's legal guardian worked to secure Money Follows the Person funding. Aaron now



Aaron attends prom

lives in the community much closer to his family, and he regularly receives physical therapy which helps with his contractions. He enjoys community outings and recently attended his first prom.

An inmate with disabilities at one of Kentucky largest prisons contacted P&A because the prison had moved him to an area where he could not get access to insulin. Due to intervention by P&A, the inmate resumed the insulin treatments. The inmate was eventually moved to a minimum security facility.

## Systemic Advocacy

### Use of Restraint/Seclusion in Schools

P&A continued to advocate for the regulation of the use of restraint and seclusion in Kentucky's schools. When efforts to pass federal legislation failed, P&A contacted the Kentucky Department of Education (KDE) with our significant concerns arising out of our knowledge of over 80 children who have been injured as a result of improper or abusive restraint and/or seclusion. The KDE has responded to our concerns and has presented the first draft of a proposed regulation limiting the use of restraint and seclusion in Kentucky's public schools.

### Re-Entry Resource Directory

P&A continues to compile a directory of available resources to assist ex-offenders who have a disability become more familiar with services that may help them have a more successful return to the community. To help us gather the information, a survey was designed by P&A and distributed to inmates at the Frankfort Career Development Center, the Blackburn Correctional Complex, and the Kentucky Correctional Institution for Women. A total of 430 surveys were completed. The three top barriers to successful re-entry identified were housing, employment, and financial services. P&A anticipates the directory, which will include a listing of resources and services by county, will be ready for distribution by September 2012. P&A is hopeful copies of the re-entry directory will be available at each prison, probation and parole office, and the fourteen Community Mental Health Centers.

## Litigation

### Jefferson County Schools and OCR Complaint

P&A, Children's Law Center, the Southern Poverty Law Center, and Legal Aid Society met with Jefferson Public School District superintendent and staff several times to discuss disparate discipline of students with disabilities, African American students, and African American students with disabilities. The meetings did not lead to a resolution. On May 20, 2011, the coalition organizations filed a class complaint with the U.S. Department of Education, Office of Civil Rights (OCR) against the Jefferson County Public School District alleging disability discrimination under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The complaint is currently being investigated by OCR.

### Certificate of Need (CON) Administrative Hearing for Level II Psychiatric Residential Treatment Facilities (PRTFs)

P&A and three parents filed opposition to four applicants for PRTF Level II facilities due to their size and violation of the "home-like" setting requirements in the state regulation. Three applicants decreased their size, and our opposition was withdrawn. The fourth was the Purchase

Youth Village application. This application would put the beds in the old Marshall County hospital building. The Hearing Officer approved the application, noting the statute allows Level II PRTFs to be situated in a hospital and finding that the proposal "meets [the] design requirements" of being home-like.

## P&A's Two Advisory Bodies

P&A has two advisory bodies as set forth in Public Laws 99-319 and 106-402 and their implementing regulations. These two advisories are the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council and the Protection and Advocacy for Individuals with Developmental Disabilities (PADD) Advisory Board.

The PAIMI Advisory Council and the PADD Advisory Board guide P&A in setting annual program priorities.

### PAIMI Advisory Council (PAC) Self-Advocacy Project at Personal Care Homes (PCHs)

In 2011, P&A staff and members of the PAC interviewed 20% of the resident population in 20 PCHs throughout the state. Prior to visiting the personal care homes, members of both the PAC and P&A staff attended a



PAIMI Advisory Council

training session focused on conducting interviews with individuals with disabilities. The interview tool used included 104 questions, and a total of 218 individuals were interviewed. The data gathered was entered into the Statistical Package of the Social Sciences, and P&A will issue a report in 2012.

### PADD Advisory Board Self-Advocacy Project



PADD Advisory Board

Six members of the Kentucky Protection and Advocacy for Individuals with Developmental Disabilities (PADD) Advisory Board attended the International Conference on Self-Determination, and one of the PADD Advisory Board members presented at the conference. PADD Board members decided they wanted to create individual power points regarding personal rights and responsibilities and felt using personal stories and photos would be the best way to provide this information. Last year PADD Advisory Board members presented to residents and staff at facilities and community programs, and to self-advocacy organizations.

# 2012 KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY AWARDS



Timothy Young

## For our communities...

*"I thought back to our Founders and what John Adams said, 'It's of more importance to community that innocence should be protected than it is that guilt should be punished.' Communities are made of individuals we defenders help. The Bill of Rights including the right to counsel is a stunning document. That is what the Founders were concerned about for their communities. Every time we stand up for another it is for someone in our community. Every time we represent a client we create a ripple of hope that creates a stronger community. I applaud you as a public defender."*

**Timothy Young, Ohio Public Defender and Vice-Chair of American Council of Chief Defenders, Keynote speaker - June 2012 DPA Annual Awards lunch**



The Professionalism & Excellence Award was presented by KBA President Doug Myers, to Paducah's Chris McNeill, second from left; Public Advocate Ed Monahan, left, presented the Gideon Award to Stanton's John Nelson, third from left; the In Re Gault Award to Suzanne Hopf; the Furman Award to UK's Bob Walker and Jim Clark; the Rosa Parks Award to Louisville's Lisa Butler; the Anthony Lewis Media Award to James Mayse of the Owensboro Messenger-Inquirer, the Nelson Mandela Lifetime Achievement Award to Gail Robinson, not pictured.

## Gail Robinson received the Nelson Mandela Lifetime Achievement Award



Gail Robinson's career of litigating spans the areas of appeals, trials, juvenile, capital, administrative law... the hard

cases, the hopeless clients, the daunting challenges. Gail is a litigation leader, a mentor for many and always an audacious advocate. She represents clients passionately, unrelentingly, indefatigably. Courage is a matter of the heart, the quality of confidence and lack of fear. That's Gail. Former Public Advocate Ernie Lewis said, "people don't like to go up against Gail...because she doesn't lose." No one is successful without significant help. We all face barriers. Some of us face significant barriers that overwhelm us, immobilize us, or prevent us from reaching our potential. However, there are people of a different spirit. Think of Nelson Mandela who was a political prisoner in South Africa for 27 years because he had the audacity to say blacks were equal to whites. "It always seems impossible until it's done," Nelson Mandela said. Think of Gail, a person who for 25 years chose to help poor people in need of legal representation. She has left a legacy for us to enjoy.



Public Advocate Awards were presented by Public Advocate Ed Monahan, left, to ABA President William T. (Bill) Robinson III; Sixth Circuit Judge Boyce F. Martin, Jr.; Administrative Office of the Court's Pretrial Services Director Tara Boh Klute, and State Representative Brent Yonts.



Public Advocate Ed Monahan, left, presented members of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents a Public Advocate Award for their work to recommend major reform of the defender conflict program. The Task Force was created by the Kentucky Board of Governors under the leadership of President Maggie Keene and Chaired by Bill Johnson. Michael D. Bowling, Former Chair, House Judiciary Committee; Lewis G. Paisley, Retired Judge, 22nd Judicial Circuit; Jeff Hoover, Minority Floor Leader, Kentucky House of Representatives; W. Douglas Myers, President-Elect, Kentucky Bar Association; Margaret E. "Maggie" Keane, President, Kentucky Bar Association; William E. Johnson, Chair, Johnson, True & Guarnieri; Jerry J. Cox, Chair, Kentucky Public Advocacy Commission; Charles E. (Buzz) English, Jr., Past-President, Kentucky Bar Association; Daniel T. Goyette, Chief Public Defender, Louisville-Jefferson County Public Defender Corp. Not present: Phillip R. Patton, and Julia H. Adams, Retired Judge, 25th Judicial Circuit.

AWARDS

***"In all criminal prosecutions the accused has the right to be heard by himself and counsel...."***

Section 11, KY Constitution (1891)

## The Right to Counsel



Governor Steve Beshear signs House Bill 378 into law. From left to right, B. Scott West (DPA General Counsel), Damon Preston (Deputy Public Advocate), Ed Monahan (Public Advocate), and Representative Brent Yonts (Bill's sponsor).

The preeminent national standard for public defender programs is independence. The first principle of the seminal ABA *Ten Principles of a Public Defense Delivery System* (2002) is: *"The public defense function, including the selection, funding, and payment of defense counsel, is independent."* Kentucky's public defender program has this independence through a combination of the current statutes, KRS Chapter 31, and a memorandum of understanding with the Justice and Public Safety Cabinet. Since administrations change it is important to incorporate the critical aspects of independence into the statutes. The 2012 HB 378 did just that. How'd it happen? Through the willingness of Representative Brent Yonts to sponsor the bill, obtain key co-sponsors, testify for the bill, do all those byzantine activities that it takes behind the scenes. HB 378 was the last bill to be passed and enrolled in the 2012 General Assembly. It was delivered to the Governor a few minutes before midnight on the 60<sup>th</sup> day. Its successful journey through all the improbabilities is because of many who worked on it and voted on it but primarily because of one man, Brent Yonts. Many cynical observers only see legislators as people of self-interest. To the contrary, there are statesmen who do what is necessary for better government. We have such a statesman in Brent Yonts.



## United States Attorney General Eric Holder on Indigent Defense

*"Putting politics aside, we must address the fact that, simply put, there is a crisis in indigent defense in this country. Resources for public defender programs lag far behind other justice system programs, constituting only about 3 percent of all criminal justice expenditures in our nation's largest counties. In many cases, contract attorneys and assigned lawyers receive compensation that does not even cover their overhead. We know that defenders in many jurisdictions carry huge caseloads that make it difficult for them to fulfill their legal and ethical responsibilities to their clients. We hear of lawyers who cannot interview their clients properly, file appropriate motions, conduct fact investigations, or do many of the other things an attorney should be able to do as a matter of course. This growing crisis is troubling not just because of the government's constitutional duty to ensure the right to counsel. When defendants fail to receive competent legal representation, their cases are vulnerable to costly mistakes that can take a long time to correct. Lawyers on both sides can spend years dealing with appeals arising from technical infractions and procedural errors. When that happens, no one wins."*

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

Sixth Amendment, US Constitution (1791)

# TRIAL LEADERS



**Linda West**  
Bell County



**Steve Florian**  
Boone County



**Renae Tuck**  
Bowling Green



**Brian Hewlett**  
Boyd County



**Jennifer Wittmeyer**  
Bullitt County



**Sandra Downs**  
Capital Trials East



**Jim Gibson**  
Capital Trials West



**Shanda West-Stiles**  
Columbia



**John Delaney**  
Covington



**Susanne McCollough**  
Danville



**Susie Hurst**  
Elizabethtown



**Casey Holland**  
Frankfort



**Greg Berry**  
Glasgow



**Will Collins**  
Hazard



**Tina McFarland**  
Henderson



**Ginger Massamore**  
Hopkinsville



**Dan Goyette**  
Jefferson County



**Liz Curtin**  
LaGrange



**Tom Griffiths**  
Lexington



**Bonnie Potter**  
Lexington



**Deaidra Douglas**  
London



**Eric Stovall**  
Madisonville



**Amanda Mullins**  
Maysville



**Jay Barrett**  
Morehead



**Robin Irwin**  
Murray



**Jerry Johnson**  
Owensboro



**Chris McNeill**  
Paducah



**Traci Hancock**  
Pikeville



**Steve Goble**  
Prestonsburg



**Valetta Browne**  
Richmond



**Teresa Whitaker**  
Somerset



**Lisa Whisman**  
Stanton

Supervisor positions in the Cynthiana and Harlan DPA Offices were vacant as of July 1, 2012.



## Department of Public Advocacy

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