

**MISSISSIPPI
PUBLIC DEFENDERS
TASK FORCE**



Report to the Mississippi Legislature

September 29, 2000

**MISSISSIPPI PUBLIC DEFENDERS TASK FORCE
REPORT TO THE MISSISSIPPI STATE LEGISLATURE
September 29, 2000**

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**Letter From the Chairman of the
Mississippi Public Defenders Task Force**

SUPREME COURT OF MISSISSIPPI
POST OFFICE BOX 117
JACKSON, MISSISSIPPI 39205
TELEPHONE (601) 359-3697
FAX (601) 359-2443

LENORE L. PRATHER
CHIEF JUSTICE

EDWIN LLOYD PITTMAN
FRED L. BANKS, JR.
PRESIDING JUSTICES

September 29, 2000

CHUCK McRAE
JAMES W. SMITH, JR.
MICHAEL P. MILLS
WILLIAM L. WALLER, JR.
KAY B. COBB
OLIVER E. DIAZ, JR.
JUSTICES

STEPHEN J. KIRCHMAYR
COURT ADMINISTRATOR

The Honorable Amy Tuck
Distinguished Members of the Senate
The Honorable Tim Ford
Distinguished Members of the House
New Capitol
Jackson, Mississippi 39201

Mesdames and Messieurs:

The Public Defenders Task Force has diligently and thoughtfully considered the legislative mandate which included: (1) needs - study for indigent counsel; (2) types and costs of other states' public defender systems; and (3) the relationship between the circuit bench and the appointment of public defenders. We trust that the enclosed report makes a detailed and comprehensive response to your concerns.¹

RECOMMENDATIONS

One implied mission of the task force is to make recommendations for the improvement of our indigent defense system in criminal proceedings. All task force members agree that reform of the present system is needed. The passage of House Bill 1228 (creating the Office of Capital Defense Counsel and the Office of Capital Post-Conviction Relief and authorizing this study) was an important step in reforming our indigent defense system.

¹The opinions expressed in this transmittal letter are that of the author and not of the individual task force members. This report has not been reviewed or approved by task force members.

1. The Office of Indigent Appeals

The next logical step would be the creation of an Office of Indigent Appeals. A streamlined office of an attorney/director and five staff attorneys would be able to handle the bulk of indigent non-death sentence appeals in the State. This office would provide both an efficient and timely way to address a significant part of the criminal process. At the local level, overburdened attorneys would be relieved of filing appeals, allowing them to give priority to trials. Appeals would also be processed more expeditiously because they would be prepared by attorneys with expertise in this field and by using economies of scale.

2. The State Public Defender

A State Public Defender with limited authority is needed to oversee the new agencies (Capital Defense and Indigent Appeals) and to provide administration, budgeting and financial support in one office for the entire system (see attached matrix). While the offices of Capital Defense Counsel and Indigent Appeals could certainly operate without the oversight of a State Public Defender, the directors of each agency would be unnecessarily involved in administrative functions instead of practicing law. There would also be wasteful duplication of support functions such as that of a fiscal officer. Finally, and perhaps most importantly, there would be one individual to report and be accountable for the efficient operation of the indigent defense system.

3. Funding for Indigent Defense

All task members agree that the costs of indigent defense should be shifted from the counties to an alternate funding source. In a time of limited state revenue resources, these reforms can be added with funding provided by costs and assessments added to traffic tickets and other misdemeanor and felony dispositions. This provision for funding is currently in use in many other states and is a pragmatic way to resource improvements to the justice system.

The Honorable Amy Tuck, et al.
September 29, 2000
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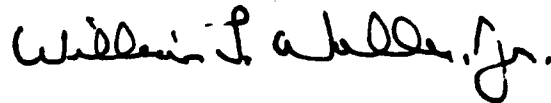
CONCLUSION

Finally, it is the unanimous belief of all task force members that the Legislature should authorize the continued work of the Public Defenders Task Force. The task force represents a cross-section of players in the justice system who have all demonstrated a commitment to improve the system.

On behalf of all members of the task force, we appreciate the opportunity to conduct this study with the hope that our legal system will be improved.

I deeply appreciate the work of Rick Patt of the AOC who has worked tirelessly in conducting the statewide survey, performing the research, acting as secretary and completing this report.

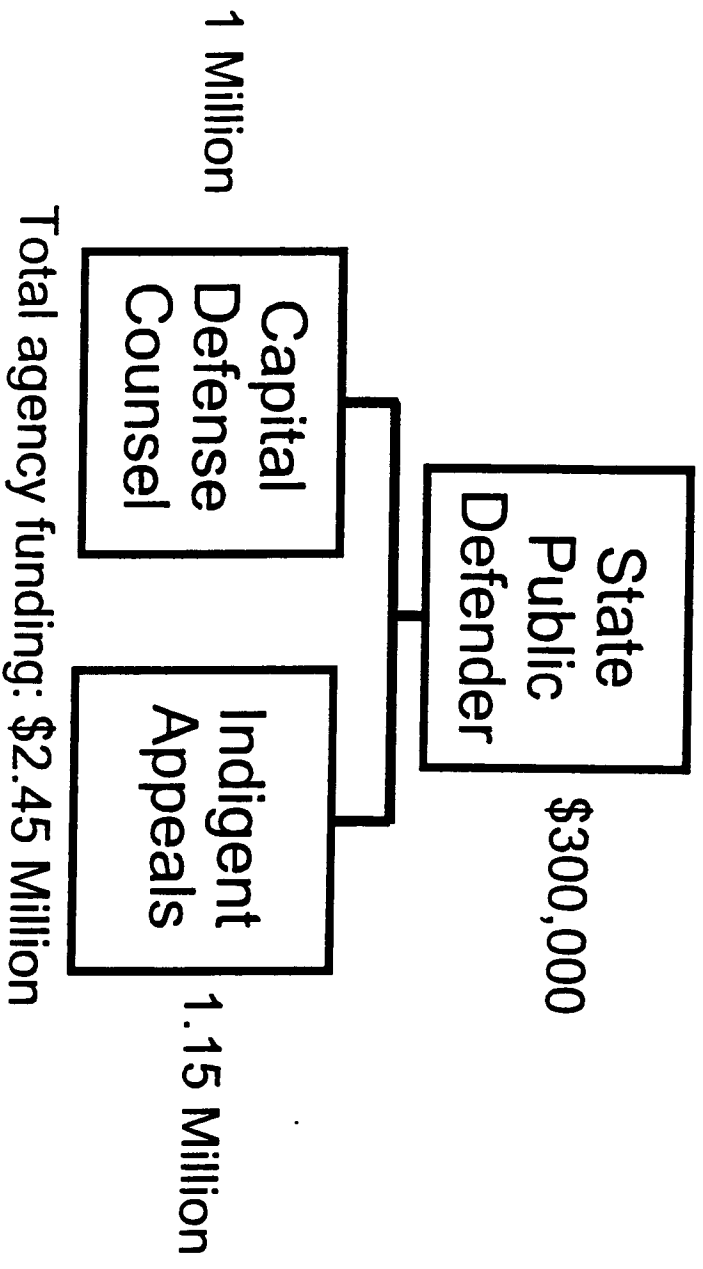
Sincerely,



William L. Waller, Chairman
Public Defenders Task Force

WLW:mim
Enclosure

- 4 year term
- Appointed by Governor
- Oversees agency
- POC indigent representation issues
- Provide admin, budgeting and financial support for agency



- Provides representation or support to court appointed attorneys for all indigents under sentence of death
- Trial judges retain appointive authority as to trial counsel
- Provide representation on appeal to indigents convicted of felonies, but not under sentence of death

Statutory Creation

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Miss. Code Ann. § 25-32-71 (Supp. 2000)

In section 30 of House Bill 1228, as signed by the Governor, there is created a Mississippi Public Defender Task Force, composed of eleven (11) members, as follows:

- The President of the Mississippi Public Defender Association, or his designee;**
- The President of the Mississippi Prosecutors Association, or his designee;**
- A representative of the Administrative Office of Courts;**
- A representative of the Mississippi Supreme Court;**
- A representative of the Conference of Circuit Judges;**
- A representative of the Mississippi Attorney General's Office;**
- A representative of the Mississippi Association of Supervisors;**
- The Chairman of the Senate Judiciary Committee, or his designee;**
- The Chairman of the Senate Appropriations Committee, or his designee;**
- The Chairman of the House Judiciary En Banc Committee, or his designee;**
- The Chairman of the House Appropriations Committee, or his designee.**

The Committee was charged to make a needs-study of the circuit court districts for state-funded indigent counsel, analyze the existing public defender systems, and provide this report to the Legislature by September 29, 2000. The Committee also looked to the types of other states' public defender systems, and studied the relationship between the circuit bench and the appointment of public defenders.

In the next section of the report, a listing of the members of the Task Force is provided, and a summary of its activities is contained in the Introduction and Narrative, with the minutes of the meetings included in Attachment "A".

Membership of the Task Force

**MISSISSIPPI PUBLIC DEFENDER SYSTEM TASK FORCE
(September 29, 2000)**

Representative Charles W. Capps, Jr.
House Appropriations Chairman
P.O. Box 308
Cleveland, Mississippi 38732
(662) 843-5341 (Clev.) (601) 359-3340 (Leg.)
(601) 359-3164 (Leg. fax)
(Chairman - House Appropriations Cmte.)

Stephen B. Simpson
Office of the District Attorney
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Gulfport, MS 39502
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(228) 865-4239 - fax
(Prosecutors Association President)

Thomas M. Fortner
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P.O. Box 23029
Jackson, MS 39225-3029
(601) 948-2683
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(designee of Public Defenders Association)

Senator Bennie L. Turner
Senate Judiciary Chairman
P.O. Drawer 1500
West Point, MS 39733
(662) 494-6611 (W.P.) (601) 359-3237 (Leg.)
(662) 494-4814 - fax
(Chairman - Senate Judiciary Committee)

Senator Jack Gordon
Senate Appropriations Chairman
P.O. Box 377
Okolona, MS 38860
(662) 447-3117
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(Chairman - Senate Appropriations Cmte.)

Justice William L. Waller, Jr.
Mississippi Supreme Court
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(Supreme Court representative)

Judge Isadore Patrick
Circuit Court Judge
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Jackson, MS 39205
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(designee of Administrative Office of Courts)

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Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
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(Attorney General's Office representative)

Mr. T.H. (Butch) Scipper
Chancery Court Clerk
230 Chestnut St.
Marks, MS 38646
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(662) 326-8004 -fax
(designee of the Association of Supervisors)

CIRCUIT JUDGES ALTERNATE MEMBER
Judge Dale Harkey
Circuit Court Judge
P.O. Box 998
Pascagoula, MS 39568
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(228) 769-3262 - fax

Introduction and Narrative

**MISSISSIPPI PUBLIC DEFENDERS TASK FORCE
REPORT TO THE MISSISSIPPI STATE LEGISLATURE
September 29, 2000**

INTRODUCTION

In the 2000 Regular Session of the Mississippi Legislature, House Bill 1228 emerged from the Conference Committees and was passed by the House and Senate, and then signed by Governor Musgrove. This historic legislative enactment would create and fund an Office of Capital Post-Conviction Counsel and a separate Office of Capital Defense Counsel, repeal the existing Statewide Public Defender Act of 1998, and create a Mississippi Public Defenders Task Force to examine the statewide public defender issue and submit a report to the Legislature by September 29, 2000. A copy of the statutory language creating the Task Force and a listing of its appointed membership is contained in the pages preceding this narrative.

The Legislature, sensitive to desires by all involved parties to be included in the discussions of these issues, made membership on the Task Force subject to a single appointment by various officials and entities, to wit: the Mississippi Supreme Court, the Mississippi Circuit Judges Conference, the Mississippi Attorney General, the President of the Mississippi Prosecutor's Association, the President of the Mississippi Public Defenders Association, the Administrative Office of Courts, the Mississippi Supervisors Association, the Chairmen of the House and Senate Appropriations Committees, the Senate Judiciary Chairman, and the Chairman of the House Judiciary *En Banc* Committee. Due to the short

time frame allowed from inception to the due date of the report, the Committee was able to meet on three occasions, identifying a course of action where information could be gathered in order to satisfy the statutory mandate.

NARRATIVE

Meetings of the Task Force

In the first meeting of the Task Force, Supreme Court Justice William Waller was elected Chairman of the group, and Circuit Judge Isadore Patrick was appointed Vice-Chairman. The minutes of the meetings of the Task Force are attached in Appendix "A". At this meeting, the group decided that surveys would be conducted of the counties and of the Senior Circuit Judges, in order to obtain information regarding how counties currently appoint and pay for public defenders in non-capital felony cases, the costs associated with these appointments, and the opinions of the Circuit Judges on the way the current system is working, with questions to determine the Judges' needs and preferences as to the system which would work the best in their district.

At the second meeting of the Task Force, the group analyzed the preliminary returns from the surveys sent out, and commented on how they reflected the different systems throughout the state. The committee discussed various methods whereby the State could possibly look to take some of the burden off the counties in appointing counsel for felony, non-capital indigent defendants, and discussed incremental policies which would possibly be able

to first relieve the counties from the burden of having to appoint counsel for felony appeals. A full explanation of the Task Force's recommendations for the setup of such an office, and the direction that the State should look may be found in the Recommendations section of this report.

At the third meeting of the Task Force, the members examined the proposal sent to them by Justice Waller, which outlined the creation of a new Office of Indigent Appeals, which would be a division under the direction of a new Office of the State Defender, with the State Defender also assuming authority for the operation of the currently-existing Office of Capital Defense Counsel. The Task Force voted to recommend this method of alleviating some of the county costs by having the state assume responsibility for indigent felony appeals, as a starting point for future legislation. Fee procedure was also addressed, with the membership proposing items set out in detail in the following report on Recommendations.

Data Collected

In regards to actions taken to collect information, the AOC mailed a copy of a survey, included as Attachment "B", to each of the Senior Circuit Judges of each district. The results of that survey may be found in Attachment "C" of this report. The Judges were asked about the percentage of felony defendants who appeared in front of them in their districts who were indigent and needed counsel appointed to represent them. The judges also made comments about how the system of felony public defense was working in their district, and their opinion

of its operation and the need for a state-funded system in their area. Results of this survey were then mailed to every Circuit Court Judge for additional comments or corrections if they so desired.

The county survey that was sent out was mailed to the Chancery Clerks of each county, on the recommendation of Task Force member Butch Scipper, who is the Chancery Clerk in Quitman County. A copy of the survey is attached, as Attachment "D". Since most of the questions dealt with county finances, the Task Force felt that the Chancery Clerk would either have the information, or be able to direct the survey to the person in the county who would. The county survey was also mailed to the Senior Circuit Judge in each judicial district, as they would have some relevant information as well. In order to get greater compliance with the survey request, the second mailing was sent to all Chancery and Circuit Clerks of each county which had not responded to the initial request. A third mailing was sent to every Chancery and Circuit Clerk, and to each of the Circuit Judges so that the counties could supplement any of their answers or send in copies of the survey if not previously returned.

A compilation of the information sent in from the county survey is contained in Attachment "E", and is in three parts, all of which have the counties organized by circuit court districts. If there is a blank out from the county name, no survey was returned. If there is a dashed line (----) then the survey was returned, but that particular question was not answered. The first section of the county survey notes the percentage of felony defendants in the county who are indigent and require appointed counsel at taxpayers' expense. The next section

documents how the counties pay appoint counsel for indigent defense, either by employing a full-time public defenders office, contracting with one or more attorneys to handle the felony indigent defense workload, or appointing counsel on a case-by-case basis from a pool of attorneys who have agreed to handle such cases. In counties where there is a full-time office or using contract attorneys, counsel is still appointed on a case-by-case basis for conflicts cases. The number of attorneys and the method by which and the amount that they are paid are also detailed in this section of the county survey results. The third section of the county survey shows the amount that the counties expended on felony indigent defense in Fiscal Year 1999, the amount, if determinable, which was spent on felony indigent appeals (excluding death penalty cases), and the amount that the county budgeted to spend on felony indigent representation for Fiscal Year 2000.

Overview

Based upon information gathered from the surveys, it is apparent that indigent defense remains a vexing problem for the counties. Many counties are unsure about proper amounts to budget for these expenses. From the information gathered, it can be seen that counties are spending approximately a little more than \$9 million per year on felony, non-capital indigent defense (this figure includes estimations on expenses in counties not responding to the survey).

The Task Force felt that the problem of funding for indigent defense could not be addressed all at once, and that the better solution was to have an assumption by the state of

indigent costs in a gradual manner, starting with an office handling felony indigent appeals. Realizing the tight budgetary constraints which the Legislature would find itself facing in the coming years, the Task Force recommended that the Legislature seek to address the funding issue by examining the feasibility of imposing state assessments on criminal fines imposed in felony and misdemeanor cases, including traffic offenses. Based on preliminary data gathered, for each dollar (\$1) put on an assessment on such fines (with the possible inclusion of civil filing fees in the figure obtained), there would be a generation of roughly \$700,000 in revenue. By the method of imposing assessments on criminal fines, the costs of providing indigent defense would fall upon those adjudicated as having broken the law and fined, and would include many of those who were themselves using the services of appointed counsel. Upon this assessment being placed in a special fund, the Legislature would have a good idea of monies available to fund any future programs or to fund any costs taken on by the state.

The Circuit Judges are in favor of examining the system to see how the counties and districts may be assisted in providing public defenders. The judges realize, and the Task Force agrees, that each county and district is unique, and what works for one district may not be appropriate for others. In this matter, the Task Force realizes that many districts may wish to employ a full-time local office, whereas other districts may have a system whereby contract/appointive counsel performs adequately and, as is done in certain other states, local control is maintained with the state assuming the financial costs. The Task Force did not recommend the state-funding of district, trial-level representation for the 2001 Legislative Session, as this would be too much too soon, considering all of the factors. Also, under the

recommendations proposed in the following section, Circuit Judges would still have control over the approval of expenses and authority in the appointment of counsel.

The Mississippi Public Defender Task Force recommendations for the 2001 Legislative Session are contained in the following section. It is the intent of the Task Force to continue to meet this fiscal year in order that further recommendations may be made and study conducted, and it would recommend that the Legislature consider allowing the Task Force to stay together as a group in order that it might serve, in an advisory capacity, the Legislature and the various entities associated with providing indigent representation for criminal defendants.

**Proposed Recommendations for the
2001 Legislative Session**

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

MEMORANDUM OF PROPOSED LEGISLATION FOR PUBLIC DEFENSE ACTIVITIES IN MISSISSIPPI

The following is an outline of proposed legislation which would modify the year 2000 legislation, and would create a State Public Defender with overall supervision of the currently-existing Office of Capital Defense Counsel and add a newly-created Division of Indigent Appeals. The Division of Indigent Appeals would represent indigent persons in the appeal of non-capital felony convictions. The State Public Defender would have overall responsibility for appointing the directors of these two divisions, regulating their activities, and handling administrative, legislative, budgeting and financial matters for both.

Recognizing that, for various reasons, it will not be feasible to overhaul the entire indigent defense system at one time, the creation of this structure, following the newly created Office of Capital Post-conviction Counsel can be considered an aggressive but practical next step.

Funding for the State Public Defender and for the divisions is, of course, dependant on the volume of criminal appeals and the proportions of those with appointed and private counsel. In 1999 the Supreme Court received 8 capital appeals and 301 non-capital felony appeals. At the current rate of filings, it is projected that in 2000 approximately 370 non-capital felony appeals will be filed. Based on these two years, approximately 350 non-capital felony appeals can be expected each year. If it is assumed that ten per cent of these cases have privately-employed counsel, the number for an Office of Indigent Appeals would be reduced to 315 appeals. Perhaps 30 of these would be handled by contract counsel due to conflicts or other circumstances. If so, the number of appeals handled by the office, in house, would be approximately 290 each year, or, assuming six attorneys in the office, 48 per attorney. This figure does not include include motions for rehearing, petitions for certiorari and other related matters.

1. State Public Defender

Appointing authority:

The State Public Defender would be appointed by the Governor, and other employees within the office would be selected and employed by the State Public Defender. The State Public Defender would oversee the operations of the agency as well as the two divisions, would serve a four-year term, and would be the spokesman for all matters relating to indigent defense representation. The employees of the agency and its divisions would serve at his or her will and pleasure.

Duties:

Appoint and supervise the directors of the Division of Capital Defense Counsel and the Division of Indigent Appeals.

Provide administrative, budgeting and financial services support for the Division of Capital Defense Counsel and the Division of Indigent Appeals.

Handle applications and contracts for grants and assistance for such offices.

Co-ordinate the collection and dissemination of statistical data as required of the two divisions.

Develop plans and proposals for further development of a statewide public defender system in coordination with the currently-existing Mississippi Public Defenders Task Force

Staffing:

A director, two clerical employees and a fiscal assistant.

Funding:

(Funding requirements have not yet been determined; however, it is expected that this will be in the range of \$300,000 per year.)

2. Division of Capital Defense Counsel

The present Office of Capital Defense Counsel would be modified and incorporated into the new structure as the Division of Capital Defense Counsel with all the duties and responsibilities held by the present Office of Capital Defense Counsel, with appointment and supervision of the division director by the State Public Defender.

Appointing authority:

The Director would be appointed by the State Public Defender (rather than by the Governor as provided in present legislation, but with provision that the person now serving would retain his position for the remainder of his term.) Employees of the division's office would be selected by the director, with the approval of the State Public Defender. The director and employees would serve the will and pleasure of the State Public Defender.

Duties:

Provide representation on appeal for all persons under sentence of death. Representation would be provided by staff attorneys, or, in the case of conflict or excessive work load, by attorneys selected and employed by the office on a contract basis.

Provide trial representation of all persons charged with a crime which may result in a sentence of death, as it may be called upon to do so by the trial judge. This responsibility would be limited to the availability of staff and funds . The trial judges would retain the prerogative of either selecting outside counsel or requesting appointment by the office, to the extent that office resources are available. Fees and expenses of trial counsel selected by the trial judges would be paid by the state out of the budget allocated to the office.

Provide advice, education and support to those private attorneys appointed by the trial judges in death penalty trials. This duty would involve services formerly provided at the trial level by the Capital Defense Resource Center.

Staffing:

Staffing would remain the same as is now provided for in H.B. 1228, with the exception that no salaried fiscal assistant would be provided in the division. (It is thought that with the State Public Defender providing fiscal and budgeting services, a fiscal assistant would be unnecessary.) This would require a staff of an attorney-director, three additional attorneys, two investigators and two secretaries/paralegals.

Funding:

(Funding requirements have not yet been determined; however, it is expected that this will be in the range of \$1 to 1.5 million per year. The fiscal assistant position may be eliminated if put under the State Defender, however additional staffing may be necessary based upon recommendations of the Director of the Office of Capital Trial Counsel due to increased funds for additional attorneys or to fund private attorneys appointed in death penalty cases.)

3. Division of Indigent Appeals**Appointing authority:**

The Director would be appointed by the State Public Defender. Employees of the division would be selected by the director, with the approval of the State

Public Defender. The director and the employees would serve at the will and pleasure of the State Public Defender.

Duties:

Provide representation on appeal for all indigent persons convicted of felonies but not under sentences of death. Representation would be provided by staff attorneys, or, in the case of conflict or excessive work load, by attorneys selected and employed by the office on a contract basis.

Provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

Staffing:

An attorney/director, five additional attorneys and two secretaries/paralegals. (With the State Public Defender providing fiscal support, a fiscal assistant should not be needed.)

Funding:

(Funding requirements have not yet been determined; however, it is expected that this will be in the range of \$1,150,000 per year.)

Miscellaneous Considerations

Legislation should clearly require all legal staff in these offices to practice exclusively for the office with no outside practice.

Legislation should clearly provide that the offices will not engage in litigation other than that directly related to the representation of the clients and as authorized by the statute creating them.

Legislation should make provisions for compensation of appointed counsel in both capital and non-capital proceedings . Using the Capital Post-Conviction Counsel legislation as a guide, the fees allowed in federal court for similar representation might be used benchmarks, with fees allowed in the corresponding state proceedings at eighty-percent of those levels. Presently, the U.S. District Court for the Southern District allows \$125 in or out-of-court in capital matters and \$70 in-court and \$50 out-of-court for non-capital felonies. Fees for associate defense counsel in cases wherein more than one attorney is appointed for a defendant may be set at a lower level by the court in which the case is pending. Defense counsel seeking compensation,

reimbursement for expenses incurred or authority to incur expenses in a case shall, prior to payment, submit a detailed statement of services and time spent to the court in which the matter is pending. The court will review the statement and application for compensation along with all prior applications in order to determine whether the fees charged are reasonable, within the limits of the statute and are necessary for proper representation. In death penalty cases, all fee applications will be served on the State Public Defender who shall, after consideration, respond with his or her recommendations. Applications for fees or expenses which, when considered with all prior applications exceed \$7,500 for fees or \$2,500 for expenses in death penalty cases or \$2,500 for fees and \$500 for expenses in non-capital felony cases shall be subject to special scrutiny. After reaching such thresholds, the attorney shall file applications monthly for consideration and approval. In death penalty cases, decisions of the trial court on fees and expenses shall be subject to review by the Supreme Court upon motion by the defendant, the State or the State Public Defender.

Following the pattern of the Capital Post-conviction Counsel legislation and the present Office of Capital Defense Counsel, the State Public Defender should receive salary and benefits equivalent to those of district attorneys. The division directors should be paid at a level of not more than that of district attorney less \$1,000, and the other attorneys should be paid as assistant district attorneys.

Provisions should be made for court approval of fees charged by contract counsel and expenses incurred both by attorneys in the state offices and contract counsel, with threshold amounts triggering court approval prior to payment.

When there is a split in representation at the trial and appellate levels, in both capital and non-capital proceedings, provisions should be made for transition of counsel. A system should be developed whereby the trial counsel, promptly upon the trial court's ruling on post-trial motions, informs the appropriate division of the conclusion of trial court proceedings. In the alternative, the trial attorney should determine whether the client desires an appeal, and if so, timely file the notice of appeal and notify the appropriate division.

Prosecutors should be required to make a declaration at an early stage of proceedings as to whether the death penalty will be sought. Full time attorneys on the staff of the office would receive no compensation other than salaries set at district attorney level for the director and assistant district attorney for the remaining attorneys. (Caution should be exercised by the director of the Division of Capital Defense Counsel and the director of the Division of Indigent Appeals in the appointment of non-staff counsel in all these cases due to limited budgeting for contract attorneys. This would result in exceeding the budget allowance if contract counsel is used to any great extent.)

It is anticipated that the Supreme Court will establish standards of competence for attorneys representing defendants in capital matters both at trial and on appeal. Those attorneys in the Division of Capital Defense Counsel should be required to meet those standards.

Attachment A

Public Defender Task Force Minutes

MINUTES OF THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Mississippi Court of Appeals *En Banc* Room
Jackson, Mississippi
June 29, 2000

In Attendance: Tom Fortner, Rick Patt, Butch Scipper, Steve Simpson, Justice William Waller, and Sonny White.

The meeting was called to order by Rick Patt, who welcomed those in attendance.

1. The first item of business discussed was how best to obtain the information about the current state of public defender expense in the State. The problem is basically whom do you ask. Most of the expenses come through the circuit court clerks' offices, but some is taken up in justice court costs. Butch Scipper reported that most counties have county administrators. The group agreed that a one-page survey to the chancery clerks and county administrators should be sent out. It was recommended that the survey concentrate on felony indigent defense expenses, excluding death penalty expenses since that area would be studied and addressed by the Office of Capital Post-Conviction Counsel and the Office of Capital Defense Counsel.

A survey should be sent to the Chancery Court Clerks, County Administrators, and Senior Circuit Court Judges. Counties have fixed figures for what they pay contract attorneys and attorneys appointed in conflicts cases. Counties would also have information on associated costs such as experts, DNA tests, etc. (nominal amount if not in capital litigation). Only three counties have budgets for full-time offices, Hinds, Jackson and Washington counties. The survey should identify what the counties are spending now. The Task Force also realized that the needs of the circuit judges should be identified through a study of the types of appointment system that is currently being used in the districts (picked by Board or Judge, rotating list or contract). Judges should state their opinion on how the office setups and expenses should be handled and the percentage of felony cases in which counsel is appointed versus those in which counsel is hired privately. Costs of indigent appeals (filing fees, transcripts, costs, etc), excluding death penalty cases, should be discovered through the questionnaire by determining the amount of the contract or appointed attorney's time is spent on appeals.

The information on the number of felony cases filed should also be obtained for use by the Task Force. Numbers from the Supreme Court Clerks office on how many of the direct appeals are handled by appointed counsel should be obtained as well. The survey would be developed by Rick Patt and sent to the other members for their comment before distribution. A rough time line was established, with the survey going out at the end of the week of July 17th with a return after August 2nd.

2. Sonny White made a motion, seconded by Butch Scipper to elect Justice Waller as the Chairman of the Task Force and have the Circuit Judge representative serve as the Vice-Chair. The motion passed unanimously.

The Task Force agreed that the next meeting would be held at the AOC on Friday, August 11, 2000 at 10:30 a.m. There being no further business, upon a motion and second, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Patt", written in a cursive style.

Rick D. Patt

MINUTES OF THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Mississippi Court of Appeals *En Banc* Room
Jackson, Mississippi
August 24, 2000

In Attendance: Chairman Justice William Waller, Vice-Chairman Judge Isadore Patrick, Judge Dale Harkery, Tom Fortner, Rick Patt, Clyde Hill, and Sonny White.

The meeting was called to order by Chairman Waller, who welcomed Clyde Hill, from the District Attorney's office in the 5th Circuit Court District, to the meeting in the place of Steve Simpson. Mr. Hill is the President-Elect of the Mississippi Prosecutor's Association. Chairman Waller also recognized Jack Pool, the Director of the Supreme Court's Central Legal Office, who would be sitting in on the meeting.

Chief Justice Lenore Prather made a special welcome to the Task Force, and commended the group on its undertaking. After her remarks and departure, the Task Force examined the minutes from the previous meeting. Upon a motion by Sonny White and a second by Rick Patt, the reading of the minutes was waived and they were approved unanimously.

1. The first item of business discussed was the surveys which were sent to the senior circuit judges and the counties concerning indigent defense. Rick Patt presented the findings of the surveys, starting with the survey sent to each circuit district's senior judge. The judges were asked to estimate the percentage of criminal defendants appearing before them who are indigent and require appointed counsel. The circuit judges reported on the type of public defender system which was set up in the counties of their district, and gave their opinion on its effectiveness, their needs and their feelings about having a full-time public defender's office set up in their district to handle felony cases. Rick Patt then discussed the surveys sent to the counties and the reports showing the expenses for non-capital felony indigent defense which are currently being borne by the counties. The Task Force then discussed the information which was shown in the surveys. Rick Patt reported that several counties had still not reported, and that the information would have to be validated before it could be placed in the report.

2. Chairman Waller stated that the Task Force should be able to get its report to the Legislature by the September 29th date, providing information and perhaps making recommendations which could incrementally take some of the financial burden off the counties. He suggested for discussion an idea to perhaps have set up an office of non-death penalty felony appeals, which could be staffed and would be completely separate from the Office of Capital Post-Conviction Counsel. The new Felony Appellate Office could function as an independent unit, or it could be placed in a new Statewide Defender's Office along with the already-created Office of Capital Trial Counsel (which is slated to handle capital trials and presumably capital appeals. Qualifications for counsel could be set by the Supreme Court,

with the Office's Director (or a Statewide Defender) appointed by the Governor for a four-year term. Chairman Waller passed out to the Task Force a draft of such a new Felony Appeals Office, which he worked on with the assistance of Jack Pool. The Task Force then conducted a lengthy discussion on the merits of such a plan, and were in general agreement that the establishment of an office to handle felony appeals would be an idea worth exploring.

3. The Task Force discussed several issues in closing. The group, upon a motion by Chairman Waller and a second by Judge Harkey, recommended that Rick Patt use the AOC to contract with law students to perform research as to the Public Defender Systems which are used in other states. The law students may also be used for stats, surveys and helping to draft the report. Judge Patrick discussed the effect that any full-time office at the felony trial level would have on private attorneys now serving in a contract or appointment capacity, and Tom Fortner reported that the members of the Public Defenders Association are split as to the desirability of having such a system at the trial level.

4. The group then agreed that the next Task Force meeting would be at the AOC on Friday, September 22nd at 1:30 pm. Upon a motion and a second, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Patt", written in a cursive style.

Rick D. Patt

MINUTES OF THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Mississippi Court of Appeals *En Banc* Room
Jackson, Mississippi
September 22, 2000

In Attendance: Chairman Justice William Waller, Vice-Chairman Judge Isadore Patrick, Tom Fortner, Rick Patt, Butch Scipper, and Sonny White. Steve Simpson was unable to be present, but faxed a memo to the group as to his position on proposed legislative recommendations.

The meeting was called to order by Chairman Waller, who recognized Jack Pool, the Director of the Supreme Court's Central Legal Office, who would be sitting in on the meeting. He also introduced Cary Brown, a MC law student, who has been doing research as an AOC law clerk on other states' systems. Chairman Waller directed the group to examine the minutes from the previous meeting. Upon a motion by Sonny White and a second by Judge Patrick, the reading of the minutes was waived and they were approved unanimously.

1. The first item of business discussed was the types of public defender systems which are present in other states. Cary Brown and Rick Patt reported on research, stating that most of the Southeastern states have some form of indigent defense systems set up at a statewide level. Alabama allows a county or counties in a district to appoint a local indigent defense commission, which will then have the authority to select a district defender and supervise the budget and expenses, paid by the state. Arkansas has a Public Defender Commission as an Executive Agency, and establishes policies and standards for the public defender system, funded by the state. The Commission appoints an Executive Director, who oversees the state office and the local defenders. Florida provides state-funded public defenders in the local court districts, overseeing that particular court area. In Georgia, a state council approves and funds local public defender plans in the differing court jurisdictions, managed in accordance with standards set by the Supreme Court. Kentucky employs a state public advocate to approve and fund local plans to provide indigent defense. Louisiana has a district defender board in each judicial district, selecting a method for providing counsel in that district. Funds used by the boards to pay counsel come from a \$17.50 per felony charge imposed upon conviction and from provided state funds. North Carolina handles their appointments on a county or district basis, appointed by the court, with costs to be picked up by the state. North Carolina also has a statewide appellate public defender system, funded exclusively by the state. South Carolina has a commission on indigent defense, which distributes funds generated from a filing fee to counties for representation, and a commission on appellate defense, which sets up an appellate office and provides state funding for felony appeals. Tennessee has a district public defenders conference, whose salary is mostly paid by the state. The conference elects an executive director to coordinate the district defenders, each of whom are appointed by the Governor. Tennessee also has a Death Penalty PCR Commission and Director, funded by the state. Texas does not have a state commission or state office, and appointments are made at the local level by the judges, and the funding is provided by the individual counties. Other

states have a variety of methods, most funded by the state and providing indigent defense either as part of a state-wide scheme or allowing district decisions as to type.

2. Rick Patt brought up the subject of looking into funding for indigent defense through an assessment on criminal fines imposed for felonies and misdemeanors, including traffic offenses. Butch Scipper mentioned that some offenders are assessed a \$10 surcharge for providing indigent defense if a fine is imposed. The group recommended looking into the possibility of have an assessment added to all criminal and traffic fines in order to provide funds for payment of indigent defense, or imposing standard additions to fines imposed upon those who use indigent defense services. In Louisiana, a felony assessment is added to convictions, and North Carolina adds a civil filing fee to pay for this cost. The Task Force favored, in principle, the idea of adding an assessment to criminal fines and traffic offenses to pay for indigent defense services as long as the special assessments already going to the counties were not decrease as to deprive the counties of any existing revenue sources.

3. Rick Patt discussed the survey results contained in the report, remarking that for the fiscal year 1999 (the one most recently completed at the county level), approximately more than \$9 million was spent by the counties for felony, non-capital indigent defense. In most of the counties of the state, the percentage of felony defendants who were indigent and required appointed counsel was 80-90%. Although individual county expenses would fluctuate from year-to-year, it would seem that the state-wide level of expenses would remain relatively constant. With the state assuming the costs of death penalty trial representation costs and death penalty PCR expenses, one method of relieving the county of some financial burden would be to take felony appeal expenses off the counties.

4. The Task Force addressed the proposal put forward by Justice Waller, with the assistance of Jack Pool. The proposal for the 2001 Legislative session calls for the creation of a state-funded office of Indigent Appeals, which would represent or coordinate funding for all non-capital felony appeals from the trial courts. There would also be created a new Office of the State Public Defender, which would oversee the aforementioned new division of Indigent Appeals and would supervise the presently-existing Office of Capital Defense Counsel in its merger into a division of the State Defender's Office. Steve Simpson, although not physically present at the meeting, did send a fax where he agreed with the idea of the creation of an Office of Indigent Appeals, but objected to the creation of a new State Defender position at this time. A copy of his fax is attached to these minutes. The Task Force agreed that it would be a better idea to have a State Defender put in place this upcoming session, as it would be necessary in the future and would result in cost and space savings, but will also recommend legislation to create a separate Office of Indigent Appeals, should the Legislature decide not to create a State Defender position. The Task Force approved the plan as set forth.

5. In the matter of fees, the Task Force agreed that legislation should make provisions for compensation of appointed counsel in both capital and non-capital proceedings. Using the Capital Post-Conviction Counsel legislation as a guide, the fees allowed in federal court for similar representation might be used benchmarks, with fees allowed in the corresponding state proceedings at eighty-percent of those levels. Presently, the U.S. District Court for the

Southern District allows \$125 in or out-of-court in capital matters and \$70 in-court and \$50 out-of-court for non-capital felonies. Fees for associate defense counsel in cases wherein more than one attorney is appointed for a defendant may be set at a lower level by the court in which the case is pending. Defense counsel seeking compensation, reimbursement for expenses incurred or authority to incur expenses in a case should, prior to payment, submit a detailed statement of services and time spent to the court in which the matter is pending. The court should review the statement and application for compensation along with all prior applications in order to determine whether the fees charged are reasonable, within the limits of the statute and are necessary for proper representation. In death penalty cases, all fee applications should be served on the State Public Defender who shall, after consideration, respond with his or her recommendations. Applications for fees or expenses which, when considered with all prior applications exceed \$7,500 for fees or \$2,500 for expenses in death penalty cases or \$2,500 for fees and \$500 for expenses in non-capital felony cases shall be subject to special scrutiny. After reaching such thresholds, the attorney should file applications monthly for consideration and approval. In death penalty cases, decisions of the trial court on fees and expenses would be subject to review by the Supreme Court upon motion by the defendant, the State or the State Public Defender. The Task Force agreed that these changes in fees should be recommended.

6. The Task Force agreed that it should continue meeting and studying this issue, and should recommend to the Legislature that it be given authority to continue to exist in an advisory capacity.

The group did not set a time for the next meeting, but agreed that it should occur before the end of the year. Upon a motion and a second, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Patt", written over a horizontal line.

Rick D. Patt

MISSISSIPPI PROSECUTORS ASSOCIATION

STEVE SIMPSON, PRESIDENT
CLAUDE MC DONALD IV, VICE-PRESIDENT
LISA HOWELL, SECRETARY/TREASURER



CLYDE HILL, PRESIDENT-ELECT
EDWARD J. PETERS, NDAA REPRESENTATIVE

September 22, 2000

VIA FACSIMILE: 601-354-7459

Members of the Public Defenders Task Force
c/o Rick Pat
Administrative Office of Courts
Jackson, Mississippi

Dear Rick:

As we discussed on the telephone, I am unable to attend the meeting of the Public Defender Task Force this afternoon in Jackson but would like to request that you disseminate this letter to the members of the task force which set forth my ideas and observations regarding the draft recommendation and proposals to the Legislature.

Based upon my discussions with the leadership of the Legislature and those persons who met last year to discuss the future of a State-wide Public Defender system, I do not feel that it would be prudent at this time to request the Legislature to create a State Public Defender with supervisory responsibilities over the Division of Capital Defense Counsel and Division of Indigent Appeals. I believe the task force is a better cross-section of people involved in the administration of justice to compile the information and make the recommendations that the Legislature has requested.

I support and in fact suggested to the Legislature last year that the next logical, incremental approach to an effective state-wide system would be the implementation of a Division of Indigent Appeals at the trial level. This achieves several goals: (1) effective appellant counsel and a uniform bank of lawyers to present appeals to the court, and (2) removal of the burdensome cost of public defender time, resources and cost upon the county of preparing records, which would be assumed by the State. Again, I think this is an economically efficient and reasonable next step to a larger state-wide indigent program. I believe that the Director of the Division of Indigent Appeals should be appointed by the Governor, as is the Director of the Division of Capital Defense Counsel.

With regard to page 3 of the Memorandum of Proposed Legislation, there is a suggestion that fees and expenses of trial counsel for persons charged with crimes which may result in a sentence of death, would be paid by the counties. As I'm sure many members of the Committee will recall, one of the primary influences upon the Legislature for implementation of the Capital Defense Counsel Office was the Associations of Supervisors pleas to relieve them of the burdensome cost of protracted and complicated death penalty litigation. Without their influence and assistance I have serious doubts that House Bill 1228 would have included the Capital Defense Counsel Office. I believe the fees and expenses of trial counsel from the Capital Defense Counsel Office as well as local counsel appointed to assist, should be borne by the State and not by the counties and request that change be made.

I concur that the Supreme Court should establish standards of competence for attorneys representing defendants in capital matters both at trial and on appeal, as well as standards for the trial level appellant division.

I apologize for my unavailability at this meeting but do anticipate being at my office in Gulfport where I may be reached at (228) 865-4003 if there are any questions or additional comments.

Sincerely,



Stephen B. Simpson

SS:ma

Attachment B

Copy of Circuit Judges Survey

MEMORANDUM

TO: Senior Circuit Judges
FROM: Rick D. Patt
DATE: August 17, 2000
RE: Public Defender Task Force Survey

Enclosed you will find a legislatively-mandated survey on Indigent Defense Costs, as well as a list of the Public Defender Task Force. The Task Force was created by the Legislature. The instructions are on the survey. I have sent an additional, more detailed survey to the Chancery Court Clerks and the County Administrators, as we are attempting to get Financial Information from them.

One of the mandates of the recently-passed legislation is that the Task Force obtain information as to the needs of the circuits. In this vein, I would like your input as to the following questions:

Judge _____ Circuit District No. _____

Estimated percentage of the district's felony defendants that are indigent _____%

Method of appointment of felony indigent defense counsel (if it varies by county, please indicate the variance) _____

District Number _____

Problems or needs in the area of felony indigent defense in your district _____

If funding were available, would you prefer to have a district-wide defender's office to handle indigent defense? (If currently served completely or partially by a full-time office, please give your impressions of its effectiveness) _____

Other comments _____

Please return by Tuesday, August 22nd to:

Rick Patt
Mississippi Administrative Office of Courts
P.O. Box 117
Jackson, MS 39205

(601) 354-7459 - fax
(601) 354-7451 - phone

Attachment C

Compilation of Results of Circuit Judges Survey

Senior Circuit Judges -- Indigent Defense Survey

**Estimated percentage of the district's
felony defendants that are indigent**

Circuit District No. 1	85 + %
Circuit District No. 2	90+%
Circuit District No. 3	
Circuit District No. 4	
Circuit District No. 5	
Circuit District No. 6	80%
Circuit District No. 7	
Circuit District No. 8	85%
Circuit District No. 9	95%
Circuit District No. 10	80%
Circuit District No. 11	
Circuit District No. 12	83%
Circuit District No. 13	50%
Circuit District No. 14	85%
Circuit District No. 15	
Circuit District No. 16	80%
Circuit District No. 17	95%
Circuit District No. 18	
Circuit District No. 19	75-80%
Circuit District No. 20	75-80%
Circuit District No. 21	90%
Circuit District No. 22	80%

Senior Circuit Judges – Indigent Defense Survey

Method of Appointment of felony indigent defense counsel (if it varies by county, please indicate variance)

Circuit District No. 1

In 6 of the 7 counties, the Board of Supervisors have agreed with a local lawyer or lawyers to handle the indigent criminal cases for a fix sum per month. This does not include appeals. In cases where conflicts exist, outside lawyers are appointed by the Court and paid a fee based on time spent, complexity, etc.

Circuit District No. 2

Harrison and Hancock Counties have voluntary participation by attorneys on a contract basis. Stone County uses the voluntary court-appointed method, with payment under statutory guidelines.

Circuit District No. 4

Sunflower and Washington Counties have public defenders. When the public defender has a conflict, I establish a pool of attorneys from which appointments are made mainly on a rotating basis. In LeFlore County, appointments are made from a pool of attorneys - mainly on a rotating basis.

Circuit District No. 6

Appointments are made from a list of attorneys willing to take indigent cases. This is done on a rotating basis.

Circuit District No. 8

At the time of the initial appearance, indigent defendants complete a Statement of Assets (a copy of our form is attached) to apply for felony indigent counsel. After reviewing the application, the Judge denies or approves the application and the lower court and the defendants are notified. This procedure is used by all four counties in our district.

Circuit District No. 9

Warren - Individual Case Appointment – hourly fee
Sharkey - Public Defender
Issq. - Individual Case Appointment – hourly fee

Circuit District No. 10

Clarke - contract P.D.
Kemper - case by case appointment
Lauderdale - contract trial P.D.s and contract appellate P.D.

Circuit District No. 12

Public Defenders and Assistant
If there is a conflict - then attorney is selected from list of attorneys

Circuit District No. 13

Each of the four counties in my district has its own public defenders.

Circuit District No. 14

We have 4 part-time public defenders, the chief public defender is appointed by the senior judges. He appoints or hires his 3 assistants. The cases in Circuit Court are handled by 3 of the defenders on a rotating basis. The 4th P.D. handles Youth Court and Justice Court, etc.

Circuit District No. 16

Part-time counsel employed by county. County sets salary for part-time public defenders and circuit judge fills position from qualified applicants. Court has no input on salary of county employees.

Senior Circuit Judges -- Indigent Defense Survey

Method of Appointment of felony indigent defense counsel (if it varies by county, please indicate variance)

Continued

Circuit District No. 17

DeSoto, Tate, and Panola have part-time salaried defenders. Tallahatchie and Yalobusha on appointment per case.

Circuit District No. 19

George and Greene Counties have part-time Public Defenders - the caseloads are relatively small and the present system works alright. Jackson County has a full-time P.D. system which includes one P.D., 1 full-time assistant P.D., 1 contract (part-time) attorney who helps the P.D. We also have 2 part-time contract attorneys who handle the conflict cases that arise with the P.D. and 1 full-time Appellate P.D. who is district-wide. The P.D. is responsible for interviewing defendants and deciding who qualifies for the office.

Circuit District No. 20

Public Defenders (5 Rankin - 6 Madison) are appointed by the court and paid by the county. Cases are assigned by the chief (lead) Public Defender equally between the P.D.s. If conflicts arise with all P.D.s. then the county appoints on a case by case basis from a list of attorneys who wish to be appointed.

Circuit District No. 21

District 21 consists of 3 counties: Holmes, Humphreys, and Yazoo. Each county has a Public Defender System. Holmes county has 2 public defenders with a conflict list. Humphreys county has 3 public defenders with few conflicts. And Yazoo has 4 public defenders. The Public Defenders receive the cases at preliminary hearings and follow through until resolution. Defendants without a preliminary hearing are appointed a public defender at arraignment.

Circuit District No. 22

Copiah and Claiborne Counties both have county public defenders with one (1) assistant in Claiborne and two (2) assistants in Copiah. All are part-time. Jefferson County attorneys are appointed on a case-by-case basis.

Senior Circuit Judges -- Indigent Defense Survey

Problems or needs in the area of felony indigent defense in your district

Circuit District No. 1

All of the lawyers handling indigent are also practicing privately; none are full-time. This creates problems in availability, scheduling, etc. Because we have had few capital cases until recently, we do not have enough experienced lawyers to represent those defendants. All appointed lawyers need the help of investigators and other support.

Circuit District No. 2

Need to more efficiently manage the docket to optimize the time of judges, lawyers, defendants and sheriff -- specifically to discern at an early stage the pleas from trials.

Circuit District No. 4

Two larger pools of highly competent criminal defense lawyers to be appointed to defend in capital cases. I make these appointments on a case by case basis and appoint only those attorneys who are the best available.

Circuit District No. 6

There is often a problem in getting attorneys willing to handle capital cases and other cases that are controversial.

Circuit District No. 8

The only difficulty we have is that the defendants rarely give a correct address and the PD's have an impossible time in attempting to locate the defendant before trial.

Circuit District No. 9

Our indigent defendants are being adequately served at this time.

Circuit District No. 10

Low pay for public defenders, too few attorneys interested in position of P.D., case load much too high.

Circuit District No. 12

P.D. needs administrative staff and possibly an additional assistant.

Circuit District No. 13

Main problem is defender's caseload and no adequate screening process to determine who qualifies.

Circuit District No. 14

Our system works well for us.

Circuit District No. 16

Higher salaries to attract attorney's to apply for positions.

Circuit District No. 17

Full-time public defenders, because of such high indigent rate.

Circuit District No. 19

I have attorneys and staff assistance. Jackson County needs at least 2 more full-time attorneys and the necessary office staff.

Circuit District No. 20

P.D.s who are part-time have a limited amount of time to devote to indigent defendants and if a P.D. has more than one case set on a given day or in a given week and that case does not get to trial, then the P.D. can not go to trial on another case because (plea entered) the P.D. is not prepared since all his time was spent preparing for the first trial.

Circuit District No. 21

Assistant for Public defenders such as investigators and expenses. Extreme cost to the counties in capital murder cases. My district consists of 2 of the poorest counties in the state where we try at least one capital murder case in the district per year.

Circuit District No. 22

Funding is needed. Funding is not popular with county government even though, in the long run qualified full-time counsel would save tax dollars in terms of reducing the number of trials and retrials. Also, the quality of indigent defense would be surely increased.

Senior Circuit Judges – Indigent Defense Survey

If funding were available, would you prefer to have a district-wide defender's office to handle indigent defense? (If currently served completely or partially by a full-time office, please give your impressions of its effectiveness.)

Circuit District No. 1

Yes, a district defenders office approximating the strength of the D.A.'s office (with investigators, etc.). It must be a full-time job. Conflicts would have to be handled on a case by case basis.

Circuit District No. 2

Subjectively, "I guess so". Objectively, "No", because: 1) it will remove the last training ground for the development of "trial lawyers"; 2) risk of developing a "civil service" mentality increases and there will be a compromising of trials to pleas of guilty.. In the old days we had a part-time D.A.'s office as well as attorneys representing indigents and in my opinion the representation on both sides was just as good or better with part-time attorneys; 3) 95% of all criminal cases are pleas - cost to taxpayers for 5% is imbalanced - might be better to spend this money on education for children, etc. What is the basis of the proponent's assumption that by simply making a person full-time it will enhance the representation of indigents? What about ineffective assistance by prosecutors? Why don't we demand more from the law schools?

Circuit District No. 4

I think the public defender system in two of our counties is preferable in disposing of the day to day business but, depending on the abilities and experience of the public defenders, capital cases need special handling.

Circuit District No. 6

Yes, this would clearly be the most effective.

Circuit District No. 8

Our district currently has a staff of four Felony Indigent Counsel (three are trial attorneys and one does appellate work exclusively). The staff is funded by four counties and maintain their private practices.

Circuit District No. 9

Only if the public defenders office was adequately funded.

Circuit District No. 10

YES.

Circuit District No. 12

We do not need a district made defender's office. We have public defenders for each county.

Circuit District No. 13

Yes, I would very much prefer a district-wide public defenders funded and staffed on a par with DA's office.

Circuit District No. 14

Yes.

Circuit District No. 16

No. If each county must bear costs of indigent defense, attorneys should be resident of the same county and member of that bar.

Circuit District No. 17

Yes.

Circuit District No. 19

Jackson County has full-time office. YES, I would prefer a district-wide P.D. office. Our district does have a district-wide appellate P.D. who also helps George and Greene Counties with conflict trial cases.

Circuit District No. 20

YES.

Circuit District No. 21

Yes. A district-wide full-time public defenders office, fully staffed and funded just as a District Attorney's office would be very effective.

Circuit District No. 22

YES.

Senior Circuit Judges – Indigent Defense Survey

Other Comments

Circuit District No. 1

While providing a trial/appeal, public defenders structure is simple, except for financing, there remains the problem of conflicts where the defendants must be represented by lawyers who are not independent etc. This is almost an insoluble problem.

Circuit District No. 8

We have found that our system works quite well.

Circuit District No. 9

The Public Defenders Office will only be efficient if it is adequately funded. The Legislature must fund such an office for it to be successful.

Circuit District No. 13

Again, I strongly favor a district-wide public defender's office to cover my 4 counties to be funded by the state and staffed exactly (as near as possible) as a DA's office.

Circuit District No. 17

Public Defenders need a support staff to help with trial preparations.

Circuit District No. 19

The full-time system is by far superior to part-time. The problem is convincing supervisors to provide necessary funding for indigent defense. If properly staffed, the full-time system, with conflict contract attorneys, is certainly the most cost effective in a county as large as Jackson. Hiring conflict contract attorneys cut this expense by more than half.

Circuit District No. 21

Public Defenders are presently not on a level ground with prosecutors. They have no access to investigators and other staff assistance. Because they are part-time, many defendants are not afforded adequate counsel because of part-time defenders not putting sufficient time into their criminal docket. Public Defenders Attorneys should be full-time, and funded and staffed just as prosecutors.

Circuit District No. 22

1) The Circuit Judges in a district should retain the ability to determine who should fill the position in the district. 2) The problem with part-time public defenders is split loyalty and availability.

Attachment D

**Copy of System and
Costs Survey Sent to Counties**

**ATTENTION: SENIOR CIRCUIT JUDGES, CHANCERY CLERKS
AND COUNTY ADMINISTRATORS**

**THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
INDIGENT DEFENSE SURVEY**

This survey is being sent due to a mandate imposed from the Mississippi Legislature in House Bill 1228 instructing this Task Force to obtain information from the counties as to the current cost of indigent defense (for public defenders or court-appointed attorneys for felonies). Unless accurate information is obtained from the counties, the State will be unable to adequately determine whether a state-funded system can be set up, thereby relieving the counties of some of its financial burden. The Legislature has imposed a September deadline on getting this information, so it is **IMPERATIVE** that we get a response from each county.

Please estimate the costs involved for your county for annual **FELONY** indigent defense expenses, excluding Death Penalty Cases, from the most recently-completed fiscal year (FY99). If possible, please separate attorney compensation for direct appeal expenses, for non-capital cases. This survey is being sent to chancery clerks, county administrators and senior circuit judges. You may wish to coordinate with these others so that only one survey is sent back per county. Enclosed is a pre-addressed envelope that you may use to return this survey.

COUNTY _____ Circuit District No. _____

Person(s) Completing Survey _____ Title _____

Phone Number _____

Percentage of felony defendants who have indigent counsel in the named county _____ %.

Attorneys are paid by _____ Contractual Basis _____ Individual Case Appointment
_____ Full-time Public Defender Office (annual budget \$ _____)

(If contractual, how many attorneys are employed contractually to handle felonies _____)

(If individual Case appointment, how many attorneys are on the current list _____)

BASIS FOR FEES (if contractual or individual case appointment)

Contractual (Set Fee Amount _____ or Hourly Fee Amount _____)

Individual Case (Fee Amount per case _____ or Hourly Fee Amount _____)

Other _____

COUNTY _____

Total FY2000 Budget for Indigent Defense (Capital/Felony/Misdemeanor) \$ _____

Overall FY2000 County Budget \$ _____

FY1999 EXPENSES ACTUALLY INCURRED (NON-DEATH PENALTY CASES)

Felony Indigent Defense (excluding Death Penalty)

- Attorney Costs \$ _____
(include office budget if full-time office)

--Conflicts Cases Attorneys \$ _____
(if contractual or PD Office)

-Expert Fees \$ _____

-Filing Fees \$ _____

-Transcripts \$ _____

-Other Costs \$ _____

- Total \$ _____

Of the total costs above, estimate of the amount or percentage of the total which is spent on indigent appeals of non-death penalty felony convictions \$ _____.

THANK YOU!

Please return by Wednesday, August 9th to:

**Rick Patt
Mississippi Administrative Office of Courts
P.O. Box 117
Jackson, MS 39205**

**(601) 354-7459 - fax
(601) 354-7451 - phone**

Attachment E

**Copy of Results of
County System and Costs Survey**

**MISSISSIPPI PUBLIC DEFENDER TASK FORCE
INDIGENT DEFENSE SURVEY**

Percentage of Indigent Defendants Using Appointed Counsel

DISTRICT ONE (Gardner, Russell, Ford)

Alcorn	<u>75%</u>
Itawamba	<u>95%</u>
Lee	<u>95%</u>
Monroe	<u>80%</u>
Pontotoc	<u>----</u>
Prentiss	<u>85%</u>
Tishomingo	<u>65%</u>

DISTRICT TWO (Vlahos, Terry, Walker, Whitfield)

Hancock	<u>-----</u>
Harrison	<u>85-90%</u>
Stone	<u>-----</u>

DISTRICT THREE (Coleman, Lackey)

Benton	<u>95%</u>
Calhoun	<u>90%</u>
Chickasaw	<u>90%</u>
Lafayette	<u>90%</u>
Marshall	<u>-----</u>
Tippah	<u>-----</u>
Union	<u>90%</u>

DISTRICT FOUR (G. Evans, Sanders, Hines, Carey-McCray)

Leflore	<u>-----</u>
Sunflower	<u>95%</u>
Washington	<u>-----</u>

DISTRICT FIVE (Loper, Morgan)

Attala	<u>90%</u>
Carroll	<u>98%</u>
Choctaw	<u>95%</u>
Grenada	<u>96%</u>
Montgomery	<u>---</u>
Webster	<u>90%</u>
Winston	<u>95%</u>

DISTRICT SIX (Johnson, Blackmon Sanders)

Adams	<u>95%</u>
Amite	<u>95%</u>
Franklin	<u> </u>
Wilkinson	<u> </u>

DISTRICT SEVEN (Hilburn, Graves, Yerger, Green)

Hinds	<u> </u>
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DISTRICT EIGHT (Gordon, Cotten)

Leake	<u>97%</u>
Neshoba	<u>89% (78% excluding Am. Indian)</u>
Newton	<u> </u>
Scott	<u> </u>

DISTRICT NINE (Vollor, Patrick)

Issaquena	<u>98%</u>
Sharkey	<u>98%</u>
Warren	<u>91.5%</u>

DISTRICT TEN (Roberts, Bailey)

Clarke	<u>85%</u>
Kemper	<u>80%</u>
Lauderdale	<u>80%</u>
Wayne	<u>85+%</u>

DISTRICT ELEVEN (E. Smith, Thomas, A. Smith)

Bolivar	<u>90%</u>
Coahoma	<u> </u>
Quitman	<u>90+%</u>
Tunica	<u>80%</u>

DISTRICT TWELVE (McKenzie)

Forrest	<u>70%</u>
Perry	<u>95%</u>

DISTRICT THIRTEEN (R. Evans)

Covington	<u>60%</u>
Jasper	<u>80%</u>
Simpson	<u> </u>
Smith	<u>30%</u>

DISTRICT FOURTEEN (Starrett, M. Smith)

Lincoln	<u>85%</u>
Pike	<u>72%</u>
Walthall	<u>75%</u>

DISTRICT FIFTEEN (Prichard, Eubanks)

Jeff. Davis	<u> </u>
Lamar	<u>70%</u>
Lawrence	<u>95%</u>
Marion	<u>70%</u>
Pearl River	<u> </u>

DISTRICT SIXTEEN (Howard, Montgomery)

Clay	<u> </u>
Lowndes	<u> </u>
Noxubee	<u>100%</u>
Oktibbeha	<u>90%</u>

DISTRICT SEVENTEEN (Baker, Carlson, Ready)

DeSoto	<u>65%</u>
Panola	<u>90%</u>
Tallahatchie	<u>98%</u>
Tate	<u>65%</u>
Yalobusha	<u>98%</u>

DISTRICT EIGHTEEN (Landrum)

Jones	<u>80%</u>
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DISTRICT NINETEEN (King Jackson, Backstrom, Harkey)

George	<u>90%</u>
Greene	<u>90%</u>
Jackson	<u>80%</u>

DISTRICT TWENTY (Richardson, Kitchens)

Madison	<u>85%</u>
Rankin	<u>75%</u>

DISTRICT TWENTY-ONE (Lewis)

Holmes	<u> </u>
Humphreys	<u>98%</u>
Yazoo	<u> </u>

DISTRICT TWENTY-TWO (Pickard)

Claiborne	<u>90%</u>
Copiah	<u>75%</u>
Jefferson	<u>90%</u>

**MISSISSIPPI PUBLIC DEFENDER TASK FORCE
INDIGENT DEFENSE SURVEY
August 2000**

Attorney Selection Method; Number of Attorneys; Basis For Fees

	<u>Selection Method</u>	<u>Number</u>	<u>Basis For Fees</u>
DISTRICT ONE (Gardner, Russell, Ford)			
Alcorn	<u>Contract</u>	<u>—</u>	<u>—</u>
Itawamba	<u>Contract</u>	<u>1</u>	<u>\$40-\$50/hr</u>
Lee	<u>Contract</u>	<u>3</u>	<u>(\$3,000/mo. - \$500 expenses - appeals ex.)</u>
Monroe	<u>Contract</u>	<u>2</u>	<u>\$3,100/mo. + expenses each</u>
Pontotoc	<u>Contract</u>	<u>2</u>	<u>\$36,000/yr.</u>
Prentiss	<u>Contract</u>	<u>—</u>	<u>—</u>
Tishomingo	<u>By Case</u>	<u>7</u>	<u>case-by-case</u>

DISTRICT TWO (Vlahos, Terry, Walker, Whitfield)

Hancock			
Harrison	<u>Contract</u>	<u>19</u>	<u>(\$24,000 - 42,300/yr.)</u>
Stone		<u>10</u>	<u>\$50/hr.</u>

DISTRICT THREE (Coleman, Lackey)

Benton	<u>By Case</u>	<u>10</u>	<u>\$65/hr.</u>
Calhoun	<u>By Case</u>	<u>4</u>	<u>set by judge</u>
Chickasaw	<u>By Case</u>	<u>5</u>	<u>—</u>
Lafayette	<u>Contract</u>	<u>2</u>	<u>\$50,000/yr. total</u>
Marshall			
Tippah			
Union	<u>Contract</u>	<u>2</u>	<u>\$2200/mo. each</u>

DISTRICT FOUR (G. Evans, Sanders, Hines, Carey-McCray)

Leflore	<u>By Case</u>		
Sunflower	<u>Office</u>	<u>3</u>	<u>(PD office - contractual amt. & \$45/hr.</u>
Washington	<u>Office</u>	<u>—</u>	<u>\$249,160 budget</u>

<u>Selection Method</u>	<u>Number</u>	<u>Basis For Fees</u>
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DISTRICT FIVE (Loper, Morgan)

Attala	<u>By Case</u>	<u>5</u>	<u>set by judge</u>
Carroll	<u>By Case</u>	<u>2</u>	<u>\$75/hr.</u>
Choctaw	<u>By Case</u>	<u>--</u>	<u>\$70/hr.</u>
Grenada	<u>Contract</u>	<u>5</u>	<u>(\$4,000/mo. + fringes + \$600/mo. office)</u>
Montgomery	<u>By Case</u>	<u>--</u>	<u>---</u>
Webster	<u>By Case</u>	<u>2</u>	<u>\$35-\$75/hr.</u>
Winston	<u>By Case</u>	<u>2</u>	<u>\$70/hr.</u>

DISTRICT SIX (Johnson, Blackmon Sanders)

Adams	<u>By Case</u>	<u>10</u>	<u>(\$500/case;\$1,000 if trial;\$1,000+ appeal)</u>
Amite	<u>By Case</u>	<u>3</u>	<u>(\$500/case plus expenses)</u>
Franklin	<u>By Case</u>	<u>---</u>	<u>---</u>
Wilkinson	<u>By Case</u>	<u>---</u>	<u>---</u>

DISTRICT SEVEN (Hilburn, Graves, Yerger, Green)

Hinds	<u>Office</u>	<u>---</u>	<u>---</u>
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DISTRICT EIGHT (Gordon, Cotten)

Leake	<u>Contract</u>	<u>4</u>	<u>---</u>
Neshoba	<u>Contract</u>	<u>4</u>	<u>(\$42,480 for 4 attorneys)</u>
Newton	<u>---</u>	<u>---</u>	<u>---</u>
Scott	<u>---</u>	<u>---</u>	<u>---</u>

DISTRICT NINE (Vollor, Patrick)

Issaquena	<u>By Case</u>	<u>---</u>	<u>---</u>
Sharkey	<u>Contract</u>	<u>1</u>	<u>\$18,000</u>
Warren	<u>By Case</u>	<u>28</u>	<u>(\$100/hr. 1st 10; then \$25/hr. + exp.)</u>

Selection Method Number Basis For Fees

DISTRICT TEN (Roberts, Bailey)

Clarke	<u>Contract</u>	<u>1</u>	<u>\$20,000/yr. (4 by indiv. case)</u>
Kemper	<u>By Case</u>	<u>4</u>	<u>\$60/hr.</u>
Lauderdale	<u>Contract Tr.&App</u>	<u>4/1</u>	<u>(\$173,280/yr. - trial) (\$2,300 per appeal)</u>
Wayne	<u>Contract</u>	<u>2</u>	<u>(\$25,000/yr. for each attorney)</u>

DISTRICT ELEVEN (E. Smith, Thomas, A. Smith)

Bolivar	<u>Contract</u>	<u>3</u>	<u>---</u>
Coahoma	<u> </u>	<u> </u>	<u> </u>
Quitman	<u>Contract</u>	<u>2</u>	<u>\$1,350/mo. each</u>
Tunica	<u>Contract</u>	<u>2</u>	<u>\$1,880/mo. each</u>

DISTRICT TWELVE (McKenzie)

Forrest	<u>Contract</u>	<u>2</u>	<u>(contract for PD's: \$50-75/hr. conflicts)</u>
Perry	<u>Contract</u>	<u>1</u>	<u>(set by contract)</u>

DISTRICT THIRTEEN (R. Evans)

Covington	<u>Contract</u>	<u>4</u>	<u>(\$1,000/case or \$25/hr.)</u>
Jasper	<u>Contract</u>	<u>---</u>	<u>---</u>
Simpson	<u>Contract</u>	<u>--</u>	<u>---</u>
Smith	<u>Contract</u>	<u>--</u>	<u>---</u>

DISTRICT FOURTEEN (Starrett, M. Smith)

Lincoln	<u>Contract</u>	<u>--</u>	<u>---</u>
Pike	<u>Contract</u>	<u>4</u>	<u>(PD - \$45,470/yr.; 3 APDs - \$32,445/yr)</u>
Walthall	<u>Contract</u>	<u>5</u>	<u>\$75/hr.</u>

<u>Selection Method</u>	<u>Number</u>	<u>Basis For Fees</u>
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DISTRICT FIFTEEN (Prichard, Eubanks)

Jeff. Davis	<u>By Case</u>	<u>5</u>	<u>---</u>
Lamar	<u>By Case</u>	<u>6</u>	<u>---</u>
Lawrence	<u>Contract</u>	<u>1</u>	<u>\$29,500/yr.</u>
Marion	<u>Contract</u>	<u>2</u>	<u>\$150/hr.</u>
Pearl River	<u>Contract</u>	<u>2</u>	<u>contract amt.</u>

DISTRICT SIXTEEN (Howard, Montgomery)

Clay	<u>Contract</u>	<u>---</u>	<u>---</u>
Lowndes	<u>Contract</u>	<u>9</u>	<u>---</u>
Noxubee	<u>Contract</u>	<u>4</u>	<u>---</u>
Oktibbeha	<u>Contract</u>	<u>3</u>	<u>\$2,341.88/mo. each</u>

DISTRICT SEVENTEEN (Baker, Carlson, Ready)

DeSoto	<u>Contract</u>	<u>4</u>	<u>(\$1,793.76/mo. + 300/mo. exp. each)</u>
Panola	<u>Contract</u>	<u>2</u>	<u>(\$70,440/yr. for two attorneys)</u>
Tallahatchie	<u>By Case</u>	<u>7</u>	<u>---</u>
Tate	<u>Contract</u>	<u>1</u>	<u>---</u>
Yalobusha	<u>By Case</u>	<u>9</u>	<u>\$40/hr.</u>

DISTRICT EIGHTEEN (Landrum)

Jones	<u>---</u>	<u>---</u>	<u>---</u>
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DISTRICT NINETEEN (King Jackson, Backstrom, Harkey)

George	<u>Contract</u>	<u>1</u>	<u>(\$35,000/yr.) - \$50/hr. for conflicts</u>
Greene	<u>Contract</u>	<u>1</u>	<u>\$45-\$65/hr.</u>
Jackson	<u>Office</u>	<u>6</u>	<u>(\$300,000-off.; \$2500/mo. K.; \$50/hr. ind.)</u>

Selection Method Number Basis For Fees

DISTRICT TWENTY (Richardson, Kitchens)

Madison	<u>Contract</u>	<u>6</u>	<u>\$2,000/mo.</u>
Rankin	<u>Contract</u>	<u>4</u>	<u>(Chief PD - \$33,000) (PDs - \$29,000 each)</u>

DISTRICT TWENTY-ONE (Lewis)

Holmes	<u>Contract</u>	<u>2</u>	
Humphreys	<u>Contract</u>	<u>3</u>	<u>\$60,000/yr. total</u>
Yazoo	<u>Contract</u>	<u>4</u>	<u>\$150,000/yr. total</u>

DISTRICT TWENTY-TWO (Pickard)

Claiborne	<u>Contract</u>	<u>2</u>	<u>\$75-\$125/hr.</u>
Copiah	<u>Contract</u>	<u>3</u>	
Jefferson	<u>By Case</u>	<u>--</u>	<u>---</u>

**MISSISSIPPI PUBLIC DEFENDER TASK FORCE
INDIGENT DEFENSE SURVEY
August 2000**

FY1999 Non-Death Penalty Indigent Counsel Expenses; Appeals; FY2000 Indigent Budget

	<u>Counsel Expenses</u>	<u>Costs Amount</u> <u>For Appeals</u>	<u>FY2000 Indigent Counsel</u> <u>Budget</u>
DISTRICT ONE (Gardner, Russell, Ford)			
Alcorn	<u>\$92,000</u>	<u>\$4,000</u>	<u>\$39,460.62</u>
Itawamba	<u>\$41,460</u>	<u>0</u>	<u>\$150,000 (\$15,000 appeals)</u>
Lee	<u>\$155,145.25</u>	<u>\$40,000</u>	<u>\$80,000</u>
Monroe	<u>\$85,952.09</u>	<u>\$3,934</u>	<u>\$50,000</u>
Pontotoc	<u>---</u>	<u>---</u>	<u>\$34,000</u>
Prentiss	<u>---</u>	<u>---</u>	<u>\$26,000</u>
Tishomingo	<u>\$24,611.95</u>	<u>---</u>	
DISTRICT TWO (Vlahos, Terry, Walker, Whitfield)			
Hancock	<u>---</u>	<u>---</u>	<u>\$555,000</u>
Harrison	<u>\$550,218</u>	<u>---</u>	<u>\$18,000</u>
Stone	<u>\$25,839.14</u>	<u>---</u>	
DISTRICT THREE (Coleman, Lackey)			
Benton	<u>\$17,262</u>	<u>0</u>	<u>\$19,616</u>
Calhoun	<u>\$45,495.07</u>	<u>---</u>	<u>---</u>
Chickasaw	<u>\$94,500</u>	<u>\$6,800</u>	<u>\$120,000</u>
Lafayette	<u>\$101,178.91</u>	<u>\$5,058.95</u>	<u>\$50,000</u>
Marshall	<u>---</u>	<u>---</u>	<u>---</u>
Tippah	<u>---</u>	<u>---</u>	<u>---</u>
Union	<u>\$23,785.90</u>	<u>---</u>	<u>\$25,000</u>
DISTRICT FOUR (G. Evans, Sanders, Hines, Carey-McCray)			
Leflore	<u>---</u>	<u>---</u>	<u>---</u>
Sunflower	<u>\$253,651</u>	<u>\$5,000</u>	<u>\$224,963</u>
Washington	<u>\$349,160</u>	<u>---</u>	<u>\$349,160</u>

<u>Counsel Expenses</u>	<u>Costs Amount For Appeals</u>	<u>FY2000 Indigent Counsel Budget</u>
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DISTRICT FIVE (Loper, Morgan)

Attala	<u>\$85,352.50</u>	<u>\$9,479.50</u>	<u>\$85,000</u>
Carroll	<u>\$26,254</u>	<u>\$1,313</u>	<u>\$25,620</u>
Choctaw	<u>\$16,408</u>	<u>\$820</u>	<u>\$16,000</u>
Grenada	<u>\$186,217</u>	<u>11%</u>	<u>\$139,350</u>
Montgomery	<u>---</u>	<u>---</u>	<u>---</u>
Webster	<u>\$14,996.50</u>	<u>---</u>	<u>\$27,334</u>
Winston	<u>---</u>	<u>---</u>	<u>\$70,000</u>

DISTRICT SIX (Johnson, Blackmon Sanders)

Adams	<u>\$268,344.28</u>	<u>---</u>	<u>\$118,000</u>
Amite	<u>\$34,265.97</u>	<u>\$2,000</u>	<u>\$65,000</u>
Franklin	<u>---</u>	<u>---</u>	<u>---</u>
Wilkinson	<u>---</u>	<u>---</u>	<u>---</u>

DISTRICT SEVEN (Hilburn, Graves, Yerger, Green)

Hinds	<u>---</u>	<u>---</u>	<u>---</u>
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DISTRICT EIGHT (Gordon, Cotten)

Leake	<u>\$33,920.42</u>	<u>\$1,341</u>	<u>\$42,514</u>
Neshoba	<u>\$45,356.21</u>	<u>---</u>	<u>\$55,000</u>
Newton	<u>---</u>	<u>---</u>	<u>---</u>
Scott	<u>---</u>	<u>---</u>	<u>---</u>

DISTRICT NINE (Vollor, Patrick)

Issaquena	<u>\$1,825</u>	<u>---</u>	<u>\$3,000</u>
Sharkey	<u>\$18,000</u>	<u>---</u>	<u>---</u>
Warren	<u>\$302,107.67</u>	<u>0 in FY99</u>	<u>\$290,000</u>

<u>Counsel Expenses</u>	<u>Costs Amount For Appeals</u>	<u>FY2000 Indigent Counsel Budget</u>
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DISTRICT TEN (Roberts, Bailey)

Clarke	<u>\$26,989.50</u>	<u>\$4,000</u>	<u>\$50,000</u>
Kemper	<u>\$22,697.04</u>	<u>5%</u>	<u>\$35,000</u>
Lauderdale	<u>\$197,602</u>	<u>\$6,762.92</u>	<u>\$231,580</u>
Wayne	<u>\$79,582</u>	<u>13%</u>	<u>\$61,582</u>

DISTRICT ELEVEN (E. Smith, Thomas, A. Smith)

Bolivar	<u>\$134,728</u>	<u>---</u>	<u>\$451,800</u>
Coahoma	<u> </u>	<u> </u>	<u> </u>
Quitman	<u>\$32,400</u>	<u>---</u>	<u>\$32,400</u>
Tunica	<u>\$43,500</u>	<u>10%</u>	<u>\$43,000</u>

DISTRICT TWELVE (McKenzie)

Forrest	<u>\$191,985</u>	<u>---</u>	<u>\$130,000</u>
Perry	<u>\$24,250</u>	<u>---</u>	<u>\$125,000 (includes capital)</u>

DISTRICT THIRTEEN (R. Evans)

Covington	<u>\$63,081.80</u>	<u>---</u>	<u>---</u>
Jasper	<u>\$40,963.63</u>	<u>\$2,048.18</u>	<u>\$45,000</u>
Simpson	<u>\$74,648</u>	<u>---</u>	<u>\$45,000</u>
Smith	<u>---</u>	<u> </u>	<u>\$24,000</u>

DISTRICT FOURTEEN (Starrett, M. Smith)

Lincoln	<u>\$137,410</u>	<u>20%</u>	<u>\$144,525</u>
Pike	<u>\$203,660.35</u>	<u>---</u>	<u>\$168,325</u>
Walthall	<u>\$43,500</u>	<u>---</u>	<u>---</u>

<u>Counsel Expenses</u>	<u>Costs Amount For Appeals</u>	<u>FY2000 Indigent Counsel Budget</u>
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DISTRICT FIFTEEN (Prichard, Eubanks)

Jeff. Davis	---	---	---
Lamar	\$92,500	\$5,000	\$88,000
Lawrence	\$33,450	---	\$29,500
Marion	\$115,874.11	\$4,400	\$112,287
Pearl River	\$141,360.34	---	\$131,000

DISTRICT SIXTEEN (Howard, Montgomery)

Clay	---	---	---
Lowndes	---	---	\$195,055
Noxubee	---	---	\$30,207.84
Oktibbeha	\$107,943.46	---	\$128,485

DISTRICT SEVENTEEN (Baker, Carlson, Ready)

DeSoto	\$142,000	\$5,000	\$194,205
Panola	\$93,610	---	\$70,440
Tallahatchie	\$37,924	---	\$51,000
Tate	\$28,504.43	---	\$23,000
Yalobusha	\$41,453	---	\$35,494

DISTRICT EIGHTEEN (Landrum)

Jones	\$120,528	33%	\$120,528
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DISTRICT NINETEEN (King Jackson, Backstrom, Harkey)

George	---	---	---
Greene	\$36,627.88	10%	\$50,000
Jackson	\$279,859	---	\$295,872

<u>Counsel Expenses</u>	<u>Costs Amount For Appeals</u>	<u>FY2000 Indigent Counsel Budget</u>
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DISTRICT TWENTY (Richardson, Kitchens)

Madison	<u>\$178,357</u>	<u>---</u>	<u>\$168,701</u>
Rankin	<u>\$175,435</u>	<u>---</u>	<u>\$175,435</u>

DISTRICT TWENTY-ONE (Lewis)

Holmes	<u> </u>	<u> </u>	<u> </u>
Humphreys	<u>\$110,843.68</u>	<u>---</u>	<u>\$60,000</u>
Yazoo	<u>---</u>	<u>---</u>	<u>\$150,000</u>

DISTRICT TWENTY-TWO (Pickard)

Claiborne	<u>\$52,662</u>	<u>\$554</u>	<u>\$72,600</u>
Copiah	<u>\$143,000</u>	<u>\$20,000</u>	<u>\$140,200</u>
Jefferson	<u>-----</u>	<u>-----</u>	<u>-----</u>

Attachment F

Other States' Public Defender Systems

ANALYSIS OF PUBLIC DEFENDER SYSTEMS OF OTHER STATES

Summary Report

This one-page summary will give an overview of the indigent defense systems in the Southeastern states, with a notation concerning other states. A full report is contained in the pages following this one-page summary.

Alabama - Allows a county or counties in a district to appoint a local indigent defense commission, which will then have the authority to select a district defender and supervise the budget and expenses, paid by the state.

Arkansas - Has a Public Defender Commission as an Executive Agency, and sets policies and standards for the public defender system, funded by the state. The Commission appoints an Executive Director, who oversees the state office and the local defenders.

Florida - Provides state-funded public defenders in the local court districts, overseeing that particular court area.

Georgia - A state council approves and funds local public defender plans in the differing court jurisdictions, managed in accordance with standards set by the Supreme Court.

Kentucky - State public advocate approves and funds local plans providing indigent defense.

Louisiana - Has a district defender board in each judicial district, selecting a method for providing counsel in that district. Funds used by the boards to pay counsel come from a \$17.50 per felony charge imposed upon conviction and from provided state funds.

North Carolina - Handles their appointments on a county or district basis, appointed by the court, with costs to be picked up by the state. North Carolina also has a statewide appellate public defender system, funded exclusively by the state.

South Carolina - Has a commission on indigent defense, which distributes funds generated from a filing fee to counties for representation, and a commission on appellate defense, which sets up an appellate office and provides state funding for felony appeals.

Tennessee - Has a district public defenders conference, whose salary is mostly paid by the state. The conference elects an executive director to coordinate the district defenders, each of whom are appointed by the Governor. Tennessee also has a Death Penalty PCR Commission and Director, funded by the state.

Texas - Does not have a state commission or state office, and appointments are made at the local level by the judges, and the funding is provided by the individual counties.

Other States - Have a variety of methods, most funded by the state and providing indigent defense either as part of a state-wide scheme or allowing district decisions as to type.

ANALYSIS OF PUBLIC DEFENDER SYSTEMS OF OTHER STATES

Full Report

Six of the Southeastern states: Arkansas, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee, have indigent defense commissions, which establish guidelines for implementing indigent defense services statewide. Alabama and North Carolina allow the county or group of counties comprising a judicial district to implement an indigent defense system. Finally, Florida has a hybrid of a state commission system and county system.

ALABAMA

Alabama allows a county or group of counties comprising a judicial district to implement an indigent defense system. This provides the county with substantial control. In circuits with two circuit judges or less, the presiding judge of the circuit court, with the advice and consent of the indigent defense commission, shall determine the indigent defense commission, and in circuits with three or more circuit judges, a majority of the circuit judges will decide. The indigent defense system in municipal courts shall be determined by the governing body of the municipality.

In each judicial circuit, the presiding circuit judge shall appoint an indigent defense commission. This commission shall be composed of 5 members who are residents of the judicial circuit in which they are appointed. Two members are attorneys licensed to practice in Alabama, one member who is a member of a county commission within the circuit, one member who is mayor or member of the governing body of a municipality within the circuit, and one member who is a nonlawyer citizen. They serve six year terms, unless removed for cause by the presiding circuit judge after a notice and hearing. No compensation for members except for necessary travel expenses in connection with commission business, which will be paid by state. The commission will meet at least once annually. One member is designated as chair by a majority vote of the members.

The commission shall advise the presiding circuit judge on the indigent defense system to be utilized in each county of the circuit and the operation and administration of the indigent defense systems within the circuit. It will select the public defender by a majority vote, if a public defender system is established within the circuit. In addition, it will supervise and determine the budget of the public defender.

The public defender is appointed for a fixed term not to exceed six years and may be removed for cause. The public defender may also have to serve full time, and with the consent of the indigent defense commission, can represent an indigent defendant in a state appellate court. The commission also sets the public defender's salary, which will be paid by the state out of the fair trial tax fund. The commission will also select one or more contract counsel by majority vote, if this system is established. However, a judge may still appoint counsel for indigent defendants where there is a conflict of interest involving the public defender.

ARKANSAS

The Arkansas Public Defender Commission operates under the executive branch of government and sets guidelines for the provision of indigent defense services statewide. The commission consists of 7 members who are appointed by the governor. At least four members must be attorneys who are licensed to practice in Arkansas and experienced in criminal defense. At least one member of the commission shall be a county judge, and at least one member shall be a trial judge who hears criminal cases. The governor designates one member as chair. No more than two residents of the same congressional district and no two members from the same county. The members serve five year terms.

In Arkansas, local public defender programs that meet the guidelines of the Arkansas Public defender Commission qualify for assistance from the state Capital, Conflicts and Appellate Office, which accepts capital cases in which a local public defender has a conflict of interest and acts as a resource center for local public defenders, providing court opinions, statutes and other materials.

The commission establishes policies and standards for the public defender system throughout the state. It also approves budgets for trial public defender offices and requires an annual report from them. The commission shall appoint at least one public defender position for each judicial district. This position may be full or part time. Counties with one or more public defenders will have a chief public defender elected by the commission. The commission will appoint an Executive Director. It will also evaluate performance of the Executive Director, Capital, Conflicts and Appellate office, trial public defenders and private assigned counsel.

The executive director must have experience in defense of capital cases and licensed to practice law in Arkansas. The executive director can only be removed for just cause. It is the responsibility of the director to supervise the capital conflict and appellate office, and the trial public defender office. The director must maintain records of operation of public defender system and prepare a budget for the commission. Further duties include: implementing attorney performance procedures pursuant to commission standards, maintaining court opinions and statues for use by trial public defenders and court appointed counsel, and maintain a appellate brief bank. Also, the director must prepare an annual report and supervise assignment of cases to private attorney's. Cases are assigned to private attorney's as last resorts. These attorney's are paid by the commission.

The commission will maintain a list for each judicial district of private attorneys who are willing to accept court appointments and a separate list for those willing to accept appointments for capital cases. The commission will also authorize contracts with trial public defenders.

FLORIDA

In Florida, for each judicial circuit there is a public defender. The public defender must be in good standing with the bar, and should have been in good standing for the 5 years preceding election. The public defender is elected at the general election by the qualified electors of the judicial circuit for a term of 4 years. The public defender shall be an elector of

the state and shall reside within the territorial jurisdiction of the judicial circuit in which he or she serves. There is one office for each judicial district. While this structure is mandated by the state, there is no state oversight at the trial level.

The public defender of each judicial district is authorized to employ assistant public defenders. Assistant public defenders may or may not serve full-time. The salaries of the public defenders are to be paid by the state as provided in the General Appropriations Act. In the event a new judicial circuit is created, the Executive Office of the Governor is authorized to release the necessary moneys for the payment of the salary of the public defender. No county or municipality shall appropriate or contribute funds to the operation of the offices of the various public defenders except to pay the salary of one assistant public defender whose sole function is to defend indigents charged with violations of special laws of the county, or to employ legal or support staff upon request by public defender.

Lastly, any member of the Florida Bar, in good standing, may register his or her availability to the public defender of any judicial circuit for acceptance of special assignments.

GEORGIA

Georgia has a state commission system which sets guidelines for the provision of indigent defense services statewide. The Georgia Indigent Defense Council is a separate agency within the Judicial branch of the state government. The council is composed of 15 persons appointed by the Supreme Court. One active member of the State Bar of Georgia shall be selected from each of the ten judicial administrative districts of the state, three non-lawyers shall be selected from the state at large, and two additional members shall be selected one of whom shall be a member of a metropolitan county governing authority and the other shall be a member of a non-metropolitan county governing authority. Each member shall serve a four year term. The council will meet at least quarterly.

Each local tripartite governing committee shall propose a plan for the establishment of a state funded local indigent defense program and shall submit the plan to the Georgia Indigent Defense Council for funding. After approval of the plan by the council, the committee shall implement and manage the local program within the guidelines approved and promulgated by the Supreme Court.

The council recommends standards and uniform guidelines for local programs. They also administer funds provided by the state and federal governments to support local indigent defense programs that comply with their standards. The council controls limited state funds that are distributed to local indigent defense programs to supplement their budgets. These funds are available only if the local programs demonstrate that they are following the standards and guidelines developed by the council. They support local defenders and provide local attorneys with technical, clinical and training programs. The council also prepares a budget. A Director is selected by the council, however the duties and responsibilities of the director are not included in the statute. The Georgia Indigent Defense Council and the council's director shall appoint a multi-county public defender and the office's staff. They will also prepare an annual budget for the office and administer the funds available to the office.

KENTUCKY

Kentucky has a Department of Public Advocacy which is an independent state agency within the Executive branch. The Public Advocacy Commission consists of nine members, none of whom shall be a prosecutor or law enforcement official. The members serve four year terms. Two members are appointed by the Governor. One by speaker, one by president of the senate, two by Supreme Court. The Governor also appoints two criminal lawyers from a list of five submitted by the Bar Association. One member is appointed by the Governor from a list of three submitted by the Kentucky Protection and Advocacy Board. The board will also consist of the deans of each of the Kentucky law schools. A chair is elected by the commission to a one year term. Upon appointment, the public advocate will be an ex officio member of the commission without a vote.

The commission shall recommend to the Governor three attorneys as nominees for appointment as the public advocate. Further duties of the commission include assisting the public advocate in selecting his staff and providing general supervision of the public advocate. The commission shall also engage in public education and generate political support. Also, the commission shall review and adopt an annual budget. Lastly, in no event shall the commission or its members interfere with the handling of cases by the Department of Public Advocacy.

The public advocate is appointed by the Governor to a four year term, which is renewable, unless by the Governor. The public advocate must be a member of the Kentucky Bar with five years experience. The public advocate may appoint a deputy public advocate and assistant public defenders as needed. The public advocate shall review and approve or deny or suggest modifications to all plans which are submitted to the Department of Public Advocacy for defense of indigent persons. If the plan is approved, the public advocate may allot a sufficient sum, subject to the approval of the secretary of the Finance and Administration committee, to each county. The counties are encouraged to provide the balance of the funds they need, although most counties rely on state funds alone. All moneys collected by the public advocate in defense of an indigent person shall be credited to the public advocate fund of the county in which the trial is held. If a court appoints an attorney to handle a case, the public advocate is to pay for all reasonable and necessary expenses. It is the job of the public advocate to seek and solicit funds for the operation of the defense of the indigent. Finally, the public advocate will appoint a seventeen member advisory board for the protection and advocacy division. These members shall serve two year terms.

The public advocate may establish for a county containing less than ten Circuit Judges or a group of counties a local public advocacy system by contracting with one or more attorneys and providing them an office and personnel. A Judicial District containing ten or more circuit judges shall establish and maintain an office for district public advocacy and submit a plan for the operation thereof the Department of Public Advocacy.

LOUISIANA

The Louisiana Supreme Court on December 23, 1997, repealed the prior Rule 31 entitled "Louisiana Indigent Defender Board." The Court reenacted a new Rule 31 entitled "Indigent Defender Standards." These standards provide recommended and aspirational

guidelines for the consideration and use by district defender boards in providing quality services to their indigent clients. The immediate attainment of these standards by a district indigent defender board is not a mandatory requirement for participation in the financial assistance programs of the Louisiana Indigent Defender Board. However, a district indigent defender board's assent to these standards, as goals to be immediately worked toward and to be achieved over time, is a requirement for such participation.

Louisiana has an indigent defender board, referred to as a district board, in each judicial district. Each board shall be composed of no less than three nor more than seven members as determined by the district court. Board members are selected by the district court from nominees provided by each bar association within the judicial district. If no nominations are submitted, a majority of the district court judges shall select a board member. Each parish within the judicial district shall have a representative on the board. The board selects a chairman from its members. Elected officials, district attorneys, their employees, or prosecutors in any court shall not be permitted to serve on the district board. The judges of each judicial district shall adopt rules and regulations to establish policy regarding the appointment of members to the indigent defender board. The racial and gender makeup of the board shall reflect the racial and gender makeup of the judicial district involved.

Each district board shall maintain a current panel of volunteer attorneys licensed to practice law in Louisiana and shall additionally maintain a current panel of non-volunteer attorneys under the age of fifty-five who are residing in the judicial district. The panel of non-volunteer attorneys shall not include any attorney who has been licensed to practice in Louisiana for more than thirty years. Each district board will select a method for providing counsel for indigent defendants in the Judicial circuit. One option is to allow the court to appoint an attorney from the list of volunteer attorneys, or in the case that none are available, from the non-volunteer list. The court may delegate appointing power to the district board. The district board may also employ a chief indigent defender and such assistants as it deems necessary. The salaries shall be fixed by the board. In the event of conflicts of interests, the chief indigent defender may request that the court appoint counsel. The district board can also enter into a contract with one or more attorneys in the judicial district to provide counsel for indigents. In a judicial district comprising more than one parish, the board may select the method of providing counsel for indigents on an individual parish basis. The district board is to keep accurate records and may expend funds for necessary expenses. In addition, members of the twenty-ninth judicial district may be paid per diem for each day the member attends a board meeting, which shall be at the same rate as that paid to members of the legislature. The district board may accept, receive and use public or private grants.

Each district board shall also have a judicial district indigent defender fund. Seventeen dollars and fifty cents for each felony, which will be administered to the fund. Such sum shall be remitted to the fund until the indigent defender board certifies to the court that sufficient amounts are in the fund to pay timely the volunteer counsel appointed by the court to represent indigent defendants. In addition to these funds, the state shall pay to each district indigent defender board ten thousand dollars per annum.

In capital case the court shall appoint no less than two attorneys to represent the defendant. In non-capital appellate matters the district court or appellate court shall appoint counsel who have been previously certified by the Louisiana Indigent Defender Board.

NORTH CAROLINA

North Carolina has a county system where the state has delegated the responsibility to organize and operate an indigent defense system to the individual county or group of counties comprising a judicial district. There is no state commission. Counsel for an indigent person is assigned by the court. In the courts of those counties which have a public defender, however, the public defender may tentatively assign himself or an assistant public defender to represent an indigent person, subject to subsequent approval by the court. Fees of assigned counsel and salaries and other operating expenses of the offices of the public defenders shall be borne by the state. In districts which do not have a public defender, the court shall fix the fee to which an attorney who represents an indigent person is entitled. Assistant public defenders and investigators are appointed by the public defender as needed. In case of conflict of interests, the court may assign a member of the district bar to represent an indigent person.

While North Carolina doesn't have a statewide public defender system, they do have a statewide appellate public defender system funded exclusively by the state. The Chief Justice appoints an appellate defender to a four year term. The appellate defender may be suspended or removed from office and reinstated for the same causes and under the same procedures as are applicable to removal of a district attorney. The appellate defender must be an attorney licensed to practice law in North Carolina and shall devote his full time to the duties of the office. The appellate defender shall appoint assistants and staff, not to exceed the number authorized by the Administrative Office of the Courts. The assistants and staff shall serve at the pleasure of the appellate defender.

The appellate defender represents persons subsequent to conviction in trial courts pursuant to assignment by trial court judges under the general supervision of the Chief Justice. The Chief Justice may authorize the appellate defender not to accept assignments of certain appeals but instead to cause those appeals to assigned either to a local public defender's office or to private assigned counsel. Further duties of the appellate defender include: maintaining an appellate brief bank, providing continuing legal education training to assistant public defenders and to private counsel representing indigents, and provide consulting services. Lastly, the appellate defender shall recruit qualified members of the private bar who are willing to provide representation in State and Federal death penalty post-conviction proceedings. Funds to operate the office of the appellate defender are provided by the AOC from funds authorized by law. Salaries shall also be set by the AOC.

SOUTH CAROLINA

South Carolina is unique in that it has a commission on indigent defense and a commission on appellate defense. The commission on indigent defense is an independent agency within the executive branch and consists of seven members appointed by the Governor on recommendation of the South Carolina Public Defender Association. One member is appointed from each congressional district. One is selected from the state at large and will serve as chairman. Members shall serve four year terms. The commission shall supervise the operations of the office of indigent defense. Members will also appoint an Executive Director of the office of indigent defense.

The executive director administers the office of indigent defense. The duties of the director include: distributing state funds to counties, compiling statistics on indigent defense statewide, reporting to the general assembly on indigent defense, and maintaining a list of attorneys qualified to accept appointments in death penalty cases. The executive director also has the responsibility of collecting and distributing public defender application fees and surcharge fines imposed on specified criminal offenses. Lastly, it is the directors duty to supervise the staff and carry out requirements of the commission. 38.26% of a seventy dollar filing fee for filing complaints or petitions in civil actions in a court of record, are distributed to the Defense of Indigents Per Capita Fund, which then distributes these funds on December thirty-first and on June thirtieth of each year to South Carolina organizations that are grantees of the Legal Services Corporation, in amounts proportionate to each recipient's share of the state's poverty population.

The commission on appellate defense helps to establish policies for the office of appellate defense and establish criteria to be used in the determination of indigence. The commission consists of the following persons: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the Senate Judiciary Committee or his designee; and Chairman of the Judiciary Committee of the House of Representatives or his designee. The commission elects a chairman for a one year term.

The commission appoints a Chief Attorney for a four year term. The Chief Attorney must be licensed to practice in South Carolina and is to devote full time to the duties of his office. The chief attorney may only be dismissed by the commission for cause and after a hearing. The chief attorney has the responsibility of submitting a budget to the commission and establishing training for employees. The chief attorney must also represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement.

TENNESSEE

Tennessee has a district public defenders conference, whose membership consists of all district public defenders of Tennessee whose salary is paid in whole or in part out of the state treasury. The attorney general and reporter shall be an ex officio member of the conference and act as its legal advisor. The public defender of Shelby County and the public defender of Davidson County shall also be members of the conference. It is the duty of the conference to give consideration to the enactment of such laws and rules of procedure as in its judgment may be necessary to the more effective administration of justice and thus promote peace and good order in the state. To this end, a committee of its members shall be appointed to draft suitable legislation and submit its recommendations to the general assembly. The conference has at least one meeting per year and elects annually a president, vice president, secretary and such other officers as are necessary.

Members of the district public defenders conference elect an executive director. The director assists in improving the administration of justice in Tennessee by coordinating the defense efforts of the various district public defenders. The director works under the

supervision of the executive committee of the district public defenders office. The director serves as a liaison among various branches of state government. Duties also include preparing a budget for each district and providing public defenders with minimum law libraries.

For each judicial district, except the twentieth and thirtieth districts, there is an office of the district public defender. The governor appoints a district public defender for each judicial district from a list of three per district submitted by the judicial council. The district defenders serve eight year terms. The district public defender has the duty and responsibility of handling all appeals filed by an indigent person represented in the trial courts of the state. The district defender is also authorized to employ, reassign, or contract with individuals utilizing special funds appropriated solely for the purpose of providing prompt and fair adjudication of post-conviction proceedings in capital sentence cases, including authority to assign the additional duties of personnel reassigned to the post-conviction cases. The district defender is empowered to designate the executive director of the district public defenders conference as the fiscal officer for the judicial district served by a defender. They are allowed to appoint assistant district defenders and other personnel as needed. The general assembly is attempting to achieve the ratio of (1) full-time assistant public defender per twenty-six thousand six hundred seventy-five (26,675) population within the judicial district according to the 1990 federal census.

The State of Tennessee also created the post-conviction defender commission and the office of post-conviction defender to provide for the representation of any person convicted and sentenced to death in the state who is unable to secure counsel due to indigence. The post-conviction defender commission is composed of nine members: two appointed by the Governor; two appointed by the lieutenant governor; two appointed by the speaker of the House of Representatives, and three appointed by the Supreme Court of Tennessee. Each member is to serve a four year term. The commission designates one member as chair. The commission appoints a post-conviction defender and prepare the annual budget for the Office of Post-Conviction Defender.

The post-conviction defender is appointed to a four year term. The post-conviction defender must be a lawyer in good standing with the Supreme Court of Tennessee and possess demonstrated experience in capital case litigation. The post-conviction defender may employ assistant post-conviction defenders, investigators, and support staff as needed. Further duties include: maintaining a clearinghouse of materials and brief banks for public defenders and private counsel who represent indigents charged or convicted of capital crimes, providing CLE training and consulting services to lawyers representing defendants in capital cases, and recruiting qualified members of the bar to provide representation in state death penalty proceedings.

TEXAS

Texas does not have a State Public Defender's Office, nor does it have a State Public Defender Commission. The Legislature recently considered a bill establishing a state-funded system, but trial judges voiced opposition due to the loss of appointment and fee-approval power currently exercised from the bench. Attorneys for indigent defendants are appointed by the judges, with the counties paying the costs. The system currently in place is very similar

to the practice in Mississippi, although it lacks statewide offices addressing death penalty cases.

OTHER STATES

Sixteen states have a state public defender with full authority for the provision of defense services statewide: Alaska, Colorado, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Wisconsin, and Wyoming. Six other states have indigent defense commissions setting guidelines for the provision of indigent defense services statewide: Indiana, Kansas, Nebraska, North Dakota, Ohio, and Oklahoma. Thirteen states delegate the responsibility to organize and operate an indigent defense system to the individual county or group of counties comprising a judicial district: Arizona, California, Idaho, Maine, Michigan, Mississippi, Montana, New York, South Dakota, Utah, and Washington. Finally, seven states have a unique system of providing indigent defense services: Illinois, Iowa, Nevada, Oregon, Pennsylvania, Virginia, and West Virginia.