



ANNUAL  
ACTIVITIES AND EXPENDITURES REPORT  
July 1, 2016 – June 30, 2017

The following report of activities and expenditures of the State Public Defender is submitted in accordance with Miss. Code §§ 99-18-1 and 99-18-15. A docket of potential death penalty eligible cases in the circuit courts and rosters of all death penalty cases in the state are available on our webpage at <http://www.ospd.ms.gov/CapDefInfo.htm>.

#### **STATE DEFENDER**

André de Gruy assumed responsibilities as the State Defender on July 1, 2016. He continues to provide direct supervision to the Capital Defense Division. In July OSPD submitted a revised 5-Year Strategic Plan and FY 2018 Budget Request. OSPD is sought additional funding to begin the Parent Representation project envisioned in HB 772 (2016). The 2017 Legislature appropriated \$200,000 specifically for this purpose and OSPD has been working with courts to begin this program.

The State Defender serves on the Corrections and Criminal Justice Oversight Taskforce. In addition to participating in taskforce meetings the State Defender attended and participated in a panel presentation at the *Justice Reinvestment Initiative Performance Measurement Convening* in Washington, D.C. October 5-6.

The State Defender has prepared an evidence-based workload assessment of felony trial level defenders throughout Mississippi and presented it to the Public Defender Taskforce. The State Defender also served on the Asset Forfeiture Task Force and has published Recommendations for improvements in that area.

Along with the Training Director and the Youth Court Resource Counsel, the State Defender presented a talk on performance standards for Parent Attorneys at the Youth Court Judges Conference in September. Working with the AOC and private funders the State Defender is working on implementation of HB 772 (2016) which transferred to OSPD the responsibility for training and certification of lawyers in Youth Court and added Parent Representation provisions.

The State Defender has managed the current year budget cuts of 5% and worked with the Legislature to secure funding for FY 18 that will allow us to maintain service level provided in FY 17. While the FY 18 appropriation is essentially level with the reduced FY 17 appropriation, it includes \$200,000 (6.5%) for Parent Representation. In March the State Defender participated in a panel presentation on oral argument at the Mississippi Appellate Judges Conference presented by the Judicial College.

The FY 17 budget was balanced by imposing travel restrictions during the last quarter and freezing the Capital Conflicts program. Moving forward to FY 18 we have reduced staff and salaries and eliminated Capital Conflicts.

## Capital Defense

### Detailed Expenses as of June 30, 2017

Superior Commitment Item Text	Commitment Item Text	Amount	Posting Day
SALARIES,WAGES & FRINGE BENEFITS		871,147.06	
TRAVEL AND SUBSISTENCE - IN STATE TR		66,544.88	
CONTRACTUAL SERVICES		244,324.85	
COMMODITIES		5,575.51	
<b>TOTAL</b>		<b>1,187,592.30</b>	

## Indigent Appeals

### Detailed Expenses as of June 30, 2017

Superior Commitment Item Text	Commitment Item Text	Amount	Posting Day
SALARIES,WAGES & FRINGE BENEFITS		1,108,693.48	
TRAVEL AND SUBSISTENCE - IN STATE TR		7,952.28	
CONTRACTUAL SERVICES		19,166.53	
COMMODITIES		1,096.76	
<b>TOTAL</b>		<b>1,136,909.05</b>	

## Training

### Detailed Expenses as of June 30, 2017

Superior Commitment Item Text	Commitment Item Text	Amount	Posting Day
SALARIES,WAGES & FRINGE BENEFITS		201,916.94	
TRAVEL AND SUBSISTENCE - IN STATE TR		19,686.40	
CONTRACTUAL SERVICES		166,221.24	
COMMODITIES		71,890.79	
<b>TOTAL</b>		<b>459,715.37</b>	

## State Defender

### Detail Expenses as of June 30, 2017

Superior Commitment Item Text	Commitment Item Text	Amount	Posting Day
SALARIES,WAGES & FRINGE BENEFITS		264,481.88	
TRAVEL AND SUBSISTENCE - IN STATE TR		3,265.08	
CONTRACTUAL SERVICES		335.00	
COMMODITIES		149.69	
STATISTICAL EXPENSES		1,000.00	
<b>TOTAL</b>		<b>269,231.65</b>	

<b>AGENCY TOTALS</b>		<b>3,053,448.37</b>	
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**Office of State Public Defender**

**Budget Detail as of July 3, 2017**

<b>Funds Center/ Commitment Item</b>	<b>Current Budget</b>	<b>Purchase Order</b>	<b>Total Commitments</b>	<b>Actuals</b>	<b>Available Budget</b>
<b>CmmtItem</b>	<b>3,066,607.00</b>	<b>1,627.45</b>	<b>1,627.45</b>	<b>3,052,448.37</b>	<b>12,531.18</b>
<b>60000 Salaries Wages</b>				<b>2,446,239.36</b>	<b>2,446,239.36</b>
<b>60001000 Salaries &amp; Wages</b>				1,900,196.58	1,900,196.58
<b>60020000 Employer PERS Match</b>				299,280.93	299,280.93
<b>60021000 Salaries, SS Match</b>				138,998.12	138,998.12
<b>60023000 Group Health Insurance Match</b>				93,272.00	93,272.00
<b>60024000 Group Life Insurance Match</b>				2,087.73	2,087.73
<b>60025000 Workers' Compensation</b>				6,310.00	6,310.00
<b>60027000 Unemployment Insurance Tax</b>				2,864.00	2,864.00
<b>60040000 Cafe Plan Admin Fee</b>				3,230.00	3,230.00
<b>60050000 PR Refund Ded SPAHRs</b>					
<b>60300 Travel &amp; Subsisten</b>				<b>97,448.64</b>	<b>97,448.64</b>
<b>60400000 In State Travel</b>				58,915.15	58,915.15

<b>60402000 In State Non Taxable Lodging</b>				25,571.94	25,571.94
<b>60404000 In State Rented Vehicle</b>				3,291.17	3,291.17
<b>60500000 Out of State Travel</b>				5,777.81	5,777.81
<b>60502000 O/S Non Tax Lodging</b>				1,571.31	1,571.31
<b>60504000 Out of State Rented Vehicle</b>				124.00	124.00
<b>60505000 Out of State Public Carrier</b>				1,510.30	1,510.30
<b>60701000 Travel Social Security Match</b>				55.09	55.09
<b>60702000 Travel Medicare Match</b>				12.87	12.87
<b>60960000 Prior Year Expense - Travel</b>				619.00	619.00
<b>61000 Services</b>		<b>1,627.45</b>	<b>1,627.45</b>	<b>430,047.62</b>	<b>431,675.07</b>
<b>61110000 Postal Services</b>				3,083.24	3,083.24
<b>61420000 Equipment Rental</b>		466.70	466.70	14,395.86	14,862.56
<b>61500000 Repair &amp; Maint Serv</b>				(77.24)	(77.24)
<b>61600000 Inter-agency Fees</b>				800.00	800.00
<b>61610000 Contract Worker Payroll - EFT</b>				37,229.48	37,229.48
<b>61625000 Ctr Wrkr PR Mtch EFT</b>				8,404.87	8,404.87

<b>61660000 Acct &amp; Financial</b>		1,154.75	1,154.75	19,833.77	20,988.52
<b>61670000 Legal and Related Services</b>		3.00	3.00	86,538.58	86,541.58
<b>61675000 Settlement Atty Fee</b>				52,964.26	52,964.26
<b>61676000 Settlement Other Fee</b>				6,750.00	6,750.00
<b>61680000 Medical Services</b>		3.00	3.00	9,450.00	9,453.00
<b>61690000 Fees &amp; Svc-Prof Fees</b>				25,477.50	25,477.50
<b>61695000 Fees &amp; Svc-Reimb1099</b>				17,731.17	17,731.17
<b>61696000 Fees&amp;Svc Rmb no 1099</b>				85,232.13	85,232.13
<b>61700000 Insurance Fees and Services</b>				4,173.00	4,173.00
<b>61705000 Banking and Credit Card Fees</b>				143.00	143.00
<b>61710000 Membership Dues</b>				10,162.27	10,162.27
<b>61715000 Trade Subscriptions</b>				38,021.01	38,021.01
<b>61830000 IT Prof - Out Vend</b>				6,256.25	6,256.25
<b>61900000 PCard Contractual</b>				2,553.19	2,553.19
<b>61910000 Petty Cash-Contract</b>				925.28	925.28
<b>61960000 PY Exp Contractual</b>					
<b>62000 Commodities</b>				<b>78,712.75</b>	<b>78,712.75</b>

<b>62040000 Food for Business Meetings</b>				69,203.27	69,203.27
<b>62400000 Furniture and Equipment</b>				10.00	10.00
<b>62900000 PCard Commodity</b>				7,961.98	7,961.98
<b>62910000 Petty Cash-Commod</b>					
<b>62920000 Reimb Travel Comm</b>				1,537.50	1,537.50

## CAPITAL DEFENSE

Capital Defense is currently staffed to handle a mix of 10-15 new trial level cases per year and/or 3 new appeals per year. This assumes local counsel will be appointed. Currently the division is representing 11 clients at the trial level. Capital Defense is representing six clients at the appeal level. These are all of the direct appeal cases pending.

Since January 1, 2017, division lawyers have presented Oral Arguments to the Mississippi Supreme Court; tried a case without local counsel in Greene County; and resolved four cases with a guilty plea. One plea was entered during jury selection and another the week before trial was scheduled to commence.

OSPD has operated a capital conflict program in which private counsel, investigators and experts in conflict cases were paid for through the Capital Defense Fund established by *Miss. Code* §99-18-17(2). SB 2362 (2016) made OSPD a general fund agency, abolished the Capital Defense Fund and transferred the balance to the State General Fund. The conflicts program was suspended. Existing contracts on cases that are scheduled for trial in FY 17 were honored by the State Defender but new contracts were not entered into. OSPD is developing a recommendation for handling capital conflict cases to be presented to the Supreme Court and Legislature as part of overall public defense reorganization.

OSPD-CDD 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 funded through a grant from the Vital Projects Fund in cooperation with SPLC.<sup>1</sup>

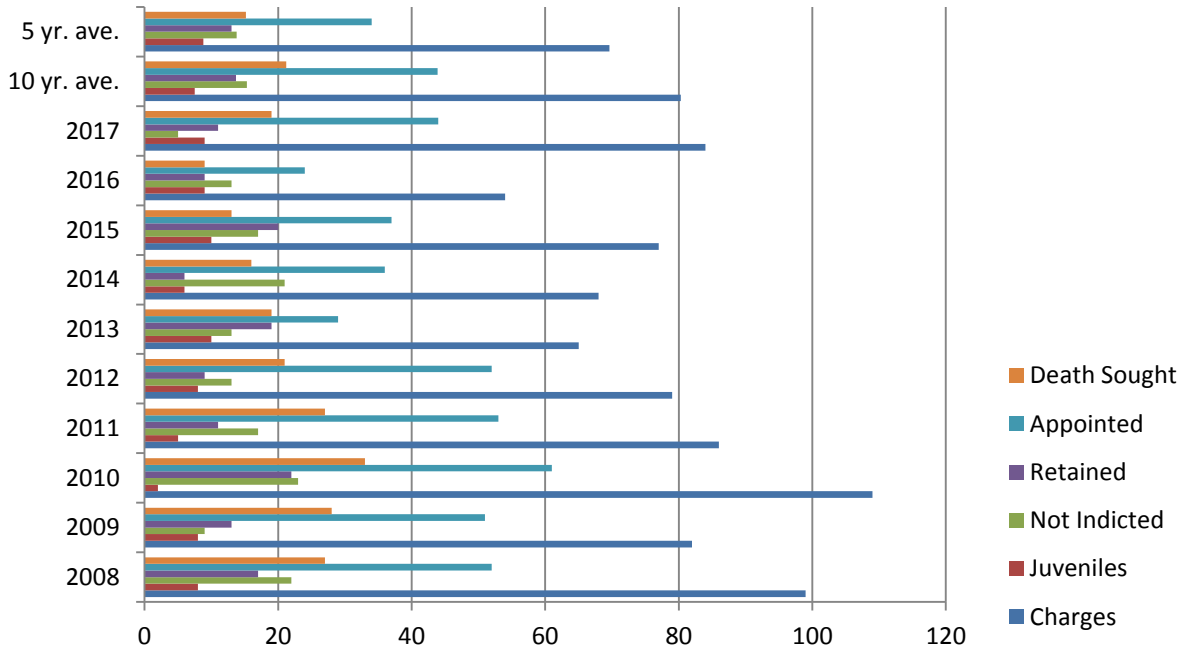
Death Penalty eligible cases<sup>2</sup> have continued to decline. Correspondingly the Capital Division has been reduced from a high of five lawyers to a projected staff for FY 18 of three.

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<sup>1</sup> See Appendix.

<sup>2</sup> Capital Murder cases in which the District Attorney elects to seek a death sentence.

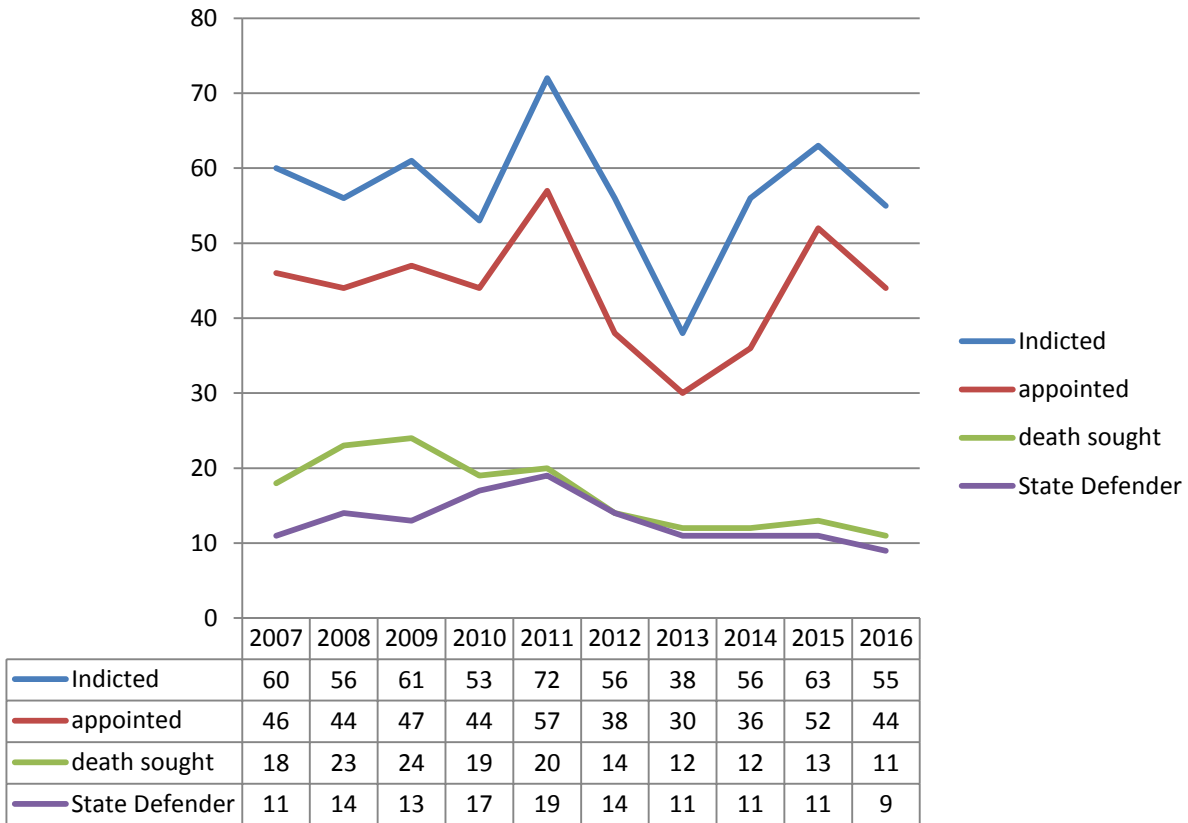
## Capital Murder Cases Closed FY 08-17



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	10 yr. ave.	5 yr. ave.
Death Sought	27	28	33	27	21	19	16	13	9	19	21.2	15.2
Appointed	52	51	61	53	52	29	36	37	24	44	43.9	34
Retained	17	13	22	11	9	19	6	20	9	11	13.7	13
Not Indicted	22	9	23	17	13	13	21	17	13	5	15.3	13.8
Juveniles	8	8	2	5	8	10	6	10	9	9	7.5	8.8
Charges	99	82	109	86	79	65	68	77	54	84	80.3	69.6



## Indicted Death Eligible Cases Opened FY 07-16



### INDIGENT APPEALS

Since July 1, 2016, IAD has filed 116 briefs. IAD currently has 223 open cases including 56 awaiting the filing of the record and briefing schedule and five are assigned to the Criminal Appeals Clinic at UM Law School. The remaining 162 cases are divided between the seven attorneys on staff. There are an additional eight cases be handled by private conflict counsel due to a conflict of interest with IAD.

There were seven oral arguments before the COA this year. One in September at MUW and another in November at Mississippi Valley State - both assigned to Hunter Aikens, and one in March at Mississippi Valley handled by Ben Suber. Four additional arguments were handled by Erin Briggs, Dan Hinchcliff and two by Ben Suber.

The staff attorneys of IAD rotate responsibility for summarizing appellate court decisions to be disseminated to county level public defenders and routinely answer questions for these defenders in the field.

IAD attorneys also presently serve on the Supreme Court Rules Committee (Justin Cook) and the DUI Task Force (George Holmes). George Holmes is a member of the Miss. Bar Resolution of

Fee Disputes Committee and Erin Briggs just ended a term as Region 5 Director for the National Bar Association in July.

## **DEFENDER TRAINING**

In addition to providing support to the State Defender in developing the Parent Representation program and workload assessment, the Training Division is assisting with the development of a mental health cases resource project and defender data project.

Through the mental health initiative OSPD consulted with defenders and drafted pleadings and appeared in two Chancery Court matters to facilitate clients being moved from criminal to civil court. OSPD unsuccessfully advocated for a legislative change suggested by the supreme court. The State Defender again commented on the proposed Rules of Criminal Procedure governing mental health matters and participated in trainings presented by NAMI-MS.

OSPD staff made other presentations to CLE programs presented by the University of Mississippi, Mississippi College, Mississippi Judicial College and the Mississippi Association for Justice in addition to Training Division programs. A presentation to the Circuit Clerks on data collection and reporting was also made.

The Division is providing on-going technical assistance to trial level defenders and is operating an intern-investigator program for the Hinds County Public Defender.

In August the division put on a 15 hour CLE program designed specifically for attorneys representing clients in municipal and justice courts attended by 86 people. In September the division put on an 11 hour CLE program for Youth Court Defenders attended by 26 people. In October the division put on a 17.3 hour program for all felony level public defenders attended by 119 people. A second 17.3 hour felony level conference was held in April with a Youth Court program occurring simultaneously. A total of 210 people attended.

In June the division conducted a Youth Court Defender program and the first in Mississippi Parent Attorney training program. Each provided 6 hours of CLE credit. Thirty four juvenile defenders received certification credit as well as 34 parent attorneys.

A total of 71.85 CLE hours were offered to 509 participants.

***Juvenile Life without Parole (JLWOP) – the effect of Miller v. Alabama on the delivery of indigent defense services in Mississippi. (June 2017)***

Background

In 2005 the Supreme Court of the United States held that sentencing a person to death for a crime that occurred prior to their 18<sup>th</sup> birthday violated the federal constitution. *Roper v. Simmons*, 543 U.S. 551 (2005). In 2010 the Court held sentencing juvenile offenders to life without parole (JLWOP) for non-homicide offenses violated the federal constitution. *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010).

In June 2012 the Court held that automatic life without parole sentences for juvenile offenders convicted of homicide offenses violated the federal constitution. *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

In June 2013 the Mississippi Supreme Court recognized that under Mississippi's parole law enacted in 1994 and 1995, all life sentences are without parole. *Parker v. State*, 119 So.3d 987 (Miss. 2013). Thus the *Parker* Court held that *Miller* requires individual determinations of parole eligibility in all capital murder and murder cases before a life sentence without parole can be imposed. *Parker* applies to all juvenile offenders serving an automatic life sentence as well as all juvenile offenders convicted since *Miller*. See *Jones v. State*, 122 So3d 698 (Miss. 2013) (*Miller* applies retroactively as matter of state law).

In light of these decisions every juvenile homicide offender is now entitled to a sentencing or resentencing hearing and entitled to counsel for that hearing. See *Perryman v. State*, 120 So.3d 1048 (Miss. Ct. App. 2013). Because life without parole is the equivalent of a death sentence when imposed on a juvenile offender, see *Miller*, equivalent procedures must be in place to ensure the defendant's constitutional rights are protected. *Dycus v. State*, No. 2012-M-02041-SCT (Order vacating sentence and remanding for new sentencing hearing before a jury pursuant to *Miss. Code* § 99-19-101) (Sept. 17, 2014).

This will require mitigation investigation and presentation including the use of experts, particularly in the field of child development. See *Davis v. State*, 87 So.3d 465 (Miss. 2012) (death sentence vacated where counsel failed to investigate and present mitigation).

Because these juvenile homicide cases are not "death penalty eligible offenses" Capital Defense Counsel cannot provide direct representation. *Miss. Code* § 99-18-5. However, under the State Defender's authority to utilize employees of one division in another division, Capital Defense has assisted the Public Defender Training Division in providing training and technical assistance to public defenders and volunteer counsel handling JLWOP cases. This assistance has been enhanced by a partnership with the Mississippi Office of the Southern Poverty Law Center in which OSPD is housing the JLWOP Resource Counsel funded through SPLC with a grant from the Vital Projects Fund. This limited assistance benefits the local defenders and counties but falls

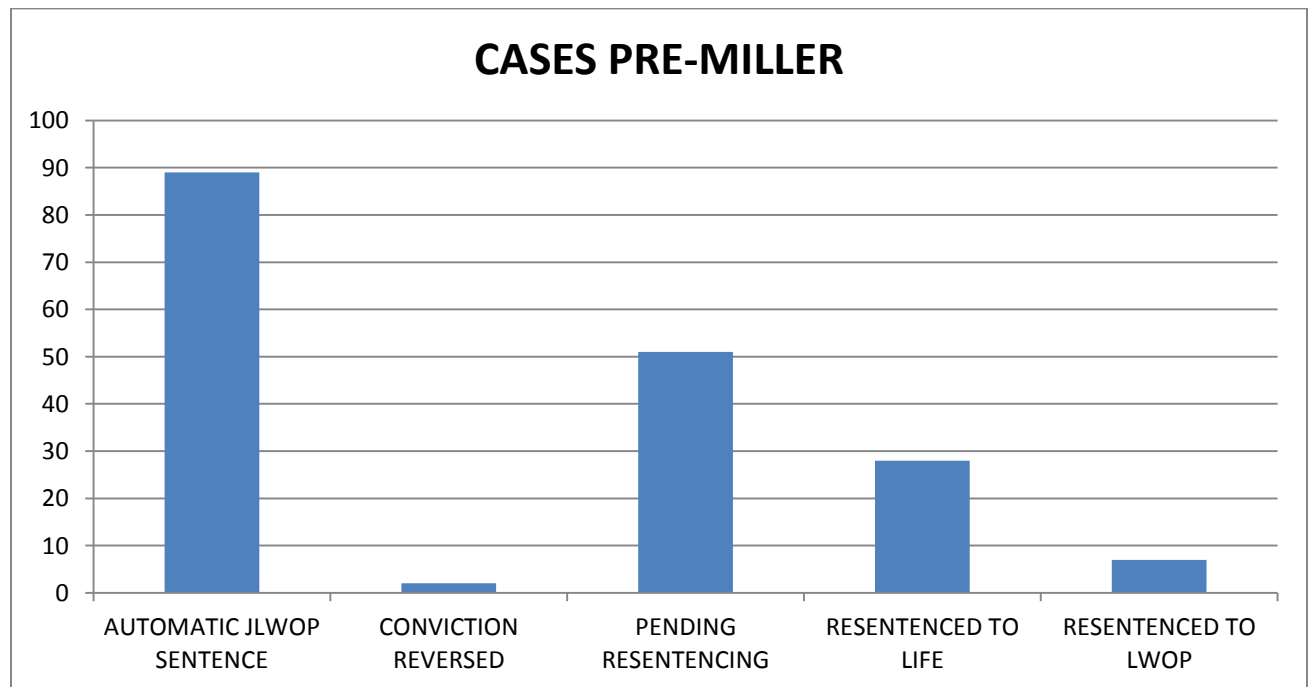
far short of ensuring they can meet the new constitutional mandate. This development increases the need for comprehensive indigent defense reform in Mississippi.

### Scope of the Problem – old cases

Eighty-seven people<sup>3</sup> in Mississippi were sentenced to automatic life without parole sentences for crimes occurring when they were juveniles (JLWOP sentences). Four were on direct appeal when *Miller* was decided and 83 have since filed 85 post-conviction motions raising Miller claims.

Of the four cases on direct appeal when *Miller* was decided, two had their convictions reversed and two had the JLWOP sentence vacated. In one of the two reversals the defendant was acquitted on retrial and the other plead to a reduced charge of manslaughter. One person whose sentence was vacated, Lester Parker, has been resentenced to life with parole. The second, Terry Hye, is pending resentencing.

In the post-conviction cases, courts have been vacating the sentences and remanding for resentencing. So far, 34 resentencing proceedings have resulted in 27 sentences of life with eligibility for parole and 7 JLWOP sentences. One person died prior to resentencing. Fifty resentencing proceedings are pending.



<sup>3</sup> Two people have two sentences imposed in separate cases so the total number of cases is 89.

### Scope of the Problem – new cases

There were 16 potential JLWOP cases pending pre-trial when *Miller* was decided. Two were sentenced to automatic JLWOP for murder before *Parker* was decided and are counted in the 85 post-conviction cases noted above. One since *Parker* has been sentenced to JLWOP for murder. The others have been convicted of lesser charges or had charges dismissed.

Seventy-five new JLWOP eligible cases have been filed since July 1, 2012. Forty-three of these cases remain open. Of the 32 closed cases three people have been sentenced to JLWOP bringing the total LWOP sentences post-*Parker* to eleven. It is anticipated that there will be 12 new JLWOP eligible cases indicted each year needing appointed counsel.

### The Bottom Line

Even the most conservative estimate of the cost to counties to provide constitutionally adequate counsel, investigators and experts in the pending cases would be in the millions with an additional \$900,000/year to handle future cases. This cost does not include the cost of empaneling juries.<sup>4</sup>

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<sup>4</sup> See *Vicksburg Post* Editorial, April 1, 2015, regarding retrial of Vega case.