



2008

ANNUAL REPORT



OFFICE OF THE PROSECUTING ATTORNEY

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LETTER FROM THE PROSECUTOR



To: The Citizens of Kalamazoo County

We are pleased to present this report to you, whom we serve and represent daily in our courts. This report is intended to provide you with an overview of our office and the work accomplished in 2008.

During the past year, we were called upon to provide services to several thousand victims of crime in our community. On behalf of those victims, we prosecuted all manner of criminal offenses, ranging from misdemeanors such as Assaults, Thefts, and Drunk Driving to felonies such as Home Invasion, Child Abuse, Robbery and Murder.

In addition, 2008 saw the culmination of team efforts with police agencies that resulted in the charging of several cold case Homicides, and the subsequent convictions of the defendants for their horrendous acts.

Our office has continued the partnership with the Courts, Law Enforcement and Treatment Providers in handling substance abuse cases. 2008 was the first full year of the pilot program "Sobriety Court." The Court is designed to closely monitor second time drunk drivers. We also partnered with Community Mental Health and the District Court to establish a Mental Health Recovery Court. The Court works with offenders who have a mental illness and have committed a property crime or quality of life offense.

We invite your review of our 2008 performance and renew our pledge to provide the best professional service to you in the year to come.

Sincerely,

Jeffrey R. Fink
Prosecuting Attorney

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CHAPTER 1

OVERVIEW

The Kalamazoo County Prosecuting Attorney appears on behalf of the People of the State of Michigan in criminal prosecutions of adults in Circuit Court and District Court. The Office of the Prosecuting Attorney (OPA) handles juvenile delinquency, paternity, support, and child neglect cases in the Family Court Division of Circuit Court. The People elect the Prosecuting Attorney to a four-year term of office.

MANDATED RESPONSIBILITIES

The OPA is responsible for other legal functions including:

- Victim notification on the status of their case and informing them of their rights to participate;
- Representing custodial parents in civil proceedings for the establishment of support and paternity, through referrals from the Department of Human Services (DHS);
- Providing information about juvenile offenders to public schools in Kalamazoo County; and
- Representing law enforcement in forfeiture actions against drug dealers.

The Prosecuting Attorney is the chief law enforcement officer for Kalamazoo County. The Office was created by the Michigan Constitution. The responsibilities and authority of the Prosecutor are established by common law, statute, court rule and appellate case law. In recent years, changing attitudes in the Courts and State legislature have significantly altered the traditional role of the Prosecutor. While adult criminal matters still represent the major portion of the prosecution effort, (over 10,000 cases in 2008) a growing list of additional responsibilities has placed larger demands upon prosecution resources. The responsibilities and role of the Prosecutor are now defined in over 700 separate statutes and court rules in Michigan. Michigan appellate case law and federal case law have further expanded upon those statutes.

The following describes only the general functions of the Prosecuting Attorney's Office:

CRIMINAL

The Prosecutor's criminal jurisdiction encompasses all State statute felony and misdemeanor offenses committed within the boundaries of Kalamazoo County. The Prosecutor's responsibility for these criminal matters involves the determination and filing of charges and appearances in all subsequent court proceedings, including appeals. In addition, the Office prosecutes juvenile matters, both criminal and neglect. In total, adult and juvenile crimes are prosecuted in 17 individual courts throughout the County.

SUPPORT

Additional civil and criminal responsibilities are discharged by the Prosecutor in divorce and paternity matters. Under a reimbursement program with the State, the Prosecutor's Office establishes paternity and seeks out non-custodial parents of minor children and secures court orders to insure payment of child support and, thus, reduces the financial burden to taxpayers.

OTHER

Finally, as a matter of local policy, the Prosecutor's Office strives to be a catalyst for constructive change in the Criminal Justice System. Because of the Prosecutor's unique and pivotal position in the system, he is often able to initiate system wide improvements. This responsibility may be one of the most important functions in our local fight against crime.

YOUR PROSECUTOR

In 2004, Jeff Fink was chosen by Governor Jennifer Granholm to serve as an advisor on Juvenile Justice and Delinquency Prevention. In 2007, Jeff was appointed to the Federal Advisory Committee on Juvenile Justice and Delinquency Prevention. This committee consists of representatives from all 50 states and territories and it advises the President and Congress on juvenile justice issues and prevention strategies. Such an appointment is an honor to both Mr. Fink and to this Office. It is a clear reflection of the high esteem in which the Kalamazoo County Prosecutor's Office is held.

CHAPTER 2

VISION, MISSION & GUIDING PRINCIPLES

OUR VISION IS:

- Justice
- Protection
- Integrity

OUR MISSION IS TO:

- Enhance the quality of life in our community.
- Be leaders in quality prosecution.
- Aggressively advocate our cause.
- Continuously improve our service.
- Achieve our goals through teamwork.
- We will treat each other fairly and give credit to each staff member for their distinctive contributions.

OUR GUIDING PRINCIPLES ARE:

- We will treat all people with dignity, respect, honesty and fairness.
- We will interact with all groups and organizations in a spirit of cooperation.
- We will provide all people with ethical, competent and professional service.
- We will hold all people responsible for their actions.
- We will insure that our office is a rewarding, challenging and enjoyable place to work.

CHAPTER 3

MANAGEMENT TEAM

The Office of the Prosecuting Attorney consists of the Prosecuting Attorney, Chief Assistant Prosecuting Attorney, the Prosecutor's Administrator, and three Divisions of professional staff.



Jeffrey R. Fink – Prosecuting Attorney

Jeff is a graduate of Western Michigan University (WMU) and received his law degree from the University of Toledo School of Law. Jeff was honored with the National Order of Barristers Award for courtroom advocacy while at law school. In August of 1980, Jeff joined the Kalamazoo County Prosecutor's Office as an Assistant Prosecuting Attorney. Jeff has served as an Assistant Prosecutor in all areas of the Prosecutor's Office: District, Family and Circuit. In 2002, Jeff was appointed the Chief Assistant Prosecuting Attorney. Jeff was elected Kalamazoo County's Prosecuting Attorney in 2004. He was re-elected in 2008. Jeff has served with distinction in various capacities with the following organizations: The Child Abuse and Neglect Council, the Kalamazoo Coalition for Youth Violence Prevention, the Prosecuting Attorney's Association of Michigan, the Community Corrections Advisory Board, the Child Death Review Team, the Jail Diversion/Mental Health Task Force and the Fraternal Order of Police. Jeff has been named as an advisor to both the Governor of Michigan and the President of the United States on criminal justice matters.



Carrie L. Klein – Chief Assistant

Carrie has been an Assistant Prosecuting Attorney in Kalamazoo County since joining the office in 1985. She has worked in all areas of the Office, handling cases in District Court, Probate Court and in both the Trial Division and Family Division of the Circuit Court. Carrie holds a degree in Criminal Justice from Grand Valley State College. She received her law degree in 1984 from Wayne State University Law School and also graduated as a 1984 member of the Wayne State Law School Chapter of the Order of the Coif. Carrie serves as a member of the Kalamazoo Assault Intervention Program, the Domestic Violence Fatality Review Team and the Kalamazoo Consortium Elder Abuse Task Force. Carrie became the Chief Assistant Prosecuting Attorney in January 2005.



Kristine Cunningham – Administrator

Kristine has worked within Kalamazoo County's criminal justice system since 1995 and has served as the Administrator of the Prosecutor's Office since 2003. In this position, she is responsible for managing all non-legal staff of the Prosecutor's Office. She also researches, writes, and oversees all grant applications and contracts, manages the Office's budget and computer network, and provides other administrative duties. Previously, she served as the Coordinator for the Kalamazoo Criminal Justice Council (KCJC) and as the Program Assistant of the Kalamazoo County Adult Drug Treatment Court. In 1995, Kristine graduated cum laude from Western Michigan University (WMU) with a Bachelor's Degree in Psychology and Sociology. In 2004, she obtained her Master's Degree in Public Administration from WMU. Kristine serves as an active member of the Prosecuting Attorney's Association of Michigan (PAAM) Technical Services Subcommittee and Victim Rights Subcommittee.

CHAPTER 4

DISTRICT COURT DIVISION

The District Court Division includes Assistant Prosecuting Attorneys, Victim Advocates, Witness Coordinators, and support staff. This Division handles the initial stages of felony cases and all the trial and related court work of misdemeanor cases charged under State law.



Scott W. Brower
(Division Chief)

In the District Court Division, Assistant Prosecutors are assigned to one of five courtrooms. They are responsible for handling all of the misdemeanor and traffic matters before that particular judge. This type of structure is called Vertical Prosecution. It enables the same attorney to remain with a case from the time it reaches District Court until its final disposition. In addition, crime victims are better able to establish a relationship with the attorney handling their case. Case preparation and presentation are improved because the attorney handling the case at a preliminary stage of the proceedings is the same attorney that will conduct the trial. In short, both services to the public and public safety are enhanced through this innovative use of Vertical Prosecution in District Court.

MISDEMEANORS



Dan Zomer, Assistant
Prosecutor & **Michelle
Sutton**, Legal Assistant

A misdemeanor case can start from a police ticket, or from a Complaint authorized by the Prosecutor's Office. Police often use tickets for traffic offenses such as Speeding, Drunk Driving, and Driving While License Suspended. Prosecutors in the District Court Division also review police reports and make charging decisions on other crimes, such as Assault, Domestic Violence, Malicious Destruction of Property or Retail Fraud.

If an offender contests a ticket, the Prosecutor's Office will handle the case at a formal hearing or trial. A large percentage of cases begin with a warrant request. This is generally the first time that the Assistant Prosecutor is involved in a case, unless he/she reviewed a search warrant or visited the crime scene. At this stage, the Assistant Prosecutor determines whether a person should be charged with a crime and, if so, what the

crime should be. The Assistant Prosecutor must thoroughly review all police reports and records concerning the case, including witness statements.

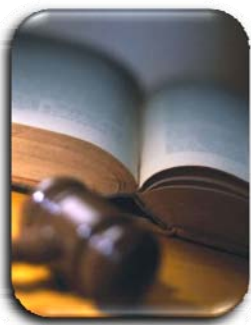
After a Complaint is issued by the Prosecutor's Office, the paperwork is filed with the District Court. When the judge reviews the Complaint and signs a Warrant, the police make arrangements to have those charged appear in court for arraignment where they are told the charges against them and advised of their constitutional rights. The conditions and amount of bail are determined. If they plead guilty, the court will schedule the case for sentencing. If they plead not guilty, the case will be set for trial.



Melissa Scott,
Charging Specialist

Many events can occur prior to trial. The Assistant Prosecutor and defense attorney will often meet at a Pretrial Conference to discuss possible legal issues or to determine whether the defendant will plead guilty to the crime charged or some other offense. The court may also hear motions to determine whether evidence can be used at trial or whether there is some legal reason why the defendant should not be tried.

The trial can be by judge or jury. During the trial, the judge or a jury will determine whether the defendant has committed a crime, and if so, what that crime is. At trial, the prosecution must present evidence to prove the defendant's guilt beyond a reasonable doubt. The defendant is not required to prove his or her innocence or to present any evidence.



If the defendant is found guilty, the judge will set a date for sentencing. A pre-sentence investigation report may be prepared by the probation office. It contains information about the crime, defendant's background and a sentence recommendation. At sentencing, the judge will consider the information in the report. Determination of the sentence is the judge's sole responsibility. The judge may consider different alternatives, such as a fine, probation, community service, a sentence to jail or any combination of those consequences. The judge may also order the defendant to make restitution to any victims who have suffered physical or financial harm.

FELONIES

Felony cases always begin with a warrant request. Once the Assistant Prosecutor reviews the police report and issues a Felony Complaint, the paperwork will be brought to one of the District Court Judges for his or her signature. The police will then bring the defendant to the court for arraignment.



At a felony arraignment in District Court, the defendant does not enter a plea. Instead, the defendant is advised of their right to a preliminary examination within 14 days of the arraignment. The court reviews requests for court-appointed attorneys at the arraignment.



Aubrey Sharp & Jeff Williams, Assistant Prosecutors

A Felony Preliminary Examination is a contested hearing before a District Court Judge, sometimes called a probable cause hearing. The Assistant Prosecutor presents witnesses and the Judge determines whether there is probable cause to believe that a crime was committed and that the defendant committed the crime. Because the burden of proof is much less than at a trial, the Assistant Prosecutor does not call all potential witnesses to testify; generally, only the victim and some of the police witnesses testify. Through their attorney, the defendant can cross-examine the witnesses and present their own evidence - including witnesses.

If probable cause is proven, the defendant is bound over (i.e., sent) to Circuit Court for trial. If probable cause is not proven, the felony charge can be dismissed or reduced to a misdemeanor for trial in District Court. A defendant and Prosecutor can decide not to have a Preliminary Examination and waive the hearing.

In 2008, there were 10,650 adult cases reviewed for possible felony or misdemeanor prosecution (3,172 felonies & 7,478 misdemeanors). A total of 2,125 felony and 5,675 misdemeanor cases were authorized.

AWARD

Each year, OPA staff and other criminal justice agencies are given an opportunity to nominate an OPA staff member (Division Leaders and Management are excluded) for the "Robert L. Pangle Excellence in Public Service" Award. Robert Pangle was employed by the Prosecutor's Office for over 32 years, retiring as Chief Assistant in 2002. The RLP Award reads, in part, "This Excellence in Public Service Award is presented annually to a member of the Prosecutor's Office who has demonstrated service to the public in the highest traditions as established by Robert L. Pangle." After reviewing all submissions, Management selects the awardee.



In 2008, Shellie Stapert received this award. Shellie is a Legal Assistant in the Prosecutor's Office who prepares all of the felony informations and habitual offender notices for filing with the Circuit Court-Trial Division and covers the duties of many other support staff when they are out of the office. Shellie was nominated for this public service award not only because her work is handled with the highest quality of professionalism, but also because Shellie serves her community outside the office by teaching Sunday school, working in the nursery of her church and delivering meals to the disadvantaged and elderly. Congratulations, Shellie!

VICTIM ADVOCACY – District Court



Kerrie LeClerc,
Victim Advocate
Specialist

Since 1987, a Victim Advocate Specialist has been funded by a Victims of Crime Act (VOCA) grant. This Victim Advocate Specialist focuses primarily on assisting victims of domestic violence. Today, two District Court Victim Advocates assist victims of all misdemeanor assaultive crimes, including making referrals to community agencies, assistance with Personal Protection Orders and completing Crime Victim Compensation paperwork.

In 2008, our District Court Victim Advocate Program served victims of assaultive misdemeanor crimes that were associated with 1,796 new cases. Additionally, an estimated 8,980 case status letters were generated and mailed to the victims of these cases.

NOTE: The Victims of Violence Project is supported by Crime Victim Assistance Grant Award CVA #20091376 awarded to the Kalamazoo County Office of the Prosecuting Attorney by the Michigan Crime Victim Services Commission, Michigan Department of Community Health. The grant award of \$67,453 (80% of the project), comes from the Federal Crime Victims Fund, established by the Victims of Crime Act of 1984. The County of Kalamazoo provides the required match by an in-kind match of one Victim Advocate on staff. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Justice or the Michigan Department of Community Health.

DRUNK DRIVING

A specialized, and very busy area of District Court practice, lies in the prosecution of drunk driving cases. Michigan law prohibits the operation of a motor vehicle if you are under the influence of alcohol, have an unlawful blood alcohol content, are operating with the presence of a controlled substance in your system or have become visibly impaired by alcohol or a controlled substance. First and second offenses are misdemeanors and a third offense can be charged as a felony, punishable by up to five years in prison. Should the offense involve a traffic crash, which results in injuries or death, penalties can range up to 15 years in prison. All such convictions, whether misdemeanor or felony, carry an array of additional fines, costs and license sanctions. A total of 691 drunk driving cases were prosecuted in 2008 (117 felonies and 574 misdemeanors).



DOMESTIC VIOLENCE

Another specialized and demanding area of District Court lies in the disposition of domestic violence cases. The Batterer Intervention Standards for the State of Michigan define “domestic violence” as follows:

“Domestic violence is a pattern of controlling behaviors, some of which are criminal, that includes but is not limited to physical assaults, sexual assaults, emotional abuse, isolation, economic coercion, threats, stalking and intimidation. These behaviors are used by the batterer in an effort to control the intimate partner. The behavior may be directed at others with the effect of controlling the intimate partner.” Batterer Intervention Standards for the State of Michigan, §4.1 (January 20, 1999).”



As local police aggressively investigate domestic violence cases, they present them to the Prosecutor’s Office for the initiation of criminal charges. These cases range in severity from assault and battery to first-degree murder. Offenders may be charged with their crime even when the victim refuses to cooperate, as long as witnesses or other evidence is available. The OPA’s goal is to bring the offender under the jurisdiction of the court and hold them accountable for their behavior. This helps protect the victim and other family members and helps to change the course of future personal interactions.

In 2008, 989 cases involving domestic violence were authorized (90 felonies and 899 misdemeanors).

KAIP

The District Court Victim Advocates also participate in the Kalamazoo Assault Intervention Project (KAIP). In 1990, this group was formed by committed criminal justice professionals and service providers “to cooperate, coordinate and collaborate on all community efforts to reduce domestic violence.”

KAIP has five essential purposes:

- To assist victims of domestic violence in breaking the pattern of abuse;
- To prevent the occurrence of further violence to the victims;
- To hold all defendants accountable for their acts of violence;
- To minimize the victim's role in the prosecution of the defendant and
- To encourage the use of education and counseling designed to change the defendant's future behavior.



KAIP membership includes judges, probation officers, counselors and medical personnel. Visitors from other jurisdictions have attended these meetings in order to observe and research potential methods of dealing with domestic violence. KAIP members have also made presentations to community groups and written articles for local neighborhood newspapers to inform the public on domestic violence issues.

In addition to KAIP, this office chairs the Domestic Violence Fatality Review Team. This Team is responsible for reviewing domestic violence fatality cases to determine how the criminal justice system and/or improved victim services could have prevented the fatality.

WITNESS UNIT

In the past, a significant amount of each law enforcement agency's time was consumed with officers waiting to appear in court as a witness for a criminal case.

Oftentimes, considerable amounts of overtime was paid, even when the officer was no longer needed for the case and not required to appear in court. This process not only took officers away from their patrol areas for potentially long periods of time, it also took detectives away from investigating other serious crimes.

Through a Local Law Enforcement Block Grant, this office was able to staff a District Court Witness Unit to coordinate witnesses and manage cases in the District Courts in Kalamazoo County. The Witness Coordinators manage and expedite the processing of witnesses on statute criminal cases in seven District Courtrooms throughout the county.

GOALS

- To reduce the amount of overtime dollars needed to bring officers to court.
- To decrease, or eliminate, the number of adjourned and dismissed cases due to a lack of necessary witnesses.
- To reduce the inconvenience to District Court witnesses and establish witness cooperation while efficiently utilizing court time, police court time, police agency resources, and prosecutor's preparation time.



Diane Klauer & Gay Colby,
Witness Coordinators

In 2008, 4,762 cases were handled by the Witness Coordinators, involving a total of 14,329 witnesses. Because of the efforts by Witness Coordinators, a total of 7,790 witnesses (3,937 lay, 126 expert and 3,727 law enforcement) were excused from court, with a cost savings of approximately \$366,706 in 2008. Every police agency, their funding source and the public safety of the community benefits from the efforts of the Witness Coordination Unit.

CRIMINAL SEXUAL ASSAULT ATTORNEY

The Criminal Sexual Assault (CSA) Attorney handles all cases involving the criminal sexual assault of children under the age of 13. In addition, this Assistant Prosecutor handles other sexual assault or child abuse cases that require special attention.

Sexual abuse is one of the most traumatizing events that can occur to anyone. If the abuse is directed toward a child, the episode is especially devastating, both to the child, the family and ultimately the community. Recognizing the exceptional needs of these special victims, this Office developed a specialist position to work with the child from the onset of his or her contact with the criminal justice system and to follow the case through the court process. The CSA attorney often makes psychological referrals for the child and the family, coordinates further police investigations, develops rapport with the child and guides the child and family through the entire prosecution. Practical experience has proven that this personal contact significantly reduces the trauma to the child, and when coupled with professional counseling, has been shown to have a positive therapeutic value.

In addition, the CSA attorney is involved in the implementation of the Kalamazoo Comprehensive Approach to the Management of Sex Offenders program (KCASOM). This program is focused on management of sex offenders in the community. A grant secured by the Kalamazoo County Sheriff's Department in 2006 provides funding for intensive supervision of sex offenders being reintegrated into the community following their release from jail or prison. Smaller caseloads for probation and parole agents permit closer scrutiny of offenders. A myriad of options are now employed for offender supervision, such as global positioning devices to monitor their movement within the community. A multi-disciplinary team meets monthly to review sex offender cases and gather input from treatment providers, polygraphers, supervising agents and victim advocates. The goal of the program is to increase public safety and reduce victimization.

AWARD

In 2008, Assistant Prosecutor Chris Ann Johnson received the Kalamazoo Department of Public Safety "Chief's Award for Excellence" for her prosecution efforts on the People v Rendae West homicide case.



CHAPTER 5

CIRCUIT COURT DIVISION

The Circuit Court Division handles the prosecution of felony cases. Felonies are crimes punishable by imprisonment in excess of one year, and can range in seriousness from retail fraud, bad checks, narcotics violations, criminal sexual conduct, home invasion, robbery, to murder.



Gregory W. Russell
(Division Chief)

A felony case originates with the charging function. It begins with a careful review of all investigative reports prepared by the police or investigative agency. Once a case is accepted for prosecution, it then passes through the District Court system before it is bound over to the Circuit Court of Kalamazoo County where ultimate disposition will take place.

VERTICAL PROSECUTION

Assistant Prosecutors assigned to the Circuit Court Division may be assigned to a particular Circuit Court Judge. When a case is set for trial, an Assistant Prosecutor is assigned to the case and will be responsible for handling all court events associated with that case. This system of “vertical prosecution” was begun in 1985. One of the many benefits of this type of prosecution is the same attorney works with the victim and witnesses throughout the Circuit Court process.



Alexis Sanford,
Assistant Prosecutor &
Patty Maxwell, Legal
Assistant

Each case requires large amounts of attorney and support staff time from beginning to end. The Kalamazoo Prosecutor’s Office philosophy of holding criminals strictly accountable for their conduct was again successful in 2008. In our baseline year of 1974, felony pleas to the original charge were only 13%. In 2008, defendants plead guilty to the original felony charge placed against them in 82% of the cases. This performance measure is consistent with our overall objective of plea dispositions to the original felony charge of not less than 80% per year. This overall dispositional rate demonstrates an effective and efficient use of the limited resources available to the criminal justice system. Furthermore, when criminal

defendants are being held to answer to the charges brought against them at this high rate, charging practices by the OPA illustrate a staff of Assistant Prosecutors well trained at making the decisions that impact upon the lives of victims and defendants.

In 2008, approximately 1,068 criminal cases were set for trial in Circuit Court. In order to make efficient use of the number of available trial weeks in each of the four Trial Division Courts and to accommodate an increasing felony caseload, it is necessary to schedule approximately 13 cases in each Court for trial each week. Typically, although only one case can be tried in each Court per week, many of the other cases set for trial in any given week are resolved through settlement negotiations. Those that are not resolved through either trial or plea are rescheduled for trial. In 2008, 65 trials were held. In 81% of the cases, defendants either plead guilty to the original felony charge or were found guilty of the original felony charge placed against them.



The year 2008 was remarkable for not only the number of cases that were tried, but most especially for their length and complexity. Ten (10) complex homicide trials were held with Guilty verdicts in 9 of those cases. In addition, the following trials were held:

- Home Invasion (5)
- Armed Robbery (2)
- Assault with Intent to Murder (2)
- Criminal Sexual Conduct (3)
- Delivery of Controlled Substances, Operating/Maintaining Methamphetamine Labs and/or Possession of Controlled Substances (8)
- Resisting and Obstructing Police Officers or Fleeing and Eluding Police (2)
- Aggravated Stalking or Domestic Violence 3rd Offense (2)

AWARD



In 2008, Assistant Prosecutor Stuart Fenton received the Kalamazoo Department of Public Safety "Chief's Award for Excellence" for his prosecution efforts on the People v Christopher Levitt homicide case.

VICTIM ADVOCACY – Circuit Court

Three Victim Advocates (VAs) are assigned to the Circuit Court Division to provide advocacy services to victims of felony crimes. One and a half of the Circuit Court VAs are funded by a Crime Victim Rights grant, which requires no County match.

The Circuit Court Victim Advocates provide constitutionally mandated and critical services to victims of felony crimes (i.e., notices of court hearings, escort to court, referrals for counseling, etc). In 2008, our Circuit Court Victim Advocates served victims of crime that were associated with approximately 1,613 new felony cases. Additionally, an estimated 9,678 case status letters were generated and mailed to the victims of these cases.



Sigrid Carpenter, Victim Advocate & Myra Delaney, Legal Assistant

NOTE: The Crime Victim Rights Project is supported by Crime Victim Assistance Grant Award CVA #20090993 awarded to the Kalamazoo County Office of the Prosecuting Attorney by the Michigan Crime Victim Services Commission, Michigan Department of Community Health. The grant award is \$161,177 and funds 2.5 FTE Victim Advocates. The focus of the program is to: Implement the requirements of the William Van Regenmorter Crime Victim Rights Act, P.A. 87 of 1985. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Justice or the Michigan Department of Community Health.

AWARD



The Prosecuting Attorneys Association of Michigan (PAAM) recognized Gayle Somers, Circuit Court Victim Advocate, as the 2008 recipient of the Frances A. Smith Prosecution Staff Achievement Award. The award is given annually to the victim advocate or prosecution staff professional who best exemplifies the ideals of Fran Smith, office manager in the Calhoun County Prosecutor's Office, who continues her more than 50 years of service to the citizens of Michigan. Gayle was formally recognized for this award at the Victim Rights' Annual Conference in Mount Pleasant.

ASSET FORFEITURES – KVET

The Kalamazoo Valley Enforcement Team (KVET) is a drug enforcement task force comprised of 18 police officers from the Kalamazoo Department of Public Safety (KDPS), and the Kalamazoo County Sheriff's Department. They operate out of an office at a clandestine location under the command of Kalamazoo Department of

Public Safety Captain Joseph Taylor. KVET Officers are deputized by the Kalamazoo County Sheriff and have jurisdiction to enforce State laws throughout Kalamazoo County. In 2008, KVET investigations resulted in criminal charges in 439 cases. A specialized Assistant Prosecuting Attorney, known as the KVET Attorney, handles these KVET criminal cases. The Prosecutor's Office and the Kalamazoo Valley Enforcement Team have continued an aggressive campaign of prosecuting and forfeiting the property of persons who traffic in illegal controlled substances.

In order to take away the financial incentive to commit drug offenses, our State Legislature has given law enforcement agencies the ability to seize and forfeit money, vehicles, or other property involved in the manufacture or trafficking of illegal controlled substances. When property is seized under this forfeiture statute, a notice is given to the owner of the property, alerting them that the police are seeking the forfeiture of the property. The owner of seized property has 20 days to file a claim to contest the forfeiture of the property. If the owner fails to file a claim with the seizing agency within the 20 days, that property becomes the property of the seizing agency by operation of law. Property forfeited to the police in this manner is called an "administrative forfeiture." If the owner does contest the seizure, the case is then forwarded to the Prosecutor's Office for court action.



Mark Holsomback
(KVET Assistant
Prosecutor)

The KVET Attorney is funded by the City of Kalamazoo and handles all asset forfeiture cases initiated countywide by KVET and KDPS, as well as handling select criminal cases in his capacity as an Assistant Prosecuting Attorney. When Officers from KVET or KDPS seize property and the forfeiture of the property is contested, the case is sent to the Prosecutor's Office for review by the KVET Attorney. If the seizure is determined to be legally appropriate, the case is settled out of court or a complaint is filed with the Circuit Court seeking the forfeiture of the seized property. The KVET attorney prepares the legal pleadings and the case proceeds to a non-jury trial.

Pursuant to State law, property forfeited to the police under the drug forfeiture statute is either used by the police, sold at a public sale or destroyed. Proceeds from the sale of forfeited property must be used to enhance drug enforcement efforts. Before administratively forfeited property is used, sold or destroyed by the seizing

agency, as provided by statute, the KVET Attorney reviews the facts of the case and determines what is to become of the forfeited property. This procedure is required by statute and is to insure that the police have complied with the forfeiture procedure and to preserve the integrity of evidence that may later be needed by the Prosecutor's Office in a related criminal case.

In 2008, forfeiture cases resolved by the KVET Attorney resulted in the forfeiture of over \$82,100 to KVET. In the last 5 years, the KVET Attorney has resolved a total of 399 forfeiture cases, resulting in the forfeiture of over \$670,288 to KVET. Statistics relating to the KVET Attorney's activities in 2008 are highlighted below:

CIVIL FORFEITURE

- Number of Forfeiture Cases Resolved by KVET Attorney: 80
- Amount of Money Forfeited to KVET: \$82,100

CRIMINAL CASE DISPOSITION

- Number of Convictions obtained by KVET Attorney: 144
Felony Charges: 141, Misdemeanor Charges: 3

DRUG ENFORCEMENT AUTHORITY - SWET



The Southwest Enforcement Team (SWET) is a regional cooperative of State, County and Local Narcotics units. The team continues its aggressive campaign of investigating, prosecuting and forfeiting the property of persons who traffic in illegal controlled substances. As part of this effort, an Assistant Prosecutor is assigned to handle SWET drug prosecutions wherever they occur in this area. The attorney is on 24-hour on-call status, available by telephone or pager. The attorney maintains a computer in his home in order to review and prepare documents as needed 24 hours a day. The attorney also has an office at the Central/East Office of the Southwest Enforcement Team headquarters and is available on a daily basis for legal questions.

Due to the nature of the position, the Drug Enforcement Attorney can become involved in both criminal and civil cases during the investigative stage, providing legal information, attending arraignments to ensure high bonds and performing other legal functions not normally handled by Assistant Prosecutors.

Fiscal Year 2007-2008 was the fourteenth year that the Department of Drug Control Policy, under the Anti-Drug Abuse Act, has funded the Drug Enforcement Attorney position, and the Michigan Department of State Police provides the match. There is no required match from the County of Kalamazoo.

In FY 2007-2008, 136 arrest warrant requests were received and reviewed by the attorney assigned to the Southwest Enforcement Team. Those requests resulted in the issuance of criminal charges against 61 individuals, totaling approximately 90 charges.

During this year, 53 defendants were adjudicated. Of the 53 defendants adjudicated, 46 defendants were convicted of criminal charges. This number represents defendants from this year and defendants from prior years whose cases had not yet been resolved in the criminal justice system. Of the 46 defendants convicted, 28 defendants were convicted of all the charges filed against them, 42 defendants were convicted of the most serious charge against them, and four defendants pled to reduced charges due to cooperation with the Southwest Enforcement Team or for other reasons. They received sentences including prison, jail and probation. In addition to incarceration and probation, the defendants' sentences included approximately:



Steve McLaughlin
(SWET Assistant
Prosecutor)

- Court ordered \$850 in restitution to SWET.
- Courts collected \$4,110 in oversight fees for probation supervision.
- Court ordered \$11,125 in court cost reimbursement.
- Court ordered \$7,393 in attorney cost reimbursement.
- Courts ordered 7 defendants to attend and complete substance abuse counseling.

The Southwest Enforcement Team collected \$437,470 from cash forfeited in 2008 and forfeited property sold in 2008. Several pieces of property forfeited in 2008, including a house, were not yet sold in 2008. This money was forfeited in one of two ways: administrative forfeiture or contested forfeiture. An administrative forfeiture occurs where personal property worth less than \$50,000.00 is seized.

In these cases, the claimant, or person the property is taken from, must file a written notice of his or her intent to contest the forfeiture and post a bond with SWET. If the claimant fails to file the written notice and post the bond within twenty days of being notified of the forfeiture, the property is forfeited to the agency automatically.



The second way an agency can forfeit property is through a contested forfeiture. Contested forfeitures are initiated when a summons and complaint are filed in circuit court. There are three kinds of contested cases: cases involving real property (land), cases involving personal property worth more than \$50,000.00, and cases where claimants file the required written notice and post the necessary bond.

During the 2007/2008 fiscal year, SWET requested the initiation of 21 contested forfeiture cases. SWET also resolved or settled 28 contested forfeiture cases. Of the 28 cases resolved:

- 14 cases were settled through negotiations before a summons and complaint were filed,
- 8 cases were resolved by agreement or consent judgment after the summons and complaint were filed in Circuit Court, and
- 2 were resolved by default judgment.

In the fiscal year 2007/2008, SWET forfeited property valued at \$437,470 from contested forfeitures.

INVESTIGATIVE SUBPOENAS AND COLD CASES

In 1995, the Legislature enacted legislation giving prosecutors investigative subpoena power. This law empowers prosecutors to essentially act as a "one person grand jury." During a police investigation, the Investigative Subpoena Prosecutor participates in the police investigation by utilizing this law to subpoena witnesses to a crime and question them under oath about their knowledge of the particular crime under investigation. The attorney prepares court petitions authorizing the use of investigative subpoenas, prepares the subpoenas, questions the witnesses under oath, handles any legal issues in connection with these cases and then makes the final charging decision. If the witness ignores the subpoena, the witness could be found in

contempt of court. If the witness lies under oath, the witness is subject to perjury charges with a penalty equal to that of the crime being investigated. Once a case is charged, the attorney remains on the case throughout the court process.

This law is a powerful tool for law enforcement. It enables police to solve cases that otherwise would not be due to hostile or uncooperative witnesses. Before this law, police had no way to compel these types of witnesses to tell them what they knew about particular crimes. Since the law's enactment, the investigative subpoena attorney has obtained several convictions on homicide cases, which previously could not have even been charged.



In 2008, an Investigative Subpoena was authorized on an assault with intent to commit great bodily harm, which occurred near the WMU campus in September 2008. The case remains under investigation.

In addition, there were significant developments in an investigative subpoena/cold case authorized previously – the Polderman homicide case. In 2008:

- Three defendants were tried and convicted of First Degree Felony Murder, Home Invasion, and Perjury. One defendant was tried and convicted of a similar charge in 2007. All four are serving life in prison.
- After testifying against each of the other codefendants, one additional defendant was sentenced to prison. She had previously pled guilty to Second Degree Murder.
- A sixth defendant was sentenced to jail for lying about his knowledge of those involved in the homicides.

Each of the cases described above involved the issuance of investigative subpoenas and an order compelling witnesses to produce documents or other evidence or to give a statement under oath.

AWARD



Scott Brower, Division Chief and the Assistant Prosecutor in charge of Investigative Subpoenas, received the 2008 Kalamazoo County Sheriff's Department Award for Excellence for prosecutorial expertise in the Polderman and Lewis homicides, which resulted in murder convictions for those responsible.

RESEARCH/APPELLATE ATTORNEYS

The Prosecuting Attorney has statutory obligations to represent the People of the State of Michigan in all statute criminal cases. Specialized attorneys handle the appellate function of the Prosecutor's Office. Their primary responsibilities involve appeals from criminal cases and parental rights termination cases and legal research assignments.

The Prosecutor's Office routinely responds to criminal defendants' first appeals of their convictions. However, when first appeals are not successful, the defendants file more motions and appeals. The Office responds to those filings too. In 2008, defendants convicted in 1979, 1983, 1990 and 1997 of murder, rape, and other serious crimes asked the courts to review their trials, pleas, or sentences and release them from prison. Responding to such old cases is challenging because statutes, case law, and procedures change. The appellate attorneys research the changes and write responsive pleadings.



Mary Breier, Senior Administrative Assistant &
Heather Bergmann, Assistant Prosecutor

In 2008, appellate attorneys filed six appeals on behalf of the Prosecutor. Four of the appeals challenged the lengths of the defendant's sentences. Two appeals concerned disputed statutory interpretations.

In 2008, 100% of the criminal convictions and parental rights termination cases were affirmed. This success rate is important because it assures the public that the Office provides quality legal services and treats defendants fairly.

CHAPTER 6

FAMILY COURT DIVISION

The Family Court Services Division is comprised of two different units; the juvenile unit and the child support unit. Both units have a direct impact on the quality of life for Kalamazoo's children and their families, but the work they do is very different.



Karen M. Hayter
(Division Chief)

CHILD SUPPORT UNIT



The Child Support Unit is funded by the federal government, through the State of Michigan, to provide the necessary legal services to establish child support for children living with only one parent. When the custodial parent is receiving financial assistance from the State, they must cooperate with the legal processes necessary to establish a legally enforceable obligation to pay child support. Since studies have found that there is a direct correlation between growing up in poverty and neglect, delinquency and adult criminal acts, the child support unit is truly a front line crime prevention program.

In 2008, the Child Support Unit received 1,314 referrals from the Michigan Department of Human Services (DHS) for children and families who needed paternity or child support established. After screening the referrals for factual and legal viability, 1,061 legal proceedings were initiated under the Paternity Act, Family Support Act, and Uniform Interstate Family Support Act.

The court must consider a number of factors when establishing the amount of child support to be paid by the non-custodial parent. That information is researched and provided by the staff of the Child Support Unit. Although not all of the cases have been completed thus far, by the close of 2008, 877 orders for child support were obtained, equaling



Roger Klok, Support Investigator & **Manda Evans**, Legal Assistant

\$179,896 in monthly child support. If annualized, the orders equal \$2,158,754 in support.

The Friend of the Court Office has the primary responsibility for collecting and dispersing child support payments and enforcing child support orders. However, when the Friend of the Court exhausts all of the civil remedies that are reasonably available, the case is referred back to the Prosecutor's Office for criminal investigation and prosecution.



Darcy Garwood,
Support Investigator

Kalamazoo is very fortunate to have an investigator who spends her time aggressively seeking out the non-custodial parents who have failed to support their children and their hidden financial assets. During 2008, a record number of 150 criminal investigations for failure to pay child support were commenced. Of those 150 referrals, 102 investigations were submitted to the adult criminal unit for review and 78 felony non-support complaints were filed with the court. To date, the court has entered criminal orders of restitution for unpaid child support equaling \$455,451 in restitution.

AWARD

In 2008, Assistant Prosecutor Kate Procnier received the Outstanding Prosecuting Attorney Staff Award from the Michigan State Office of Child Support. This honor is one of only two Prosecutor's Office awards presented annually. The announcement and presentation were made at a statewide conference in front of hundreds of colleagues.



JUVENILE UNIT

The attorneys and support staff of the Juvenile Unit work collectively to represent the People of the State of Michigan in delinquency proceedings and the Michigan Department of Human Services in child protective proceedings. They see first hand the connection between children living in poverty, delinquent behavior and child abuse. Many of the same families served by the Child Support Unit are also involved with the court through the Juvenile Unit.

After a crime is committed and investigated by the police, if the suspect is under 17 years of age, police send a charging request along with their investigative

reports to the Juvenile Unit. In 2008, the Juvenile Unit reviewed 2,557 criminal investigations for legal and factual sufficiency. Of those, 2,118 petitions were authorized and sent to the Circuit Court Intake Department for further action.

Not all children need formal court intervention. Sometimes a conversation with the parents, the minor, and the victim, some community service or other informal sanction, is all that is needed to help the child make better choices in the future. However, in those situations where the minor requires more intensive intervention, the Intake Department returns the case to the Juvenile Unit for formal prosecution. In 2008, the Intake Department returned more than 1,000 delinquent petitions to the Juvenile Unit to initiate formal court intervention.



Dave DeBack, Assistant
Prosecutor & **Andrea
Nixon**, Legal Assistant

In addition, some cases are referred because of neglect or abuse of minors by parents. The goal of a child protective proceeding is usually to reunite children with their parents after the problems that brought the family to court have been resolved; unless, there is serious physical or sexual abuse. An Assistant Prosecutor works with agencies to provide services to ensure that children are not abused or neglected by their parents. If the Court takes jurisdiction of the minor child, the Assistant Prosecutor attends Court hearings to help ensure that parents are given plans to correct abusive or neglectful

behaviors. If progress is not made, the Assistant Prosecutor, in the best interests of the child, may file termination petitions, and attend Court hearings to terminate the parental rights of the parents who have abused or neglected their children.

Once a court has decided the children should be temporary wards, many services are made available to the families through the Department of Human Services. After the parents have complied with all offered services, the case is closed. If there is non-compliance, a last option to provide stable and permanent family life for some children is to terminate parental rights. Children then become available for adoption to family members or to other people who can help them recover from the abuse and neglect they suffered.

In 2008, Assistant Prosecutors in the Juvenile Unit handled a combined total of 1,386 pretrials, 257 trials, 47 motions, 112 review hearings, 40 permanency planning hearings, and 550 disposition hearings.

Because the Kalamazoo County Prosecutor provides legal assistance to the Michigan Department of Human Services (DHS) on abuse and neglect cases, a reimbursement is received from the State of Michigan. In 2008, the State reimbursed the County more than \$40,000 for time spent by the four Assistant Prosecutors working on abuse and neglect cases.

VICTIM ADVOCACY – Family Court

A Victim Advocate is assigned to the Family Court Division to provide advocacy services to victims of crimes committed by juveniles. This Victim Advocate is funded by a Crime Victim Rights grant, which requires no County match.

Critical victim advocacy services include escorting the victim to court, referrals for counseling and assistance with completing Crime Victim Compensation paperwork. In 2008, the Family Court Victim Advocate served victims of crime that were associated with approximately 984 new juvenile cases. Additionally, an estimated 9,840 case status letters were generated and mailed to the victims of these cases.



Erin Tonda, Assistant
Prosecutor & Stella
Chivikas, Victim Advocate

OUTREACH ACTIVITIES

The seven (7) Assistant Prosecutors and other legal staff assigned to the Family Court Division also participate in a number of outreach activities, whose purpose is to improve healthy living and reduce violence through education. Assistant Prosecutors are Board members of groups like the Child Abuse and Neglect Council (CAN), Intimate Partner Violence Community Advisory Board, Michigan Family Support Council, Kalamazoo County Bar Association Board of Directors and the Family Drug Treatment Court. Staff have also taught classes for the Kalamazoo Law Enforcement Academy, Davenport University, Western Michigan University, local elementary, middle and high schools, and the Kalamazoo Youth Academy. Additionally, division members gave presentations to the Court Appointed Special Advocate (CASA) class of 2008, local judges and referees, neighborhood associations, and the Kalamazoo Public Schools.



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