

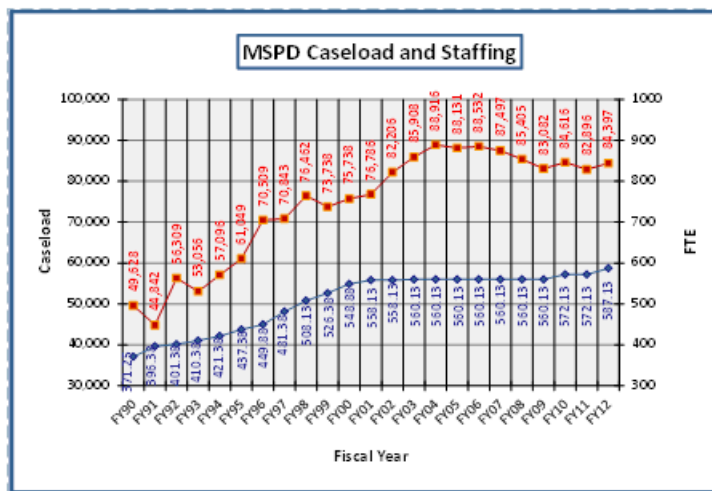
## Missouri State Public Defender Press Release: October 10, 2012

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Today the State Auditor issued its audit of the Missouri State Public Defender System, a report that's been two years in the making. Cat Kelly, the new State Public Defender, who assumed leadership of MSPD part way through the first year of the audit, actually agrees with many of the audit's findings, though disagrees with the "Citizen's Summary" appended to the report itself.

"If you read the actual findings of the auditor, as well as our responses, you'll get a pretty accurate picture of the issues with which MSPD is dealing in placing a precise measurement on the ongoing problem of too many cases and not enough lawyers," says Kelly. "The summary skips over all of those and paints with too broad a brush."

The audit, which was requested in 2010 by retiring State Public Defender, J. Marty Robinson, as part of the transition in leadership, had also been called for by some prosecutors questioning whether Missouri's public defenders are truly in need of the caseload relief they've been seeking.

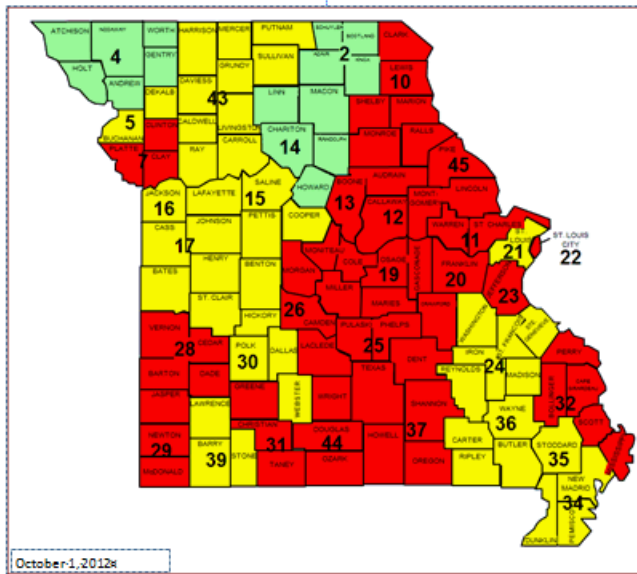


The auditor's report issued today does confirm that public defender caseloads have risen by 70% since 1990, while staffing has failed to keep pace, increasing by only 58% during that same period.

According to the report, "MSPD has responded to its workload problems by reorganizing certain programs, redistributing caseloads to certain district offices, creating volunteer attorney programs, requesting additional resources from the legislature, and developing a caseload protocol to identify

district offices in which caseload is excessive and a corresponding administrative rule allowing the refusal of new cases in those district offices."

It is the last action that has created controversy and has some prosecuting attorneys disputing the extent of the overload Missouri's public defenders are carrying. The rule allowing the refusal of excess cases was adopted by the Public Defender Commission in 2008, but has been embroiled in litigation even longer than the audit was pending. It was not until July 31 of this year that the Missouri Supreme Court ruled that an associate circuit judge was wrong to override the system's use of the rule to turn away excess cases. Since the high court's ruling, Missouri's State Public Defender has placed 31 offices – 27 trial and 4 appellate / post-conviction-- on limited availability. The move is impacting criminal courts in 90 of Missouri's 114 counties.



State Public Defender Offices Exceeding Maximum Caseloads

- Certified & Placed on Limited Availability for Accepting New Cases Effective October 1, 2012
- Exceeding Maximum Caseloads & Eligible for Certification Effective November 1, 2012
- Currently Ineligible for Certification

The recent Supreme Court opinion sidestepped the question of whether Missouri’s public defenders have ‘drawn the line in the right place’, as they begin to turn away excess caseload. Kelly thinks the auditor’s report will help

Missouri Public Defender settle that question. “They provide some very specific expectations of things we need to do to have better data with which to determine the best place to draw the line, such as requiring all staff to track their time by case type and

task and eliminating reliance on national caseload standards in favor of developing our own Missouri-specific standard. These are things we’d already begun working toward so it’s nice to have the auditor’s imprimatur that this is the right way to move forward in refining our protocol.”

One of the nation’s leading experts on public defender caseload standards agrees. Dean Emeritus Norman Lefstein at Indiana University’s School of Law served as an expert in the most recent round of litigation in which the public defender attempted to turn away excess cases. The former Chair of the American Bar Association’s Criminal Justice Section and one of the primary authors of both the ABA’s *Standards on the Defense Function* and *Standards on the Prosecution Function* has been studying public defender caseload issues around the country for well over a decade. He too advocates eliminating reliance on national caseload standards in favor of an internally-developed Missouri-specific caseload standard. At the same time, Lefstein has no doubts that Missouri’s public defenders are carrying excessive caseloads. In fact, his assessment is that a public defender caseload protocol developed according to his -- and now the state auditor’s -- recommendations will result in MSPD’s lawyers turning away even more cases than they are under the existing protocol.

Kelly says MSPD will continue operating under the existing protocol until the next version is complete, given Dean Lefstein’s assessment that the risk is not that MSPD’s lawyers are turning away too many cases, but too few.

“When you’re watching a warehouse burn to the ground, you may not know exactly how many firefighters would be ideal or what type of equipment would be the very best without more study -- but you sure know that what you HAVE is not enough,” says Kelly.