

General Information**Agency Name**

Office of the State Public Defender

Agency Director

Diane M. Lozano, State Public Defender

Agency Contact

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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, CHINS and in child protection, in children in need of supervision, in termination of parental rights, delinquency cases, and appeals.

Budget Information

Expenditures\$13,234,056

Department/Division/Program:

Office of the State Public Defender

Report Period:

FY18

Report Narrative

Wyoming Quality of Life Result:

The Office of the State Public Defender 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, 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 (Public Defender) 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 Public Defender maintains fifteen field offices located throughout the state, including an appellate division, which provide Wyoming counties with competent, experienced counsel to represent a vast majority of the criminal defendants who seek counsel. The Public Defender 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 Public Defender 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* (GALs) in child protection cases, children in need of supervision cases, state initiated termination of parental rights cases, delinquency cases, and appeals. The GAL Division has six (6) field offices throughout the state and provides GAL services in twenty-two (22) counties.

Basic Facts:

The Office of the Public Defender 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 \$27,057,943 (PD - \$21,844,295; GAL - \$5,213,648). The total PD 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 Public Defender must provide effective assistance of counsel pursuant to the Wyoming and Federal Constitutions. In order to guarantee that right to Public Defender clients, each Attorney must have a manageable caseload. The ABA *Standards for Criminal Justice* 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 Public Defender monitors caseloads that are recorded by an in-house case-weighted database system. The Public Defender 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.

The function of the Public Defender's Office is to represent persons accused of misdemeanors, felonies and probation violations in circuit and district courts who cannot afford to hire an Attorney. The Public Defender's Office represents juveniles accused of delinquency and children in need of supervision cases (CHINS) in juvenile court and individuals 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 FY17, the Public Defender's Office handled 15,975 criminal cases and 131 appeals; and was at 109.7% of caseload maximum (8 trial divisions over caseload maximum; 2 trial divisions at maximum). In FY18, the Public Defender's Office handled 14,934 criminal cases and 131 appeals; and was at 103.5% of caseload maximum (8 trial divisions over caseload maximum).

The function of the Guardian *ad Litem* division is to provide legal services as Guardians *ad Litem* in the cases listed above 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 FY17 the GAL provided services to 2,877 children with 1,263 new cases assigned for GAL Representation. In FY18 the GAL Division provided services to 3,013 children with 1,340 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 three (3) years. In FY18, a total of 13 attorneys were awarded this benefit (total of \$31,230) based upon financial need. The grant website is located at jrj.wyo.gov.

PD PERFORMANCE MEASURE #1: Manageable Caseload Maximums

Chart #1 shows the number of field offices above 100% of caseload maximums.

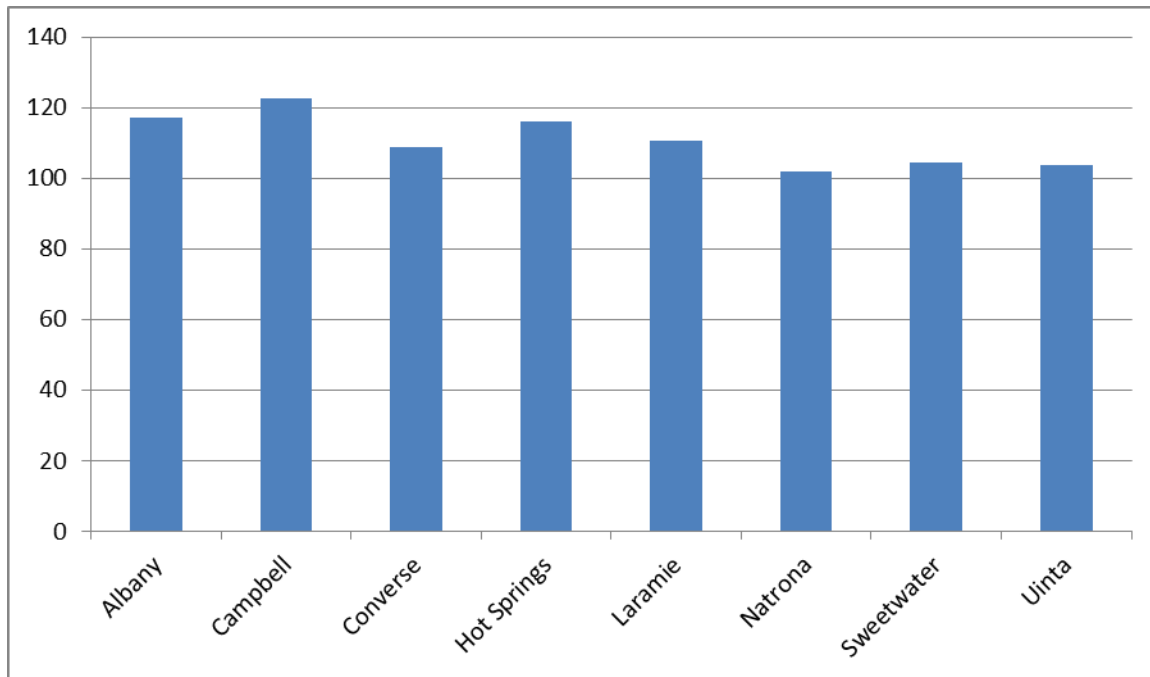


Chart #1

STORY BEHIND THE PERFORMANCE:

There are 14 Public Defender 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 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. The Appellate Division, located in Cheyenne, handles the criminal appeals to the Wyoming Supreme Court. The Office 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 Public Defender. Once appointed, the Public Defender *must* provide representation. The Public Defender must provide representation in each case to which it is appointed. The Public Defender represents a vast majority of all criminal defendants who seek counsel. In FY17, the Public Defender provided counsel in 15,975 trial cases and 131 appeals. The average newly assigned cases per attorney were 305.45. In FY18, the Public Defender's Office handled 14,934 criminal cases and 131 appeals. The average newly assigned cases per attorney were 285.55. In FY18, the Public Defender represented 90.7% of all criminal defendants represented by counsel in state trial courts.

The Public Defender 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 public defender attorney must have a manageable caseload and adequate resources. The ABA *Standards for Criminal Justice* 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 Public Defender monitors caseloads that are recorded by an in-house case-weighted database system. The Public Defender 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.

Caseloads are tracked for the Public Defender as a whole as well per each field office, each county and each attorney. But because each 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 Public Defender 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 offices (Hot Springs/Washakie County, Campbell County, Converse/Goshen/Platte/Niobrara County, Albany, Laramie County, Natrona County, Sweetwater County, and Weston/Crook County) exceeded caseload maximums (over 100%) with 2 offices (Sheridan/Johnson County and Uinta/Lincoln) at 100%. In FY18 8 offices (Hot Springs/Washakie County, Campbell County, Converse/Goshen/Platte/Niobrara County, Albany, Laramie County, Natrona County, Sweetwater County, and Weston/Crook County) exceeded caseload maximums (over 100%).

In order to fulfill ethical and constitutional obligations to provide effective assistance of counsel, Public Defender attorneys must have the necessary time, training and resources. Necessary resources include funding for expert witnesses. In order to be effective and competent, a Public Defender attorney must have the requisite criminal defense knowledge and training. The Public Defender conducts an annual conference that provides training to Public Defender 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 agency 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.¹ Furthermore, the Public Defender 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 Public Defender requires adequate technological resources. The Public Defender provides hardware, software and connectivity to its offices. This includes laptops and power point presentation software. Currently the agency provides electronic legal research through *Westlaw* for all employee attorneys and legal assistants. Full-time employee attorneys are provided West's *Wyoming Statutes Annotated and Wyoming's Criminal and Traffic Law Manual*.

What has been accomplished?

Low Cost/No Cost Alternatives: The Public Defender has been functioning above constitutional standards, which prohibits attorneys from participating in other aspects of the criminal justice standards. Attorneys are unable to provide ethical representation if caseloads are excessive or are at or above 100% of caseload maximum standards. The Public Defender continues to participate in Court Assisted Treatment Programs when the attorneys have the necessary time to do so.

Additional Resources: In FY18, the Public Defender struggled to provide effective and ethical representation of its clients in accordance with constitutional mandates. Eight field offices had excessive caseloads in FY18. 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 Public Defender was audited by the Department of Audit during the fiscal year for FY13. In order to meet audit requirements, the Public Defender 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 Public Defender 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 Public Defender 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.

¹ The Public Defender 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 FY18:

	No. of New Case Appointments	Reimbursement Ordered	Finding of No Ability to Pay
Circuit Court	10251	3518	4452
District Court	1080	1860	1085
Juvenile court	500	71	404
Total	11831	5449	5941

*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 Public Defender collected \$449,744 in court ordered reimbursement fees.

STORY BEHIND THE PERFORMANCE:

The Guardian *ad Litem* Division was transferred to the Office of the State Public Defender on July 1, 2008 in a budget footnote and was codified July 01, 2012. The GAL Division employs 7 full-time attorneys and contracts with an additional 28 attorneys. All attorneys for the Division provide legal services for children acting as their guardian ad litem in child protection (abuse and neglect), children in need of supervision, 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 twenty-two (22) of Wyoming's twenty-three (23) counties. The GAL Division began providing services in Sweetwater County in Fiscal Year 2014. Goshen County has chosen not to accept the GAL Divisions services. The Counties have agreed to match twenty five percent (25%) of the state funds expended by the GAL Division in their county, pursuant to W.S. § 14-12-103(b).

Procedurally, the District Court appoints the GAL Division 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 entitled to a GAL. W.S. § 14-3-416.) The GAL Division, through use of supervising attorneys, then assigns the case to an attorney. The GAL Division is administered by a Deputy State Public Defender who must be an attorney pursuant to statute. The administrative arm of the Division consists of the Deputy, a fiscal specialist and a paralegal. The GAL Division Deputy monitors caseloads, provides trainings and resources and consults on individual cases as needed, maintains 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 certain filed documents kept in the administrative office.

The GAL Division often partners with the Wyoming Supreme Court Children's Justice Project (CJP) on projects, including the Children's Justice Conference. All trainings provided by the GAL Division ensure the attorneys are able to provide effective representation to children.

In FY18 the GAL Division provided services to 3,013 children with 1,340 new cases assigned for GAL Representation.

What has been accomplished?

The GAL Division continues to conduct random Continuous Quality Improvement Reviews and annual evaluations of the attorneys to ensure timeliness of statutory hearings, effectiveness and compliance. Emphasis is in obtaining permanency for children as timely as possible, which results in children involved in the child welfare system being more productive equal members of society. High quality legal representation by attorney Guardian ad Litem result in better outcomes for children. These outcomes not only improve the life of the child and their family, but it also results in significant savings to the state budget. These savings are accomplished by children moving through the system more timely. More timely cases require less involvement from the Court, County Attorneys, Parent's Attorneys and DFS. The GAL Division has worked diligently with the Children's Justice Project improving the timeliness of hearings in three different jurisdictions (Park, Laramie and Natrona Counties) which result in significant decreases in out of home placements/stays and corresponding decrease in costs to the State and all entities involved in the juvenile system.

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 Division 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 Division to more completely interact and effectively communicate with Department of Family Services (DFS) and the Courts.

The GAL Division partners with the Children's Justice Project 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. The GAL Division and the Children Justice Project are participating in an online Juvenile Court Training Module with the National Association of Counsel for Children. This online course is part of the National Certification process for juvenile court attorneys and judges. The course will result in better trained and highly qualified attorneys. The online program is offered at a considerable savings to our attorneys, as well less travel time in attending trainings. Each attorney and Judge is able to participate at their own desk, as time permits.

Low Cost/No Cost Alternatives: The GAL Division partners with the Children's Justice Project 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, Family Services and many of our partners in the child welfare system. The GAL Division 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 CASES, EXPENDITURES AND REVENUES COLLECTED BY COUNTY PURSUANT TO W.S. §7-6-106(D)(III):

COUNTY	CASES	PERCENTAGE	EXPENDITURES	REVENUE
ALBANY	91	3.02%	\$ 76,147.48	\$ 15,229.50
BIG HORN	58	1.92%	\$ 48,533.56	\$ 9,706.71
CAMPBELL	391	12.98%	\$ 327,183.13	\$ 65,436.63
CARBON	202	6.70%	\$ 169,030.67	\$ 33,806.13
CONVERSE	85	2.82%	\$ 71,126.77	\$ 14,225.35
CROOK	35	1.16%	\$ 29,287.49	\$ 5,857.50
FREMONT	122	4.05%	\$ 102,087.83	\$ 20,417.57

GOSHEN	4	0.13%	\$ 3,347.14	\$ 669.43
HOT SPRINGS	46	1.53%	\$ 38,492.13	\$ 7,698.43
JOHNSON	70	2.32%	\$ 58,574.98	\$ 11,715.00
LARAMIE	622	20.64%	\$ 520,480.58	\$ 104,096.12
LINCOLN	30	1.00%	\$ 25,103.56	\$ 5,020.71
NATRONA	413	13.71%	\$ 345,592.41	\$ 69,118.48
NIOBRARA	0	0.00%	\$ -	\$ -
PARK	92	3.05%	\$ 76,984.27	\$ 15,396.85
PLATTE	49	1.63%	\$ 41,002.49	\$ 8,200.50
SHERIDAN	101	3.35%	\$ 84,515.33	\$ 16,903.07
SUBLETTE	18	0.60%	\$ 15,062.14	\$ 3,012.43
SWEETWATER	399	13.24%	\$ 333,877.41	\$ 66,775.48
TETON	25	0.83%	\$ 20,919.64	\$ 4,183.93
UINTA	101	3.35%	\$ 84,515.33	\$ 16,903.07
WASHAKIE	39	1.29%	\$ 32,634.63	\$ 6,526.93
WESTON	20	0.66%	\$ 16,735.71	\$ 3,347.14
		0.00%	\$ -	\$ -
23	3013	100.00%	\$ 2,521,234.69	\$ 504,246.94

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 three (3) years. In FY18, a total of 13 attorneys were awarded this benefit (total of \$31,230) based upon financial need. The grant website is located at jrj.wyo.gov.

Organizational Chart

