



ANNUAL
ACTIVITIES AND EXPENDITURES REPORT
July 1, 2019 – June 30, 2020

The Office of State Public Defender (OSPD) was created by the Legislature in 2011 through the consolidation of the Office of Capital Defense Counsel and the Office of Indigent Appeals. Capital Defense was opened in 2001 to provide Sixth Amendment services in death penalty eligible cases at trial and direct appeal. Indigent Appeals was created in 2005 to handle non-death felony appeals.

The Defender Training Division was added to provide training and technical assistance to all working in indigent defense. The scope of services was expanded to allow Indigent Appeals to handle appeals from youth court, and again in 2016 to authorize the OSPD to handle defense of parents accused of abuse or neglect in youth court and on appeal.

STATE DEFENDER

In July, the Office of the State Public Defender (“OSPD”) submitted a revised 5-Year Strategic Plan and FY 2021 Budget Request.

The State Defender serves on the Corrections and Criminal Justice Oversight Taskforce, the Sentencing Disparity Taskforce, and is working with the Parent Representation Taskforce to expand and deepen parent defense across the state. He also serves on the Supreme Court’s Children’s Justice Commission.



OSPD continuously seeks partnerships with local government agencies as well as private sector providers and organizations to find new ways to more effectively serve low income Mississippians in their time of need. In recognition of the innovative work by OSPD, State Defender André de Gruy was presented the *Trail Blazer for Justice Award* by the Mississippi Center for Legal Services at their 45th Anniversary celebration.

Beginning in January the State Defender was actively engaged with the Legislature. With the prison unrest and the urgent need for comprehensive criminal justice reform the State Defender provided technical assistance to committees in both houses seeking solutions to the overcrowding in our prisons. We also supported legislation to adopt the Public Defender Task Force recommendations for reform of the public defender system in Mississippi. By mid-March the legislature recessed and OSPD began to respond to COVID-19.

Working with the Attorney General OSPD successfully advocated for Emergency Administrative Orders from the Supreme Court to relax the Rules of Criminal Procedure to facilitate video teleconferencing of hearings to ensure courts could remain open, clients and defenders would remain safe and constitutional rights would be protected.

In house OSPD moved to voluntary telework agency wide limiting in office staff to 3-6 employees at most times. This new work environment and the forced cancelations of the semi-annual statewide defender training program presented communication concerns. OSPD responded by instituting twice weekly “Defender Town Halls” on Zoom to facilitate on-going communication and to check in on each other.

These meet ups lead to the State Defender seeking additional rule modifications from the Supreme Court. These changes included a circuit court review of jail populations and permitting pleas to be conducted virtually. Defenders sharing experiences also supported best practices such as video client meetings to spread across jurisdictions.

Known weaknesses in the current defense services delivery “system” in Mississippi were highlighted by COVID-19. Already deficient client communication practices became a crisis, even at OSPD with our more limited client community. Internally we were able to make technology adjustments to facilitate clients calling the office more frequently and introducing videoconferencing with clients where jails could support. Defenders in better resourced localities had similar success but those in localities without support structure communication ended.

The “black-hole” problem where people go unrepresented from preliminary hearing until indictment, contributed to vulnerable people remaining in custody without opportunity for bail review. Because most defenders do not work in established offices, they did not have access to technology to stay connected to clients, courts, or colleagues.

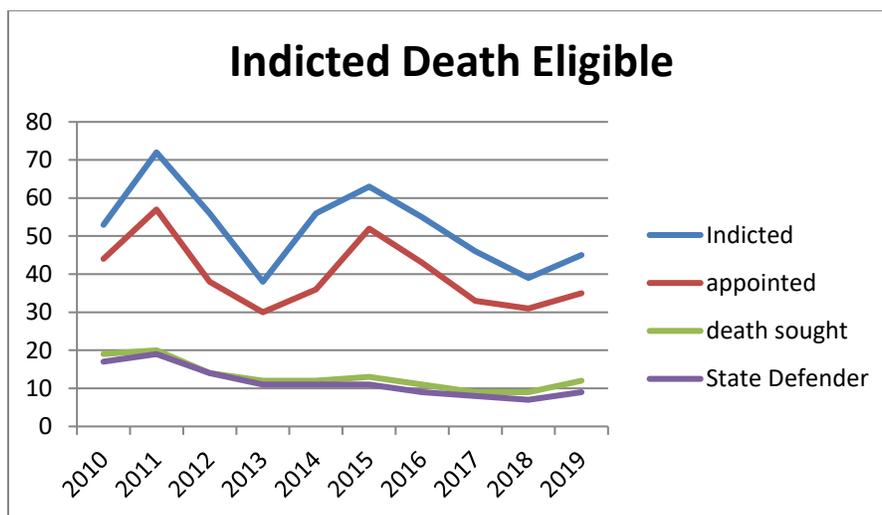
The State Defender provided technical assistance to local defenders through research and drafting of model pleadings on topics of concern to defenders. Topics included securing release for vulnerable people in jails and prison and protection of constitutional rights particularly pertaining to the return of jury trials.

The State Defender also partnered with the Macarthur Justice Clinic and others to monitor jail populations and MDOC practices. Through this partnership and collaboration with MDOC we were able to assist with the safe release of people from local jails as well as the state-run Restitution Centers where people were detained but unable to work. This collaboration lead to a clarification of policy to ensure that people sentenced to MDOC but unable to transfer because of COVID could still earn time off.

While COVID-19 occupied much of the final quarter of SFY 2020, the State Defender responded to other critical needs planned and unplanned. OSPD advocated in the legislature for parole reform to address Constitutional issues facing juvenile offenders and filed an amicus brief in support of the petitioner in *Jones v. Mississippi* pending before the Supreme Court of the United States. Responding to the concerns raised about systemic racism in policing across our country, OSPD presented a [report](#) to the legislature with practical recommendations to improve the relationship between police and the people they serve.

CAPITAL DEFENSE

Capital Defense is currently staffed to handle a mix of 10-12 new trial level cases per year and/or two new appeals per year. This assumes local counsel will be appointed. At the close of the year the division was representing 11 clients at the trial level. In July 2011, when Capital Defense became a division of OSPD it had a total staff of 11 including 5 capital defenders. With efficiencies from the merger and declining demand the division is now staffed by 7 including 3 capital defenders.



The division is representing three clients at the direct appeal stage. These are all of the direct appeal cases pending. The division closed five cases this year including one by guilty plea to manslaughter after a reversal by the state Supreme Court of a capital murder conviction and death sentence and an appeal that was vacated by the Supreme Court of the United States.

In February, a trial team consisting of two division attorneys, mitigation specialist, paralegal and contract investigator were involved in a multi-week capital murder trial involving 8 victims. The client was convicted of four counts of capital murder and sentenced to death. We have begun the appeal process in this matter. Death was dropped in another case and a third case ended in a plea to capital murder and multiple life without parole sentences in another multi-victim case. The final case was closed in June by plea to capital murder and life without parole sentence.



The attorneys and mitigation specialists worked with the Training Division to present the 4th Deep South Capital Conference to provide the training required for Mississippi public defenders to participate in defending death penalty eligible cases (MRCrP 7.4). Staff assisted with planning the program and in presenting lectures.

Beginning March 16, all field investigation was paused do to COVID-19. Attorneys and investigators began teleworking. The division had trials scheduled in April, May and June which have been continued.

Because of the risk of introducing the virus into a prison or jail, client visits were restricted. Telephone contact was maintained and following technology modifications telephone communication was enhanced. Where possible virtual visitation was established.

Over the final months of SFY 2020 division staff continued limited court appearances and only necessary jail and prison visits. Mitigation specialists, unable to conduct field investigations, began working with national experts to reinvent best-practices. Focusing training on use of on-line investigation mitigation specialists have continued investigations and will use this new model in the future once field investigations resume.

We recognize that a greater reliance on technology can enhance our work but can never be a substitute for in-person investigation especially when investigation includes visits to the homes our clients were raised in. Thus, while capital defense is continuing, no new cases could be opened in the last quarter of SFY 20 and existing investigations were slowed. It is anticipated that this slow down will have a long-term impact on the division with no cases tried until 2021 and potential overload of new cases in the next fiscal year.

Capital Defense was forced to suspend its internship program mid-term however we did conduct a scaled down virtual summer program.

INDIGENT APPEALS

In SFY 2020, Indigent Appeals (“IAD”) filed 100 briefs and participated in four oral arguments. IAD closed the year with 154 open cases including 25 awaiting the filing of the record and briefing schedule. Five cases raising *Miller v. Alabama* juvenile sentencing issues had been assigned to the Juvenile Parole Project at Capital Defense funded by a grant from the SPLC. The grant funds ran out in March and the cases have been absorbed by IAD staff. All cases are divided between the six attorneys on staff. There are an additional four cases with independent outside counsel due to conflicts of interest between clients.

With the retirement of Professor Phil Broadhead, the Criminal Appeals Clinic at the University of Mississippi School of Law was discontinued. From the first days of Indigent Appeals the Clinic took on several cases each semester. The Law School and Professor Broadhead prepared us for this loss, but it still is a loss. Indigent Appeals easily absorbed the last pending cases but without having the Clinic available for assignments staffing and workloads will have to be monitored.

The staff attorneys of IAD routinely answer questions and conduct research for trial level defenders in the field. IAD also assists with moot courts for defenders inside and outside the office preparing for oral arguments and handling oral arguments. IAD attorneys also serve on the Supreme Court committees and Mississippi Bar committees. Due to the COVID-19 emergency most staff began teleworking and continue to file briefs and maintain contact with clients and each other. Several IAD attorneys participate in the public defender Town Halls to offer support and assistance to the line defenders around the state and IAD hosted a virtual summer intern.

Over the past two years IAD has been presented with three significant challenges; the decision to reduce staffing from seven attorneys to six followed by the end of the Criminal Appeals Clinic and finally to end of the Juvenile Resource Counsel grant project. Each challenge added to the workload of IAD. As demonstrated below, the timeliness of filing briefs has been significantly impacted however the number of briefs filed and in progress has kept pace with new briefing schedules and remained ahead of the State’s briefs and court opinions.

Fiscal Year 2019-20						
	2019/20 Q1	2019/20 Q2	2019/20 Q3	2019/20 Q4	TOTALS	
Briefing Sched. Issued	31	27	22	20	100	Total
Briefs Filed	30	20	24	20	94	Total
average days to file briefs	47	65	64	62	60	Average
percent filed w/in 60 days	46%	42%	50%	40%	45%	Overall
Total Pending Cases at close of Quarter	222	177	174	154	182	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	41	31	37	25		
briefs in progress	17	22	16	15		
pending rehearing motions - appellant	n/a	6	6	11		
pending rehearing motions - appellee	n/a	1	0	0		
pending cert. petitions - appellant	n/a	4	0	3		
pending cert. petitions - appellee	n/a	0	0	0		
state briefs due	31	26	23	17		
awaiting decision	81	76	65	61		
pending post decision	n/a	11	26	21		
miscl.			1	1		
*n/a due to computer system event of 10/1/19						
Fiscal Year 2018-19						
	2018/19 Q1	2018/19 Q2	2018/19 Q3	2018/19 Q4	TOTALS	
Briefing Sched. Issued	28	29	44	19	120	Total
Briefs Filed	26	33	29	32	120	Total
average days to file briefs	42	47	46	61	49	Average
percent filed w/in 60 days	88%	85%	69%	40%	71%	Overall
Total Pending Cases at close of Quarter	214	209	208	186	204	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	38	40	31	28		
assigned to Ole Miss	11	10	10	0		
briefs in progress	18	17	28	16		
pending rehearing motions - appellant	10	6	5	11		
pending rehearing motions - appellee	2	1	3	1		
pending cert. petitions - appellant	10	13	9	6		
pending cert. petitions - appellee	1	2	2	2		
state briefs due	25	34	37	25		
awaiting decision	79	65	68	77		
pending post decision	19	19	14	20		
misc. pending	1	2	1	0		
Fiscal Year 2017-18						
	2017/18 Q1	2017/18 Q2	2017/18 Q3	2017/18 Q4	TOTALS	
Briefing Sched. Issued	41	42	28	34	145	Total
Briefs Filed	27	42	29	33	131	Total
average days to file briefs	40	49	51	50	48	Average
percent filed w/in 60 days	93%	85%	77%	79%	84%	Overall
Total Pending Cases at close of Quarter	228	231	238	219	229	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	48	42	47	37		
assigned to Ole Miss	9	7	9	9		
briefs in progress	26	23	20	20		
pending rehearing motions - appellant	13	13	14	13		
pending rehearing motions - appellee	3	3	2	1		
pending cert. petitions - appellant	9	8	9	6		
pending cert. petitions - appellee	1	0	1	1		
state briefs due	38	40	32	36		
awaiting decision	59	75	82	76		
pending post decision	21	19	21	19		
misc. pending	1	1	1	1		

DEFENDER TRAINING

Defender Training continues to produce high quality CLE programs for anyone participating in indigent defense. In September, training was provided to 37 juvenile defenders. In October, 104 felony defenders received training. In November, 39 parent defenders were trained. The training for attorneys in youth court – juvenile and parent defenders – is statutorily mandated. The Supreme Court mandates training for lawyers in death penalty cases.

What is the OSPD Training Division?

A lot more than a place to get “training” or even “technical assistance.”

Defender Training is where OSPD touches every public defender in Mississippi and through them every client in need.

Defender Training is the **hub of innovation** at OSPD.

We the defender-innovators train and support defenders to protect clients from Death Row, prepare defenders to preserve the fundamental rights of parents to raise their children with limited intrusion from the government and everything in between.

The Deep South Capital Defense Training was conducted during the first week of March. The program again provided dual track programs in death penalty and juvenile life without parole litigation. This year OSPD partnered with the National Legal Aid and Defender Association to simultaneously present our program and their Life in the Balance program. Participants from Mississippi registered through OSPD and out of state participants registered through NLADA. Participants could participate in workshops and lectures at either program. Through cost sharing we maximized the educational content while minimizing the cost to OSPD.

The Training Division had the regular Spring Defender Conference as well as two Youth Court programs, one for juvenile defenders and one for Parent Defenders scheduled. Due to the pandemic all conferences had to be canceled. Training Director Beau Rudder immediately began planning for distance learning. Initial steps were to organize “Defender Town Halls” via Zoom to connect public defenders around the state, including youth court defenders, to learn their needs and assist them in continuing to protect their client’s rights in the new environment.

The entire training division spent much of the final quarter of SFY 2020 exploring ways to ensure that the youth court defenders can maintain their statutorily required training certification and all defenders receive opportunities to maintain proficiency. The program, consisting of two fulltime and three part-time employees began learning how to edit video and deliver training virtually.

Working with our partners at the National Association for Public Defense they joined “train the on-line trainer” initiatives that laid the groundwork for the *Mississippi Public Defender Distance Learning Project*. Through a mix of live virtual presentations and pre-recorded material the project will launch in late summer. The first mini course was offered for Ethics credit. The course consisted of an experienced federal defender walking people through the uncharted waters of defending clients in virtual courts.

In addition to providing support to the State Defender in developing the Parent Representation program and system reorganization plan, the Training Division is assisting with the development of a mental health cases resource project and defender data project. The Training Division is providing on-going technical assistance to trial level defenders and is involved in developing the privately organized Mississippi Bail Fund Collective.

OSPD, through the Training Division, continues to provide technical assistance to attorneys handling cases for juvenile offenders facing life without parole sentences (JLWOP) through the Juvenile Parole Resource Counsel project. The workload included entering a case as “second-chair” in Hinds County to relieve the county defender’s burden while providing direct training and technical assistance that will transfer to the entire office. The project is primarily funded through a grant from the Southern Poverty Law Center. The grant ended in early March but the project will continue on a more limited basis going forward.

PARENT DEFENSE

In 2016 the Legislature authorized OSPD to begin involvement in child welfare matters through training lawyers representing indigent parents accused of abuse or neglect by CPS as well as limited direct representation at the trial phase and on appeal in such matters. This was a result of a Supreme Court initiative. The Court’s Parent Representation Task Force has continued its support for the program.



In January, Jurist in Residence John N. Hudson of Natchez told legislators at the Capitol during the Three Branch Government Convening on Parent Representation, of the fear and bewilderment that parents face when they are drawn into court without a lawyer to explain the proceedings and advocate on their behalf. As a judge, he feared that he was not hearing the whole story because parents were not able to effectively represent themselves.

Our state Supreme Court has long recognized that “the lack of appellate activity in the child abuse and neglect arena led to the deterioration of state and federal procedural safeguards designed to protect Mississippi’s children in need.” (Budget Request FY 2019, Supreme Court – Administrative Office of Courts, 4-1) This conclusion came from a 1995 study commissioned by the Court.

OSPD has now begun to address this decades-old problem. OSPD is providing appellate representation to six parents through parent defense resource counsel project.

Back in 2016 there was no additional appropriation for either aspect of this program however OSPD began the training portion by reallocating available funds. By 2018 OSPD was providing three parent defender training programs a year. OSPD also expanded the Youth Court Resource Counsel project to include technical assistance for parent defenders in addition to juvenile defenders.

The Legislature provided \$200,000 to begin providing direct representation in 2018. In addition to taking over existing pilots OSPD and Jackson County partnered to launch a new model of

parent defense. The program consisted of not just a fulltime defender but a social services position. The model has been adopted by another county supported by county, private grant and federal grant funds through Mission First Legal Aid serving Rankin County. In June 2020, the Supreme Court's Parent Representation Task Force endorsed multidisciplinary defense as the model that should be pursued throughout the state.

SFY 2020 began with OSPD completing plans to expand parent defense in the First and Tenth Chancery Court Districts. Both areas became operational October 1. The Tenth District project funds a fulltime defender housed in the Hattiesburg office of the Center for Legal Services. It is modeled on the successful Harrison County project and provides deeper services through its location at the Center for Legal Services.

Because the First District has no established legal aid or defender offices OSPD worked with Chancellor Mask, Judge Bevill and the Boards of Supervisors in Alcorn, Itawamba, Lee, Pontotoc, Tishomingo, and Union counties to create part-time contract programs. All but one of the new defenders attended the Parent Defender Training program in November. With these new programs OSPD became involved in 16 counties across the state that collectively represent over 45% of the children in CPS custody.

The other OSPD supported trial level programs include: a fulltime defender based at the Center for Legal Services serving Harrison County; funding half of the cost of fulltime defenders in Hancock and Desoto counties and funding half of the cost of a part-time defender in Adams County. Since July 2018 OSPD managed pilot sites in Hinds and Bolivar Counties. Each program is funded by a 50/50 match of county and Kellogg Foundation grant funds. The grant ended in June 2020 and OSPD is seeking state funding and exploring other opportunities to remain involved in Hinds County the county with the largest in-care population in the state.