



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 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 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, through grants to local entities, 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 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](#)

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.

OFFICE OF STATE PUBLIC DEFENDER *NEXT-STEP* IMPLIMENTATION

- Amend Miss. Code §99-18-13 to authorize OSPD to promulgate standards, subject to Supreme Court approval and appropriate funds for local system enhancement grants.
- Our proposal has 4 goals:
 - Make counsel available as early as possible and enable them to stay with client.
 - Facilitate access to support services.
 - Close the pay-gap with similarly situated prosecutors.
 - Ensure reasonable workloads.
- Building on the 2023 Legislature's authorization to assist in Hinds County, we propose adding support services there and adapting the initiative to a multi-county model to enable small and mid-sized counties to establish systems that can more efficiently and effectively meet their service needs with a mix of fulltime and part-time providers. We propose two pilot sites, one in the north and one in the south.
- We are requesting an increase to the Hinds grant to fund an investigator, social worker, and administrative assistant. The county would continue to provide basic office expenses to support these positions. The total grant to Hinds County would be \$667,000, an additional \$220,479 above 2024 appropriation.
- The grants to new offices would fund 3 FT attorneys, 1 FT administrative position, 1 FT investigator and 1 FT social worker. Like Hinds, the counties would provide office space and expenses to support the positions. (Miss. Code §25-32-7) The office chief defender would be selected by the senior circuit judge on recommendations of the local bar. (Miss. Code §25-32-3)
- The sites would be selected based on local interest and greatest need. Multi-county offices would require counties to enter interlocal agreements to establish the office. (Miss. Code §25-32-1) The grant for each project would be \$666,500. Total additional funds of \$1,553,479.
- Early and continual representation and access to support services are essential to a properly functioning system. 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 at early stage also impacts availability of intervention 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 screening for intervention programs, bail advocacy, improve compliance with conditions of bail and reentry success on the backend.
- Continuity of representation in the early stages of felony cases has been addressed recently by the state Supreme Court. Effective July 1, 2023, Rule 7 of the Rules of Criminal Procedure was amended to mandate that counsel must be continuously provided. While necessary to ensure compliance with the Constitution, the amendment increases the burden on counties.

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

§ 99-18-13. Powers and duties of State Defender

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

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

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