

REPORT OF THE CENTRE COUNTY PUBLIC DEFENDER FOR 2016



EXECUTIVE SUMMARY/HIGHLIGHTS

- We opened 2508 new cases in 2016, an increase of about 2.5% from 2015.
- We provided direct legal services to 2301 individuals in 2016 or about 330 clients for each of our 7 attorneys.
- Charges are dismissed in more than a third of the criminal cases we closed in 2016.
- We successfully petitioned the Court to expunge the criminal records of 211 individuals in 2016.
- 98% of the criminal cases we closed in 2016 involved a disposition accepted by the client as satisfactory.
- To the extent acquittals and reversals define success, we were successful in about half of our criminal trials and appeals.
- We submitted claims for the county's reimbursement of our state inmate representation expense to the Department of Corrections and the county of sentence for 336 cases in 2016 in an amount of \$75,311.30.
- Severely handicapped by space constraints in our office, we have nonetheless found a way to utilize local law students and other volunteers to assist us providing our services without cost to the county.
- Our staff provides a significant amount of non-representational services to various county boards and committees.
- Our attorneys volunteer a significant amount of their own personal time to law-related endeavors designed to benefit the legal profession and our community.

INTRODUCTION

Our standard annual statistical report to the Board of Commissioners can be found right after the Table of Contents of this document. This report has historically been just a two-page accounting of the number of public defender cases opened by type and office activity defined by the number of hearings and other quantifiable events occurring during the year.

In 2015, we began supplementing our report with information to give context to those numbers. We have included data and analysis to provide some measure of our effort and value to our clients, county, and criminal justice system. In this report, one can find important information explaining the basis for our statutorily mandated services and our methodology in reporting and analyzing our data. We have added some reports we typically provide only to the county's finance department and have generated some new reports.

Our intent is to further the Board's commitment to transparency in county government by providing a "one source" compilation of information about our office, what it has accomplished in the previous year, and identifiable trends for our future. We have hopefully given the reader the flexibility of deciding for himself or herself just how much information to digest at any given time by prefacing the report with an Executive Summary or Highlights section and including a Table of Contents to the various sections of the report. As always, should the Board desire additional information, we are happy to investigate ways to track and collect that data for future reports.

David Crowley, Public Defender

January 13, 2017

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Statistical Summary of Public Defender Office

January through December 2016

Cases Opened by Type

Capital Cases	1		
Criminal Cases	1014		
Summary Matters	70		
State Parole	103		
County Probation and Parole	381		
Appeals	23		
Mental Health Commitments	279		
Juvenile Delinquency	101		
Children and Youth Services	55		
Civil Custody	0		
Child Support	22		
PFA	31		
Other Contempt Cases	405		
Extradition	23		
		Total New Cases Opened In 2016	2508
		Active Cases Carried Over* or Reopened**	914
		2016	
		Caseload	3422
		Number of Individual Clients served in 2016	2301

Activity for 2016

COMMON PLEAS COURT (Criminal)

Preliminary Hearings	863
Arraignments	639
Hearings	185
Guilty Pleas	675
ARD Placements	238
Sentencings	691
Pre-Trial Conferences	426
Juries Selected	74
Jury Trial Days	17
Bench Trials	12
Informal Dispositions	10

COMMON PLEAS COURT (Other)

County Parole and Probation Revocation Hearings	338
C.Y.S. Hearings	340
Civil Custody Hearings/Conferences	1
MH/MR Hearings	256
Juvenile Hearings	257
Extradition Hearings	25
Summary Trials	65
Summary Appeals	6
Support Hearings	32
Bench Warrant Hearings	342
ARD Revocation Hearings	27
Indirect Criminal Contempt Hearings	378
Memoranda to Court	55
P.C.R.A. Hearings	1

INVESTIGATIVE

Office Interviews and Consultations	965
S.C.I. Interviews and Consultations	387
Centre County Prison Consultations	806
Other Interviews and Consultations	907
Witness Interviews	224
Subpoenas Served	20
Field Investigations	23

STATE PAROLE

State Parole Board Hearings	49
Administrative Appeals	28

COMMONWEALTH, SUPERIOR, AND SUPREME COURT APPELLATE PRACTICE

Petitions for Review Filed	8
Notices of Appeal Filed	18
Docket Sheets Filed	13
Answers and Other Pleadings Filed	6
Briefs Filed	26
Oral Argument	3
Petitions for Allowance of Appeal Filed	19

ADMINISTRATIVE

Meetings with County Departments/Offices	623
Training/Seminars (Days or Parts of Days)	19
Personnel Evaluations Completed	12
Provided Testimony at P.C.R.A. Hearings	2
Internal Meetings	12
Reports to County	12
Bills Generated and Submitted to Other Counties	336

TOTAL

10471

*we carried 696 active cases over into 2016

**we reopened 218 closed cases in 2016

METHODOLOGY USED IN THE REPORTS

The Statistical Summary of the Public Defender Office uses our case management software to tally the number of cases opened and worked on during the course of a year. Our cases are broken into 14 general types. At the request of Chairman Pipe, in 2014 we started thinking about our “caseload” not just in terms of the number of cases worked on during the year, but also the number of people we helped in those cases as we can represent one client in several different cases in the course of a year.

Most experts agree that cases cannot be considered in a vacuum. For this reason, the Centre County Public Defender has historically reported not only the number of cases it opens, but also some of the activity involved in that representation. From our calendaring software, we are able to track and tabulate the number of hearings, client conferences, and other events we have scheduled for a particular case to give some context to the work involved in what we report as our caseload for the year.

a. Definition of a Case

As adopted by the Public Defender Association of Pennsylvania:

A case is defined as the filing of a document with a court or quasi-judicial body naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case. A direct or collateral appeal from the judgment or the filing of post final judgment petitions constitutes a separate case where counsel is appointed.

Shortly after the United States Supreme Court recognized the right to free counsel for an indigent criminal defendant, bar associations, courts, and individual public defender offices began a serious debate about office caseloads and how many cases a public defender could reasonably be expected to handle in the course of a year. National Standards were developed in the early 1970s, which set caps on the number of cases a full-time public defender could be assigned without even defining what a case is. While these 50-year old standards remain the only national attempt at limiting case assignments, they fail to account for the expansion of the right to counsel to new case types, changes in the delivery of legal services, economies of scale, and jurisdictional differences which impact the amount of time needed for an individual case.

To the extent that there is value in comparing the number of cases a public defender opens or works on in a year, that number is useless without a commonly accepted definition of what a case is. Consistent with our state association's definition, the Centre County Public Defender Office defines a case in terms of the individual complaint or petition filed against an individual, which prompts the appointment of an attorney due to the potential loss of his liberty. The duration of a case may extend through final appealable judgment. An appeal from that judgment constitutes a

separate case. Separate complaints filed against the same individual constitute separate cases. A parole or probation revocation or contempt citation related to an earlier case would constitute a new case. Because a diversion is not a final appealable disposition and there is no right to appeal a denial of parole, representation on an ARD revocation or parole application would be considered a continuation of representation on the original case.

b. Basis for Distinguishing “Case Type”

The Public Defender Act, 16 P.S. §9960.1 *et seq.*, is Pennsylvania’s legislative response to a series of United States Supreme Court decisions mandating local governments to provide free legal services to indigent criminal defendants and other individuals facing the forfeiture of their liberty by the state. The Act limits the scope of our representation and generally defines the types of cases where we are obligated to provide representation. Pennsylvania is now the only jurisdiction in the United States where indigent criminal defense funding is solely a local responsibility. We have segmented our caseload into the following general types of cases.

Capital

A capital case is a murder case where the District Attorney has given notice that aggravating circumstances exist in the case, which would permit him or her to seek the death penalty. Until and unless our nation or state government abandons the death penalty, these criminal cases will always be set apart from even the most serious of the remaining criminal cases. The Rules of Criminal Procedure, in pertinent part Pa.R.C.P. 801, require a minimum level of experience and a minimum amount of recent death penalty specific training before an attorney may even enter an appearance for a defendant in a capital case. Though our county has not had a capital case for several years, we have at all times at least one member of our

staff who is immediately able to provide such representation by possessing the required experience and remaining current in the required training.

In 2016 we acquired a murder case where the District Attorney received a grant of extension of time to provide notice of aggravating circumstances. The Court granted that motion and refused to put a hard deadline on the District Attorney to provide the notice. We have counted that as a capital case as it requires early ongoing mitigation investigation resources until and unless the District Attorney makes a decision not to seek the death penalty.

Criminal

We define as “Criminal Cases” those non-capital cases where the highest graded offense on the charging document is a felony or misdemeanor. As opposed to other jurisdictions where public defender representation is only required in felony cases and misdemeanors with at least a possibility of incarceration being imposed, our Public Defender Act provides for public defender representation in all misdemeanor and felony cases. Most of Pennsylvania’s misdemeanor offenses would be considered to be a felony in those jurisdictions in any event due to the length of possible sentence being more than one year in all but ungraded and third degree misdemeanors.

Summary

We define as “Summary Offense” those remaining criminal offense where the highest graded offense on the charging document is graded as a summary. For a summary offense, the maximum possible punishment does not usually exceed 90 days and original dispositional jurisdiction for the offense lies with a magisterial district judge rather than the court of common pleas. We only provide representation in summary cases where a mandatory jail sentence is the punishment if convicted (e.g., Driving Under Suspension DUI-Related) or where the district judge notifies us that he or she is considering imposing a jail sentence if the defendant is convicted.

State Parole

Pennsylvania is unique to other jurisdictions as it has an indeterminate sentencing scheme where prison sentences must include a minimum period of incarceration, determining initial parole release eligibility, and a maximum term, which must be at least double the minimum sentence. Additionally, depending on its length, that prison sentence can either be a county prison or state prison commitment. When a defendant is sentenced to state prison, an administrative agency of state government, the Pennsylvania Board of Probation and Parole, rather than the sentencing court has jurisdiction over parole release and recommitment for parole violations. Pennsylvania has long recognized the right to counsel in the parole recommitment process and representation is mandated by the Public Defender Act. Pennsylvania, through a series of court decisions and an amendment to the Act, places the responsibility of representing state parole violators on the public defender of the county where the parole violator is incarcerated rather than the public defender of the county where he was initially sentenced or the county where he committed the violation. Because we have two state prisons here, we have a rather robust practice in this area consisting of hearings and administrative appeals to the Parole Board.

County Probation & Parole

We define our “County Probation & Parole” cases as probation violations and those parole violations where the local sentencing court rather than the Parole Board retains jurisdiction over the revocation.

Appeals

As the Public Defender Act separately lists state appeals as an area where our representation is mandated, we separately categorize the filing of a notice of appeal (by or against our client) as a new case irrespective of whether we provided representation on the initial case. This is consistent

with national standards and the practices of other jurisdictions tracking public defender caseloads.

Mental Health Commitments

Pennsylvania's Mental Health Procedures Act, 50 P.S. §7101 *et. seq.*, requires the court appointment of counsel for any individual involuntarily committed to psychiatric treatment for a period longer than the initial five-day evaluation period. The Public Defender Act gives the local court discretion to appoint the public defender or private counsel to represent an individual in these cases. In Centre County, the Court appoints private counsel to represent non-Centre County residents at the Meadows Psychiatric Hospital and the public defender to represent all other individuals subject to an MHPA commitment. Our representation on these cases grew exponentially with the Department of Corrections' decision to open a Mental Health Unit at the State Correctional Institution at Rockview. About two-thirds of our mental health commitment cases come from that one facility. We are also appointed to represent the intellectually disabled in civil commitments under the Mental Retardation Act of 1966, and state prison inmates where the Department of Corrections is seeking medical guardianship or injunctive relief.

Juvenile Delinquency

We represent not only those juveniles charged with a criminal offense in Centre County, but also those juveniles who reside in Centre County who have been found delinquent for an offense in another jurisdiction and returned here for disposition.

Children & Youth Services

The State's act of removing an abused or neglected child from the home of his parents is now generally accepted as creating a situation requiring the appointment of counsel. Historically, our office has been appointed to provide representational services to the children in these cases. We currently contract with Children and Youth Services to provide

guardian *ad litem* services pursuant to federal mandate. In Pennsylvania, a guardian *ad litem* must be an attorney. In addition to representing to the court the child's expressed objectives in the litigation, the guardian must undertake an independent investigation to determine and articulate to the court that which is in the best interest of the child.

Civil Custody

Valuing the expertise of our guardian *ad litem* in dependency cases, the Court will occasionally appoint us as guardian in a civil custody dispute.

Child Support

An individual in arrears on court-ordered support may be summoned to a civil contempt hearing to determine whether he should be incarcerated as an inducement to bring his obligation current or make other financial arrangements with the court. As this involves the potential loss of liberty, we are available to provide representation at these hearings to those who apply for our services or when we are court appointed for a bench warrant.

PFA

An individual accused of violating a Protection From Abuse Act Order may be immediately incarcerated and held for a summary criminal contempt trial. We provide representation at the initial arraignment on most of these arrests and try to secure a bail release for them to continue to be employed. We also provide representation at the final hearing if they are not released or financially unable to secure private counsel.

Other Contempt Cases

By far the largest growing type of case for us are the remaining criminal contempt cases where a defendant who has concluded his sentence has been unable to completely satisfy the fines costs and restitution ordered as part of that sentence. If the Court finds in a contempt trial that the failure to pay was willful, the defendant may be sentenced to up to six months incarceration.

Extradition

The final case type is our representation of inmates at our local county or state prisons who are wanted as a fugitive from another state. They may have open charges there or they may be wanted as a probation or parole violator there. They may be finishing a sentence here or they may have just been picked up in a traffic stop with no ties to the area. In all these cases, before they can be sent back to the demanding jurisdiction, the local court must advise them of their rights to challenge extradition and the right to assistance of counsel in such a challenge. Typically the Court appoints us to go to the prison to meet with the inmate in advance of that court proceeding. If the inmate declines to waive extradition we seek bail release and habeas corpus relief.

FIVE-YEAR COMPARISON OF SELECT DATA

In the chart which follows, we have compiled case type openings and select event data from the past five years to look for trends and help us make projections of our future needs.

Statistical Summary of Public Defender Office 5 year look back

Cases Opened by Type	2016	2015	2014	2013	2012
Capital Cases	1	0	0	0	0
Criminal Cases	1014	999	1079	1111	995
Summary Matters	70	68	61	50	55
State Parole	103	95	100	44	66
County Probation and Parole	381	310	289	319	210
Appeals	23	72	55	48	27
Mental Health Commitments	279	297	257	267	201
Juvenile Delinquency	101	94	85	135	142
Children and Youth Services	55	39	57	39	30
Civil Custody	0	0	4	2	9

Child Support	22	12	15	31	23
PFA	31	45	38	30	23
Other Contempt Cases	405	394	277	75	25
Extradition	23	22	13	18	11

Select Activity for the Period

COMMON PLEAS COURT (Criminal)

Preliminary Hearings	863	845	853	932	799
Arraignments	639	656	693	671	523
Hearings	185	252	306	213	246
Guilty Pleas	675	637	664	670	546
ARD Placements	238	198	218	264	265
Sentencings	691	686	762	899	687
Pre-Trial Conferences	426	234	239	140	136
Juries Selected	74	36	37	22	21
Jury Trial Days	17	20	11	6	0
Bench Trials	12	6	18	12	6
Informal Dispositions	10	9	3	22	8

COMMON PLEAS COURT (Other)

County Parole and Probation Revocation Hearings	338	282	250	249	180
C.Y.S. Hearings	340	280	266	209	197
Civil Custody Hearings/Conferences	1	1	2	5	31
MH/MR Hearings	256	287	236	241	183
Juvenile Hearings	257	203	213	322	269
Extradition Hearings	25	18	14	18	12
Summary Trials	65	65	69	47	46
Summary Appeals	6	10	2	11	11
Support Hearings	32	13	13	15	15
Bench Warrant Hearings	342	372	369	175	117
ARD Revocation Hearings	27	27	33	36	28
Indirect Criminal Contempt Hearings	378	426	230	113	77
Memoranda to Court	55	73	40	50	49
P.C.R.A. Hearings	1	1	0	1	3

ROCKVIEW AND BENNER

Client Interviews and Consultations at Benner	113	98	66	13	N/A
Client Interviews and Consultations at Rockview	274	342	299	292	243

Identifiable trends or anomalies

1. Appeals

The 23 appellate cases opened in 2016 represented an all-time low for the office. In particular CYS appeals were only 15% of the 5 year average while criminal appeals and state parole appeals were about half of our 5 year average.

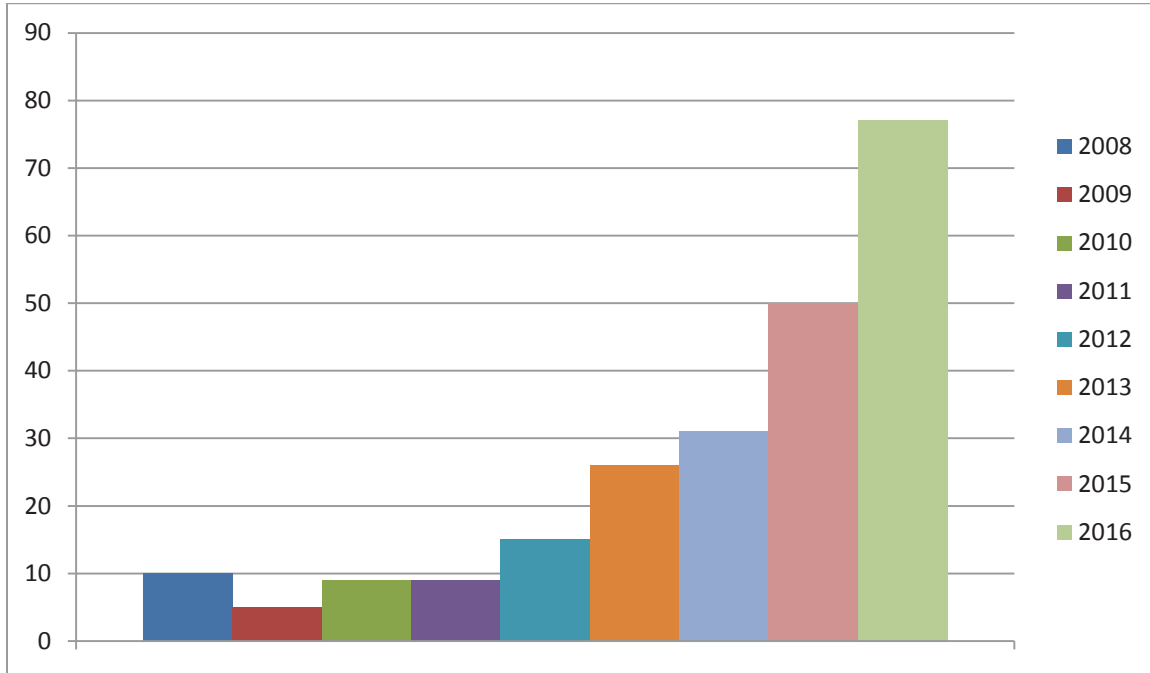
In looking at our dependency appeals there was a dramatic increase from 2013 through 2015. Where we had previously only been averaging a couple of these appeals each year, we were averaging 10 appeals in this 3 year period. The dramatic increase in these three years appears to be attributable to a couple of extremely litigious parents with multiple children who had filed multiple appeals. As their children have all been placed in permanent adoptive homes we are probably going to return to just 1 or 2 of these appeals per year.

The reduction in criminal appeals appears to be the result of an increase in trial acquittals and the absence of Commonwealth appeals from pre-trial orders in 2016. We are predicting that in 2017 we will be closer to our average of 22 criminal appeals.

The reduction in state parole appeals appears to be directly related to significant delays (many as long as 9 months) in the Parole Board's response to administrative appeals. Before a state parole violator may appeal his recommitment to the Commonwealth Court, he must exhaust all administrative remedies. For most of 2016 the Board was acting under the belief that the House of Representatives would pass legislation consolidating it with the Department of Corrections. As a result, more than half of the attorneys in its chief counsel's office resigned or took other positions with the Board. Those positions were not replaced and the work was not timely done. With the recent defeat of the consolidation bill, things should be getting back to normal with the Board. In 2017 we should exceed our average of 13 annual state parole appeals.

2. Criminal cases from Rockview and Benner

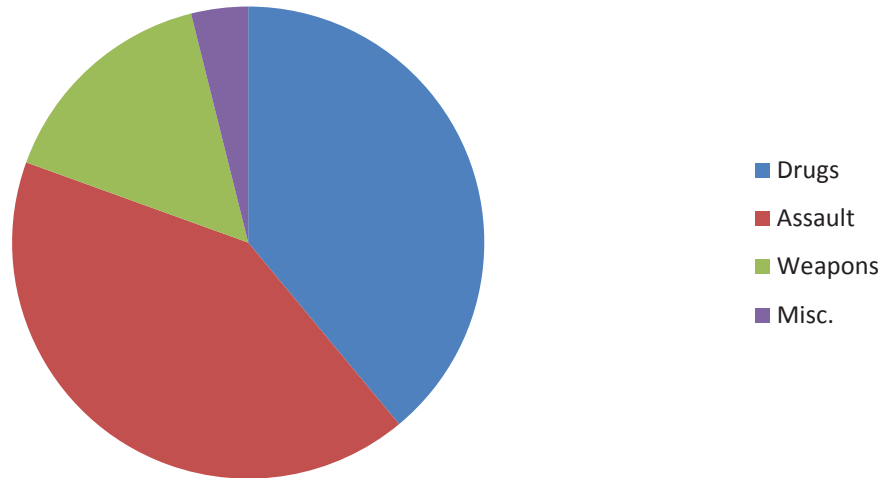
The Court has asked us to track the number of cases we pick up where a state inmate is accused of committing a new criminal offense at Rockview or Benner. The following chart shows the number of these cases opened in each of the past 10 years.



Prior to the opening of the State Correctional Institution at Benner Township in 2013 we had been averaging about 10 state inmate criminal cases per year from the State Correctional Institution at Rockview. In 2016 our institution criminal cases ballooned to 77.

For 2016 we looked at each of the 77 cases and broke them down into 3 basic categories: Assaultive (32), Drug Possession (30) and Weapon Possession. The miscellaneous category in the chart is comprised of one each of the following cases: False Reports to Law Enforcement, Arson, and Failure to Register under Megan's Law.

Distribution of SCI Criminal Offenses by Category



Act 26 of 1997 made it a second degree felony for any inmate to possess any amount of a controlled substance. In the six year period from 2008 through 2013 the office opened a total of two drug possession cases from our state prisons. In 2016 we opened 30.

REIMBURSEMENTS FOR OUR LEGAL SERVICES

While we are 100% county funded, we do our part to try to recoup for the county general fund as much of a reimbursement for our services as is available. As previously stated, we have a contract with the County's Children and Youth Services to provide guardian *ad litem* services for children alleged to be without proper parental control and guidance. We prepare monthly reports and a budget each year for CYC to include in their request to the federal government for its funding. The other major area of available reimbursement for our services involves some of the case types where we represent state inmates at the two local state prisons.

State Parole Recommitments

The Public Defender Act makes the county where a parole violator is incarcerated responsible for providing representation at recommitment hearings and any administrative or court appeals of its decisions. The Act also makes the county of sentence responsible to reimburse another county which supplies its public defender for that representation. We currently seek a reimbursement in the amount of \$100 for a hearing and \$45 for each hour worked if an appeal is requested. In 2016, we submitted 116 bills to other counties for this work in an amount totaling \$25,413.43.

State Inmates Charged for Crimes at the Prison

We used to seek reimbursement from the county of sentence for representation of state inmates accused of committing a new crime at Rockview based on a statutory provision, which made the county of sentence responsible for those costs. That statute was amended several years ago to make the “Commonwealth” responsible for those costs. Centre County joined several other counties with state correctional institutions to compel the Commonwealth to reimburse them for these costs. That suit ended in a settlement with the Department of Corrections agreeing to reimburse only the actual salary and benefits for the hours a public defender spends working on one of these cases as documented by an itemized bill of time spent. It is an extremely cumbersome process, which fails to account for our overhead and other expenses directly related to the case. In 2016, we sought DOC reimbursements in the amount of \$31,557.15 for 57 criminal cases from SCI Rockview and SCI Benner.

Mental Health Commitments from the Rockview MHU

Several years ago, the Department of Corrections opened up an inpatient Mental Health Unit at the State Correctional Institution at Rockview when it first closed the Mental Health Unit at the State Correctional Institution at Pittsburgh. It then closed the Mental Health Unit at the State Correctional Institution at Cresson. Our office provides

representation to those inmates forced into treatment in that unit pursuant to the Mental Health Procedures Act and the Public Defender Act. Like the State Parole cases, we seek reimbursement from the county of sentence in the amount of \$100 for each hearing and \$45 dollars an hour thereafter if an appeal is requested. In 2016, we submitted 163 bills to other counties seeking reimbursement in the amount of \$18,712.72.

CRIMINAL CASE CLOSURE REPORT FOR 2016

Eleven hundred twenty-five criminal cases were closed by this office in 2015. A case is closed at the conclusion or our representation. Relatively recent changes in the law and local procedures requiring a greater participation by this office in the county parole release process have caused us to either keep cases open longer than in the past or reopen them as we do with cases diverted through the ARD program which are subsequently revoked and brought back into court.

Seeking some measure of the value of our services in this significant area of our practice, we started tracking the disposition of our criminal cases in 2015. We have defined “disposition” as that event in a criminal case where the case is dismissed prior to trial, diverted from criminal prosecution by the Court and District Attorney, tried to verdict by a judge or jury, or the entry of a plea, which resulted in a final appealable sentence. While a diverted case may ultimately result in the dismissal of criminal charges, we have not included that dismissal as a “disposition”. A diverted case through ARD may be revoked because of the client’s violation of conditions and eventually result in a plea or trial disposition. For these reasons, we just identify the disposition as a diversion. The successful diversions, which result in dismissal of charges and expungement of criminal record are reflected separately at the end of this report.

We did not represent the defendant at the time of disposition on 83 of the criminal cases closed in 2016 because we either ceased representing

the client before the disposition (a conflict was declared after representation commenced, private counsel was retained, client no longer qualified as indigent, client eventually waived counsel) or we picked the case up after the disposition (we were appointed for post-sentence motions, we received a parole application for an inmate we did not previously represent, we were appointed on a Post-Conviction Relief Act Petition).

Breakdown of Criminal Case Dispositions for 2016

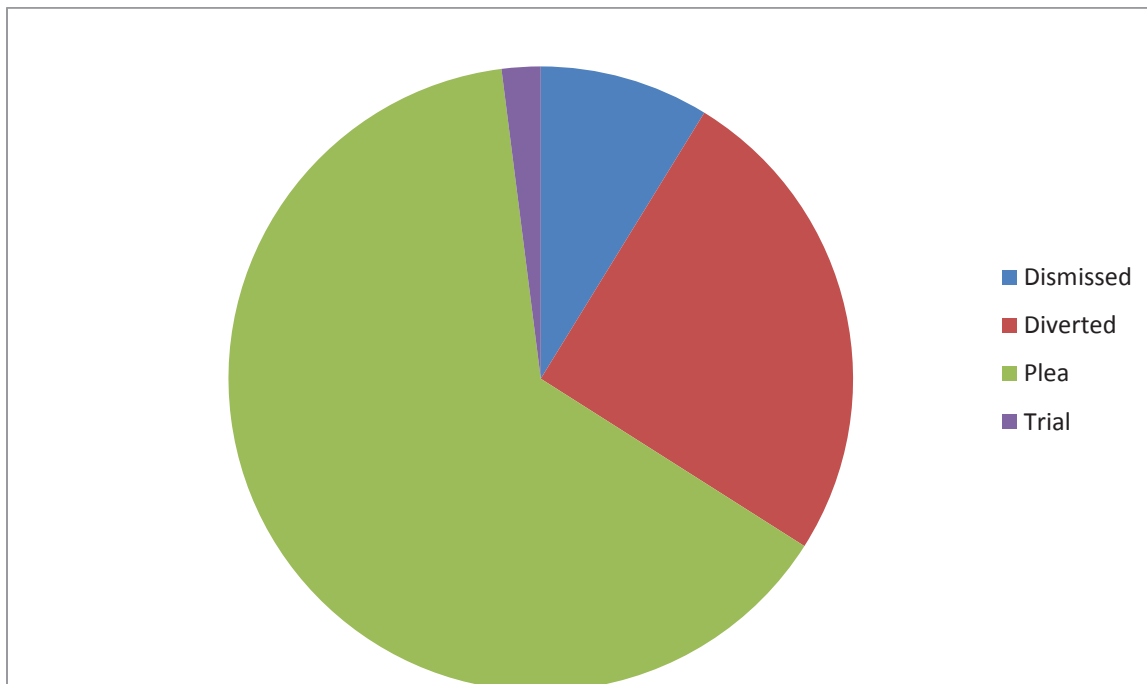
Of the cases where we did represent the client at what we have defined as the “case disposition” the following were disposed of as follows:

Dismissed pre-trial: 96

Diverted from criminal prosecution: 276

Plea: By Agreement 687, By Open Plea 13

Trial: By Jury 16, By Judge 6



Counting the acquittals, dismissals, and diversions where the charges are eventually dismissed and expunged, 37% of the criminal cases we represented at disposition in 2016 resulted in no conviction. To the extent that some measure of client satisfaction can be assumed in not only the dismissals and diversions but also in the number of cases where the client agreed to his plea-bargained sentence, Centre County Public Defender client satisfaction with the disposition of their criminal case could be measured at about 98%.

Breakdown of Sentences from Open Pleas and Trial Convictions

For the remaining 2% of our criminal cases closed in 2016, we went through each case to collect additional information about how the cases ended for the client. Of the cases where a dismissal, diversion or a mutually agreed upon plea agreement could not be achieved and the client was left with the options of pleading open or going to trial, we recorded the following sentencing and post-dispositional information:

Open Plea results: Fines & Costs only 1, Probation 3, County Prison 2, State Prison 3 (no plea offer was made in 3 of the cases, the sentence was less than the offer in 8 cases and more than the offer in 2 cases)

Non-Jury Trial results: Acquittals 3, Dismissal after appeal 1, Probation 2, State Prison 1 (Of the convictions which remained after appeal, no offer was made in 1, the defendant received the same sentence as the offer in 1, and the defendant received a lower sentence in 1)

Jury Trial results: Acquittals 4, State Sentences 10, County Sentences 2 (Of those 12 Jury Trial convictions: Sentence was less than the plea offer 2, Sentence was the same as the plea offer 0, Sentence was more than plea offer 6, No plea offer was made 4)

Expungements

In this information age, one of the greatest impediments to offender rehabilitation and reentry into society is the inability to secure employment due to a criminal record. Though legislation was recently passed to expand the availability of expunging criminal records, the right to expungement of misdemeanors and felonies is currently limited to those cases where the charges have been dismissed through acquittal at trial or dismissal following the successful completion of the Accelerated Rehabilitative Disposition diversion program. In 2016, we successfully expunged the criminal arrest records for 211 clients.

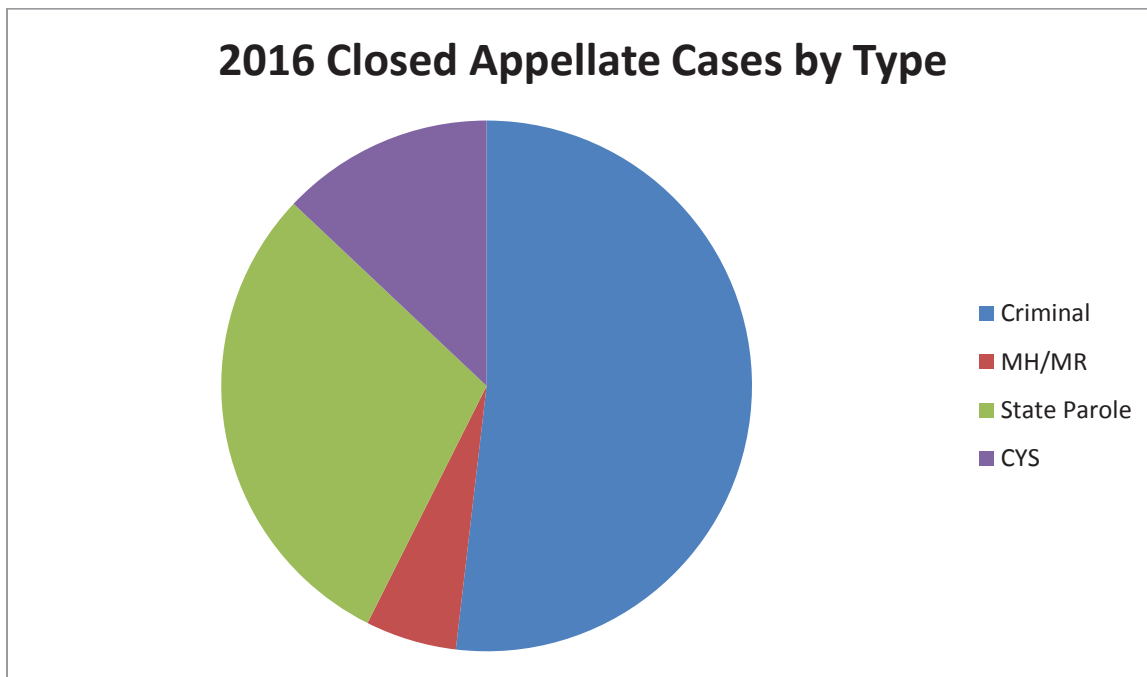
APPELLATE CASE CLOSURE REPORT FOR 2016

A party in a court proceeding has the right to appeal a final adverse decision to a higher court. If the party had a right to counsel in the court below, that right extends to the appeal and counsel must be appointed for the appeal if the party remains indigent or becomes indigent after the lower court judgment. In the context of criminal cases, especially, it is not uncommon for a previously privately represented defendant to be incarcerated after sentencing or to have expended his financial resources for his trial and need our services for the appeal.

Appellate cases are generally more time consuming than any case a public defender has other than a capital case. Appellate cases require counsel's extensive review of the transcripts and other documents constituting the record made in the lower court. They require the preparation of a legal document called a "brief", which extensively cites to that record and presents a legal argument based on a comprehensive review of statutory and decisional case law. The national standards discussed above recommend a separate division for appellate work due to the required knowledge of complex appellate rules. They also recommend

a cap of about 25 appellate cases per year for an attorney doing nothing other than appeals.

We closed 54 appellate cases in 2016. For this report, we grouped them into five general areas: appeals in criminal type cases (criminal cases, contempt, probation or county parole revocations), appeals in state parole cases, appeals in Children & Youth Services cases, appeals in juvenile delinquency cases, and appeals in mental health commitment cases. The chart below gives this distribution of those closed cases by area by area of practice.



Our client was not the appellant (the party filing the appeal), in all of these appeals and not every case was litigated to a final court decision. Some cases are withdrawn, dismissed or remanded before a brief is filed by this office. Sometimes this occurs after we have filed our brief. We went through the cases in each of the areas noted the following dispositional information.

Juvenile

We closed no juvenile delinquency appeals in 2016, but had one appeal still pending at the end of the year.

Mental Health Commitments

We were the appellant in all 3 cases and withdrew 1 appeal prior to briefing, the Superior Court affirmed the lower court decision in the remaining 2 cases.

CYS

A parent, guardian, and the agency may appeal common pleas court determinations concerning dependency and orphans' court determinations to terminate parental rights. We were the appellee in all seven of these cases. All these cases required the filing of briefs, and the Superior Court affirmed the lower court in all these cases.

State Parole

Our state parole cases are commenced in the other intermediate appellate court, the Commonwealth Court, as they involve an appeal from a state agency rather than a common pleas court. For this reason, we have separated state parole from "criminal type" appeals. The scope of appellate review is extremely limited in the Commonwealth Court and that Court requires an application to withdraw from defense counsel when counsel determines there are no issues of arguable merit available to the inmate. The application must be accompanied by an *Anders* Brief or "No Merit" letter analyzing the record and explaining why there is no legal support for the appeal.

We were the Petitioner in all 16 cases. Three of those cases were withdrawn by the client and one was dismissed by the Court prior to briefing. In five cases our motion to withdraw with supporting *Anders* Brief was granted and the Parole Board decision was affirmed.

Of the 7 remaining state parole appeals the Parole Board's decision was affirmed in 3 cases, reversed in 2 cases, and in 2 cases the Board agreed with us after reading our appellate brief and petitioned the Court for remand to correct its decision.

Criminal Type

The District Attorney's office was the appellant in 5 of our 28 appeals. It prevailed in none of its appeals. It withdrew one of its appeals before we had to file a brief. Of the cases we briefed, the Superior Court affirmed all four.

Of the 23 cases where we were the appellant, 13 were affirmed and 10 were reversed. Counting the appeals the District Attorney filed, we were the prevailing party in over half of the criminal type appeals, which were briefed and litigated to final judgment.

REPORT ON OUR CLINICAL PROGRAM AND VOLUNTEERS

In addition to the chief public defender, we are currently staffed with 7 full-time assistant public defenders (an assistant public defender position was added in September 2016), an office manager, an investigator, a paralegal, and 3 secretaries. Our close proximity to a major university has historically provided this office with the opportunity supplement our paid staff with volunteer assistance by offering an opportunity to its students and others in the community seeking practical experience in the justice system. In years past, we have taken criminal justice and social work undergraduates as office interns. When the University became affiliated with the Dickinson School of Law and opened a local campus, we were a source of internship, externship, and fellowship opportunities for its law students. Four years ago we partnered with the law school in developing a criminal law clinic supervised by two of our staff attorneys. Our present space constraints have severely limited our ability to expand that clinic and take other students as interns.

The clinic consists of four law students in their final year who have been certified by the Supreme Court to enter into a limited practice of the law under the direct supervision of a licensed attorney. The clinic runs roughly from September until May.

REPORT OF NON-REPRESENTATIONAL DUTIES

The Chief Public Defender reports quarterly to the Board of Commissioners. He meets bi-monthly with the Common Pleas Court Judges to share information about systemic efficiencies and challenges in the local court system. The Public Defender prepares an annual budget for his office for approval by the BOC and makes various reports to the BOC. The Chief Public Defender also prepares an annual budget for and makes monthly reports to Centre County Children & Youth Services for the County's partial reimbursement for our service as guardian *ad litem* for dependent children. He also approves bills to the Department of Corrections and the county of sentence when our representation is subject to a reimbursement from those entities. In supervising his staff, he provides annual performance reviews.

In 2016, the office supplied manpower hours to the following BOC and judicially approved collaborative efforts with other stake holders in the justice system.

CJAB

The Centre County Criminal Justice Advisory Board (CJAB) was created on June 8, 1999, by a joint resolution of the Centre County Board of Commissioners and the Centre County Board of Judges. The CJAB is composed of key stakeholders from the courts, county government, law enforcement, victim services, and various community agencies that are involved in the administration of justice within Centre County. The CJAB is

advisory in nature, and makes recommendations to agencies, elected officials, and the courts on matters pertaining to juvenile and criminal justice operations. There has been a Centre County Public Defender on the Board since its inception. In addition to attending its monthly meetings members of this office participated in the following initiatives of the CJAB in 2016:

AOPC Drug Court Training

Reentry Coalition

BARJ

With the passage of Act 33 in 1995, Pennsylvania's Juvenile Act was amended and the mission of Pennsylvania's juvenile justice system was redefined to include the goals of "Balanced and Restorative Justice." According to Act 33, the juvenile justice system was charged "... to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community." Since the early 1990s, we have dedicated one of our staff attorney positions to work exclusively in juvenile court. Our "juvenile specialist" as a member of the county BARJ meets regularly with representatives of the court, juvenile probation, the district attorney, and others to further the county's commitment to this state mandate.

Children's Round Table

Pennsylvania's Court Improvement Program is guided through a three-tiered structure known as the Children's Roundtable Initiative. The three tiers include local Children's Roundtables in each of the 60 judicial districts, 7 statewide Leadership Roundtables and 1 State Roundtable.

Pennsylvania uses the Roundtable model to guide the flow of dependency practice and the collaboration between the dependency courts, the Department of Public Welfare, and other relevant stakeholders in the dependency side of the juvenile court system. Our guardian *ad litem* is a member of the statewide, Children's Round Table which meets bi-annually, for three days. He also serves on two local sub-committees: Court Impact and Transition Age Youths, which meets once a month for an hour.

REPORT OF THE OFFICE RELATED VOLUNTEER WORK

As a member of the legal profession, an attorney is encouraged, if not ethically obligated, to do a certain amount of law-related volunteer work called *pro bono publico*. Because we are full-time public defenders and are not permitted to have a private practice, it is difficult if not impossible to offer free direct legal services to individual clients. Over the years, we have found other ways to honor our *pro bono* responsibilities. We have volunteered on our vacation and personal time, evenings, and weekends in a variety of endeavors, which serve the community and advance the goals and objectives of criminal justice and the profession as a whole. In 2016, we donated personal time to the following office related activities.

Public Defender Association of Pennsylvania

The Public Defender Association of Pennsylvania is a statewide community of public defenders dedicated to securing a fair justice system and ensuring high quality legal representation for people facing loss of life, freedom or family. It is legislatively mandated and was incorporated in 1971. Centre County's first Chief Public Defender, Ned Williard, was the first Vice President of this Association. We have had an office member on its Board of Directors since 1997. We have had an office member serve as President of the Association and have had a member on its executive committee as Secretary of the Association since 2005. For most of the

past 16 years, we have had at least one office member donate vacation time to serve on the volunteer faculty of PDAP's annual training programs for trial and appellate attorneys.

Pennsylvania Commission on Sentencing

The Commission was created by the General Assembly in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy that would increase sentencing severity for serious crimes and promote fairer and more uniform sentencing practices. Over the years, the Centre County Public Defender office has had members volunteer personal time to serve on several of its work groups and committees. In 2014, we were one of two public defender offices invited to join its Strategic Advisory Work Group. The workgroup is composed of Commission staff, Common Pleas Court Judges, District Attorneys, Defense attorneys and representatives of other court-related offices and organizations. It was charged with taking a fresh look at the sentencing guidelines and some of the broader criminal justice policies to determine if there are things that can be done differently or if there are recommendations that can be made to the General Assembly or administration to advance changes to more efficiently use the resources at PCS's disposal. This workgroup concluded its mission in July of 2016. One of our staff volunteered two half days this past November for a commission sentencing workshop with graduate students at the University.

Pennsylvania and Centre County Bar Association

Six of our attorneys belong to both associations. In 2016, we had one of our attorneys on the local association's board of governors. For several years, we had at least one of our attorneys volunteer as the attorney advisor to local high school mock trial teams competing in the state association's competition. Other members of the office have volunteered as jurors in that competition.

Leadership Centre County

Leadership Centre County is a 501 (c)(3) Corporation dedicated to the development of qualified leaders within the community. The program was founded in 1991 as a cooperative effort of the Chamber of Business & Industry of Centre County, the Bellefonte Inter-Valley Area Chamber of Commerce, the Moshannon Valley Economic Development Partnership, and the Pennsylvania State University. Leadership Centre County (LCC) is a self-sustaining organization governed by a board of directors. It is one of more than 1000 similar programs across the country. The LCC experience has an immediate, positive effect on the participants, their organizations, and the community. Each person is better informed and more skilled in active community leadership. In the 2015-2016 session, the Centre County Public Defender had one alumnae of and one attorney enrolled in LCC.

Wilkinson-Campbell Chapter of the American Inns of Court

American Inns of Court (AIC) are designed to improve the skills, professionalism, and ethics of the bench and bar. The Inn of Court is an amalgam of judges and lawyers meeting approximately once a month to “break bread” and to hold programs on matters of ethics, skills, and professionalism. Our first assistant was on the committee to develop the local chapter several years ago and numerous members of our office have participated in its evening programs since its inception. We had one member participating in the Inn of Court in the 2015-2016 session.