

# STATE OF MISSISSIPPI



## OFFICE OF STATE PUBLIC DEFENDER

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Senator Boyd and honorable members of the Study Committee on Women, Children and Families:

In 2016, Office of State Public Defender’s mission was expanded to include training for all youth court defenders and direct representation for parents in the child welfare system. With the recent *Dobbs* decision, the Parent Defense Program, begun in 2018, will need to grow significantly in the next few years. As more women in low-income families have children and often additional children the number of families struggling to stay together will grow significantly. Dr. Daniel Edney from the MS Health Department testified to the Senate Study Group on Women, Children and Families that they estimate the state will see an additional 5,000 unplanned births every year.<sup>1</sup>

### Mandatory Appointment of Counsel

Parent Defenders must be made available to every parent facing the risk of having a child or children taken by the government. Research and the experience of the pilots, demonstrates that having attorneys in these cases not only protects the fundamental rights of parents, but it also helps move cases through the system more quickly, reducing the time kids are in foster care thus resulting in savings to the State to off-set this new expense. For example, during the 2021 calendar year, the Mississippi Department of Child Protection Services saw an increase of children in custody from 3,766 to 3849, (increase by 1.89%), those counties with salaried Parent Defenders saw a decrease of 2.61% in children in custody.<sup>2</sup> The time has come to mandate appointment of counsel.

OSPD is committed to developing evidence-based projects that will provide high quality legal services in a cost-effective manner. Because of unique circumstances in different parts of Mississippi one model is not right for all. In some areas the “ideal” is not feasible so we and local leaders are being flexible as we work towards improving delivery options. That said, we have concluded that the “ideal” delivery model is a fulltime parent

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<sup>1</sup> Testimony given September 27, 2022

<sup>2</sup> 2148 to 2092 Among those counties reporting salaried Parent Defenders in conjunction with OSPD and AOC. OSPD saw a decrease of 10.66% in those counties OSPD is helping to fund. 1398 to 1249.

defender in a legal aid or defender office with access to clerical and social service support. For more detail see the Children's Bureau memorandum addressing the "why and how" of delivering high quality legal representation for parents at all stages of the child welfare system. <sup>3</sup>

### Interdisciplinary Defense Teams

OSPD continues to work with the courts and other stakeholders to develop interdisciplinary defense teams (IDT) to reduce removals to foster care and to get children who have been removed back home quickly and safely. These teams consist of a certified attorney, social worker and, beginning in the fall of 2022, a parent partner.<sup>4</sup> Parent partners are parents who have lived experience dealing with the Child Welfare System who acts as a peer support for parents currently experiencing the Child Welfare System.

This model has been utilized for many years across the country. Casey Family Programs have also been a constant supporter of high-quality interdisciplinary parent representation and has provided seed money and consultants to help develop this model in Mississippi.<sup>5</sup> OSPD has introduced this model through training programs beginning in November 2019 and with Casey introduced the practice on the Coast and in Lee County this year.

This model has support from the federal government which has authorized Title IVE funding reimbursement for multidisciplinary defense services. This funding source could be used for future program growth. OSPD has been working with the state Department of Child Protection Services to draw down these funds. OSPD has already taken significant steps to fully develop these supports for parents by contracting with a master's level social worker with significant experience in the child welfare system. This Interdisciplinary Defense Team Coordinator will oversee the implementation of the IDT model and provide training and technical assistance to all providers.

### Funding

Like all indigent defense services in Mississippi, the primary funder of parent defense are the counties. Obviously mandating appointment would significantly increase costs to the counties. OSPD has been subsidizing services in some counties. This shared model for funding needs to continue.

To maintain the existing sites, further develop interdisciplinary defense, and touch each of the top 10 counties with children in foster care OSPD is asking in its SFY 2024 budget request an additional \$326,000 for a total of \$704,000 in SFY 2023<sup>6</sup>. The current

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<sup>3</sup> U.S. Dept. of Health & Human Services, Admin For Children & Fam., Information Memorandum: High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (Jan. 17, 2017).

<sup>4</sup> With the assistance from Casey Family Programs

<sup>5</sup> <https://www.casey.org/quality-parent-representation/>

<sup>6</sup> This does not include \$136,000 in general funds currently appropriated to AOC to support parent attorneys in select locations with county match funds.

appropriation covers subsidies for four fulltime attorneys handling cases in eight counties and eleven part-time positions (2.6 FTE) covering ten counties. We estimate the full cost of funding parent defense in child welfare matters to be \$3.3 million. Today, funds from all sources cover about half of the need.

The next-phase additional funding request includes subsidizing the cost of moving Hinds County to a fulltime attorney and social worker. Hinds County is a critical need site with 225 children in custody as of Oct. 6, 2022. By Comparison, Harrison County with 263 children in custody, has two full-time attorneys. One funded by county and one by OSPD.

### Cost Savings to State

Studies have shown that Interdisciplinary approaches to parental representation, a savings of up to 118 fewer days per child in foster care. The daily per diem for a foster care board payments ranges from \$23.23 to \$29.22 (not including special needs or therapeutic resource homes).<sup>7</sup> This would equate to a savings of \$2,741.14 per child in custody, which was 3,878 as of Sept. 1, 2022. If each of these 3,878 children spent 118 less days in foster care, that would equate to a savings of over \$10 million.

If a parent defender could reduce time in care by just 1 month for 4,000 children, it would be a savings of, at minimum, \$2.7 million.<sup>8</sup> Based on research and the experience of the pilots, having attorneys in these cases not only protects the fundamental rights of parents it helps move cases through the system more quickly, reducing the time kids are in foster care thus resulting in savings to the State to off-set this new expense. For example, an early assessment showed the statewide foster care population decreased by 17% compared to a 23% decrease in the targeted counties.

OSPD realizes that not every family can be safely reunited. But cases can still be expedited by a parent defender by ensuring that parents receive due process throughout the life of the case and aiding those parents in other permanency planning, such as family durable legal custody or termination of parental rights for adoption.

### Conclusion

This increase in the Parent Defense Program is essential to not only protecting the due process rights of parents, particularly in the wake of the *Dobbs* decision, but also ensuring that cases move quickly towards a child's permanency, whether that be returning home or being adopted. Many of the leaders who have testified to before this committee have voiced their support for parent attorneys and their ability to help move cases and create a more efficient path to permanency. The cost to fully fund the Parent Defense Program is minimal compared to the potential savings and benefits of Mississippi's families.

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7 <https://www.mdcps.ms.gov/sites/default/files/about-us/policies-%26-procedures/DFCS-Policy-Section-D-09-11-17.pdf> Page 135

8 \$23.23per diem x 4000 children in custody x 30 days = \$2,787,600.00. The per diem does not include medical expenses.