



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. This proposal 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 Sixth Amendment Center. The evaluation was commissioned by the Task Force and funded by the federal government.

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 to this plan. OSPD endorsed the plan and continues to support it. However, we believe that a more modest “next step” is more feasible.

The “next step” is to adopt Recommendation #1 of the Sixth Amendment Center Report. *Task Force Final Report*, page 20.

- 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.

This recommendation has now been endorsed by the Mississippi State Bar.

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 primarily on 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](#)

2024 Mississippi Legislative Session

The 2024 Regular Session of the Mississippi Legislature will convene at noon on January 2. The Mississippi Bar's ability to take a position on proposed legislation is limited to matters affecting the regulation of the profession and the improvement of the quality of legal services. At its November meeting the Board of Bar Commissioners approved supporting the Mississippi Supreme Court's efforts in advocating for its Fiscal Year 2025 Budget Request as well as the Fiscal Year 2025 Budget Requests of the District Attorneys and Staff and the State Public Defender to the extent these requests do not conflict with the Mississippi Supreme Court's Budget Request, as all three requests are relevant to the regulation of the profession and the improvement of the quality of legal services in our State. The Board also gave its support to the State Public Defender's proposal to subsidize indigent defense at the County level and set practice standards subject to approval by the Mississippi Supreme Court as the proposal is also relevant to the regulation of the profession and the improvement of the quality of legal services in Mississippi. As a service to our members, The Clay Firm will continue to provide an update of pending legislation during the 2024 Session that may be of interest to the legal profession after bills are introduced. Updates during the Session can be found [HERE](#). If you have questions or concerns regarding legislation, you may contact Beth Clay or Stephen Clay at 601-353-0559.