



ANNUAL REPORT
July 1, 2021 – June 30, 2022

The Office of State Public Defender (OSPD) was created by the Legislature in 2011 through the consolidation of the Office of Capital Defense Counsel (OCDC) and the Office of Indigent Appeals (OIA).

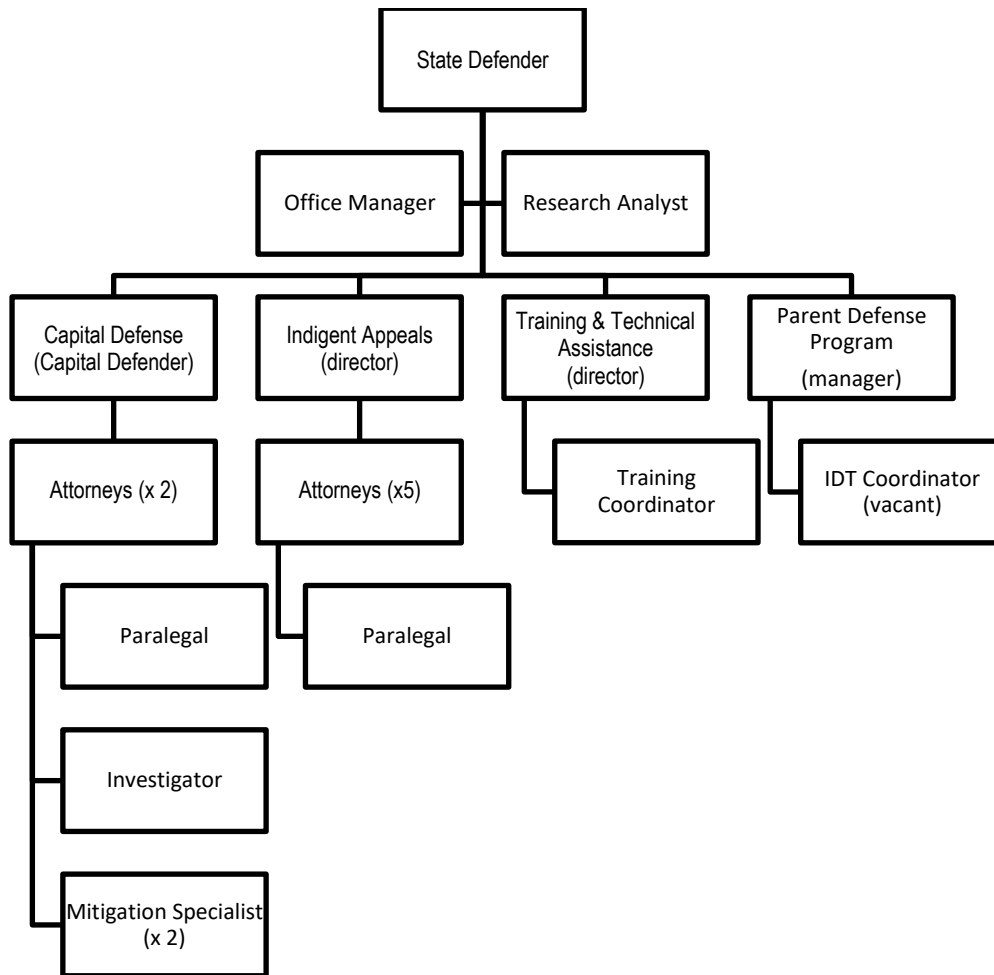
Capital Defense was opened in 2001 to provide Sixth Amendment services in death penalty eligible cases at trial and direct appeal. Indigent Appeals was created in 2005 to handle non-death felony appeals. In 2007 the Defender Training Division was added to provide training and technical assistance to all working in indigent defense. Also in 2007, the scope of services was expanded to allow Indigent Appeals to handle appeals from youth court.

In 2016 scope of services was again expanded to authorize OSPD to handle defense of parents in matters brought by Child Protection Services alleging abuse or neglect or seeking to terminate parental rights and appeal of such matters.

The value of the consolidation is clear. The agency was created with 25 positions. We are providing more and higher quality services today with 20 full-time staff. One example of how this works in practice is the use of an Indigent Appeals attorney to work with a Capital Defense attorney to handle a death penalty appeal. Other OIA attorneys provided editing support on the case.

Another example is the conversion of an OIA administrative assistant position to a data research position. Working with our partners at NLADA we began with a VISTA early in the year focused on developing a consolidated case management system. The new system will allow more efficient operations allowing us to do more with less. The VISTA transitioned to a regular staff position and will now oversee data input and analysis.

This will allow us to do more in support of criminal legal system reforms as well as planning and development of the indigent defense system. It will allow us to provide tailored data evaluations for local defenders to address system needs and case-specific research.



While we have yet to realize the state-wide system developed in collaboration with the Public Defender Task Force, we plan to present a more modest “next step” proposal to the Legislature over the next few months. This proposal will expand our authority to allow us to support defense services in all cases where there is a Constitutional Right to Counsel.

Phase 1 proposes three pilot sites, one in each supreme court district. There are two models, each of which includes defenders working in full-time offices as well as part-time private contractors in the same manner as most counties have today. Investigators and social workers are also included. The four primary goals of the proposal are to: 1. Enable early entry in cases; 2. Ensure reasonable workloads; 3. Close the pay gap with prosecutors; 4. Expand multi-disciplinary defense.

STATE DEFENDER

In July OSPD submitted a revised 5-Year Strategic Plan and FY 2023 Budget Request. OSPD worked with local defender leaders and developed a new proposal for state support for indigent defense. The recommendation modifies the Public Defender Taskforce recommendation by eliminating the proposed commission and state-funded district defender positions.

Phase 1 of the new proposal would create a state grant program to be administered by OSPD. The goal of this proposal is to help create three pilot projects, one in each Supreme Court District. The southern and northern districts would be multi-county systems to help

rural counties deliver services in most efficient ways. The central district project would be tailored to the unique needs of the city of Jackson. The goal of the proposal is to remedy four of the most serious deficiencies identified by the taskforce studies: lack of early entry in cases, lack of pay parity between defenders and prosecutors, lack of support services such as social workers, and excessive caseloads.

The State Defender serves on the Corrections and Criminal Justice Oversight Taskforce Committee (C&CJ) which met regularly to work on a legislative agenda and to prepare its annual report. The State Defender also works throughout the year with the Parent Representation Taskforce to expand and deepen parent defense across the state. He also serves on the Supreme Court's Children's Justice Commission.

The third quarter was dominated by the legislative session. The State Defender worked on the pilot project proposal and overall budget request for the Agency as well as other criminal law-related bills which included changes to State Medical Examiner law and the work-release initiative supported by the C&CJ taskforce. The legislature did not expand OSPD authority or fund the pilots, but OSPD was provided American Rescue Plan Act (ARPA) funds to provide counsel in "special courts" created to reduce the backlog of cases in the 7th Circuit Court District.

Much of the fourth quarter has been spent developing this Special Defender Unit. After meetings with the elected judges, Chief Justice, representatives of the Administrative Office of the Courts, the District Attorney and county Public Defender a plan was finalized in June. The unit will work under the State Defender in collaboration with the Hinds County Office of the Public Defender (HCOPD) to help reduce any case backlog associated with the Covid-19 pandemic.

Staffing and service delivery are modeled on the Division of Capital Defense Counsel at OSPD. OSPD has assembled a team of attorneys, social workers, investigators, and administrative support (legal secretary). The attorneys and the legal secretary will be salaried employees and OSPD will contract with private investigators as needed for fact investigation and with social workers for client's social service needs and case development. The anticipated launch date is August 1, 2022.

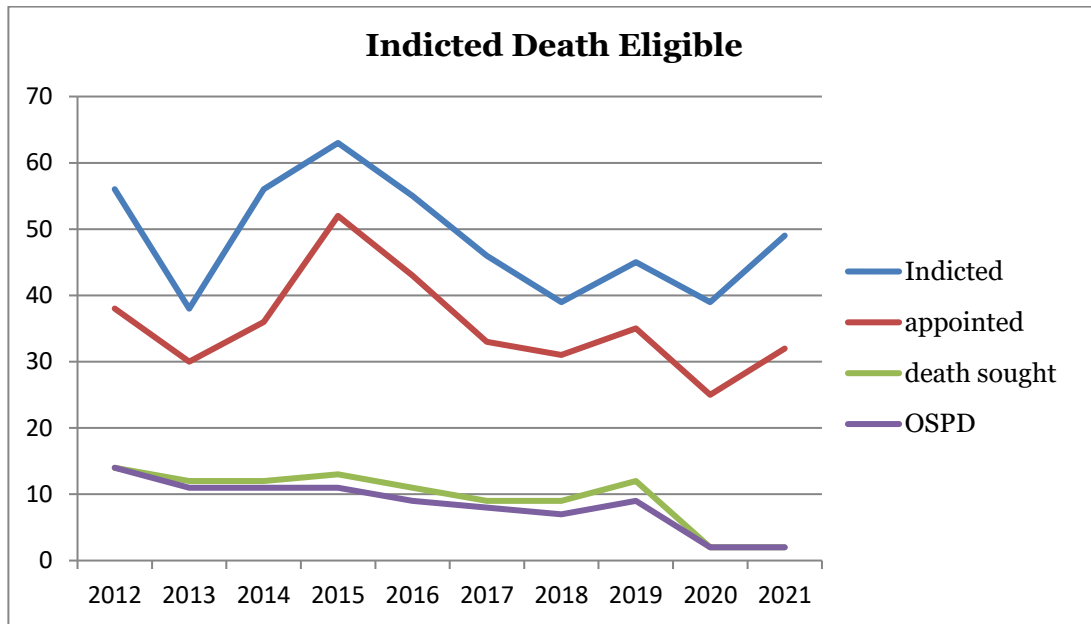
CAPITAL DEFENSE

At current staffing Capital Defense can handle up to 10 new trial level cases per year and 2 new appellate cases per year. This assumes local counsel will be appointed at the trial level. Capital Defense has again experienced attorney turnover. A trial attorney hired in late 2021 left the office after one year to take a position as a public defender in the Virgin Islands. This was the fifth attorney to leave the office in 3 years after nearly a decade of stability in staffing. The position was filled by a trial attorney from the Hinds County Public Defender Office. This attorney has sufficient trial experience but has not participated in a death penalty trial so is not Rule 7.4 qualified yet.

Capital Defense is currently representing 9 clients at the trial level. One case was tried to verdict in the fourth quarter. One case was tried to verdict in the third quarter and one case resolved by plea of guilty. Two cases were resolved by plea in the second quarter.

Two clients are at the direct appeal stage. These are the only direct appeal cases pending. In one case oral argument was conducted in the state Supreme Court in the second quarter, the conviction and sentence were affirmed, and rehearing denied. Capital Defense will file a Petition for Certiorari in this matter. The record was submitted to the state Supreme Court in the other case. The Brief of Appellant will be filed early next year.

COVID-19 has periodically limited the extent of investigation that can be done. This has slowed some trial preparation and reduced the number of cases OSPD can handle. It has also reduced the number of cases in which prosecutors are seeking death, thus we do not believe there is currently a backlog in death penalty eligible cases.



INDIGENT APPEALS

Since July 1, 2021, the Indigent Appeals Division (IAD) filed 86 briefs. IAD had 135 open cases at the close of the year including 40 awaiting the filing of the record and briefing schedule. This caseload is the highest since the first quarter of 2021 and highest number of pending briefing schedules since the first quarter of 2020. This suggests the Covid-related slowdown has ended.

During the year two cases were handled by Stacy Ferraro. Ms. Ferraro served as an independent resource counsel for attorneys handling cases for people who were juveniles at the time of the crime of conviction and facing a life without parole sentence (*Miller* cases). The project is funded by the Vital Projects Fund and provides services at no charge to OSPD or the clients.

Three cases have been assigned to *pro bono* lawyers from the firm of Forman, Watkins and Krutz LLP. This firm has previously worked with OSPD providing *pro bono* representation in *Miller* cases and is now in the second year of this partnership with IAD.

Staff attorney Hunter Aiken is serving as co-counsel of a death penalty direct appeal. The record in that case is more than 2000 pages. The size of the record, the complexity of the area of law and the heightened scrutiny required of death penalty litigation has required a reduction in the number of other cases he has handled.

There are two cases not counted in the above caseload with independent outside counsel due to conflicts of interest between clients.

In addition to their appellate practice, staff attorneys of IAD routinely answer questions and conduct research for trial level defenders across the state. IAD also assists with moot courts for defenders inside and outside the office in preparation for oral arguments and appearing at oral arguments. IAD attorneys also serve on the Supreme Court committees and Mississippi Bar committees.

Staff Attorney Justin Cook is the President of the Mississippi Public Defender Association and is joined on the Board by OSPD Training Director Erin Briggs.

DEFENDER TRAINING

The Training Division (Division) has continued to offer trainings in multiple formats: distance learning, virtual, in person and hybrid. In August the Division, continuing the collaboration with the federal defenders, produced a virtual training – “Understanding and Litigating the Use of Mobile Devices.”

The first in-person training since March 2020 was conducted in September 2021. Forty parent defenders, including seven virtual attendees, received their statutorily mandated certification training.



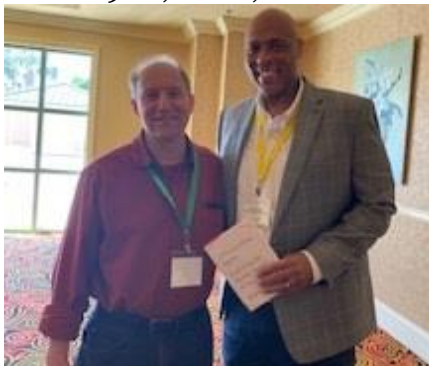
In October 2021 the Division produced two hybrid trainings. The Fall Public Defender Conference was attended by 100 in person and 14 virtually. Participants received 14.5 CLE credits. Simultaneously, 49 juvenile defenders, 38 in person and 11 virtually, received eight CLE hours to complete their statutorily mandated

certification training.

Two attorneys have utilized the Distance Learning Program to complete Parent Defense certification training and one attorney completed the Death Penalty Distance Learning Program. The Distance Learning Program allows lawyers in need of training certification to complete challenging programs without having to wait for the next regularly scheduled program or settle for a less rigorous pre-recorded video option.

The Training Division hosted three trainings in the 3rd quarter of 2022. All of our trainings continue to utilize a paperless system. We now offer conference registration, conference materials, and conference evaluations through QR Codes.

March 9-11, 2022, we hosted the biennial Deep South Capital Defense Conference in Bay St. Louis, Mississippi. There were 41 in-person attendees and six attended virtually. Highlights of the conference included presentations from Sister Helen Prejean – a longstanding death penalty abolitionist; Curtis Flowers – a man tried six times for capital murder in Mississippi before his exoneration; and other nationally recognized as well as in-state presenters in the capital defense community.



(Marc Bookman the Co-Founder and Executive Director of the Atlantic Center for Capital Representation and Kelsey Rushing

Mississippi’s Capital Defender)

Based on the high quality of speakers at the Conference, we had attendees from as far as California come for the training. Out of state attendees cover their own expenses and pay an attendance fee. The fee is deposited to the state general fund.

March 23-25, 2022, we hosted our Youth Defender and Parent Defender Certification Trainings. The Youth Defender Training was held March 23-24, 2022, and the Parent Defender Training was held March 24-25, 2022. The Youth Defender conference ended the morning of the 24th and the Parent Defender conference started the afternoon of the 24th. This approach to providing these trainings allows the Training Division to better utilize staff resources, reduce training costs, and provide attendees with the opportunity to receive two separate certifications without additional travel costs.

The Division has continued to host monthly public defender townhall meetings. These meetings strengthen the defender network and allow otherwise isolated defenders to brainstorm cases and other challenges presented by our work with defenders from across the state.

Training director Erin Briggs is not only leading training opportunities in Mississippi, she is recognized nationally. In September 2021 she was a facilitator at the National Defender Leadership Institute (NDLI) Nuts & Bolts of Leadership. The national Black Public Defender Association has certified Ms. Briggs as a Trainer on Race. In January 2022 she was a facilitator at a training for the Public Defender Service of Connecticut and plenary presenter on Litigating Race on Appeal for the NLADA Appellate Defender Training in New Orleans.

In April 2022 Erin served as a panelist on the Race Equity Track of the Access to Justice for Children and Families. This conference in Tysons Corner, VA, was sponsored by the ABA Center on Children and the Law. There were attendees and presenters from across the country who were stakeholders in the child welfare system. Later that month, the Training Division hosted the biannual OSPD/MPDA Public Defender Conference in Philadelphia, Mississippi.

Training rounded out the year with a hybrid training on Fetal Alcohol Spectrum Disorder (FASD) held in Jackson on May 12-13, 2022. On Thursday, May 12, co-sponsor Billy Edwards, a nationally renowned speaker on FASD, provided one-on-one consultations with interested lawyers in our conference room at OSPD.

On Friday, May 13, 2022, we hosted a one-day hybrid training with the leading voices in FASD. Most of our attendees were virtual with a small but intimate group of attorneys attending in person at the Woolfolk State Office Building.

PARENT DEFENSE

In June 2021 our parent defense program took a giant step forward by hiring a full-time program manager. Jennifer Morgan, a long-time parent defender in Desoto County, provides technical assistance to frontline defenders, assists with training, and oversees appeals. This year the program filed appellate briefs in three cases and is awaiting a scheduling order on a fourth.

The Parent Defense Program has worked with the Commission on Children's Justice, Casey Family Programs, and local judges to develop or expand programs. The program is now involved in each county in the First Chancery Court District. Beginning in early 2022 a part-time parent defender began working in the Hinds County Youth Court. The Lee

County Parent Defender project expanded to include a second part-time attorney and a full-time social worker.

Ms. Morgan has been working closely with Casey Family Programs and Be Better Now Mentoring to develop and pilot a Parent Partner Program which will provide clients with a Parent Partner who has personal life experience with the child welfare process. We will be piloting this program on the Gulf Coast and in Lee County.

OSPD and Casey Family Programs hosted an Informational Session on March 28, 2022. Almost 30 people, including judges, attorneys, and Mississippi Department of Child Protection Services (MDCPS) employees were in attendance via Zoom. The initial development and planning phase ended March 31. In April four people attended the peer support supervisor training offered by the Department of Mental Health. Training is scheduled for July for Parent Partners.

This year MDCPS saw a statewide increase of children in custody from 3,820 to 3,884 (a 1.675% increase). Counties that receive partial funding from OSPD saw an annual decrease of 7.4%. The decrease would have been significantly greater but for a substantial increase in Lee County of 30.9%. The increase is suspected to have resulted in part because of changes at MDCPS locally and a significant increase in substance use in the population. The Youth Court, MDCPS, OSPD, and the Lee County Family Defense Team have all adjusted to meet these needs.

While Parent Defenders are working hard to safely reunite children with their parents, there was a significant setback this year. Parent Defender access to Mississippi Youth Court Information System (MYCIDS), the “official court file” was significantly restricted. While less than half of the Parent Defenders protecting a parent’s right to raise their children have access to MYCIDS, that access was restricted even more following a MYCIDS “update”. OSPD is working with the AOC to correct these problems.

In June 2022, the Supreme Court of the United States handed down what may be the most impactful decision on children and families in its history. The *Dobbs* decision’s impact on Mississippi will be significant and our Governor and Legislature recognize this. OSPD is proposing:

- a mandate for appointment of counsel to every indigent parent with a CPS case at or before Shelter;
- state funding support to develop multidisciplinary defense teams; and
- increase in funding/support for families pre-removal.

This is not revolutionary. The 2018 federal [Family First Prevention Services Act](#) set this as the policy of the USA and all states.

Parent Defenders (attorneys, social workers, and parent partners) are in youth court, client homes or working with MDCPS every day to try to help struggling families. In the words of the Speaker we make sure “those who are born have the resources they need” guided by the principle that FAMILIES ARE BEST FOR CHILDREN. Our work directly impacts two of the areas of recognized need: 1) “Helping families with challenges . . . those suffering from family breakdown, abuse, drug addiction, homelessness, special needs or other crises,” and 2) “Improving foster care.” When we successfully help families strengthen and help children return home or stay home safely, we reduce stress on MDCPS and the foster care system and make it more effective when it is needed.