

## PUBLIC DEFENDER

### Wyoming Quality of Life Result:

The Wyoming Public Defender Program provides effective assistance of counsel for needy persons accused of committing a crime. Directly, the Program is a responsible steward of State assets and effectively responds to the needs of residents and guests. Indirectly, our Agency contributes to Wyoming families living in a stable, safe, supportive, nurturing, healthy environment.

### PUBLIC DEFENDER PROGRAM:

#### Contribution to Wyoming Quality of Life:

The Wyoming Public Defender Program, as part of the criminal justice system, fulfills a constitutional obligation by providing effective assistance of counsel to our clients, needy persons accused of crime and needy juveniles accused of committing a delinquent act, whom we are appointed to represent. By providing legal assistance to those who cannot provide for themselves, we are part of the Human Services of this State, and by assuring the proper functioning of the criminal justice system, we contribute to the Public Safety of the citizens of this State. By defending those wrongly accused or erroneously charged, we insure fairness and balance within the courts for the people of Wyoming. We provide a necessary balance to the criminal justice and juvenile court systems.

#### Basic Facts:

Total Number of Authorized Employees:	53 full-time 19 part-time
Budget Information:	
General Funds	\$ 5,745,025
Other Funds	1,124,068
HB308 Grant Funds	<u>468,000</u>
TOTAL	\$ 7,337,093

The primary function of the agency is to represent needy persons accused of crime and juveniles accused of committing a delinquent act. As such, we represent those individuals in all state courts (i.e., Circuit Court, District Court, Juvenile Court, and the Wyoming Supreme Court), including appeals from a lower court to a higher court. Additional functions include representing individuals facing revocation of probation and individuals who are to be extradited to other states. The agency does not handle cases in municipal or federal courts, other than a Writ of Certiorari to the United States Supreme Court.

The agency represented more than 13,400 individuals in FY06, including 89 appeals to the Wyoming Supreme Court.

**Performance:**

This annual report addresses the Strategic Plan (6<sup>th</sup> edition) which covers the time period from July 1, 2004 to June 30, 2008. There were five performance measures (i.e., outcomes) set forth in this strategic plan:

- Effective Assistance of Counsel
- Manageable Caseloads
- Conflict-Free Representation
- Position and Salary Parity
- Program Turnover Not to Exceed 20% Per Year

Performance measures for the 7<sup>th</sup> edition of our Strategic Plan included two performance measures: a manageable caseload and effective assistance of counsel.

**Performance Measure #1: Effective Assistance of Counsel:**

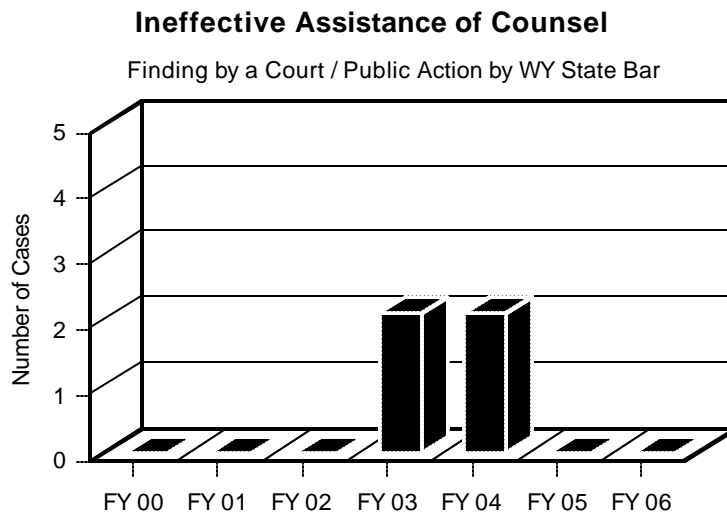
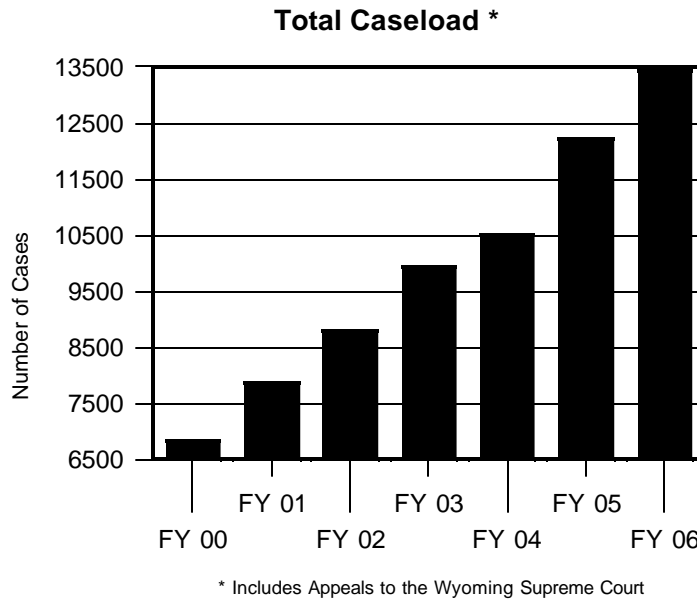


Chart #1 shows that in FY06, there were no findings of ineffective assistance of counsel with any public defender cases. Effective assistance of counsel is constitutionally defined and is accordance with the Rules of Professional Conduct for Attorneys at law. It is measured by three factors: 1) percentage of cases in which a court makes a finding of ineffectiveness of counsel; 2) written complaints by members of the judiciary to the Public Defender administration; and 3) public action by the Board of Professional Responsibility against a Public Defender.

**Performance Measure #2: Manageable Caseloads**



The agency has adopted caseload guidelines, based upon national standards--an average caseload per FTE (Full-Time Equivalent) attorney of 175 to 200 new trial-level cases per year or 25 new appeals per year. Chart #2 shows total caseload for the agency increased from FY05 to FY06 by approximately 10%—from 12,214 new cases in FY05 to 13,419 new cases in FY06.

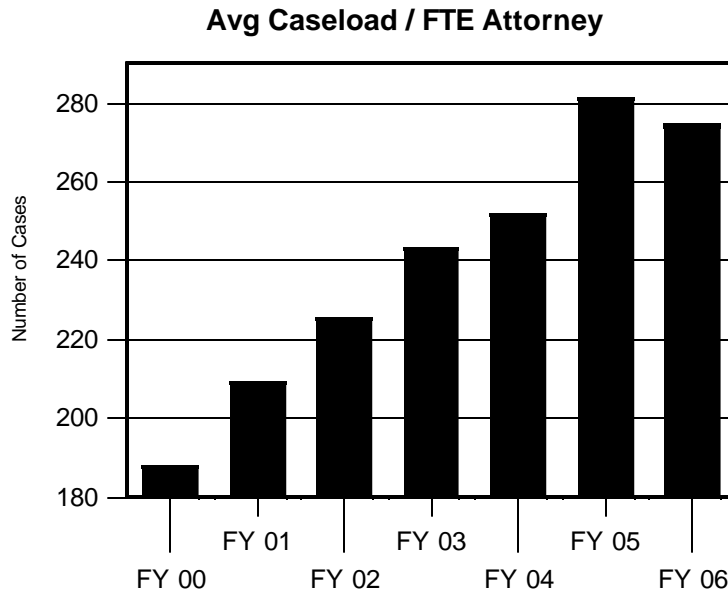


Chart #3 shows the average caseload per FTE trial attorney. Caseload per FTE trial attorney decreased by 3.1%—from 282.83 cases to 274.17 new trial level cases per year per FTE attorney.

## *Public Defender*

Caseload per FTE appellate attorney is 29.67 new appellate cases per attorney.

### **Performance Measure #3: Conflict Free Representation**

The agency provided conflict-free representation pursuant to the guidelines set forth in Asch v. State, 2003 WY 18, 62 P.3rd 945 (Wyo. 2003). No cases were reversed by any Wyoming Court as a violation of Asch v. State.

### **Performance Measure #4: Position and Salary Parity**

On May 1, 2006, the Division of Human Resources, Department of Administration and Information eliminated the classification of attorneys into Attorney I, Attorney II, Attorney III, and Attorney Supervisor. All attorneys employed by the executive branch for the state of Wyoming are now in one class—Attorney (ATTY) in the same pay band on the X-pay scale. This reclassification effectively eliminated the ability to measure this outcome as set forth in our Strategic Plan dated September 1, 2003.

### **Performance Measure # 5: Program Turnover**

In FY06, the agency had 72 authorized positions (19 of those designated part-time) from the Wyoming Legislature. In addition, the agency had at the end of June 2006, twenty-eight (28) independent contractors—consisting of 23 attorney independent contractors and 5 investigator independent contractors. This was an increase in independent contractors by virtue of HB308 grant funding, authorizing up to 5.0 FTE attorneys and 2.0 FTE investigators additional.

Agency turnover among authorized full-time and part-time positions was 19.5%. Turnover among independent contractors was 21.5%. With a total staff of 100 (including independent contractors as well as full-time and part-time employees), total turnover rate was 20%.

### **Story Behind the Last Year of Performance:**

The agency continues to provide effective assistance of counsel, fulfilling a constitutional obligation to the citizens of Wyoming.

As a direct result of grant funding from HB308, the agency was able to hire additional independent contractor attorneys, which resulted in a decrease in average caseload per FTE attorney. However, the current caseload per FTE attorney at 274.17 new trial level cases per trial attorney still exceeds our caseload standards. Similarly, the caseload per FTE appellate attorney at 29.67 exceeds our caseload standards.

Turnover within the agency increased significantly in FY06—from a total turnover rate among all staff (including independent contractors) of 6.6% in FY05 to 20% in FY06.

## Public Defender

One major factor not reflected in the performance measures are death penalty cases. In FY06, this agency was tasked with defending six different death penalty cases at various stages in the criminal justice process—from pre-trial to trial to appeal to post-conviction. Death penalty cases are costly and result in a tremendous drain on our limited resources. As a direct result of the increased caseload and the number of death penalty cases, the agency had to request an effective immediate budget in the sum of \$479,672 from the 2006 Wyoming Legislature just to complete the biennium.

### Reimbursements:

Wyoming Statute § 7-6-106(d) requires that the agency's annual report contain pertinent reimbursement information.

Reimbursement payments collected by the counties and returned to the State's general fund increased from FY05 to FY06. In FY05, \$347,366.60 was collected. In FY06, \$380,005.76 was collected, an increase of 9.4%.

Quarterly Reimbursement data:

<b>FY06</b>	<b>No. of Cases Appointed to Public Defender</b>	<b>Reimbursement Ordered</b>	<b>No Reimbursement Ordered/Specific Finding of No Ability to Pay</b>	<b>No Reimbursement Ordered/ No Finding of Inability to Pay</b>
1st Qtr.	3239	1139	1110	48
2nd Qtr.	3266	1262	1239	41
3rd Qtr.	3499	1617	1127	36
4th Qtr.	3326	1686	1305	35
<b>TOTAL</b>	<b>13,330</b>	<b>5704</b>	<b>4781</b>	<b>160</b>

NOTE: In the above chart, the appointment and reimbursement processes will not occur during the same reporting quarter. The court initially appoints the Public Defender's Office (i.e., the first column) to represent a client. That appointment can last over several months and in some cases more than a year. There is also an additional column, "No Attorney Fees/No Cost Incurred," which is not shown. This occurs, for example, when the court appoints the Public Defender's Office and the client hires private counsel or the charges are dismissed without any court hearing with the assigned public defender. Detailed quarterly reimbursement information by court as required by statute is available in the Public Defender's Office.

### What has been Accomplished:

In FY06, the agency provided effective representation of counsel to our clients in accordance with constitutional mandates.