

Mississippi Public Defender Task Force



2015 Annual Report

**Mississippi Public Defenders Task Force
Report to the Mississippi State Legislature
December 30, 2015**

TABLE OF CONTENTS

Letter From the Chairman	1
Unofficial Minutes of July 27, 2015 Meeting	Appendix A
December 18, 2015 Report from NLADA	Appendix B
December 7, 2015 Proposal from the Sixth Amendment Center	Appendix C



SUPREME COURT OF MISSISSIPPI

POST OFFICE BOX 117
JACKSON, MISSISSIPPI 39205
TELEPHONE (601) 359-3697
FAX (601) 359-2443

WILLIAM L. WALLER, JR.
CHIEF JUSTICE

JESS H. DICKINSON
MICHAEL K. RANDOLPH
PRESIDING JUSTICES

December 30, 2015

ANN H. LAMAR
JAMES W. KITCHENS
DAVID A. CHANDLER
RANDY G. PIERCE
LESLIE D. KING
JOSIAH D. COLEMAN
JUSTICES

HUBBARD T. SAUNDERS, IV
COURT ADMINISTRATOR
AND COUNSEL

The Honorable Tate Reeves
Distinguished Members of the Senate
The Honorable Phillip Gunn
Distinguished Members of the House
The Capitol
Jackson, Mississippi 39201

Dear Friends:

The Mississippi Public Defender Task Force was created in HB 602 during the 2015 Legislative Session. The Legislature established three duties for the Task Force:

- 1) Make a comprehensive study of the needs of the circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts.
- 2) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal delinquency cases.
- 3) Study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

The Task Force conducted its first meeting on July 27, 2015. Supreme Court Justice James W. Kitchens was elected chairman, and Demetrice Williams, President of the Mississippi Public Defenders Association, was elected vice-chairman. The Office of State Public Defender (OSPD) was tasked with keeping a record of the meeting. (A copy of the minutes of the meeting is attached as Appendix A.)

In summary, OSPD provided a recapitulation of the work of the last Task Force, and a general discussion ensued as to what path this new Task Force should take. There was a consensus that it would not be productive to make a recommendation to the Legislature until the Task Force had identified the deficiencies of the current system. It also was determined that even basic data, such as total indigent caseload statistics by circuit court districts, is not available from the Administrative Office of the Courts (AOC), and that there is no state-level collection of such data.

December 30, 2015

Page 2

The lack of reliable data from AOC is largely the result of inconsistent reporting by the State's circuit court clerks.

OSPD has been in the process of gathering limited data with the help of the National Legal Aid and Defender Association (NLADA), and hoped to have a report to discuss at the next Task Force meeting. It was agreed that when OSPD had received preliminary numbers for the Task Force, a second meeting would be conducted. However, NLADA did not produce its report for the Task Force until mid-December of 2015. (A copy of this report is attached as Appendix B.) Additionally, the Sixth Amendment Center also submitted a proposal in December to assist Mississippi with data collection and recommendations for a statewide indigent defense system. (A copy of this proposal is attached as Appendix C.) Because of the limited time available before the Legislature reconvenes, the Task Force will not meet again until the 2016 Session has begun.

Based on the limited reliable data now available, it is clear that an effective data collection process must be established. In future Task Force meetings, we will discuss these proposals, as well as the need to give the Office of State Public Defender statutory authority to collect needed information from the court clerks across the State, specifically adding OSPD to the distribution of reports required to be submitted by clerks to the AOC by Section 65 of HB 585. Without the continued help of outside organizations, additional funding may become necessary to enable OSPD to analyze the data collected.

Respectfully submitted,

A handwritten signature in dark ink, reading "James W. Kitchens". The signature is fluid and cursive, with a large loop at the end of the last name.

Justice James W. Kitchens, Chairman
Public Defenders Task Force

cc: Supreme Court Justices

Appendix A

Public Defenders Task Force Meeting Minutes

July 27, 2015

(UNOFFICIAL)

MS Supreme Court 4th Floor

Conference Room

10:30am Justice Jim Kitchens called the meeting to order and expressed support for a statewide public defender system.

10:40am Senator Hob Bryan moved to begin the nomination for Chair and Vice-Chair of the task force.

Members in Attendance:

Demetrice Williams (President, Mississippi Defenders Association)
Angel Myers (President, Mississippi Prosecutors Association)
Ta'Shia Gordon (Administrative Office of Courts Director)
Justice James W. Kitchens (Mississippi Supreme Court)
Jerrolyn Owens (Special Assistant Attorney General)
Tony Sandridge (Mr. Sandridge attended as Perry Hood's designee representing the Mississippi Association of Supervisors)
Jennie Eichelberger (Mississippi Bar)
Tanisha Gates (President, Magnolia Bar Association)
Chairman Hob Bryan (Senate Judiciary Committee, Division B)
Chairman Mark Baker (House Judiciary En Banc Committee)
Chairman Herb Frierson (House Appropriations Committee)

Members not in Attendance:

Judge Michael M. Taylor (Circuit Court Judge)
Chairman Eugene S. Clarke (Senate Appropriations Committee)

Invited Guest in Attendance:

Leslie Lee (State Public Defender)
Andre De Gruy (Capital Defense Counsel, Office of State Public Defender)
Beau Rudder, (Director, Training Division, Office of State Public Defender)

Order of Business:

Election of Chairman and Vice Chairman:

1. Senator Baker nominated Justice Kitchens for Chair of the Public Defender Task Force. *Justice Kitchens accepted the nomination.*
2. Ta'Shia Gordon nominated Demetrice Williams to be Vice-Chair. *Mrs. Williams accepted nomination.*
3. Justice Kitchens moved to vote on the proposed candidates. *The Task Force voted unanimously in favor of Justice Kitchens and Demetrice Williams.*

Recap of prior task force minutes:

1. Leslie Lee: The last task force meeting dealt with issues of gathering data. The only comprehensive report on the state's indigent defense system was done a couple of years back, it shows how money is spent on indigent defense and its broken down by counties and how indigent defense is delivered along with the cost of providing those services. The movement toward an independent commission in the 2015 Legislative session was for the purpose of gathering better data. The proposed commission would have been able to assess how much is actually being spent. The 6th Amendment center assisted in data collection led by David Carroll. Offers have been made by the National Legal Aid and Defense Association to collect data. The task force could not come to a decision as to how the system would work because some judges were comfortable with their current systems because they had authority over their public defenders. The ABA has guidelines for independent indigent defense systems however following those guidelines is a tough situation when arguing in front of Judge who could either hire or fire you. The commission should have been described to the legislature noting that the commission was not in place to fire or hire public defenders but to gather information and make recommendations to the legislature. The proposal was intended to make a more unified system within the State and focus on what other States are doing in regard to indigent defense regulation.

Responses from respective groups/ associations:

1. Justice Kitchens: We are a task force and we should assume that it is our duty to create a system and what should be presented to the legislature. *Asked Leslie Lee to explain the issue.*
2. Leslie Lee: The main objective is independence, there are no standards established for workload or caseload standards in the state. We are only one of six states left that does not have state oversight of their public defenders. The main purpose is to establish standards within the state.
3. Justice Kitchens explained that after Gideon v. Wainwright every person who was not afforded an attorney was entitled to one by the law. Judges in the past would appoint lawyers to an indigent defendant, then request the lawyer's bill at the end and submit it to a board of supervisors that would pay that bill after vastly cutting the bill at the end. In his view, one of the problems with our current system is that cases are being retried and dismissed because of ineffective assistance of counsel. So, what should we be doing differently and how should we pay for it?

4. Leslie Lee: We are the only southern state that does not have statewide oversight; it is understandable that someone in Tupelo does not want me telling them how to do their jobs from Jackson. The system would focus on establishing standards and giving guidance to localized systems on how to implement those standards. The fear of losing independence in Louisiana was just the same with local systems however ninety percent of those attorneys agreed with systems in the long run. Alabama used to have private counsel just bill the state. Their new state oversight (according to the director of their indigent defense board) estimated a savings of over 20 million dollars with their new state-wide system. The key is to assist the counties. Michigan's system oversees and caps counties budgets and the rest is left up to the state to cover but the current funding counties receive would not be limited thus making the initial system start up less financially burdensome on the state.
5. Tony Sandridge asked whether or not there would be a blanket cap for all counties?
6. Leslie Lee responded that the cap would be calculated on per capita basis or something in that realm.
7. Tony Sandridge: Essentially the caps would be based on what the counties are already spending meaning they would not spend above that amount in excess.
8. Leslie Lee: It would still be a bargain because it's a line item that counties could be comfortable with because that number would be stable.
9. Beau Rudder: It's probably difficult to budget for these counties that fluctuate back and forth for example Warren County where there is appointed counsel. However, stagnant cost within counties would make budgeting easier.
10. Tony Sandridge: Some counties really want to reserve that funding and other counties are just afraid to upset local judges.
11. Justice Kitchens: The flip side is that the state is struggling for funding and if we alleviate county stress then it's put back on the state. Moving the burden from the counties to State is basically the direction that the system aims to accomplish.
12. Leslie Lee: Sometimes it's hard to predict future savings resulting from reform; however standards could make these savings more visible.
13. Justice Kitchens: Early case resolution could result from attorneys that follow through with their entire cases. Preliminary hearings eliminate many cases. If public defenders have evaluated the cases properly then case resolutions

would be more prominent thus alleviating county courts and decongesting the courts. A system that produces better quality representation at this level would be effective.

14. Leslie Lee: There is a financial reason attorneys are not representing clients at initial appearance. The problem is that there are specific attorneys hired for initial hearings (Rankin County) and are not present for the entire case besides that type of representation which affects the establishment of attorney client-relationships.
15. Mark Baker: The regional contract system is consistent and cheaper (Newton County), why are there inconsistencies across the state when it comes to salaries throughout the counties?
16. Leslie Lee: Scott County was sued because defendants were not given attorneys at their initial appearances and people were only being appointed defendants at the indictment stage.
17. Andre De Gruy: At the last meeting the discrepancies were at issue, however per capita tells part of the story, crime rates differ throughout the state, there are many factors as to how counties calculate these costs, caseloads are lower than per capita cost should be lower.
18. Mark Baker: The other issue is trying to describe this contribution from the state that has an eerie sound, because it sounds like MAEP. The house has two public defenders. There must be agreement between these two to move forward in reaction to proposed legislation of this nature for anything to move the House. My position is that the public defenders within the House are going to have to be on board with the system as well.
19. Senator Bryan: One of the questions is what is going on out there in these individual counties because there are circumstances where attorneys are appointed sparingly which is inefficient; there are also issues with my constituents with public defenders for not responding to their calls.
20. Mark Baker: The solution for him comes back to population. The number of public defenders required should be based on the population of the county.
21. Justice Kitchens: This is about indigence, for example Rankin County is thriving and Carroll County is not, the problem is that Carroll County is going to have more indigent than Rankin County so it's questionable whether population should be the common denominator, however not disagreeing that it shouldn't be.
22. Mark Baker: There is some way to find out what the number is and from that information we decide where to go from there.

23. Angel Myers: Is there a structure for each office? Is there a set number of members within an office and staff for each office? How can you implement standards before structure? How do you impose standards on the counties from here without overreaching?
24. Leslie Lee: For example, in Alabama every judicial district decided on the structure of their own offices while the state issued the standards for those offices. Not every office needs a large number of public defenders, however I would like to see at least one full time public defender in each county that could manage the caseloads in their respective counties also to show what is needed in those counties specifically.
25. Angel Myers: Why don't we just rely on the attorney standards, the prosecutors association relied on the ABA standards for assigning attorneys to certain caseloads.
26. Leslie Lee: We could use those standards however another goal is to keep the cost down as well.
27. Andre De Gruy: From 2000 to about 2007 or 2008 there have been about 4 or 5 task force reports, Judge Chapman at the time decided that we should just mirror the prosecutor's structure. Establishing a structure before numbers would offer some guidance, designing a system before would allow the analysis of the data collected to be processed more fluently.
28. Angel Meyers asked about what type of numbers are needed and what numbers have not been obtained yet to make these decisions.
29. Andre De Gruy: The AOC potentially has numbers and these numbers could be retrieved from the individual counties, but you need the average number of cases going back at least 5 years and breaking the number up by types of cases. The data we don't have is how many of these people are indigent.
30. Justice Kitchens: Speaking to the reliability of AOC data, he stated for example jury trials comparisons data in relation to 20 years ago are not reliable because the problem is according to Chief Justice Waller is that the circuit clerks are not uniform in their reporting, the information may not be completely reliable until the electronic court system is established.
31. Ta'Shia Gordon: The issue is that circuit courts use different data collections, the reports are difficult to decipher because of their various methods of collection, and staffing is inadequate to process the amounts of data being received for review. Under House Bill 585 there is potential that the data would be more accurate.

32. Mark Baker asked what exactly was the purpose of House Bill 585?
33. Ta'Shia Gordon: HB 585 focuses on defendant names, the actual charge, the actual statute code under the charge, and how many charges are filed.
34. Mark Baker inquired as to when the AOC would be able to acquire data.
35. Ta'Shia Gordon: The data will be submitted to PEER and they will decipher the data we have currently and we may be able to view this data by September. The issue is with the speed of case resolution; a system is needed to provide standards for effective counsel.
36. Mark Baker: Favors the Alabama system.
37. Justice Kitchens stated that the general consensus from the responses is that there is a need for the system and whether there was any member who had opposition to the system. No one voiced opposition to a statewide public defender system.
38. Leslie Lee asked Demetrice Williams whether she saw a need for a statewide system in the Delta.
39. Demetrice Williams: She does see a need. In her district, in Sunflower County, public defenders provide ninety-eight percent of the criminal defense in the county. As an example, Washington County experiences a heavy caseload of criminal offenses; they have implemented a full time office which is apparently working effectively there.
40. Mark Baker responded that she described two systems and that it does work in some cases, however should we focus on the percentage of indigent persons in those counties to determine how many public defenders there should be in those counties? For instance, if 75% of the defendants are indigent then couldn't we just multiply the number of prosecutors by 75% to determine the number of public defenders needed?
41. Andre De Gruy: Establishing a system through that specific focus of data collection could be effective.
42. Tony Sandridge: If we had a system in place, how would that system affect Sunflower County? *Question directed toward Demetrice Williams.*
43. Demetrice Williams: There is no support system, part time public defenders conduct full time work and it's possible that establishing a system that addresses case load disparity can address specific needs of particular counties.

44. Justice Kitchens responded asking whether or not after establishing a fulltime staff would a single lawyer be able to handle the case load.
45. Demetrice Williams: Because it can often be confusing to work on the same client with another attorney in different stages of their cases they operate separately within their office and there would still be a need for multiple attorneys along with that full time staff.
46. Tanisha Gates: The number of indigent persons within Holmes county determines how many public defenders were needed, the three counties within her district adjusted the amount of public defenders based on their need for them within those counties apart from just a set number. The indigent population should be a determining factor in how many public defenders are appointed in each county.
47. Mark Baker: A district by district comparison would be the determining factor because not every county functions the same. The Judges would have to be following some type of standard to appoint attorneys. Is every Judge using the same standard to determine who is indigent?
48. Justice Kitchens: It is possible that a statutory mandate would be able address this issue.
49. Tony Sandridge: Since other states have established, should we view those models and adjust them accordingly in Mississippi?
50. Leslie Lee: Data collection is an issue that must be addressed to form a foundation.
51. Ta'Shia Gordon: The method by which data is collected is an issue; a more uniform method would make data collection easier.
52. Hob Bryan: For example attempting to collect simple information such as new cases divided by the number of judges. I have suggested that we hire an individual to call every county to collect this data, and proposed to shut down the Administrative Office of Courts and shift the funding to the State Public Defender's office. The starting point is how many assistant D.A's are employed and the number of indictments each county issues would be a starting point to collect data.
53. Judge Kitchens: It is important to conduct a meeting on the data that we actually have now to focus on a benchmark.
54. Mark Baker: Is there some indication that the result of ineffective counsel is the source of the overall problem?

55. Justice Kitchens: It is difficult to determine who the public defender was in the lower courts in order to determine where the deficiencies spring from. A state system with a hierarchy would be able to better handle the quality of attorneys that take on indigent defendants.
56. Leslie Lee: A system would ultimately solve the problem.
57. Justice Kitchens: Meeting times must be determined and it is possible that a meeting will be held at the end of October.
58. Mark Baker: Data collection should be the starting point to determine what should be done ultimately.
59. Leslie Lee: We will be producing a report on what we can gather in the next 2-3 months.
60. Hob Bryan: Based a reading of the statute, focus on the section where there must be a yearly report, there should be report for the past 3 years, 2017 would be the prime year to propose legislation, file a report mid 2016 for the proposal. The legislature lacks lawyers, not even 20% within the legislature, this is a subject that most of them could not possibly comprehend without time to review the reports and proposal.
61. Justice Kitchens: Years about during a meeting on reducing crime, former state district attorney and later U.S. attorney Dunn Lampton told the group there needed to be more public defenders. The criminal justice cannot work better without more public defenders. He then asked Andre De Gruy for closing remarks.
62. Andre De Gruy: If anyone was interested in assisting the data collection there would be information on the website as far as caseload and performance standards.
63. Leslie Lee: Clarified that the Task Force was asking OSPD to gather data and report back to the Task Force.

11:38am - Justice Kitchens adjourned the meeting.

Appendix B



MISSISSIPPI INDIGENT DEFENSE DATA PROJECT:

Recommendations for the Mississippi Public Defender Task Force

December 2015

Prepared by the National Legal Aid & Defender Association on behalf of
the Mississippi Office of State Public Defender

Marea L. Beeman
*Director of the Justice Standards
Evaluation and Research Initiative*

Tiffany Culley
Senior Research Associate

Contents

Chapter 1: Background and Recommendations	2
Report Objective	2
Why Mississippi Needs a Data Collection System	2
Report Methodology	4
Recommendations to the Public Defender Task Force	4
Chapter 2: Findings and Action Steps	6
Chapter 3: Public Defender Survey Report	9
About the Survey	9
Survey Report Findings	9
Summary	14
Chapter 4: Proposed Data Collection Project Methodology	15
Conclusion	19

Chapter 1: Background and Recommendations

Report Objective

In July 2015, the chairman of the Mississippi Public Defender Task Force, Mississippi Supreme Court Justice James Kitchens, asked the National Legal Aid & Defender Association¹ to provide technical assistance to the Task Force. Specifically, Justice Kitchens asked NLADA to identify a methodology for acquiring accurate and reliable data from the circuit courts to determine the needs of the state's indigent defense system. This methodology would help the Task Force fulfill its legislatively mandated duty to make "a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts."²

NLADA undertook this project through grant funding we receive from the Open Society Foundations to expand the capacity of the indigent defense community to embrace and utilize data, research and analysis. To develop our report, NLADA conducted site work, fielded a survey to indigent defense attorneys, and reviewed background reports and materials. The report provides recommendations, findings and action steps to assist the Task Force and sets out a methodology for a pilot data collection project. We hope that the report helps inform recommendations for an institutionalized indigent defense data collection mechanism in Mississippi.

Why Mississippi Needs a Data Collection System

In today's data-enabled culture, it is imperative for government to carry out its functions using accurate data and information. Data automation tools make it irresponsible to claim a lack of resources exist to produce basic decision-making data. In the criminal justice system nationally, the indigent defense function has been slower than some other criminal justice system sectors to embrace the importance of using data to drive decision-making and inform resource allocation. However, it is rapidly catching up.

In Mississippi, implementation of the right to counsel is primarily a local responsibility.³ For non-capital, trial level cases, Mississippi's 82 counties and multiple localities have the responsibility to select the type of delivery system used, determine the amount of funding required, and appropriate necessary funds.⁴ Counties have implemented an array of service models to provide indigent defense representation,

¹ Founded in 1911 and located in Washington, DC, NLADA is America's oldest and largest nonprofit association dedicated to excellence in the delivery of legal services to those who cannot afford counsel.

² Mississippi Code Section 25-32-71

³ The Sixth Amendment of the U.S. Constitution guarantees the right to assistance of counsel for defendants in criminal matters. In 1963, the Supreme Court decision *Gideon v. Wainwright* clarified that this right extends to people who are unable to afford an attorney in state felony cases. Subsequent opinions extended the right to counsel to misdemeanors which carry a possible punishment of incarceration and to juvenile delinquency matters. States have taken differing approaches to carrying out this constitutionally and statutorily mandated government function.

⁴ Statutory specification for the provision of indigent defense services is found in Miss. Code Ann. § 25-32-1 et. seq. § 99-15-15 and § 99-15-17

including assigned counsel, contract public defenders, full-time salaried public defender offices and part-time salaried public defenders.

With this highly de-centralized structure, it is difficult to get a statewide picture of indigent defense activities and resources. Counties and providers of indigent defense services are under no obligation to collect and report this information. The data that are collected are not tracked in a uniform fashion. As a result, it is exceedingly difficult to piece together an accurate statewide picture of indigent defense caseload, spending and activities.

Legislative attempts to create centralized, statewide oversight for administration of indigent defense services in Mississippi have been attempted but so far have yet to be fully enacted. Steps toward greater centralization of services include creation in 2000 of two statewide offices to handle capital cases, the Office of Capital Defense Counsel and the Office of Capital Post-Conviction Counsel and, in 2005, a statewide appellate defender program, the Office of Indigent Appeals.

In 2011, the state legislature created the Mississippi Office of the State Public Defender (OSPD), which brought the Office of Indigent Appeals and the Office of Capital Defense Counsel under one entity. The OSPD continues to provide the direct client representation for which the two merged offices were previously responsible. In addition, the OSPD was given responsibility to “coordinate the collection and dissemination of statistical data” and to “develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defender Task Force.”

The Task Force comprises 13 designated members.⁵ It is expected to “[m]ake a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs” in both criminal and youth court cases and report to the state legislature each year. Consideration is to be given to efforts in other states.

It is currently difficult for the OSPD and Task Force to carry out their data collection and planning responsibilities. Documentation that Mississippi lacks an adequate data collection system for indigent defense services dates back more than 20 years, first in a report issued in 1995 by The Spangenberg Group on behalf of the Indigent Defense Sub-Committee of the Mississippi Bar Association’s Criminal Justice Task Force, and again in an update to that report issued two years later. The 1997 report stated:

Mississippi is sorely in need of a system to accurately track indigent defendant cases. Public defenders in Mississippi are under no obligation to keep accurate caseload figures and not surprisingly, most do not. Similarly, the courts’ case-tracking system does not differentiate between those cases handled by retained counsel and those handled by appointed counsel.⁶

⁵ Authorization for the Task Force appears in Miss. Code Ann. § 25-32-71. Members include: (a) The President of the Mississippi Public Defender Association, or his designee; (b) The President of the Mississippi Prosecutors Association, or his designee; (c) A representative of the Administrative Office of Courts; (d) A representative of the Mississippi Supreme Court; (e) A representative of the Conference of Circuit Judges; (f) A representative of the Mississippi Attorney General’s Office; (g) A representative of the Mississippi Association of Supervisors; (h) A representative of The Mississippi Bar; (i) A representative of the Magnolia Bar Association; (j) The Chairman of the Senate Judiciary Committee, Division B, or his designee; (k) The Chairman of the Senate Appropriations Committee, or his designee; (l) The Chairman of the House Judiciary En Banc Committee, or his designee; and (m) The Chairman of the House Appropriations Committee, or his designee.

⁶ The Spangenberg Group, *Update: The State of Indigent Defense Services in Mississippi* (January 1997), p. 9.

The consequences of not having access to data on the indigent defense function are straightforward. Without data, it is impossible to accurately predict and justify resources needed to provide constitutionally mandated representation services. However, it is counterproductive to assign blame for the scarcity of indigent defense data in Mississippi. The indigent defense function is part of the overall criminal justice system. Complete information about indigent defense activities cannot be collected from one single entity in each county, but rather requires input from multiple actors in the justice system. With some clear direction of what data is required and a shared understanding of how to collect it, Mississippi's indigent defense function in particular and its criminal justice system overall stand to benefit from richer information about resource needs.

Report Methodology

From August 24 to 27, 2015, NLADA conducted on-site assessments in Mississippi, which included court observation and interviews of key stakeholders involved with maintaining indigent defense data in three counties. The information gathered from the site visits was then supplemented by data from a survey sent to members of the Mississippi Public Defender Association. Its members include lawyers who represent indigent criminal defendants and do not prosecute any cases, and non-lawyers who either work in a public defender office or support indigent defense work in some non-lawyer capacity (for example, as social workers, investigators, office managers, or mitigation specialists).

In the site visits we met with indigent defense providers, court clerks, a court administrator, one judge and one district attorney. We observed criminal court proceedings in Jackson Municipal Court, Hinds County Circuit Court and Warren County Justice Court. We also met with several staff members at the Administrative Office of the Court, the chair of the Public Defender Task Force (Mississippi Supreme Court Justice James Kitchens), and leadership staff at the OSPD. In all we met with 17 people. We are grateful to the OSPD staff for arranging our site visit meetings and for the warm reception we received from those we met.

The survey, which collected responses from 58 attorneys from September 3 through 28, 2015, asked about the types of service delivery models used in each county, how defenders track case information, how they define a "case" for reporting purposes, and the percentage of their practice that are indigent defense cases. Respondents were also asked at what stage they are appointed felony cases and how many felony cases they were appointed in 2014. Results of the survey were shared with public defenders in October 2015 at the OSPD's annual meeting held in Tunica.

The balance of this report consists of 1) recommendations to the Public Defender Task Force, 2) findings with actions steps to address them and 3) a recommended Data Collection Project Methodology.

Recommendations to the Public Defender Task Force

One central finding animates our observations and recommendations for this report: there is no shared understanding of what data are needed to assess indigent defense in Mississippi and there is no reliable mechanism to track and report information about indigent defense activity among Mississippi counties. No mandate at the county or state level requires indigent defense providers to track and report on

budget, caseload or other activities, and no mandate exists for counties to collect and report this information to a state entity. The result is an absence of up-to-date, accurate information on indigent defense delivery system type, funding, caseload, providers or activities. Without that information, there is no way for the OSPD or any other entity to accurately assess indigent defense quality or resource needs on a county, circuit or statewide basis. The recommendations below address both short- and long-term measures necessary to develop adequate data collection and analysis of indigent defense activities in Mississippi.

Recommendation 1: To facilitate uniform, statewide collection of indigent defense data in the short term, the Administrative Office of the Courts should add a check box on its Notice of Criminal Disposition Form to indicate in every criminal and juvenile delinquency case whether indigent defense counsel was appointed. This simple, no-cost mechanism will provide an immediate start to collecting critical data on indigent defense practice statewide. Over the long term, this information can be collected via the statewide Mississippi Electronic Courts (MEC) system.

Recommendation 2: The Mississippi legislature should enact legislation authorizing the Office of the State Public Defender to collect indigent defense data from counties. The legislation should direct counties to supply this information on an annual basis to the OSPD. The OSPD should be responsible for identifying which data points are required and then implementing a statewide mechanism to collect accurate data using standardized case definitions.

Recommendation 3: The OSPD should hire a staff member who is experienced in both qualitative and quantitative analysis to oversee the data collection effort. In the short term, this research analyst staff member can spearhead a pilot project to collect and analyze indigent defense data from a sample of counties. In the long term, this person would oversee a refined process to collect indigent defense data from every county (and, ideally, eventually from every municipal and justice court) on an annual basis for a complete picture of indigent defense resources.

Recommendation 4: The state legislature will need to provide adequate information technology (IT) resources to the OSPD to support design and automation of indigent defense data collection and analysis. Continuous investment from the state legislature into IT capacity will be necessary to operationalize data assessment, similar to what is done for prosecutors. District attorneys are provided with a case-tracking system and receive training and support for its use through the Attorney General's Office. There is no analogous resource for attorneys who take indigent defendant appointments. No training, software or hardware is supplied to courts or defenders to enter and track data uniformly.

Recommendation 5: There is a need for an OSPD-led education campaign that reaches all parties responsible for collecting or tracking indigent defense data, including providers, court clerks, court administrators, and county representatives. The campaign will include information on why it is important to collect data and should be followed by training on how data should be collected and reported. The net result will be a burgeoning culture of data collection and use that over time greatly improves resource allocation and understanding by multiple justice system stakeholders.

Recommendation 6: To identify and demonstrate the sort of data that should be collected and the process required to do so, the OSPD should undertake a data collection pilot project using the methodology spelled out in Chapter 4 of this report.

Chapter 2: Findings and Action Steps

Findings in this section are based on site visits conducted in three Mississippi counties (Hinds, Rankin and Warren) and on results from our public defender survey. Site visits were conducted in order to understand firsthand how indigent defense data is currently tracked and managed. Hinds, Rankin and Warren counties were selected in part because they each use a different type of indigent defense delivery system for their felony cases and we sought to understand whether reporting varies across different delivery systems. Hinds County has one of the state's four full-time public defender offices; conflict of interest cases are handled by private counsel appointed by the court on a case-by-case basis. Rankin County relies on six attorneys working from separate offices as part-time public defenders. When a conflict of interest is identified by one attorney, the case is re-assigned to another of the six attorneys. And in Warren County, all representation is provided by private attorneys appointed by the court on a case-by-case basis.

Finding 1: Recent developments have opened a window of opportunity towards standardized data tracking.

As we learned from our site visits and review of historical materials, little movement has been made in Mississippi over the last 20 years to establish a consistent and reliable indigent defense data collection system. However, positive developments indicate that the time is now right to begin this process. First, the request from the Public Defender Task Force for help identifying a methodology for data collection presents a promising new direction. The Task Force's request for assistance in developing information that will inform its recommendations to the legislature demonstrates a recognition of the importance of using data to evaluate the indigent defense system in Mississippi.

Furthermore, our conversations with representatives from the Administrative Office of the Courts (AOC) indicate an immediate opportunity for collecting standardized indigent defense data. We learned it is possible to modify an existing form, the Notice of Criminal Disposition Form, to indicate whether indigent defense counsel was appointed. This form is expected to be completed in every criminal case processed in the state. All that is required is addition of one checkbox on the form, coupled with instruction of court staff on its completion, to begin to receive basic data on the incidence on indigent defense counsel across the state.

Additionally, the Mississippi Electronic Courts system (MEC), which is being developed for use by courts statewide and is already collecting criminal justice data in two counties, is in the process of modifying and adding fields that can form a module specific to indigent defense data. This module, along with modules being developed for district attorneys and law enforcement, will feed into MEC and consolidate data across systems. Data standardization will exist across justice system sectors as all cases will be tracked according to a common definition: indictment number.

Another promising aspect of MEC is that its system design can make certain data fields mandatory, i.e., preventing the person entering data from advancing to the next field without entering information, such as whether an indigent defense attorney was appointed. These mandatory fields ensure accurate,

consistent and complete reporting across counties. As we learned during our site visits, particularly at the Hinds County Circuit Court (see *Finding 3*), simply providing fields to enter information is not enough; the fields must be mandatory to ensure consistent entry.

Action Steps:

1. The OSPD should partner with Administrative Office of Court to ensure that steps are taken to track indigent defense data, including adding a check box on the AOC's Notice of Criminal Disposition Form to indicate whether indigent defense counsel was appointed. This simple, no-cost mechanism will provide an immediate start to collecting critical data on indigent defense practice statewide.
2. For the longer term, OSPD should collaborate with MEC to ensure that the indigent defense module under development captures key data about indigent defense across the state.

Finding 2: There are no uniform requirements at the county or state level for collecting and reporting indigent defense data. Furthermore, data are maintained by, and therefore must be collected from, multiple entities.

There is no single entity responsible for defining what needs to be collected or for overseeing the collection effort. Further, there are no resources provided -- training, software or hardware -- to any of the entities that are the likely repositories of indigent defense data to systematize their efforts.

Putting aside problems we observed with incomplete or inaccurate data tracking, it is not possible to collect complete information about indigent defense activities in each county from one single entity. Relevant data reside with multiple entities. Defenders themselves hold information about just aspects of the work they handle as part of an overall system. Defense providers will be the source of individual attorney caseload and case activity. Courts and county officials hold additional information that defense providers will not have. Courts will have individual and aggregate level data on defendant indigency screening and attorney appointments; indigent defense attorney requests, denials and expenditures for use of investigators and expert witnesses; and case outcomes. Information on overall budgeting and expenditures for indigent defense services are likely to be held by county comptrollers or other fiscal agents.

Action steps:

1. The Mississippi Public Defender Task Force should seek legislative authorization for OSPD to be placed in charge of indigent defense data statewide and given authority to enforce its collection. With this authority, OSPD should determine what data to collect. It will need to be provided resources necessary to develop and oversee a process to ensure that data collection requests are fulfilled by all of the entities that keep and collect the data points.
2. OSPD should educate and train all justice system entities (such as individual attorneys, court clerks, court administrators, and county comptrollers) on what indigent defense data is required, why it is requested, and how to supply it. In doing so, it should seek opportunities to minimize reporting burdens by participating in existing data automation resources, such as the Mississippi Electronic Courts program.

3. The Task Force and OSPD should work with court leaders and others to ensure that all entities that are expected to report indigent defense data are provided with resources to do so, including training, software and hardware.

Finding 3: There is no consistent tracking of indigent defense data.

Due to the absence of data reporting requirements, indigent defense data are not tracked consistently. Data that *are* collected are not tracked following uniform definitions.

Currently, the ability to collect reliable data varies greatly by county. Courts report on different aspects of indigent defense activity, depending on their particular capacity and data systems. As our survey documented, some attorneys do not track their data electronically. In Rankin County, we learned that the six part-time public defenders do not have a shared case management system. While the circuit court can produce information on the overall number of cases filed in a year, there is no way to determine how many cases were assigned to public defenders. In Warren County, where indigent defense services are provided entirely by individual attorneys appointed on a case-by-case basis, there is no mechanism in place to track aggregate information on indigent defense cases.

Simply having a case management system that can track indigent defense information is not always a guarantee that it will yield necessary data. In the Hinds County Public Defender Office, the case management system is outdated and lacks the necessary automation to produce accurate reports. Additionally, we found that some courts have fields in their case management systems to collect indigent defense data, but the fields do not get utilized. For instance, the Hinds County Circuit Court has a field to indicate whether a defendant is indigent and whether he/she was appointed an attorney. However, this information is rarely entered.

Action Steps:

1. OSPD should undertake the recommended data collection pilot project as soon as possible so that the office is positioned to launch a full-scale data collection operation once legislation is enacted.
2. OSPD should assess each county's existing mechanisms for tracking indigent defense data.
3. OSPD should use the results of the assessment to determine data collection resource needs on a county-by-county basis.
4. On an ongoing basis, OSPD should monitor reporting compliance and ensure quality control of the data reported.

Chapter 3: Public Defender Survey Report

About the Survey

This section presents the results of a survey sent to Mississippi indigent defense attorneys in September 2015 about the state felony indigent client cases they handle. The brief survey sought information about the different types of indigent defense service delivery models used in each county, how defenders track case information, how they define a “case” for reporting purposes, and the percentage of their practice that is indigent defense cases. The survey also asked defenders how many felony cases they were appointed in 2014 and at what stage they are appointed felony cases.

The survey collected responses from September 3 to 28, 2015. Attorneys who provide indigent defense representation in more than one county were asked to submit one survey entry for each county. In total, we received 63 entries from 58 attorneys, representing practices in a total of 33 counties. While the sample size is not representative of indigent defense attorneys working in all of Mississippi’s 82 counties, the responses provide valuable information from providers about their practices.

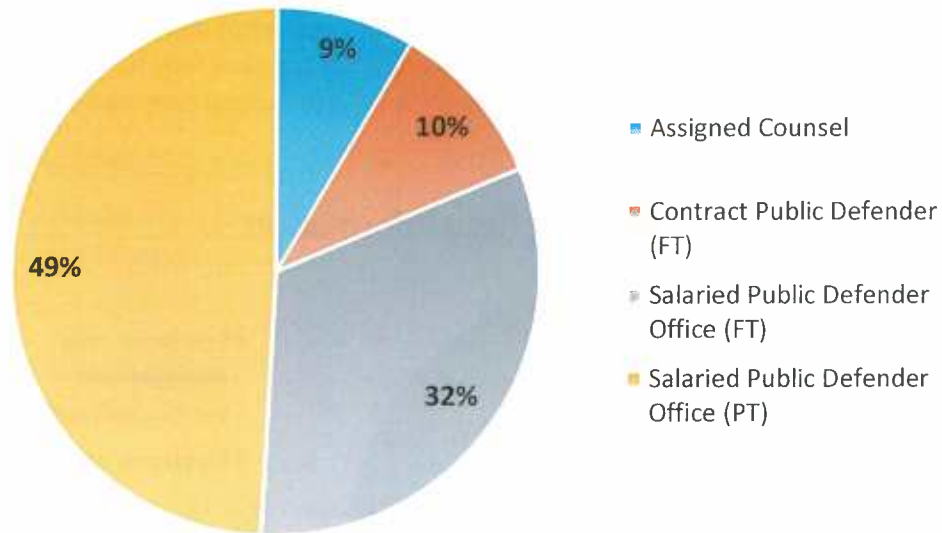
Survey Report Findings

The analysis of the survey is divided into six key areas: service delivery models, case tracking, defining a case, felony appointments, caseload, and continuity of counsel.

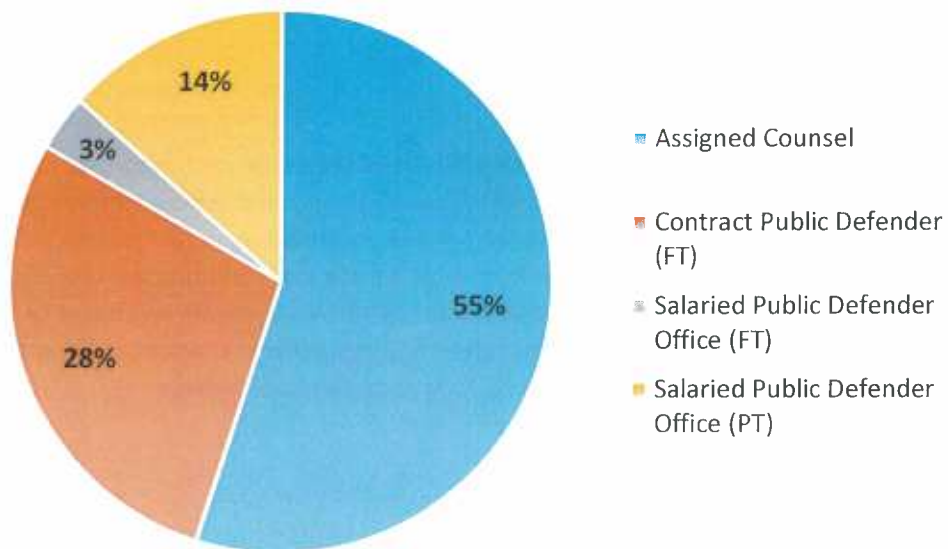
1. Service Delivery Models

The survey’s first two questions asked about the type of indigent defense delivery systems used for primary and conflict of interest cases in the respondents’ counties. The overwhelming number of respondents work in counties where the primary delivery system is a public defender office, either “full-time salaried public defender” (49 percent) or “part-time salaried public defender (32 percent).” For conflict of interest cases, “assigned counsel” was reported as the predominant delivery system used (55 percent). Approximately 80 percent of responses were from attorneys who take cases in their county’s primary case service delivery model, and 20 percent were from those who take cases in their county’s conflict of interest case service delivery model.

Primary Type of
Service Delivery Model

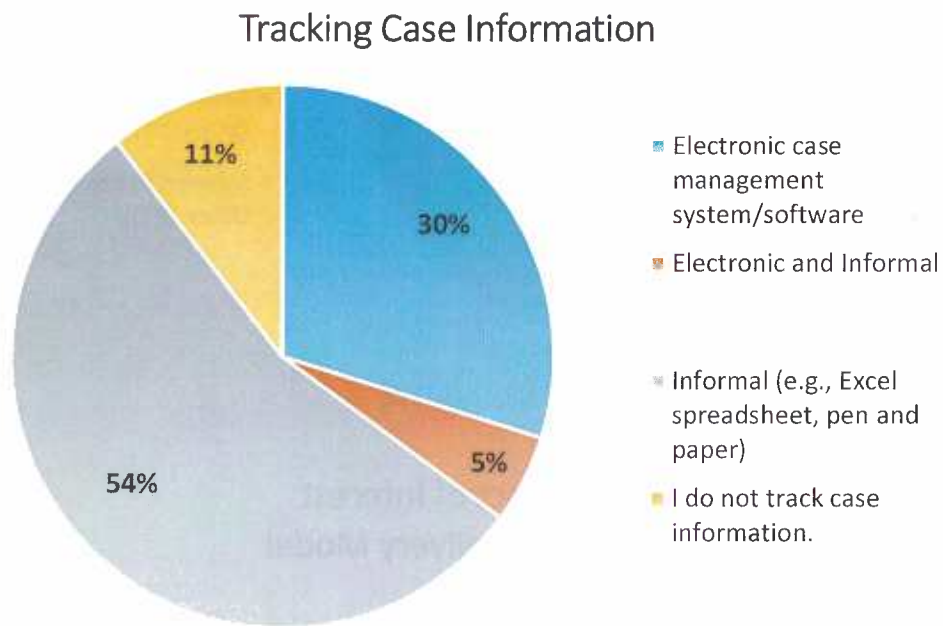


Conflict of Interest
Service Delivery Model



2. Case Tracking

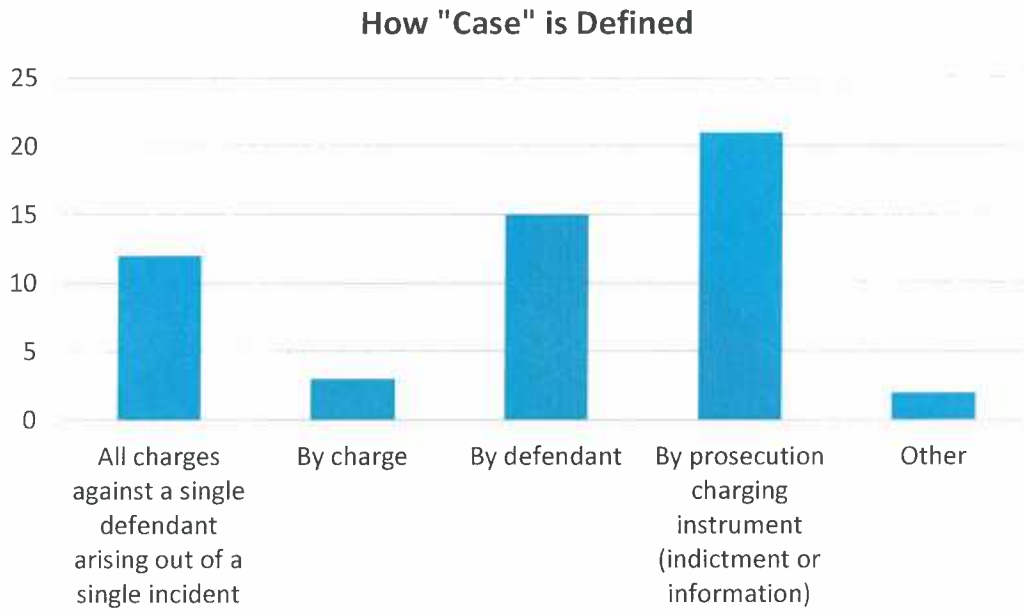
Most respondents to the survey do not keep track of case information using an electronic case management system. Over half (54 percent) of respondents track case information informally, either with a simple spreadsheet, or pen and paper. Approximately 30 percent of respondents use electronic case management systems, and five percent use a combination of case management systems and informal data collection methods. Eleven percent do not track case information at all. Most counties in Mississippi do not request data from indigent defense attorneys but were they to, these results suggest that many attorneys would be ill-equipped to easily produce basic data on cases handled.



Understanding this breakdown sheds light on the difficulty of statewide case reporting, as well as on the challenges that can be anticipated for a data collection project. Data not entered into a standardized case management system can be disorganized, incomplete, inconsistent, or, as this chart demonstrates, nonexistent. Even data in a case management system, as we discovered during our site visits, may present those exact problems if data are not entered in correctly or if certain important fields are left blank. To track consistent and meaningful information, it is important that attorneys have the ability, capacity and will to track data and are asked to so do in a standardized fashion.

3. Defining a Case

Survey respondents varied greatly in how they define a “case” for reporting purposes. The most common definition of a case reported was “by the prosecution charging information.” The second most common definition of a case reported was “by defendant.”

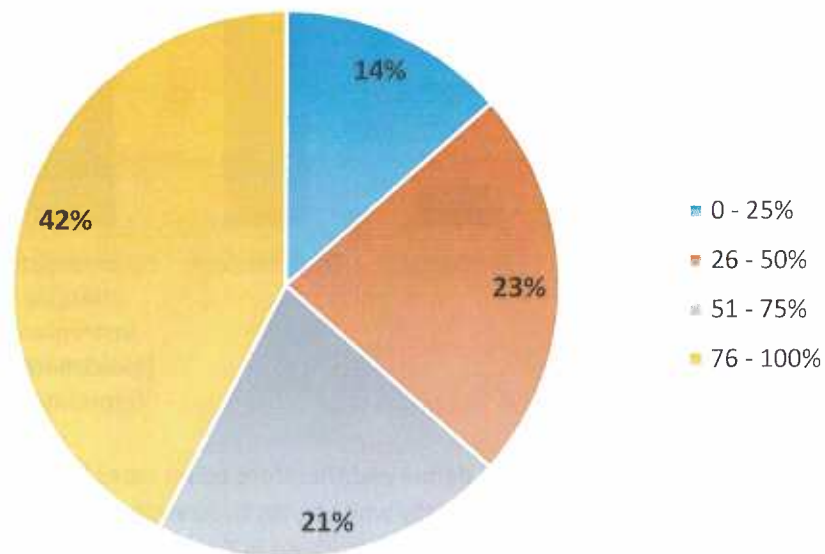


Lack of uniformity in how attorneys define and therefore count cases becomes problematic when comparing data across counties, especially when trying to quantify attorney caseload consistently. For instance, if we wanted to compare whether attorneys in County A have a higher caseload than those in County B, and each county defines a “case” differently, we cannot simply take the case numbers they provide at face value. Similar to comparing inches and centimeters, these numbers would need to be converted to provide useful information. This process can be both difficult and time-intensive.

4. Felony Appointments

Asked to estimate how much of their overall practice consisted of indigent defense appointments, the single largest category selected from four broad options was “76-100%.” More than half of all respondents indicated that indigent defense appointments consisted of over 50 percent of their overall practice.

**Indigent Defense Appointments
Percentage of Practice**



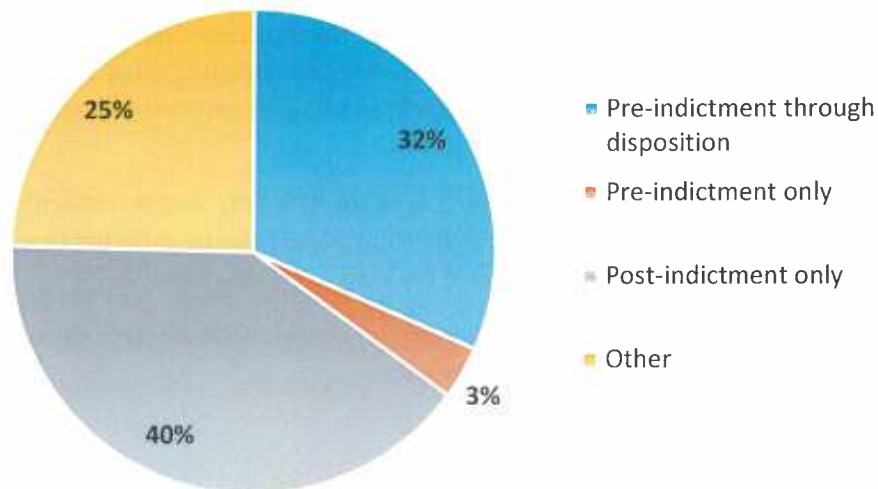
5. Caseload

Our survey attempted to measure overall indigent defense workload for Mississippi attorneys by considering 1) the percentage of an attorney’s practice that consists of indigent defense appointments and 2) the number of indigent defense cases an attorney takes per year. However, our survey question, “How many cases were you appointed in 2014?” received problematic responses. Some attorneys provided a number that reflected the cases they were appointed as an individual, while others reported the number of cases their office handles. Some could not provide a number at all. Therefore, we were unable to conduct the analysis we hoped or to even simply report average indigent defense case attorney caseload.

6. Continuity of Counsel

We asked attorneys at what stage(s) in a felony case they are involved. Overall responses indicate a lack of continuity of counsel for indigent defendant cases. Only 32 percent of responding attorneys are involved from pre-indictment through disposition, while 40 percent enter cases at indictment.

Stage Appointed Felony Case



For the responses indicating "other," some respondents take cases at both pre-indictment and post-indictment stages. Others occasionally handle preliminary hearings, and some handle cases at the pre-indictment stage only if the client is in jail.

Summary

The results from this short survey point to how difficult it is to collect reliable and comprehensive data on indigent defense in Mississippi, even from providers themselves. The survey results underscore the need for a statewide data collection mechanism to identify and collect accurate data using standardized case definitions. Until that is done, it will be very difficult to project adequate resource needs for indigent defense attorneys throughout the state.

Chapter 4: Proposed Data Collection Project Methodology

Currently, collecting statewide data on indigent defense services in Mississippi is a time-intensive and laborious process. Without a reporting mandate, outreach must be made to each county to compile basic data. There is not a single source where one can turn in each county to collect accurate information on indigent defense system type, expenditure and caseload data as multiple entities maintain aspects of the complete data picture.

The following section sets out a recommended methodology by which OSPD can collect baseline data on indigent defense from individual counties in Mississippi. The data collected will provide the necessary foundation for understanding how the public defense function operates in the state. It will serve as a starting point for developing a regular data collection and analysis project to be administered by the OSPD.

The scope of data collection for this initial project is felony data only. As data collection capacity expands, information on misdemeanors and youth court should also be collected to understand how the indigent defense system as a whole is working in the state.

The methodology for this project consists of five distinct phases: build research capacity, determine data to collect, identify sites, collect data, and analyze data.

Phase 1: Build Research Capacity

The first phase of the project involves building OSPD's capacity to identify, collect and analyze data. First, OSPD should hire a research analyst responsible for overseeing this project. Ideally, this individual would be experienced in both qualitative and quantitative analysis (including the use of statistical software) and have an understanding of the fragmented indigent defense system in Mississippi. The research analyst will also be responsible for hiring and training legal interns or other staff who will go out to each of the selected counties and collect the data necessary.⁷

The research analyst, in collaboration with IT support from OSPD or the AOC, will then create a data warehouse that will store the information collected. The data warehouse must allow for analysis via statistical software and have enough storage space to collect all of the data from this project. While the data collected from this project may allow for a relatively simple data warehouse, resources should be designated to eventually move to a more advanced warehouse, such as through Microsoft SQL Server. It is recommended that OSPD work with the AOC to see if there are existing data infrastructures on which this warehouse may be built and determine if hiring an IT consultant for this project is necessary.

A detailed guide on building indigent defense data warehouses can be found on the North Carolina Systems Evaluation Project website.⁸

⁷ See NLADA's *Building In-House Research Capacity Toolkit* for helpful information on what to look for and how to recruit an indigent defense research analyst.

⁸ <http://www.nlada100years.org/sites/default/files/NLADA%20Toolkit%20-%20Research%20Capacity.pdf>

⁸ <http://www.ncids.org/Systems%20Evaluation%20Project/Infrastructure/links.htm>

Phase 2: Determine Data to Collect

Before beginning any data collection or analysis, a set list of key data to be collected will need to be determined (e.g., attorney caseload, case outcomes, client contact).⁹ This standardized list will allow for meaningful comparisons among the different counties. We recommend limiting the number of data points to only the information most crucial for this project. The more data that need to be collected, the more burdensome it will become to both the counties providing the information and for the researcher(s) collecting and analyzing the data. Therefore, it is important to strike the right balance between the amount of information gathered and the amount of time and resources required.

The definitions for each data point will also need to be standardized. In particular, there must be a common definition of a “case” used, otherwise accurate counting and comparisons will be impossible. For example, if one attorney reports cases by individual charges, and another reports cases by defendant, then the first attorney’s caseload will likely artificially appear higher than the second attorney’s caseload because defendants often face more than one charge.

The difficulty of standardizing the definition of a case is prevalent throughout indigent defense research and is a common problem in many jurisdictions. Standardization is time-intensive because a common definition of a case must first be selected, and then all other data must be recalculated to conform to this standardization. Though difficult, this process is arguably the only way to accurately determine attorney workload and caseload and is therefore a highly recommended component of this project. It may also be possible to select for the sample only counties that use the same definition of case as a way of bypassing this problem.

Phase 3: Identify Sites

This project will involve data collection from five to eight counties in Mississippi. The exact number of sites will depend primarily on staff capacity and expected project completion timeframe. To present as broad a picture as possible, these sites will be determined by various levels of diversity, such as geography, types of delivery system and population. It may also be helpful to capture diversity in levels of data tracking capacity (i.e., case management system, spreadsheets, paper only) although more advanced systems will allow for more efficient and reliable data collection.

Which counties are selected will also depend heavily on the amount of available data. Ideally, each site would have information on all items of the pre-determined list of data points as specified in Phase 2. And while gathering information about a county in which data collection is limited to pen and paper, this option should only be explored if an office/attorney keeps consistent and easily accessible information. All other counties must have electronic data that is kept either in a case management program or in an Excel spreadsheet.

⁹ A good starting point is NLADA’s report, [Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders](http://www.nlada100years.org/sites/default/files/BASIC%20DATA%20TOOLKIT%2010-27-14%20Web.pdf) (2014) <http://www.nlada100years.org/sites/default/files/BASIC%20DATA%20TOOLKIT%2010-27-14%20Web.pdf>

Phase 4: Collect Data

This phase of the project involves first collecting information on which parties possess the necessary data, whether it be the attorneys themselves, a circuit court clerk, a court administrator, county administrator, or even an IT manager. In some counties, data will be located at more than one source. There should be an “all hands on deck” approach to identifying all of the data sources within each county, a process which may require site visits. While it is certainly possible to train law interns or research assistants to engage in this process, this phase is best conducted by the research analyst and other relevant OSPD staff because they have a deeper knowledge of how indigent defense service delivery systems work in Mississippi and can most quickly identify whom to contact. NLADA’s experience visiting just three counties, coupled with The Spangenberg Group’s more intensive data collection experience in the mid-1990s, suggests that data sources will include circuit clerks, chancery clerks, court administrators, county administrators, county comptrollers, budget analysts, public defenders, court appointed attorneys and even law clerks of circuit court justices, depending on the sample of counties selected.

Concurrent to identifying data sources will be training of legal interns or other support staff in collecting data from the selected counties. Training should include going through the list of key data points and explaining 1) what each data point means and what are the standardized definitions, 2) where to obtain the data, particularly where different items are kept by different sources and 3) how to identify incorrect or missing data. This training will need to be tailored to account for the differences among the selected sites; some sites may require more intensive training than others. OSPD support staff should receive or help compile a list of primary contacts who are able to provide data and work with staff as they gather data.

Quality control will be critical at this phase to prevent the need to go back to the original source to re-collect data. The research analyst should monitor the legal interns and other data collectors to ensure that the information received matches with the information requested. The research analyst should also continuously check that the data received is standardized across the sites or, at minimum, is able to be standardized through data cleaning. Weekly or bi-weekly meetings with all relevant OSPD staff are recommended to identify any gaps or necessary modifications to the project.

Phase 5: Analyze Data

Any data set that is collected must be cleaned, e.g., reviewed and purged of duplicate entries and other inaccurate data. Ideally, the data sets would also be standardized in a way that can allow for meaningful comparisons across counties. However, this component can be very difficult and time-intensive to achieve. If time and resources are limited, comparative data across counties may not be as important as understanding data from counties individually. Therefore, making sure the data set received from a county is accurate would be a higher priority than making sure the data in a format that can be compared across counties.

The research analyst will be responsible for data cleaning unless he or she is able to hire assistants with quantitative analysis skills. Data may be cleaned and analyzed via statistical software or Excel. If there

are IT managers in those counties where data is collected, they may also be able to help export data in a way that requires less data cleaning and standardization.

There are two types of statistics associated with the data analysis for this project. The first type of statistic is descriptive, which includes counts, percentages and other factors. The number of cases an attorney is appointed is an example of a descriptive statistic. The second type of statistic is inferential and relates to whether and to what degree two variables are associated. For instance, the relationship between the use of an investigator and case outcome is an inferential statistic.

For the purposes of this project, quantitative analysis will consist primarily of descriptive analysis, which will provide the necessary information to measure caseload, expenditures and other counts and averages. Inferential analysis, which requires using advanced statistical methods, can be completed at a later stage to answer more in-depth questions, such as which factors contribute to better case outcomes. Whether inferential analysis can be completed for this project depends largely on the amount and reliability of the data collected, the availability of statistical software, and the ability of the research analyst to use advanced statistical methods to determine correlations.

The quantitative analysis reported should also be supplemented with qualitative data, which includes any important information gathered throughout the duration of the project that cannot be measured numerically. As an example, how a particular indigent defense service delivery model works in a county, as well as the process by which data are transferred and reported, are two important pieces of information that are not quantifiable and yet enormously important to collect. Qualitative data, which can also include information gathered through interviews and surveys, provides information on contexts, processes, perceptions and other areas that allow the quantitative data to be meaningful.

Conclusion

NLADA found that the ability to collect and analyze data required to determine the needs of indigent defense in Mississippi has not significantly improved since the 1990s. While positive movement has been made to increase administrative oversight of indigent defense services statewide, progress to systematize data collection is hampered from a lack of necessary authority and tools to effectively carry out this responsibility.

It is impossible for OSPD to fulfill its reporting and planning mandate without a requirement for counties to supply it with basic data. Indeed, even if counties were required to supply this information, the picture of indigent defense felony case needs would still be incomplete because the data supplied would not report on municipal or justice court activity. This data is particularly important given that felony cases originate in municipal and justice courts.

The pilot project methodology included in this report provides a way for OSPD to move forward with data collection in the short term, independent of when legislation facilitates more comprehensive data collection across the state. Based on the findings from our site work and survey, the project methodology presents a step-by-step guide towards overcoming the hindrances that have for so long stymied the efforts around consistent data collection. The challenge of understanding the state of indigent defense in Mississippi through data is not insurmountable. We believe that it may be overcome through thoughtful and methodological assessment, coordination and implementation.

Appendix C



SIXTH AMENDMENT CENTER

PROPOSAL Evaluation of Public Defense Services State of Mississippi

Respectfully Submitted to:

Mississippi Public Defender Task Force
Associate Justice James W. Kitchens, Chairman
Mississippi Supreme Court
450 High Street
Jackson, MS 39201

&

Chief Justice William L. Waller
Mississippi Supreme Court
450 High Street
Jackson, MS 39201

By:

Sixth Amendment Center, P.O. Box 15556, Boston MA 02215
In Partnership with The Defender Initiative
Seattle University School of Law
Seattle, Washington 98122

December 7, 2015

Introduction

The Sixth Amendment Center (6AC) is a non-partisan, tax-exempt nonprofit organization seeking to ensure that no person faces potential time in jail without first having effective assistance of counsel, as required under the United States Constitution. The 6AC does so by measuring public defense systems against established standards of justice. When shortcomings are identified, the 6AC helps states overcome identified deficiencies in ways that promote public safety and fiscal responsibility. The 6AC is principally funded through generous grants awarded by Koch Industries, Inc.,¹ and the U.S. Department of Justice.

The 6AC works in partnership with the Defender Initiative at Seattle University School of Law (SUSL) – a law school-based project aimed at providing better representation for people accused of crimes and facing loss of their liberty in juvenile and other court proceedings and in the process increase fairness in and respect for the courts. The Initiative is part of the Fred T. Korematsu Center for Law and Equality, whose mission is to advance justice and equality through a unified vision that combines research, advocacy, and education.

The U.S. Department of Justice, Bureau of Justice Assistance funds the 6AC/SUSL partnership to perform evaluation of indigent defense services to state policymakers at no cost to the local jurisdiction. The 6AC/SUSL proposes to dedicate more than \$150,000 of the BJA funding to conduct an evaluation of indigent defense services in Mississippi, under the auspices of the Mississippi Public Defender Task Force.

The Sixth Amendment to the United States Constitution

The adversarial system of justice is rooted in the very fabric of the United States. Because the European people that arrived on the shores of America were, in many instances, those who had been subject to religious persecution in European courts, the people of the new emerging nation were

¹ There is increasing awareness among people across the political spectrum that the right to counsel is critical to preserving individual liberty and that in many places American criminal justice systems have evolved without the necessary protections that competent defense lawyers can assert to guard against tyranny or government abuse. Conservatives, for example, may believe in smaller government, but they also believe in the Bill of Rights. Just as the Second Amendment was originally created to allow citizens to protect their homes and families against an intrusion by government, so too does the Sixth Amendment give a person the tool – a lawyer – to defend his liberty from what the U.S. Supreme Court called the “machinery” of law enforcement. The Koch Industries, Inc. 6AC funding is part of a larger criminal justice reform grant awarded to the National Association of Criminal Defense Lawyers (NACDL). The 6AC has a memorandum of agreement with NACDL that all evaluations are independent. The 6AC is currently conducting an independent evaluation of indigent defense services in Indiana with the Koch Industries, Inc. funding.

not content to adopt the justice system of their mother countries.² Having experienced tyranny first-hand, the people of the new American colonies were suspicious of concentrated power in the hands of a few. An individual's right to liberty was self-evident, and therefore there needed to be a high threshold to allow government to take away the liberty that the Creator had endowed in each and every individual.³

Once Americans threw off the shackles of a tyrannical monarchy in the Revolution, the patriots were not about to create a new tyranny through the federal government that could infringe on the rights of individuals. Thus, the framers of the U.S. Constitution created a Bill of Rights specifically to protect personal liberty from the tyranny of big government. All people, they argued, should be free to express unpopular opinions, or choose one's own religion, or to take up arms to protect one's home and family, without fear of retaliation from the state.

Preeminent in the Bill of Rights is the idea that no one's liberty can ever be taken away without the process being fair. That is, to protect against the tyrannical impulses of government, the country's founders devised an adversarial justice system that consciously made it difficult for government to put someone in jail or prison. A jury made up of everyday citizens, protections against self-incrimination, and the Sixth Amendment right to have a lawyer advocating on one's behalf are all American ideas of justice enshrined in the first ten amendments to the United States Constitution, ratified by the states in 1791.

² As predominantly English settlers, the English justice system that the colonists set about reforming was what today would be called the "inquisitorial model" of criminal justice. The presumption of innocence does not exist in the inquisitorial system. Instead, because the judge makes a final verdict based on the evidence that he himself has collected, there is a presumption of guilt inherent in the trial proceedings. In the inquisitorial system of justice, therefore, the burden of proof rests with the defendant accused of a crime to establish his own innocence.

In England at that time, defense lawyers were specifically denied to the accused in the most serious cases. But with the introduction of defense lawyers in Colonial America, criminal trials started to become actual trials. Procedural rules started to be written down and codified. Evidence, including hearsay, could no longer be introduced without restraint. And the presumption of guilt became increasingly contested. This was the birth of the adversarial system – a system based on the simple notion that the truth is best made clear through back and forth debate of opposing perspectives. In fact, this idea of competition soon became the basis of American capitalism as well. When the North American colonies revolted from the crown, the right to counsel was quickly enshrined in all but one of the original 13 state constitutions. See: Jonakait, Randolph. *The Rise of the American Adversary System: America Before England*. Widener Law Review. Volume 14, 2008. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1026382.

³ As an example of the degree to which the New World Americans were committed to the right to counsel, the following preamble accompanied the right to counsel law passed on March 11, 1660 in the colony of Rhode Island and Providence Plantations: "Whereas it doth appeare that any person . . . may on good grounds, or through mallice or envie be indicted and accused for matters criminal, wherein the person is so [accused] may be innocent, and yett, may not be accomplished with soe much wisdom and knowledge of the law to plead his own innocencye, &c. Be it therefore inacted . . . that it shall be accounted and owned from hence-forth the lawful privilege of any man that is indicted, to procure an attorney to plead any point of law that make for clearing of his innocencye." *II Rhode Island Colonial Records 1664-77* (Bartlett, 1857), p. 239. See also: Beaney, William. *The Right to Counsel in America* (Univ. of Mich., 1955), pp. 17-18.

Sixth Amendment State Obligations under the Fourteenth Amendment

Without the aid of an effective lawyer almost anyone stands the risk of going to jail when charged with a crime. The majority of people do not know, for example, what is and is not admissible in a court of law let alone how to procedurally put the prosecution's case through the crucible of adversarial testing. If this is true of even the most affluent and educated among us, is it then fair to let someone who has fallen on hard times, or has been let down by our country's educational system, or is not yet an adult, face a loss of liberty at the hands of government simply because they lack the guiding hand of counsel to navigate the complexities of our legal system?

In 1963, the United States Supreme Court answered with a definitive "no." In *Gideon v. Wainwright*,⁴ the Court declared that "reason and reflection, require us to recognize that, in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."⁵ That is, the tyranny of government could not take the liberty of an indigent accused of a felony without first providing the effective assistance of counsel. Moreover, *Gideon* made the provision of indigent defense services a state obligation through the Fourteenth Amendment.⁶

For the more than 50 years since *Gideon*, the Supreme Court has consistently extended state obligations under the Sixth and Fourteenth Amendments to any criminal case in which a defendant may potentially lose his liberty, including: direct appeals,⁷ juvenile delinquency proceedings,⁸ misdemeanors,⁹ misdemeanors with suspended sentences,¹⁰ and appeals challenging a sentence as a result of a guilty plea.¹¹

The Right to Counsel in Mississippi

Right to counsel services in Mississippi are administered under the adage that the government closest to the people governs best. Numerous local agencies and officials spread across the state's

⁴ 372 U.S. 335 (1963).

⁵ *Id.*, at 344.

⁶ *Id.*, at 342-43.

⁷ *Douglas v. California*, 372 U.S. 353 (1963).

⁸ *In re Gault*, 387 U.S. 1 (1967).

⁹ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

¹⁰ *Shelton v. Alabama*, 505 U.S. 654 (2002).

¹¹ *Halbert v. Michigan*, 545 U.S. 605 (2005).

82 counties and 298 cities share the principal responsibility for ensuring the sufficiency of public defense services.

In 2011, the Mississippi Legislature took initial steps to oversee local services through the creation of the Office of the State Public Defender (OSPD).¹² In addition to consolidating the pre-existing Office of Indigent Appeals and the Capital Defense Counsel Office, OSPD is statutorily tasked with coordinating “the collection and dissemination of statistical data and mak[ing] such reports as are required of the divisions, develop[ing] plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force.” The Mississippi Public Defender Task Force (MPDTF) is composed of legislators, policy-makers and criminal justice stakeholders (judges, defenders, prosecutors, etc.).¹³ Unfortunately, OSPD office received no additional funds for these planning and training responsibilities.

Proposed Study & Obligations of the Mississippi Public Defender Task Force

We propose to conduct on-site indigent defense assessments in eight Mississippi counties. Funding limitations make it impossible to conduct on-site assessments in every Mississippi county. Generally, a relative sample inclusive of ten percent of counties (or, eight of Mississippi’s 82 counties) is scientifically sound. However, it is important that the citizenry recognize those sample counties as being representative of their state. Therefore, the 6AC/SUSL asks the Task Force to choose eight counties that reflect diversity of population size, indigent defense delivery service

¹² Miss. Code Ann. § 99-18-1.

¹³ The Mississippi Public Defender Task Force was created by statute, see Miss. Code Ann. § 25-32-71, in 2000. Originally conceived as an 11-member committee, the act was amended to expand the Task Force to 13-members in 2007. The Task Force consists of the following: (a) The President of the Mississippi Public Defender Association, or his designee; (b) The President of the Mississippi Prosecutors Association, or his designee; (c) A representative of the Administrative Office of Courts; (d) A representative of the Mississippi Supreme Court; (e) A representative of the Conference of Circuit Judges; (f) A representative of the Mississippi Attorney General’s Office; (g) A representative of the Mississippi Association of Supervisors; (h) A representative of The Mississippi Bar; (i) A representative of the Magnolia Bar Association (The African-American Bar); (j) The Chairman of the Senate Judiciary Committee, Division B, or his designee; (k) The Chairman of the Senate Appropriations Committee, or his designee; (l) The Chairman of the House Judiciary En Banc Committee, or his designee; and, (m) The Chairman of the House Appropriations Committee, or his designee.

The duties of the task force are three-fold: (a) make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts; (b) examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases; and (c) study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

model, and geographic region.¹⁴ Outside of selecting the eight counties, the Task Force has no other obligations under this proposal.

For planning purposes, however, the budget for site work and report writing is based on the following eight jurisdictions. These are just placeholders until the Task Force determines the eight counties to evaluate: Choctaw (population: 8,000); Desoto 161,000); Hinds (285,000); Madison (95,000); Lowndes (59,000); Neshoba (29,000); Tallahatchie (15,000); and, Tunica (10,000).

Site work can begin as early as January 2016. Site work consists of three basic components:

Data collection: Basic information about how a jurisdiction provides right to counsel services is often available in a variety of documents, from statistical information to policies and procedures. All relevant hard copy or electronic information, including copies of indigent defense contracts, policies, and procedures, are obtained at the local level and reviewed.

Court observations: Understanding how the right to counsel works in any jurisdiction requires an understanding of two critical processes: (a) the process the individual defendant experiences as a case is processed from arrest through to disposition; and, (b) the process the attorney experiences while representing that individual at the various stages of the defendant's case. Courtroom observations are conducted in the respective courts of each sample county.

Interviews: No individual component of the criminal justice system operates in a vacuum. Rather, the policy decisions of one component necessarily affect another. Because of this, interviews are conducted with a broad cross-section of stakeholder groups during each site visit. In addition to speaking with indigent defense attorneys, we seek interviews with district and justice court judges, county administrators, prosecutors, sheriffs, court clerks, probation officers, and law enforcement. Telephone follow-up is added when needed.

6AC/SUSL Capabilities & Competencies

David Carroll, 6AC Executive Director, will manage the project. Mr. Carroll is a nationally recognized expert on the standards and methods for the delivery of right to counsel services, with fifteen years of providing technical assistance to policymakers at the federal, state and local levels. He has led numerous research and evaluation projects, authored several papers and reports, and has testified on right to counsel issues before a number of state legislatures and the U.S. Congress. His work has brought him to all but two of the nation's 50 states.

¹⁴ This proposal is informed by preliminary site visits conducted in Harrison, Hinds and Rankin Counties to understand what it takes to conduct a Mississippi-specific evaluation. We expect that a final report will include observations based on those visits.

Robert C. Boruchowitz is Professor from Practice and Director of The Defender Initiative at Seattle University School of Law, where he has been on the faculty for nearly nine years. Before that he was Director of the Defender Association in Seattle, a non-profit public defender office, for 28 years. Professor Boruchowitz has been instrumental in developing defender standards in Washington and nationally, and has helped to evaluate defender services in Louisiana, Michigan, Nevada, Utah, Idaho, and the District of Columbia. He also has observed public defense practices in Kentucky, Arizona, New York, and Pennsylvania. Professor Boruchowitz has written and spoken widely on public defense and criminal justice issues and has been accepted as an expert witness on public defense and effective assistance of counsel by courts in Washington, New York, and Louisiana. He has served on a variety of state and national committees, and received numerous state and national awards, including the Washington State Bar Association Professionalism Award and the Champion of Indigent Defense Award of the National Association of Criminal Defense Lawyers.

Phyllis Mann has over 20 years of experience in the field of criminal defense and its processes. Now as Senior Program Associate with the Sixth Amendment Center and previously as NDLI Director at the National Legal Aid & Defender Association, over the past decade she has evaluated indigent defense systems in many states and counties as varied as Louisiana, Michigan, and Utah. Mann has also written extensively about the problems and solutions for public defense in America. Before retiring from her private practice in the state and federal courts of Louisiana, Mann was the recipient of the NLADA Arthur von Briesen Award for a private attorney making substantial volunteer contributions in support of indigent defense, and the Louisiana Association of Criminal Defense Lawyers Justice Albert Tate Jr. Award for lifetime achievement in criminal defense. Mann secured the Louisiana Supreme Court decision in *State v. Citizen*, guaranteeing that prosecutions cannot go forward in capital cases that lack sufficient resources for an effective defense.

Nick Chiarkas is a 6AC Board member who began his professional career as a New York City police officer, before attaining his law degree and multiple masters and doctorate-level degrees in criminal justice and sociology. He was a professor of law at Sanford University for eight years and a professor of criminology at Trenton State College for six. During the Reagan Administration, Chiarkas served as deputy chief counsel to the United States Senate Permanent Subcommittee on Investigations; deputy chief counsel and research director to the President's Commission on Organized Crime; and chief counsel to the United States Architectural and Transportation Barriers Compliance Board. In 1988, Chiarkas relocated to Wisconsin where he was appointed as the state public defender – a position he held for the next 22 years. As the head of the statewide defender agency, Chiarkas helped develop drug, alcohol, and mental-health treatment courts throughout the state, and was the primary facilitator of the Wisconsin Veterans Intervention Program. Chiarkas served as a consultant to Israel in establishing and enriching Israel's first National Public Defender and to Japan as it introduced a public defender system.

References

Utah Judicial Council

Study Committee of the Representation of Indigent Criminal Defendants
Contact: Hon. Stephen Roth, Appellate Judge and Committee Chairman
Phone: (801) 718-9577
Email: sroth@utcourts.gov

The 6AC/SUSL partnership released a statewide evaluation of trial-level indigent defense services in Utah in October 2015. The work was completed under the auspices of the Utah Judicial Council, Indigent Defense Committee. The 6AC/SUSL partnership is currently assisting state policy-makers address systemic deficiencies in the delivery of indigent defense services. Report available at: <http://sixthamendment.org/utah-report/>

Michigan Indigent Defense Commission

Contact: Hon. Thomas Boyd, District Judge (55th District – Ingham County)
Phone: # (517) 346-676-8455
Email: tboyd@ingham.org

In 2006, the Michigan Legislature authorized an assessment of right to counsel services throughout the state to be overseen by the State Bar of Michigan. Project manager David Carroll led a two-year project (2006-2008) to study services in ten representative counties [including Wayne County (Detroit)]. In October 2011, Governor Rick Snyder appointed a Governor's Advisory Commission on Indigent Defense by executive order. Judge Boyd was a member of the Advisory Commission. The Commission made sweeping recommendations that were enacted in 2013, including the creation of a state entity charged with the promulgation and enforcement of state indigent defense standards. Judge Boyd is a member of the new statewide oversight board.

On behalf of the State Bar, Carroll presented findings in numerous forums, including before the U.S. House of Representatives, Judiciary Committee (2009). Carroll and the Sixth Amendment Center also worked with the State Bar to provide technical assistance to a Governor's Advisory Task Force on Indigent Defense (2012) that resulted in sweeping reform recommendations that are currently being debated in the state legislature. The 6AC/SUSL partnership continues to provide technical assistance to the new Michigan Indigent Defense Commission.

The Supreme Court of Nevada

Contact: Chief Justice James Hardesty
Phone: # (775) 684-1600
Email: hardesty@nvcourts.nv.gov

Project Manager David Carroll began work with the Nevada Supreme Court in 1998 providing evaluation services of the right to counsel in the state under the auspices of the Nevada Supreme

Time Line

2016-2017

[illegible]

Budget

A. Staff Time (Preparation, Evaluation, Report Writing, Technical Assistance)

The work plan budget is calculated based on a government rate of \$85 per hour, capped at \$650 per day. An estimated total of 38 days will be spent on-site in Mississippi with another 94 office days spent on background research, site preparation (e.g. arranging interviews, scheduling court observations, etc.), data review, report writing, and limited technical assistance after the delivery of our final report.

B. Expenses (Evaluation)

The only travel anticipated, and therefore budgeted, are those trips essential to the success of the project.

Travel expenses are calculated using federal travel regulations. Using the federal GSA rates, meals and incidentals are calculated at \$51 per person per day. For ground transportation (to and from airports or parking at the airport), each person is allotted \$80 for the trip. Per-person airfare is calculated at \$520 per person. The government rate for lodging is \$89 per night per person with a sales tax allowance of 7%.

The total estimated expenses for the proposal are \$40,692.70.



**SIXTH
AMENDMENT
CENTER**

www.sixthamendment.org