



PROPOSAL FOR NEXT STEP IN DEVELOPMENT OF A STATEWIDE PUBLIC DEFENDER SYSTEM FOR MISSISSIPPI

“The State Defender shall ... develop plans and proposals for further development of a statewide public defender system ...” *Miss. Code* Section 99-18-1 (7).

The Office of State Public Defender (OSPD) submits this plan as the “next step” in development of a statewide public defender system to ensure Constitutional compliance in a fiscally efficient manner. This proposal differs from the Mississippi Public Defender Task Force proposal and Sixth Amendment Center recommendations in three significant ways. It does NOT establish a state commission, create district defender offices, nor amend existing statutory authorizations for county public defender offices.

The Task Force¹, originally created by the Legislature in 2000 and reauthorized under the leadership of Mississippi Supreme Court Presiding Justice Jim Kitchens in 2015, concluded its work in 2018 with submission of a [Final Report](#) and Recommendations to the 2019 Legislature. The Final Report was based primarily on the independent evaluation of our system by the USDOJ funded study by the Sixth Amendment Center.

The Task Force recommendations included creating a commission and “District Defender” offices in each circuit court district to oversee the delivery of services and to amend the existing statutes that authorize county public defender offices to conform. OSPD endorsed this plan and continues to support it. However, we believe that a more modest “next step” is more feasible.

The current proposal can be most closely compared to the Michigan reforms discussed in the Sixth Amendment Center Report. Essentially OSPD would be a grant making entity subsidizing local programs and service providers to help raise the level of services based on objective, evidence-based standards and recognized best-practices. A function we already perform in the child welfare system.

This proposal would allow OSPD to provide representation in any matter in which there is a constitutional right to counsel. It also tasks OSPD with promulgating practice standards subject to approval by the Supreme Court.

¹ The Task Force was comprised of stakeholders from across the criminal justice system including judges, prosecutors, county supervisors and defense lawyers who practice public defense and private criminal defense law.

Key Findings of Task Force:

- From county to county there are vast disparities in spending and caseloads.
- Without a state-level body setting objective standards and evaluating systems under those standards the people of the state of Mississippi will never know if or to what extent the indigent defense system suffers from waste, fraud, or abuse.
- Mississippi is the only state in the Southeast that relies on primarily local funding and is locally administered with no state-level oversight.
- Indigent defense services, being a constitutional right of the people and obligation of the government, should be primarily provided at the state rather than local level. However, recognizing practical realities the Task Force recommended a local/state shared responsibility model.

The Task Force was guided by an independent review of our system. In 2016 the Task Force commissioned the review of our indigent defense delivery system. Funded by a grant from the United States Department of Justice the Sixth Amendment Center conducted an in-depth study.

The Sixth Amendment Center findings:

1. The State of Mississippi has no method to ensure that its local governments are fulfilling the state's constitutional obligation to provide effective assistance of counsel to the indigent accused in felony cases in its trial courts.
2. The State of Mississippi does not ensure the independence of the defense function from undue judicial interference in the selection and compensation of felony indigent defense attorneys.
3. Outside of death eligible cases, there are no standards or oversight in Mississippi to ensure that felony indigent defense attorneys have the necessary qualifications, skill, experience, and training to match the complexity of the cases they are assigned.
4. Throughout the State of Mississippi, indigent defendants charged with felony offenses are denied the right to counsel at the critical pretrial stage between arrest and arraignment following indictment, a period that is commonly at least a few months and occasionally as long as a year or more.
5. The State of Mississippi does not ensure that felony indigent defense attorneys have sufficient time and necessary resources, including investigators and social work services, to provide effective representation.
6. Felony indigent defense attorneys in Mississippi consistently carry excessive caseloads that prevent the rendering of effective representation.

[The Right to Counsel in Mississippi: Evaluation of Adult Felony Trial Level Indigent Defense Services](#)

The **Sixth Amendment Center** also made several **recommendations**, the first being to:

- Authorize a state-level entity (either OSPD or a new commission) to promulgate, implement and enforce standards that define how effective indigent defense services should be provided, including at a minimum: attorney qualifications, performance standards and supervision protocols; time sufficiency standards; continuity of services standards; client communication protocols; and data collection standards.

1 **AN ACT TO AMEND MISSISSIPPI CODE SECTION 99-18-13 TO GRANT AUTHORITY TO**
2 **REPRESENT PEOPLE IN ANY MATTER WHERE THERE IS A CONSTITUTIONAL RIGHT**
3 **TO COUNSEL AND TO ESTABLISH PERFORMANCE STANDARDS FOR COUNSEL**
4 **SUBJECT TO APPROVAL BY THE SUPREME COURT.**

5
6 **§ 99-18-13. Powers and duties of State Defender**
7

8 (1) The State Defender is hereby empowered to pay and disburse salaries, employment benefits and
9 charges relating to employment of division staff and to establish their salaries and expenses of the office;
10 to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent
11 or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to
12 accommodate the staff; to enter into and perform contracts and to purchase such necessary office
13 supplies and equipment as may be needed for the proper administration of said offices within the funds
14 appropriated for such purpose; and to incur and pay such other expenses as are appropriate and
15 customary to the operation of the office.
16

17 (2) The State Defender may represent indigent persons in legal proceedings where the person has a
18 constitutional right to appointed counsel and provide representation to parents or guardians who have
19 been determined by the youth court judge to be indigent and in need of representation in an abuse,
20 neglect or termination of parental rights proceeding or appeal therefrom. The State Defender shall
21 promulgate, implement and enforce standards that define how effective indigent defense services should
22 be provided in all such cases, subject to approval of the Supreme Court.
23

24 (3) Representation may be provided by staff or contract counsel including, but not limited to, by
25 contract with legal services organizations and/or county public defender programs.

OFFICE OF STATE PUBLIC DEFENDER PHASE 1 IMPLEMENTATION

- Mississippi is only state in the Southeast without state level oversight of indigent defense or majority state funding – some states have both
- The four surrounding states all deliver services differently
 - Arkansas has a public defender commission that employs all defenders and staff and provides for conflict counsel with 100% state funding – like the 1998 Mississippi Statewide Public Defender Act
 - Tennessee has a mirror image of the DA system including electing public defenders and has near 100% state funding (two counties maintain offices that existed at time of their reforms)
 - Louisiana has a statewide structure but the funding scheme, based primarily on local collection of fines and fees, is significantly flawed
 - Alabama has 100% state funding administered through DFA with local advisory boards
- Our current proposal is more limited than these systems. It can be most closely compared to the Michigan reforms discussed in the Sixth Amendment Center Report. OSPD would be a grant making entity subsidizing local programs and service providers to help raise the level of services based on objective, evidence-based standards and recognized best-practices. A function we already perform in the child welfare system.
- Our proposal has 4 goals
 - Make counsel available as early as possible and enable them to stay with client
 - Ensure reasonable workloads
 - Close the pay-gap with similarly situated prosecutors
 - Access to support services
- Early and continual representation and access to social workers are essential. They not only result in better outcomes for clients, but they also reduce public expenditures by reducing unnecessary jail and prison time.
 - Pretrial detention is a driver of incarceration. If you stay in jail pretrial you are more likely to be convicted and if convicted sentenced to more time.
 - Lack of counsel pre-indictment all but eliminates bail advocacy or even bail review. Early in the pandemic we asked the supreme court to mandate more regular bail reviews under the Rules. Several trial judges responded that the review trigger should come from defense counsel – but in too many places there is no lawyer.
 - Lack of counsel at early stage also impacts availability of diversion programs like drug court – less than 50% of drug court applicants are indigent but over 80% of all defendants are indigent.
 - Access to social workers will improve bail advocacy, improve compliance with conditions of bail and reentry success on the backend.
- Two delivery models
 - Multi-county model designed to enable small and midsized counties to establish systems that can more efficiently and effectively meet their service needs with a mix of fulltime and part-time providers.
 - The Neighborhood Defender Service model for the unique needs of the City of Jackson. The neighborhood defender model first used in New York and more recently introduced in Detroit, which also includes civil legal services, has proven to be highly successful in more efficiently delivering criminal defense and resolving issues that contribute to failure to appear and recidivism.
- No county or city will be expected to contribute more to cost than they are currently spending. The total cost of fully funding three projects would be approximately \$3.8 million. At least \$1.8 million would be in county, city, or private funds. The state cost for the three projects would not exceed \$2,000,000.

Budget Narrative for Pilot Projects

SUPPORT FOR LOCAL DEFENDER PROGRAMS

In formulating this proposal OSPD adopted the *Seven Guiding Principles for an Indigent Defense Delivery System in Mississippi*. Mississippi Public Defender Taskforce, Final Report at p. 21, except for deleting the district defender offices.

Based on our experience in developing parent defense programs across the state we believe that the most effective and efficient way to begin to address the deficiencies identified in the independent study of our indigent defense delivery systems by the Sixth Amendment Center is for OSPD to partner with local governments to develop evidence-based indigent defense delivery systems in their jurisdictions.

State funding will be focused on ensuring reasonable caseloads, compensation equity and adequate support services to facilitate early involvement with cases and continuity of representation throughout the process. To ensure measurable efficiency and be accountable for public funds each program will have to provide reliable data.

To qualify for state assistance the local provider will have to be established consistent with state statute and comply with court rules. The provider must agree to adhere to standards promulgated by OSPD as recommended by the Sixth Amendment Center (6AC) report, *The Right to Counsel in Mississippi, Evaluation of Adult Felony Trial Level Indigent Defense Services* (March 2018) and found in the *Guiding Principles*.

Standards will cover collecting and sharing data; early appearance and continuity of representation; staffing qualifications and performance reviews; client communication as well as training requirements for all staff. *6AC Report* at p. 109.

Caseload limits will be based on the [OSPD 2016 study](#) and/or the National Advisory Commission on Criminal Justice Standards and Goals recommendations referenced in the 6AC report and our study. Pay parity guidelines are based on the District Attorney Budget Request and DA enabling legislation. Needs assessment for support services are based on the May 2020 paper from the National Association for Public Defense with comparison to staffing in Mississippi DA offices and follows *Guiding Principle 5*.

A critical shortcoming of the current system that was exposed in the pandemic was the need for social workers connected to defender programs. Outside of the capital offices there are no social workers currently working in any public defender office in Mississippi although they are beginning to be introduced to parent defense programs.

Social workers are essential to delivering competent criminal defense under current constitutional standards. Social workers assist with successful release from pre-trial incarceration, successful reentry, and sentencing advocacy. Perhaps the most important need for social workers in defender offices is in addressing the far too frequent client suffering from serious mental illness. Social workers perform essential functions that they are uniquely

qualified to provide while reducing time and thus costs of attorneys and long-term in reductions in unnecessary or inappropriate incarceration and the costs associated with that. [*The Stepping up Initiative, National Association of Counties.*](#)

OSPD recommends establishing a compensation grid like the DA offices with slight modifications to account for function differences including county rather than district-wide offices and “lower court” caseloads. Compensation would be no greater than DA or comparable ADA, investigator or victim assistance coordinator which will be comparable to a defense social worker. Secretary/paralegal compensation should be equal to local DA office positions.

Chief Defender \$120,000 up to DA salary (per existing statute)

Felony Defender 3 – ten or more years of experience – \$105,000 to \$115,000

Felony Defender 2 – five to ten years of experience – \$95,000 to \$105,000

Felony Defender 1 – zero to five years of experience – \$85,000 to \$95,000

Misdemeanor Defender 2 – five or more years of experience - \$85,000 - \$100,000

Misdemeanor Defender 1 – zero to five years of experience - \$75,000 - \$85,000

Youth Court Defender 2 – five or more years of experience - \$85,000 - \$100,000

Youth Court Defender 1 – zero to five years of experience - \$75,000 - \$85,000

Investigator/MSW - \$45,000 to \$63,000

Phase 1 would establish three pilot projects, one in each supreme court district. The overarching goal of this proposal is to improve services to indigent people accused of wrongdoing by the government without increasing cost to counties and municipalities.

Each multicounty office would have 4-6 FT attorneys, 2 FT administrative positions, 1 FT investigator and 1 FT social worker.

To qualify for state fiscal support under the multi-county defender model counties would have to establish a defender office as a primary delivery provider (25-32-1 through 25-32-19) and include meaningful participation of the private bar. Private counsel services could be on individual cases compensated at an hourly rate (99-15-15 through 99-15-21) or on a part-time contract basis accepting multiple cases as is done in most counties currently. However, contracts must include time expectations and caseload limits. (*Right to Counsel in Mississippi Recommendation #3*)

Participating counties would need to enter interlocal agreements to establish the office. (25-32-1) Agreements must include salary ranges and the counties would need to provide office space comparable to that provided to the local district attorney. Each office would have an expense account for ordinary expenses. (25-32-7) The office chief defender and outside contractors would be selected by the senior circuit judge on recommendations of the local bar. (25-32-3)

ALTERNATIVE MODEL FOR THE CITY OF JACKSON – NEIGHBORHOOD DEFENDER

The neighborhood defender model first used in New York and more recently introduced in Detroit, which also includes civil legal services, has proven to be highly successful in more efficiently delivering criminal defense and resolving issues that contribute to failure to appear and recidivism.

Why a neighborhood defender in Jackson? A trip to Jackson municipal court dramatically demonstrates the need for a different way. Routinely people are called before the court for felony initial appearances and misdemeanor arraignments simultaneously. The city public defender stands with the person on the misdemeanors and the county public defender on the felony. Data shows that the people in city court also often have child protection matters in youth court.

The neighborhood defender model would include misdemeanor representation and parent defense in youth court. Currently no defender system includes felony, youth court and misdemeanor representation in the same office/project. Private funding would enable the neighborhood defender to include an attorney to provide civil legal services.

THE BOTTOM LINE

No county will be expected to contribute more to cost than they are currently spending. The state cost for the three projects would not exceed \$2,000,000.