

**MISSISSIPPI
PUBLIC DEFENDERS
TASK FORCE**



REPORT TO THE MISSISSIPPI LEGISLATURE

DECEMBER 2, 2005

**MISSISSIPPI PUBLIC DEFENDERS TASK FORCE
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in Non-Capital Felony Cases at Trial

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



SUPREME COURT OF MISSISSIPPI

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WILLIAM L. WALLER, JR.
PRESIDING JUSTICE

December 2, 2005

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

Mesdames and Messieurs:

The Mississippi Public Defender 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. Please accept this letter as the report of the Task Force to the 2006 Mississippi Legislature. We trust that it is responsive to your concerns.

PASSAGE OF SENATE BILL 2960

Legislation recommended by the Public Defender Task Force to create the Office of Indigent Appeals was signed by Governor Haley Barbour on March 21, 2005. Senate Bill 2960, sponsored by Senator Charlie Ross, received overwhelming approval by the House and Senate. A copy of the bill is attached.

In this bill, funding for the Office of Capital Defense Counsel and the Office of Capital Post-Conviction Counsel will change from general fund appropriations to special funds generated from increases in assessments on criminal fines. In addition, the Office of Indigent Appeals was created and funded through the same mechanism. The net effect of this change will free up about two million dollars presently appropriated from the general fund and provide a much improved public defender system.

The Honorable Amy Tuck, et al.
December 2, 2005
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The new office will represent indigent persons in the appeal of non-capital felony convictions. The office parallels the Criminal Division of the Attorney General's office, and will be similarly staffed. The Director will be appointed by the Governor, and employees of the office will be appointed by the director. The director will serve for four years, and the employees will serve at his or her will and pleasure. In the case of conflict or excessive workload, representation will be provided by attorneys selected and employed by the office on a contract basis.

The devastation caused by hurricane Katrina has delayed the appointment of the director. The appointment is anticipated to be made in the coming weeks.

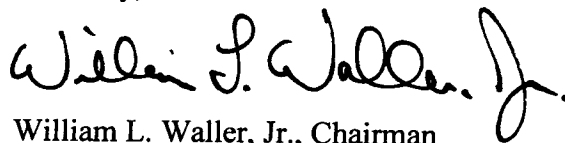
RECOMMENDATION

The Task Force offers no legislative proposal to the Mississippi Legislature for the forthcoming session. The next year will be devoted to: 1) the establishment and initial operation of the new Office of Indigent Appeals; and 2) evaluation of the new funding approach for the Office of Capital Defense Council and the Office of Capital Post-Conviction Relief Council.

CONCLUSION

On behalf of all members of the Task Force, we appreciate the opportunity to serve with the hope that our legal system will be improved.

Sincerely,



William L. Waller, Jr., Chairman
Mississippi Public Defender Task Force

cc: Governor Haley Barbour

WLW/mm

Enclosure

Statutory Creation

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Miss. Code Ann. § 25-32-71

There is created the Mississippi Public Defender Task Force which shall be 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 Task Force was charged to make a needs-study of the circuit court districts for state-funded indigent defense counsel, examine existing public defender systems, and provide this report to the Legislature by December 2, 2005. The Task Force also looked at the types of approaches taken by other states, and studied the relationship between the circuit bench and the appointment of public defenders.

Membership of the Task Force

Mississippi Public Defender Task Force Membership

Chairman

Presiding Justice William L. Waller, Jr.
Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205
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Judge William Chapman, III
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Senator Carl "Jack" Gordon, Jr.
Chairman Senate Appropriations Committee
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Senator Charlie Ross
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Representative Edward Blackmon, Jr.
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Chairman House Appropriations Committee
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Updated 08/25/05

Attachment "A"

Public Defender Task Force Minutes

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

MINUTES

AUGUST 26, 2005

MS BAR CENTER BOARD ROOM

10:00 A.M.

Members Present:

Presiding Justice William L. Waller, Jr., Supreme Court, Chairman
Judge William Chapman, III, Conference of Circuit Judges, Co-Chairman
T.H. "Butch" Scipper, MS Association of Supervisors
Kevin Lackey, Administrative Office of Courts
Senator Carl "Jack" Gordon, Jr., MS Senate Appropriations Committee
Rep. Johnny Stringer, MS House Appropriations Committee

Others Present:

Jack Pool, Central Legal, Supreme Court
Margarette Meeks, Administrative Office of Courts
Jimbo Richardson, for Rep. Edward Blackmon, MS House Judiciary En Banc Committee
Paul Hurst, Governor's Office
André deGruy, Office of Capital Defense Counsel
Louwlynn Vanzetta Williams, Office of Capital Post Conviction Counsel
Matt Steffey, Mississippi College School of Law
Joel Yelverton, MS Association of Supervisors

Members Absent:

Marvin "Sonny" White, MS Attorney General's Office
Rep. Edward Blackmon, Jr., MS House Judiciary En Banc Committee
Ellis "Bilbo" Mitchell, MS Prosecutors Association
Senator Charlie Ross, MS Senate Judiciary Committee
Tom Fortner, MS Public Defender Association

Call to Order

The meeting of the Mississippi Public Defender Task Force was called to order at 10:05 a.m. by Presiding Justice William L. Waller, Jr., Chairman. Judge William Chapman, Vice-Chairman, gave the opening prayer.

Opening Comments

Presiding Justice Waller provided a chronology of significant indigent defense activities in Mississippi. In 1999, the Court held in *Jackson v. State* that capital defendants would be entitled to representation in post-conviction relief cases. In 2001, the Office of Post-

Conviction Relief Counsel was created by legislation. Included in this legislation was the creation of the Office of Capital Defense Counsel, which was incorporated by the Attorney General's Office. In 2005, the Legislature created the Office of Indigent Appeals.

OLD BUSINESS
Minutes

Senator Carl Gordon moved that the minutes from the November 19, 2004 meeting be approved. Mr. Butch Scipper seconded the motion. The minutes were unanimously approved.

NEW BUSINESS
A. Reports

Presiding Justice Waller called on representatives from various offices to present reports.

1. Office of Capital Defense Counsel

Mr. André deGruy announced that he will replace Mr. Tom Fortner, Hinds County Public Defender, as the representative for the MS Public Defenders Association on this task force. Mr. deGruy presented a report on the activities of the Office of Capital Defense Counsel. A fourth attorney, Ms. Allison Steiner, was hired in August. The office is seeking to fill the investigation position with a forensic social worker. The office is collaborating with Jackson State University and the University of Southern Mississippi in utilizing student interns during the summer months. Mr. deGruy explained that his office needs to identify ways to increase funding for hiring private attorneys on a contractual basis to handle conflict cases. Approximately \$1 million is needed. Mr. deGruy's office will develop qualifications for the contractual attorneys. Mr. deGruy noted that training is a great concern. The federal government will provide some assistance by paying the costs for two county public defenders to attend the death penalty training in November.

Following Mr. deGruy's report, Presiding Justice Waller opened the floor for questions. Presiding Justice Waller asked about the amount of money generated from the special assessment on fines. Mr. deGruy indicated that he did not have the exact amount but explained that the assessment has generated sufficient funds. Presiding Justice Waller underscored that the purpose of the Office of Indigent Appeals was to prevent another situation like Quitman County. There was a brief discussion about the issue of conflict with attorneys representing multiple defendants.

2. Office of Post Capital Relief Counsel

Ms. Vanzetta Williams presented the report for the Office of Post Capital Relief Counsel on behalf of Mr. Robert Ryan, Director, who is attending a conference out-of-state. Ms.

Williams reported that the office represents 40 death row defendants. The office consists of three attorneys, one paralegal, one investigator, one contractual paralegal and one contractual fiscal agent. The enabling statute limits the number of staff members. Federal habeas petitions are handled by local counsel or nationally recognized attorneys. The office is in the process of filing six petitions. Ms. Williams noted that the office faces challenges with scheduling because court dockets are full. Because the office operates pursuant to Rule 22, it is difficult to function when the attorneys are unable to appear before a judge. As to training, the attorneys have attended training pursuant to Rule 22. The office has 11 potential *Atkins* cases.

Following Ms. Williams' report, Presiding Justice Waller opened the floor for questions and general discussion.

Presiding Justice Waller noted that the office should adhere to the time-lines pursuant to Rule 22. He indicated that other avenues are available for getting things done.

Mr. deGruy discussed the problem with accused individuals sitting in jail awaiting evaluation by Whitfield. The wait can be as long as one year because of funding problems at Whitfield. Mr. deGruy explained that the funding for state forensics burdens everyone because these individuals cannot be placed in the regular population.

Mr. Scipper inquired about the length of time for transmitting county funds to the State Treasurer under SB 2960. Mr. Jack Pool stated that there was probably a 90-day interval.

Ms. Williams explained that there is often a 3-month wait for transcripts. Her office has had to file PCR petitions without the transcript.

3. Office of Indigent Appeals

Mr. Paul Hurst, of the Governor's Office, gave a brief report on the Office of Indigent Appeals. There was an overwhelming response to the Executive Director position. A good applicant pool has been created from approximately 30 résumés. The timetable for filling the position is early September. Mr. deGruy has volunteered to assist with the organizational setup of the office.

4. Uniform Criminal Rules Study Committee

Professor Matt Steffey reported on the work of the Uniform Criminal Rule Study Committee. He began work with the committee as its official reporter in February of this year. The goal of the committee is to develop a comprehensive set of uniform rules of criminal procedure. Mr. Steffey briefly discussed the scope of the rules considered to date and his role as reporter. The anticipated time frame for completion of the proposed rules is two years.

5. Criminal Code Revision

Mr. Steffey reported on the work of the Criminal Code Revision Committee. The committee, which began meeting in 1997, has undertaken a monumental task. The goal is to develop a legislative proposal for revising the criminal code. The anticipated time frame for completion is a couple of years. This project will provide tremendous benefits to the profession.

B. Proposed Legislation for 2006

Presiding Justice Waller indicated that there were no plans to submit a legislative proposal for 2006. Since the Legislature passed legislation to create the Office of Indigent Appeals, the task force should allow the next year for the office to get established and become operational.

Presiding Justice Waller asked Ms. Williams to submit to the Court a critical needs proposal for the Office of Post Conviction Relief Counsel.

Rep. Johnny Stringer reported that the Department of Mental Health's budget was cut by \$11 million. The cuts have affected Mental Health's ability to provide expert evaluations.

Sen. Gordon believes the Office of Indigent Appeals will greatly improve the efficiency of indigent defense in Mississippi.

Mr. deGruy stated that there is a need for some administrative oversight for the three state offices and counties providing indigent defense. He suggested that the task force recommend the creation of a public defender commission. The director of the commission would provide assistance to judges and counties when they are ready for a public defender system. Mr. deGruy also proposed that a position be added to the Office of Indigent Appeals to address indigent juvenile appeals.

Sen. Gordon asked about the number of counties with full-time public defenders. The counties include Forrest, Hinds, Jackson, and Washington.

There was a brief discussion about the inclusion of public defenders in the state retirement system. Sen. Gordon stated that the statute could be amended to include public defenders.

Next Meeting

Presiding Justice Waller indicated that there was no need for an additional meeting this year since no funding request will be submitted to the Legislature.

Adjournment

There being no further business, the meeting of the MS Public Defender Task Force was adjourned at 11:15 a.m.

Respectfully submitted by:

Margarette Meeks
Project Manager, Administrative Office of Courts
Recorder, MS Public Defender Task Force

Hon. William L. Waller, Jr., Presiding Justice
Supreme Court of Mississippi
Chairman, MS Public Defender Task Force

Date Approved

* Note: Minutes are signed when approved at the next meeting.

Attachment "B"

Senate Bill 2960

MISSISSIPPI LEGISLATURE

2005 Regular Session

To: Judiciary, Division A; Appropriations

By: Senator(s) Ross, Dawkins, Harden, Jackson (11th), Williamson

Senate Bill 2960**(As Sent to Governor)**

AN ACT TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS; TO PROVIDE A DIRECTOR AND STAFF; TO PROVIDE COMPENSATION; TO PROVIDE THE DUTIES OF THE OFFICE; TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS OFFICE FUND AND PROVIDE FOR ITS ADMINISTRATION; TO AMEND SECTION 99-18-17, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE CAPITAL DEFENSE COUNSEL FUND; TO AMEND SECTION 99-39-117, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE CAPITAL POST-CONVICTION COUNSEL FUND; TO AMEND SECTION 93-21-117, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE VICTIMS OF DOMESTIC VIOLENCE FUND; TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, TO PROVIDE ASSESSMENTS FOR THE FUNDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) There is created the Mississippi Office of Indigent Appeals. This office shall consist of six (6) attorneys, two (2) secretaries/paralegals and one (1) financial assistant. One (1) of the attorneys shall serve as director of the office. The director shall be appointed by the Governor and shall serve for a term of four (4) years. The remaining attorneys and other staff shall be appointed by the director and shall serve at the will and pleasure of the director. The director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of assistant district attorney.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the Mississippi Office of Indigent Appeals. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the

State Treasurer upon warrants issued by the Mississippi Office of Indigent Appeals. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Office of Indigent Appeals;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by law.

SECTION 2. Section 99-18-17, Mississippi Code of 1972, is amended as follows:

99-18-17. (1) If at any time during the representation of two (2) or more defendants, the director determines that the interests of those persons are so adverse or hostile they cannot all be represented by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses approved by order of the court of original jurisdiction, including investigative and expert witness expenses of such private counsel, shall be paid by funds appropriated to the Capital Defense Counsel * * * Fund for this purpose * * *.

(2) There is created in the State Treasury a special fund to be known as the Capital Defense Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Defense Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Defense Counsel. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Office of Capital Defense Counsel;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by law.

SECTION 3. Section 99-39-117, Mississippi Code of 1972, is amended as follows:

99-39-117. (1) If at any time during the representation of two (2) or more defendants, the director determines that the interest of those persons are so adverse or hostile that they cannot all be represented

by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses, approved by order of the appropriate court, including investigative and expert witness expenses of such private counsel shall be paid from funds appropriated to the * * *Capital Post-Conviction Counsel Fund for this purpose * * *.

(2) There is created in the State Treasury a special fund to be known as the Capital Post-Conviction Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Post-Conviction Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Post-Conviction Counsel. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Office of Capital Post-Conviction Counsel;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

SECTION 4. Section 93-21-117, Mississippi Code of 1972, is amended as follows:

93-21-117. (1) There is hereby created in the State Treasury a special fund to be known as the "Victims of Domestic Violence Fund." The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(2) The circuit clerks of the state shall deposit in the fund on a monthly basis the additional fee charged and collected for marriage licenses under the provisions of Section 25-7-13, Mississippi Code of 1972.

(3) * * * All other monies received from every source for the support of the program for victims of

domestic violence, established by Sections 93-21-101 through 93-21-113, shall be deposited in the "Victims of Domestic Violence Fund." The monies in the fund shall be used by the State Department of Health solely for funding and administering domestic violence shelters under the provisions of Sections 93-21-101 through 93-21-113, in such amounts as the Legislature may appropriate to the department for the program for victims of domestic violence established by Sections 93-21-101 through 93-21-113. Not more than ten percent (10%) of the monies in the "Victims of Domestic Violence Fund" shall be appropriated to the State Department of Health for the administration of domestic violence shelters.

SECTION 5. Section 99-19-73, Mississippi Code of 1972, is amended as follows:

99-19-73. (1) **Traffic violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation in Title 63, Mississippi Code of 1972, except offenses relating to the Mississippi Implied Consent Law (Section 63-11-1 et seq.) and offenses relating to vehicular parking or registration:

FUND	AMOUNT
State Court Education Fund.....	\$ 1.50
State Prosecutor Education Fund.....	1.00
Driver Training Penalty Assessment Fund.....	7.00
Law Enforcement Officers Training Fund.....	5.00
Spinal Cord and Head Injury Trust Fund	
(for all moving violations).....	4.00
Emergency Medical Services Operating Fund.....	10.00
Mississippi Leadership Council on Aging Fund.....	1.00
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose	
of providing additional compensation for legal	
assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
<u>Capital Defense Counsel Fund.....</u>	<u>1.89</u>

<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
TOTAL STATE ASSESSMENT.....	\$ <u>58.00</u>

(2) **Implied Consent Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or any other penalty for any violation of the Mississippi Implied Consent Law (Section 63-11-1 et seq.):

FUND	AMOUNT
Crime Victims' Compensation Fund.....	\$ 10.00
State Court Education Fund.....	1.50
State Prosecutor Education Fund.....	1.00
Driver Training Penalty Assessment Fund.....	22.00
Law Enforcement Officers Training Fund.....	11.00
Emergency Medical Services Operating Fund.....	10.00
Mississippi Alcohol Safety Education Program Fund.	5.00
Federal-State Alcohol Program Fund.....	10.00
Mississippi Crime Laboratory	
Implied Consent Law Fund.....	25.00
Spinal Cord and Head Injury Trust Fund.....	25.00
Capital Defense Counsel * * * Fund.....	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
State General Fund.....	35.00

Law Enforcement Officers and Fire Fighters Death

Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	
	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
TOTAL STATE ASSESSMENT.....	\$ <u>184.00</u>

(3) **Game and Fish Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of the game and fish statutes or regulations of this state:

FUND	AMOUNT
State Court Education Fund.....	\$ 1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00
Hunter Education and Training Program Fund.....	5.00
State General Fund.....	30.00
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	
	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
<u>Capital Defense Counsel Fund.....</u>	<u>1.89</u>
<u>Indigent Appeals Fund.....</u>	<u>2.29</u>

<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
TOTAL STATE ASSESSMENT.....	\$ <u>71.00</u>

(4) **Litter Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-15-29 or 97-15-30:

FUND	AMOUNT
Statewide Litter Prevention Fund.....	\$ 25.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
<u>Capital Defense Counsel Fund</u>	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
TOTAL STATE ASSESSMENT.....	\$ <u>53.00</u>

(5) **Other misdemeanors.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any misdemeanor violation not specified in subsection (1), (2) or (3) of this section, except offenses relating to vehicular parking or registration:

FUND	AMOUNT
Crime Victims' Compensation Fund.....	\$ 10.00
State Court Education Fund.....	1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00

Capital Defense Counsel * * * Fund.....	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
State General Fund.....	30.00
State Crime Stoppers Fund.....	1.50
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose	
of providing additional compensation for legal	
assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	8.00
Judicial Performance Fund.....	2.00
TOTAL STATE ASSESSMENT.....	\$ <u>77.50</u>

(6) **Other felonies.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any felony violation not specified in subsection (1), (2) or (3) of this section:

FUND	AMOUNT
Crime Victims' Compensation Fund.....	\$ 10.00
State Court Education Fund.....	1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00
Capital Defense Counsel * * * Fund.....	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>

Capital Post-Conviction Counsel Fund.....	2.33
Victims of Domestic Violence Fund.....	.49
State General Fund.....	60.00
Criminal Justice Fund.....	50.00
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose	
of providing additional compensation for legal	
assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
TOTAL STATE ASSESSMENT.....	<u>\$156.00</u>

(7) If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court.

(8) After a determination by the court of the amount due, it shall be the duty of the clerk of the court to promptly collect all state assessments imposed under the provisions of this section. The state assessments imposed under the provisions of this section may not be paid by personal check. It shall be the duty of the chancery clerk of each county to deposit all such state assessments collected in the circuit, county and justice courts in such county on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The chancery clerk shall make a monthly lump-sum deposit of the total state assessments collected in the circuit, county and justice courts in such county under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the circuit, county and justice courts in such county during such month. It shall be the duty of the municipal clerk of each municipality to deposit all such state assessments collected in the municipal court in such municipality on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The municipal clerk shall make a monthly lump-sum deposit of the total state assessments collected in the municipal court in such municipality under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the municipal court in such municipality during such month.

(9) It shall be the duty of the Department of Finance and Administration to deposit on a monthly basis all such state assessments into the proper special fund in the State Treasury. The monthly deposit shall be based upon the number of violations reported under each subsection and the pro rata amount of such assessment due to the appropriate special fund. The Department of Finance and Administration shall issue regulations providing for the proper allocation of these special funds.

(10) The State Auditor shall establish by regulation procedures for refunds of state assessments, including refunds associated with assessments imposed before July 1, 1990, and refunds after appeals in which the defendant's conviction is reversed. The Auditor shall provide in such regulations for certification of eligibility for refunds and may require the defendant seeking a refund to submit a verified copy of a court order or abstract by which such defendant is entitled to a refund. All refunds of state assessments shall be made in accordance with the procedures established by the Auditor.

SECTION 6. This act shall take effect and be in force from and after July 1, 2005.

Attachment "C"

Other States' Public Defender Systems

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**STATEWIDE INDIGENT DEFENSE
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STATEWIDE INDIGENT DEFENSE SYSTEMS: 2004

In the decades since the opinion in *Gideon v. Wainwright* was issued, states have adopted varying approaches to fulfill the U.S. Supreme Court's mandate to provide counsel at government expense to indigent persons in criminal (and various other) proceedings. In some states, the responsibility for indigent defense services is entirely a state responsibility: both funding and oversight operate at a state level. In other states, indigent defense services remain primarily a county responsibility. In still other states, indigent defense is a shared responsibility between state and local governments.¹

Despite these variations, there is a clear trend among states to develop some sort of statewide oversight. In many states, both those with a statewide public defender program and those without, such oversight is provided exclusively through a state commission or oversight board. The oversight board is typically charged with setting policy for indigent defense services and advocating for state resources. In several states the commission provides some statewide oversight, but lacks full authority over indigent defense services. In other states, the oversight is provided exclusively by the chief public defender, and there is no commission.

The accompanying table, *Statewide Indigent Defense Systems: 2005*, sets out the statewide delivery systems, where they exist, used among the states and the District of Columbia. For the majority of states, the table describes the type of system used to oversee provision of all indigent defense services, including trial and appellate cases. However, for a few states, there are more specialized programs listed, such as statewide appellate or capital post-conviction defender programs.

For each program listed, the table indicates:

- whether it is a statewide public defender system. The table further indicates whether a public defender program handles all criminal cases at the trial level, or handles some other type of cases, such as selected cases at the trial level, direct appeals or capital post-conviction;
- whether it has an oversight commission;
- if a commission exists, the duties and responsibilities of the commission;
- if it is a state public defender program, the selection process, term, qualifications and duties of the chief public defender; and
- if it is a commission without a public defender program, the selection process, qualifications and duties of the executive director.

¹ In 17 states, counties are responsible for more than 50 percent of indigent defense services funding. In two of these states, Pennsylvania and Utah, indigent defense funding at the trial level is 100 percent a local responsibility.