

**General Information****Agency Name**

Office of the State Public Defender

**Agency Director**

Diane M. Lozano, State Public Defender

**Agency Contact**

Rebecca Meza  
307-777-7139

**Mailing Address**

Rogers Building  
316 W. 22nd  
Cheyenne, Wyoming 82002

**Web Address**

<http://wyodefender.wyo.gov>

**Other Locations**

Cheyenne, Laramie, Rawlins, Rock Springs, Evanston, Jackson, Lander, Cody, Sheridan, Gillette,  
Newcastle, Worland, Casper, Douglas and Green River.

**Statutory References**

W.S. §§7-6-101, *et seq.*  
W.S. §§14-12-101, *et seq.*

**Clients Served**

Indigent persons charged with and/or convicted of a crime or delinquent act, and in child protection, in children in need of supervision (CHINS), in termination of parental rights, delinquency cases, and appeals.

**Budget Information**

Expenditures .....\$12,558,113

**Department/Division/Program:**

Office of the State Public Defender

**Report Period:**

FY17

## **Report Narrative**

### **Wyoming Quality of Life Result:**

The Office of the State Public Defender (Office) is a responsible steward of State assets and effectively responds to the needs of residents and guests of the State of Wyoming and helps ensure that families and individuals live in a stable, safe, supportive, nurturing, and healthy environment by providing legal representation for indigent persons accused of a crime and by providing guardian *ad litem* services in child protection, children in need of supervision (CHINS), delinquency cases, and termination of parental rights and appellate cases arising from the previous three types of cases.

### **Contribution to Wyoming Quality of Life:**

The Office's Public Defender Division (PD) provides effective assistance of counsel to indigent adults and juveniles accused of a crime in the circuit, district and juvenile courts as mandated by the federal and state constitutions. The PD maintains 14 trial field offices located throughout the state, as well as an Appellate Office, which provide Wyoming counties with competent, experienced counsel to represent a vast majority of the criminal defendants who seek counsel. The PD ensures the protection of due process rights for its clients at all stages of a criminal proceeding by informing, advising, advocating and negotiating on behalf of the client. In all stages of a criminal case, the PD provides zealous representation for its clients, including attempts to resolve cases through fair plea negotiations.

The Office's Guardian *ad Litem* Division (GAL) provides legal services as Guardians *ad litem* (GAL's) in child protection, children in need of supervision (CHINS), delinquency, and in certain termination of parental rights and appellate cases. The GAL has 6 field offices throughout the state and provides GAL services in 22 counties.

### **Basic Facts:**

The Office has 92 authorized positions (including 17 part-time positions). The Office employs 55 attorneys (trial, GAL, and appellate), 8 administration employees (including the State Public Defender, Deputy State Public Defender, Deputy Guardian *ad Litem*, and fiscal), 5 investigators and 24 staff (including legal assistants and legal support specialists). In addition, the Office utilizes 25 PD contractors and 25 GAL contractors. The BFY2017/2018 budget is \$28,185,941 (PD - \$21,844,295; GAL - \$5,213,648; court-ordered capital case - \$1,127,998). The total PD (& court-ordered capital case) appropriation is 85% from State general funds and 15% from county augmenting revenues. The total GAL appropriation is from State general funds with a 25% match from the participating counties.

The PD must provide effective assistance of counsel pursuant to the Wyoming and Federal Constitutions. In order to guarantee that right to PD clients, each attorney must have a manageable caseload. The ABA *Standards for Criminal Justice, Second Edition* state that "defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations." Defense Function Standard 4-1.3(e). Whether or not a caseload is excessive depends not only on the number of cases but also on case complexity, availability of support systems and the lawyer's experience and ability. The PD monitors caseloads that are recorded by an in-house case-weighted database system. The PD utilizes the caseload maximum recommendations by the *National Advisory Commission on Criminal Justice Standards and Goals* (1973) (NAC). Annual caseloads should not exceed the following: 150 felonies per attorney, 400 misdemeanors per attorney and 200 juvenile court cases per attorney. If an attorney is assigned cases from more than one of these categories (felony, misdemeanor, juvenile), the percentage of maximum caseload in each should be assessed and the combined total should not exceed 100%. These standards are in accordance with Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, American Bar Association, Standing Committee On Ethics And Professional Responsibility and *Reasonable Caseloads: Ethics and Law in Public Defense*, Norman Lefsten, an American Bar Association, Standing Committee on Legal Aid and Indigent Defendants publication.

A criminal defendant has a constitutional right to appeal a criminal conviction. The *ABA Standards for Criminal Justice, Second Edition* state that “defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client’s interest in the speedy disposition of charges, or may lead to the breach of professional obligations”. The same standards apply to appellate counsel. The PD has adopted caseload standards for appeal in compliance with ABA and national appellate standards at 22 appeals per attorney.

The function of the PD is to represent persons accused of misdemeanors, felonies and probation violations in circuit and district courts, and on appeal in the Wyoming Supreme Court, who cannot afford to hire an attorney. The PD represents juveniles accused of delinquency and children in need of supervision cases (CHINS) in juvenile court and on appeal in the Wyoming Supreme Court. Additional functions include representing individuals who are to be extradited to other states and individuals seeking post-conviction relief. In FY16, the PD handled 14,705 criminal cases and was at 102.2% of caseload maximum. In FY17, the PD handled 15,975 criminal cases and was at 109.7% of caseload maximum (8 trial field offices over caseload maximum). In FY16, the PD Appellate Office handled 119 appeals; in FY17, it handled 131 appeals which was 58 appeals over appeal caseload maximum.

The function of the GAL is to provide legal services as Guardians *ad Litem* in child protection, children in need of supervision (CHINS), delinquency, and in certain termination of parental rights and appellate cases under a hybrid model of representation, where the GAL is to advocate for the child’s best interests and the child’s wishes at the same time. In FY16 the GAL provided services to 2,656 children with 1,178 new cases assigned for GAL representation. In FY17 the GAL provided services to 2,860 children with 1,246 new cases assigned for GAL representation.

The Office is designated as the administrator for the John R. Justice Grant, which provides student loan payments to prosecutors and public defenders who agree to continue with public service for 3 years. In FY17, a total of 6 attorneys were awarded this benefit (total of \$30,010) based upon financial need. The grant website is located at <http://jrj.wyo.gov/>.

#### **PD PERFORMANCE MEASURE: Manageable Caseload Maximums**

Chart #1 shows the number of trial field offices above 100% of caseload maximums in FY 2017.

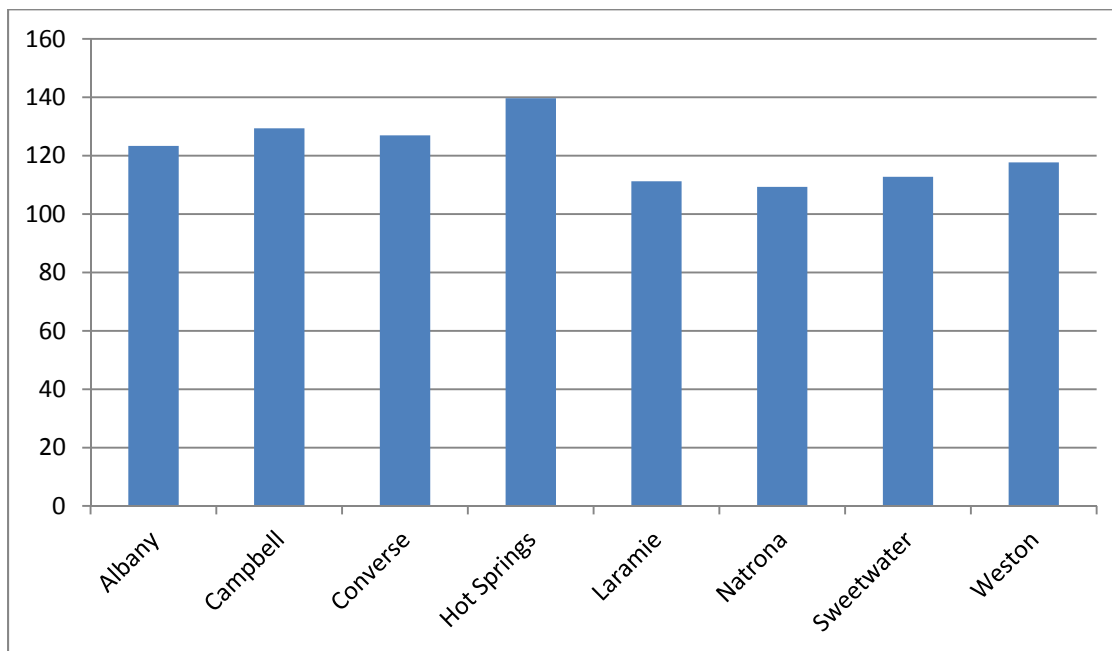


Chart #1

## **STORY BEHIND THE PERFORMANCE:**

There are 14 PD trial field offices which handle the caseload throughout the state. Some field offices are responsible for more than one county. The county in which the field office resides must provide office space or a stipend for each public defender attorney. Some field offices exist in an attorney's private office. Chief Trial Counsel (1 attorney) handles serious and high profile cases, including capital cases, around the state; Chief Trial Counsel also assists with overload in the field offices when necessary and possible. The Appellate Office, located in Cheyenne, handles criminal appeals filed in the Wyoming Supreme Court. The PD provides administrative staff, legal assistants, and investigators to its field offices. Investigators are provided regionally, with the main field offices in Campbell, Natrona, Sweetwater and Laramie Counties staffing full-time investigators. The administrative office located in Cheyenne houses the Director, Deputy, and fiscal employees.

When an accused person appears in court upon a criminal citation or Information, the courts determine whether a person's financial circumstances require the appointment of the PD. Once appointed, the PD *must* provide representation. The PD must provide representation in each case to which it is appointed. The PD represents a vast majority of all criminal defendants who seek counsel. In FY17, the PD represented 98% of all criminal defendants represented by counsel in state trial courts, which is an increase from FY16 (91%). In FY17, the PD provided counsel in 15,975 trial cases and 131 appeals. The average newly assigned cases per attorney is 305.45. In FY16, the PD provided representation in 14,705 trial cases and 119 appeals. The average newly assigned caseload per attorney was 288.

The PD must not only provide counsel to appointed indigent defendants, it must provide constitutionally competent counsel pursuant to the Federal and State Constitutions. In order to be competent, each PD attorney must have a manageable caseload and adequate resources. The ABA *Standards for Criminal Justice, Second Edition* state that "defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations." Defense Function Standard 4-1.3(e). Whether or not a caseload is excessive depends not only on the number of cases but also on case complexity, availability of support systems and the lawyer's experience and ability. The PD monitors caseloads that are recorded by an in-house case-weighted database system. The PD utilizes the caseload maximum recommendations by the *National Advisory Commission on Criminal Justice Standards and Goals* (1973) (NAC). Annual caseloads should not exceed the following: 150 felonies per attorney, 400 misdemeanors per attorney and 200 juvenile court cases per attorney. If an attorney is assigned cases from more than one of these categories (felony, misdemeanor, juvenile), the percentage of maximum caseload in each should be assessed and the combined total should not exceed 100%. These standards are in accordance with Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, American Bar Association, Standing Committee On Ethics And Professional Responsibility and *Reasonable Caseloads: Ethics and Law in Public Defense*, Norman Lefsten, an American Bar Association, Standing Committee on Legal Aid and Indigent Defendants publication.

A criminal defendant also has a constitutional right to appeal a criminal conviction. The ABA *Standards for Criminal Justice, Second Edition* state that "defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations". The same standards apply to appellate counsel. The PD has adopted caseload standards for appeal in compliance with ABA and national appellate standards at 22 appeals per attorney.

Caseloads are tracked for the PD as a whole as well as per each trial field office, each county and each attorney. But because each trial field office provides representation to the local courts, resources are allocated based upon the caseloads of each field office. In order to ensure that each field office has a manageable caseload, the PD utilizes the NAC *Criminal Justice Standards and Goals* for each field office; this is done by calculating the percentage of caseload maximum using the total field office number of assigned felonies, misdemeanors and juvenile court cases and the field office attorney FTE, which includes part-time independent contract attorneys. The primary objective is to reduce caseloads below 100% in each field office. In FY17, the total PD caseload maximum increased to 109% up from 102% in FY16. In FY17 8 field offices (Hot Springs/Washakie Counties, Campbell County, Converse/Goshen/Platte/Niobrara Counties, Albany County, Laramie County, Natrona County, Sweetwater County, and Weston/Crook Counties), exceeded caseload maximums (over 100%) with 2 offices (Sheridan/Johnson Counties

and Uinta/Lincoln Counties) at 100%. The Appellate Office also exceeded caseload maximums (over 100%) by 58 appeals.

In order to fulfill ethical and constitutional obligations to provide effective assistance of counsel, PD attorneys must have the necessary time, training and resources. Necessary resources include funding for expert witnesses. In order to be effective and competent, a PD attorney must have the requisite criminal defense knowledge and training. The PD conducts an annual conference that provides training to PD attorneys, support staff, and investigators. Newly hired attorneys receive a one-day training provided by in-house attorneys. Most of the training provided by the PD is done by mentoring and by hands-on experience. In accordance with the ABA *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003), attorneys representing capital defendants received specialized training at various national conferences. The PD handled one (1) capital case which resulted in the state dismissing the death penalty prior to trial<sup>1</sup>. Furthermore, the PD has adopted the ABA Criminal Justice Standards, Defense Function, and ABA *Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed., ©1993 American Bar Association as its standard of practice.

In addition, the PD requires adequate technological resources. The PD provides hardware, software and connectivity to its offices. This includes laptops and power point presentation software. Currently the PD provides electronic legal research through *Westlaw* for all employee attorneys and legal assistants. Employee attorneys are provided West's *Wyoming Statutes Annotated*, Lexis Nexis's *Wyoming's Criminal and Traffic Law Manual* and Lexis Nexis's *Wyoming Court Rules*.

### **What has been accomplished?**

Low Cost/No Cost Alternatives: Because most PD attorneys are handling an excessive caseload, they barely have the time, energy and resources to adequately and effectively do their jobs; this prohibits them from participating in other aspects of the criminal justice system. PD attorneys are unable to provide ethical representation if caseloads are excessive or are at or above 100% of caseload maximum standards. The PD continues to participate in Court Assisted Treatment Programs when the attorneys have the necessary time to do so. Also, during this BFY, the State Public Defender established an Executive Review Committee to screen requests for expert funding. This Committee thoroughly assessed each and every request ensuring state monies were expended only for cases absolutely requiring this resource, and utilized experienced mentoring for cases the Committee deemed could be handled without use of additional monetary resources.

Additional Resources: In FY17, the PD struggled to provide effective and ethical representation of its clients in accordance with constitutional mandates. Eight field offices and the Appellate Office had excessive caseloads in FY17. Two field offices are functioning at or near 100% of caseload maximum. These offices cannot continue to provide effective assistance of counsel pursuant to the United States and Wyoming Constitutions nor can it fulfill its statutory mandates.

Technology: The PD was audited by the Department of Audit during the 2014 calendar year for FY13. In order to meet audit requirements, the PD will need to develop or purchase new case management system in order to more accurately collect data in accordance with the Public Defender Act. The PD was unable to afford this upgrade. It has utilized the google drive to collect reports and it has provided more clear policies and standards for the collection of data. The PD is attempting to convert to a paperless system but this is not viable if it cannot afford laptops or other technological devices to make this a practical tool for its attorneys.

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<sup>1</sup> The PD was ordered to provide funding in a capital case to which it was not appointed pursuant to W.S. §7-6-109(d).

**Reimbursements:**

The following is the court ordered reimbursement of Public Defender fees for FY17:

	No. of New Case Appointmen ts	Reimbursement Ordered	Finding of No Ability to Pay
Circuit Court	11011	3323	4684
District Court	946	1693	1252
Juvenile court	458	53	486
Total	12415	5069	6422

\*Public Defender Fees are ordered at the time of sentencing. However, the statute requires the annual report include cases appointments, not sentencings. This figure does not include 3,459 subcase misdemeanors that are calculated in the annual caseload inventory.

The PD collected \$376,147 in court ordered reimbursement fees.

**GAL PERFORMANCE<sup>2</sup>**

Notwithstanding the fact that performance measures have been eliminated for the GAL, the following is included to provide an annual report on the GAL performance.

**STORY BEHIND THE PERFORMANCE:**

The Guardian *ad Litem* Division (GAL) was transferred to the Office on July 1, 2008 in a budget footnote and was codified July 01, 2012. The GAL employs 7 full-time attorneys and contracts with an additional 25 attorneys. All attorneys for the GAL provide legal services for children acting as their guardian ad litem in child protection (abuse and neglect), children in need of supervision (CHINS), delinquency and termination of parental rights cases brought by the State of Wyoming and in appellate actions arising thereof. Pursuant to Statute, the Office has entered into Memorandums of Understanding (MOU) with 22 of Wyoming's 23 counties. The GAL began providing services in Sweetwater County in Fiscal Year 2014. Goshen County has chosen not to accept the GAL's services. The Counties have agreed to match twenty five percent (25%) of the state funds expended by the GAL in their county, pursuant to W.S. §14-12-103(b).

Procedurally, the District Court (sitting as the Juvenile Court) appoints the GAL to provide representation for a child upon the initiation of a case or upon request (all children subject to an abuse/neglect action in Juvenile Court are required to have a GAL as per W.S. §14-3-416). The GAL, through use of supervising attorneys, then assigns the case to an attorney. The GAL is administered by a Deputy Guardian *ad Litem* who must be an attorney pursuant to statute. The administrative arm of the GAL consists of the Deputy, a fiscal specialist and paralegal. The GAL Deputy monitors caseloads, provides trainings and resources and consults on individual cases as needed, and maintains the administrative files. Attorneys are monitored through periodic audits of files to ensure they are meeting their ethical and statutory duties. All cases are monitored for compliance by copies of certain filed documents kept in the administrative office and in the case management system database.

The GAL often partners with the Wyoming Supreme Court Children's Justice Project (CJP) on projects, including the Children's Justice Conference (although, this BFY, no partnering on a conference occurred due to a myriad of

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<sup>2</sup> Because of the confidential nature of the GAL data, there are no performance measures that can be reported.

issues). All trainings provided by the GAL ensure the attorneys are able to provide effective representation to children in accordance with latest behavioral and developmental research and legal and ethical best practices.

In FY17, the GAL provided services to 2,860 children with 1,246 new cases. Significant increases in cases and therefore, in required representations were seen in Laramie, Carbon, Sweetwater, and Uinta Counties.

### **What has been accomplished?**

The GAL conducts random Continuous Quality Improvement Reviews (CQIR) and annual evaluations of the attorneys to ensure the timeliness of statutory hearings, effectiveness of representation and compliance with state and federal laws. Emphasis is on obtaining permanency for children as timely as possible. Children in the child welfare system whom obtain timely permanency have been shown to be more productive equal members of society. The GAL has worked diligently with the CJP and Court Improvement Project to improve timeliness of hearings in three different jurisdictions (Park, Laramie and Natrona Counties) which result in significant decreases in out of home placements/stay and corresponding decrease in costs to the State and all entities involved in the juvenile system. The GAL continues to work in Laramie County to improve overall time to permanency.

The GAL internal case management system (CMS) went online July 1, 2015 and the system has complete data entered since May 1, 2016. This system and data has enabled the GAL to continue to provide high quality representation to children and to increase statutory compliance by all parties in juvenile court. The CMS allows the GAL to more completely interact and effectively communicate with Department of Family Services (DFS) and the Courts to pinpoint issues and enable data driven solutions.

The GAL partners with the CJP and DFS to provide the annual Children's Justice Conference. The GAL's Legal Practice Handbook and on-line training modules (including competency tests) for GAL attorneys, both employees and contractors helps reduce travel costs and provides high quality - personalized training. The on-line training modules are located at: [wyotraining.wyo.gov](http://wyotraining.wyo.gov).

**Low Cost/No Cost Alternatives:** The GAL partners with the CJP in training District Court Judges and County Attorneys on the importance of timeliness and permanency. Holding statutorily mandated hearings timely and pursuant to statute reduces out of home care and promotes permanency for children. Permanency results in reduced costs for the judicial system, DFS and many of our partners in the child welfare system (including long-term savings potentials for the Departments of Health and Corrections). The GAL continues to take a leadership role in encouraging best practices in juvenile court. The GAL continues to utilize law student externs and partnerships with other state agencies to share resources and reduce spending

**GAL Division Caseloads, Expenditures, and Revenues Collected by County for FY17 Pursuant to W.S. §7-6-106(d)(iii):**

<b>County</b>	<b>Caseload</b>	<b>Expenditures</b>	<b>Revenues</b>
Albany	70	\$ 60,064.04	\$ 12,012.81
Big Horn	54	46,335.12	9,267.02
Campbell	412	353,519.78	70,703.96
Carbon	181	155,308.45	31,061.69
Converse	79	67,786.56	13,557.31
Crook	28	24,025.62	4,805.12
Fremont	105	90,096.06	18,019.21
Goshen		-	-
Hot Springs	39	33,464.25	6,692.85
Johnson	56	48,051.23	9,610.25
Laramie	575	493,383.19	98,676.64
Lincoln	32	27,457.85	5,491.57
Natrona	413	354,377.84	70,875.57
Niobrara	5	4,290.29	858.06
Park	98	84,089.66	16,817.93
Platte	61	52,341.52	10,468.30
Sheridan	121	103,824.98	20,765.00
Sublette	18	15,445.04	3,089.01
Sweetwater	343	294,313.80	58,862.76
Teton	19	16,303.10	3,260.62
Uinta	94	80,657.43	16,131.49
Washakie	46	39,470.66	7,894.13
Weston	26	22,309.50	4,461.90
<b>Totals</b>	<b>2875</b>	<b>\$ 2,466,915.95</b>	<b>\$ 493,383.20</b>



**John R. Justice Grant**

The Office is designated as the administrator for the John R. Justice Grant, which provides student loan payments to prosecutors and public defenders who agree to continue with public service for 3 years. In FY17, a total of 6 attorneys were awarded this benefit (total of \$30,010) based upon financial need. The grant website is located at <http://jrj.wyo.gov/>.

**Organizational Chart**

