

OFFICE OF STATE PUBLIC DEFENDER

FIVE-YEAR STRATEGIC PLAN FISCAL YEARS 2019 – 2023

1. Comprehensive Mission Statement

The Mississippi Office of State Public Defender (OSPD) strives to protect the Constitutional rights of indigent individuals facing the loss of “life, liberty or property” in the courts of Mississippi, and to support civil liberties and public safety for all by providing ethical and effective representation and leadership in all levels of Mississippi’s criminal justice and Youth Court system.

2. Philosophy

All people, regardless of their fiscal means, deserve to be treated by the government with dignity, justice and mercy. OSPD endeavors to provide zealous, high quality representation to our clients in the criminal and Youth Court systems of Mississippi in an ethical, cost-efficient manner. We are committed to a level of service to any indigent person at or above the level provided by the private bar.

3. Relevant Statewide Goals and Benchmarks

Statewide Goal #1: Public Safety and Order

To protect the public’s safety, including providing timely and appropriate responses to emergencies and disasters and to operate a fair and effective system of justice.

Relevant Benchmarks #1:

- Citizens should be confident that Mississippi’s criminal justice system complies with Constitutional standards for indigent defense as outlined in the American Bar Association’s Ten Principals of a Public Defense Delivery System.
- OSPD will continue to develop and plan the implementation of a state-wide public defender system to ensure quality, consistency, and fairness in all judicial districts and at all levels of court.

Statewide Goal #2: Government and Citizens

To create an efficient government and an informed and engaged citizenry that helps to address social problems through the payment of taxes, the election of capable leaders at all levels of government, and participation in charitable organizations through contributions and volunteerism.

Relevant Benchmarks #2:

- Ensure accurate data collection on how indigent defense is funded in all counties to determine where inefficiencies hamper effective justice and make recommendations for cost savings, especially to our poorer counties.
- Engage the private bar to assist in handling indigent cases pro bono where caseloads are overwhelming the established local public defenders.
- Continue to study local indigent defense delivery systems, including both felonies and misdemeanors, adult and juvenile cases, and use the information gathered to recommend improvements through a unified system.

Statewide Goal #3: Economic Development

To develop a robust state economy that provides the opportunity for productive employment for all Mississippians.

Relevant Benchmarks #3:

- Participate and advocate for alternative sentencing and re-entry programs to keep citizens working and to reduce the costs of incarceration.
- Maintain a nationally-recognized training program for public defenders to encourage confidence to businesses and workers wanting to locate here that our courts are fair and equitable.
- Through systemic reform, provide entry-level job opportunities for attorneys that include appropriate professional development for graduates of our law schools.
- To expand the delivery of defense services to include a multi-disciplinary approach especially through the use of forensic social workers and thereby expand job opportunities to Mississippi social workers.

Statewide Goal #4: Health

To protect Mississippians from risks to public health and to provide them with the health-related information and access to quality healthcare necessary to increase the length and quality of their lives

Relevant Benchmarks #4:

- Develop a Mental Health Resource program at OSPD to educate and provide technical assistance to public defenders representing clients with mental health needs.

- Expand the use of social workers in providing indigent defense services to better identify and find appropriate care for clients with mental health needs.
- Work with the Re-Entry Steering Committee and others to develop Mental Health Courts.

Statewide Goal #5: Human Services

To ensure that Mississippians are able to develop to their full potential by having their basic needs met, including the need for adequate food and shelter and a healthy, stable, and nurturing family environment or a competent and caring system of social support

Relevant Benchmarks #5:

- Develop a Parent Representation program to include training of lawyers to represent parents in Youth Court abuse & neglect and Termination of Parental Rights cases to ensure the fundamental rights of parents are respected and facilitate the expedient movement of children in the system, reducing time in emergency shelters and shortening the time to permanent placement either back in a home that can provide a nurturing environment or a permanent placement in another home.

4. Overview of the Agency 5-Year Strategic Plan

The Constitutions of Mississippi and of the United States guarantee the right to counsel to individuals accused of a crime. The single overriding objective of OSPD is to fulfill this guarantee by providing effective representation to any person who cannot afford counsel and to develop a plan to ensure that people not represented directly by OSPD also receive effective representation.

This is accomplished today and will continue over the next five years by the high quality service provided by the three divisions of our office. The Indigent Appeals Division provides effective representation to indigent defendants, on direct appeal (including youth court appeals and termination of parental rights) in an ethical, efficient and timely manner. The Capital Defense Division provides legal defense to indigent people indicted for death penalty eligible offenses in trial courts and on direct appeal. This division is able to drastically reduce the cost of death penalty litigation on counties and improve the quality of representation in death penalty cases. Finally, the Training Division provides training to all Mississippi's public defenders to significantly aid in the effective representation of indigent defendants at trial, ensuring the fair administration of justice and avoiding costly retrials due to ineffective assistance of counsel.

The success of these missions will ensure public confidence in Mississippi's judicial system. The timely processing of criminal cases is not only important to those accused but also to crime victims and their families. Protecting the rights of defendants to due process on appeal in a competent and efficient manner also promotes judicial economy and benefits the entire criminal justice system. During the next five years, OSPD will continue to provide effective

representation for indigent clients and search for ways for court systems to operate more efficiently so as to further reduce the costs to our counties. Our objective is to continue to provide representation that consistently meets or surpasses the quality of any privately retained counsel.

OSPD will continue working with the Public Defender Taskforce to implement a public defender system with state-level oversight and accountability. We will continue to seek authorization from the Legislature to accomplish this. The coordination of public defender systems will not only assist counties with the funding of indigent defense, but will establish fair and reasonable state-wide standards, and provide needed oversight of local public defender offices and budgets. By developing an in-house data research capacity OSPD will be able to collect more accurate data to better utilize existing resources, manage caseloads, and to regularly evaluate and recommend cost-saving improvements.

During the next five years, the Capital Defense Counsel Division will continue its difficult, but highly effective and recognized work in representing indigent death penalty eligible defendants. The plan for Capital Defense is to be involved in all indigent death penalty cases at the trial/appeal level unless prohibited by conflict of interest. Capital Defense plans to handle 3-5 death eligible cases per year per staff attorney.

To put this into context, the annual statewide caseload estimate for trial level cases is based on data from tracking of new capital murder charges filed since July 1, 2004. The tracking data for the past 5 years indicate a yearly average of 78 people charged with capital murder. This includes juvenile defendants (9) and those in which capital charges are reduced at preliminary hearing, grand jury or by other prosecutor action (16). Of the 53 indicted death penalty eligible cases, an average of 14 retained counsel. In over half of the remaining indicted cases, the prosecution exercised its discretion to not seek the death penalty, and provided notice of that decision at an early stage. Based on this data we estimate 14 new death penalty eligible prosecutions of indigent defendants each year.

Capital Defense also handles direct appeals of death penalty cases. During the past five years there have been seven (7) new death sentences imposed. Capital Defense has provided representation in all of these appeals. It is assumed that this caseload level will continue. Current staffing of 4 attorneys and 3 support staff is sufficient to handle the projected caseload. It should be noted that caseloads decreased over the past five years and the staffing level was reduced from 11 to 7 in part due to caseloads and in part due to efficiencies from the merger and formation of OSPD.

Over the past 5 years the State Defender has contracted with private counsel in an average of 2 cases per year to handle conflict cases. As a result of SB 2362 (2016) abolishing the Capital Defense Special Fund and a reduction in spending authority, the State Defender will not be able to continue to contract with death penalty qualified attorneys to provide representation in cases of conflict of interest and/or excessive caseload. The State Defender will work with the Task Force, the Supreme Court and Capital Post-Conviction Counsel to develop a viable capital conflicts program with existing defender resources.

In a series of cases since June 2012, juvenile defendants in capital murder and murder cases have gained the right to discretionary sentencing hearings before receiving a life without parole sentence. This has placed a significant new burden on the counties. Capital Defense currently has a grant funded position of Juvenile Life Without Parole Resource Counsel. If funding is available this position will become permanent and/or the office will expand to handle these cases. This would require a statutory change.

During the next five years, the Indigent Appeals Division will continue its outstanding representation on appeal. The Division has seven attorneys who maintain a continuous caseload of approximately 200 active cases at all times. In addition, the Division drafts and files reply briefs, motions for rehearing, and petitions for certiorari in appropriate cases, as well as preparation for oral arguments. Division lawyers participate in the improvement of the criminal justice system through membership in committees, boards and task forces as well as providing research and technical assistance and training to local public defenders in crisis situations. HB 772 (2016) expanded the scope of service of OSPD to include appeals for parents in TPR proceedings. Indigent Appeals will absorb those cases.

During the next five years, the Training Division will continue to provide public defenders with required continuing education that equals or surpasses similar training programs for judges, prosecutors, and private defense attorneys. This division is critical to our success, as most indigent defenders in Mississippi are part-time public defenders. National organizations, such as the National Association of Criminal Defense Lawyers, Gideon's Promise and the National Legal Aid and Defender Association, have taken notice of OSPD's training programs and we have begun partnering with such entities to further improve training. Our objective is to continue to provide the best legal training available to criminal practitioners within this State, and rival those offered around the nation.

Training needs have increased significantly in recent years. HB 772 (2016) and the settlement of lawsuits by several local governments this year will require enhanced training programs for defenders in Youth Court and misdemeanor cases. The United States Supreme Court decision in *Miller v. Alabama* and the passage of HB 585 (2014) has also required significant new training and technical assistance to public defenders. The Supreme Court of Mississippi has adopted new Rules of Criminal Procedure which require specific training for attorneys involved in death penalty proceedings.

In order to facilitate the work of the Public Defender Taskforce and better inform the Legislature of the need for defender services at the local level OSPD is developing a research based caseload assessment for each county. Over the next five years OSPD will recommend caseload standards and report the defender needs in felony cases. Standards will also be developed for Youth Court as well as the state funded offices. It is believed that these standards as well as performance standards for attorneys will assist policy makers in deciding the most efficient and effective method of delivery of indigent defense services.

To accomplish this initiative OSPD will hire a research associate, utilize the expanded data from clerks authorized in HB 585 (2014) and SB 2314 (2016) and assist local defenders in better collecting data in their offices.

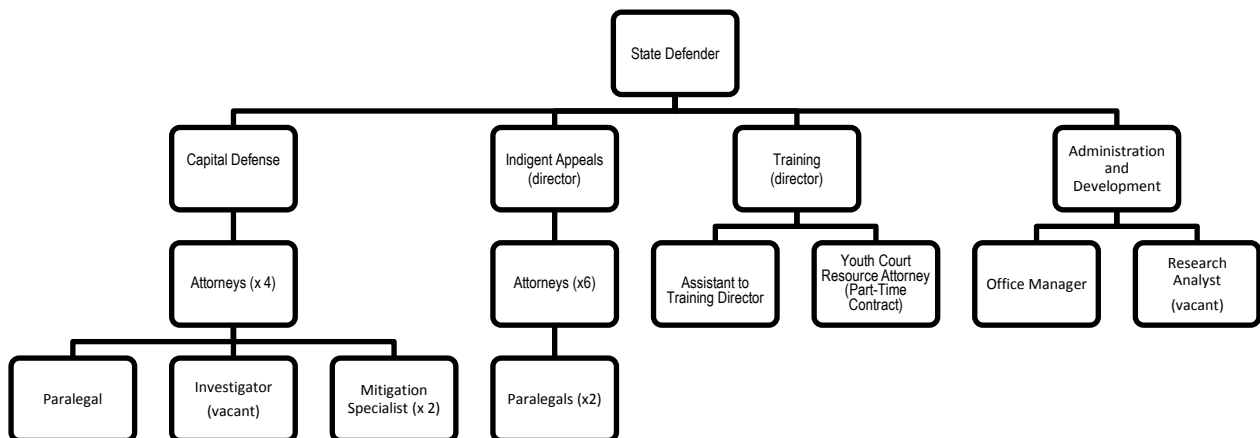
5. Agencies External/Internal Assessment

The following factors are items for which OSPD has little or no control that may affect performance:

1. A spike in violent crime rates, causing an increase in caseloads.
2. An increase in the frequency of District Attorneys seeking the death penalty.
3. A significant decrease in the number of defendants retaining counsel.
4. A significant and unexpected rise in total number of cases assigned to OSPD.
5. Changes in the law which affects the duties of OSPD.
6. Decisions from the Supreme Court of the United States or of the State of Mississippi that significantly increase the duties of defense counsel.

5.(A) Internal Management Systems Used to Evaluate Agency's Performance

Each division of OSPD is authorized to have a director, supervised by the State Defender. Staff Attorneys in Indigent Appeals report directly to and are evaluated by the Director of Indigent Appeals. The State Defender also serves as director of Capital Defense and Staff Attorneys in the Division report directly to and are evaluated by the State Defender. Paralegals, mitigation specialists, and investigators are accountable to attorneys they are assigned to support, as well as the State Defender. The Assistant to the Training Director and the contract part-time Juvenile Resource Counsel report directly to and are evaluated by the Director of Training. Legal Support staff is accountable to any attorneys they are assigned to support, as well as the office manager.



6 6.1 Agency Goals, Objectives, Strategies and Measures by Program for FY 2019 through FY 2023:

Overall: Office of State Defender

GOAL A: Continue planning for, and development and adoption of, a statewide public defender system. (Miss. Code Ann. §99-18-1(7)).

OBJECTIVE A. 1. Continue to collect accurate data to determine the best indigent defense delivery system for Mississippi.

Outcome: Develop detailed plans for a statewide database and case management system for Public Defenders.

Outcome: Draft and lobby for independent state-wide oversight of indigent defense services.

A.1.1. STRATEGY: Recruit and hire a Research Associate

Output: Publish up-to-date reports on the status of right to counsel and indigent defense delivery in Mississippi

Efficiency: Provide costs estimates/savings on reform efforts

Program 1: Office of Capital Defense Counsel

GOAL A: To reduce the cost of death penalty litigation on the counties while providing high quality legal representation for persons charged with death penalty eligible crimes. (Miss. Code Ann. §99-18-5 and §99-18-7)

OBJECTIVE A.1. To become involved in all death eligible trials in Mississippi where there is not a conflict of interests.

Outcome: Provide circuit courts state-wide with highly-trained staff attorneys experienced in death penalty cases.

A.1.1. STRATEGY: Continue to recruit and maintain experienced and highly-trained trial staff attorneys and mitigation specialist.

Performance measures from appropriation bill: close 75% of trial cases within one year; reduce the running average of reversals for ineffective assistance of counsel by .2%; reduce the average of reversals due to ineffective assistance of counsel to 7.6% of all dispositions.

Efficiency: Attorneys employed by OSPD save counties approximately \$75,000 per case and reduce the costs of expensive retrials caused by ineffective assistance of counsel

Explanatory: Participation in all cases is dependent on number of cases district attorneys pursue as death-eligible and local defenders agreeing to our involvement.

GOAL B: Maintain a docket of all indicted death penalty eligible cases and rosters of all death penalty cases originating in the state courts of Mississippi. (Miss. Code Ann. §99-18-15)

OBJECTIVE A.1. Continue to provide public access to data involving death eligible cases in Mississippi.

Outcome: Maintain timely and accurate data and current docket information on death eligible cases on the OSPD website (www.ospd.ms.gov/CapDef.htm).

A.1.1. STRATEGY: Continue to monitor circuit courts for new arrests and indictments in death eligible cases.

Output: Accurate reporting on the number and status of all death eligible cases throughout Mississippi.

Efficiency: In compliance with statutory reporting requirements

Program 2: Office of Indigent Appeals

GOAL A: To file high quality opening briefs in a timely manner. (Miss. Code Ann. §99-40-1(2)).

OBJECTIVE A.1. Facilitate the timely disposition of criminal matters in the appellate courts by filing most appellate briefs without time extensions.

Outcome: Reduce the average time from notice of briefing schedule to filing of initial brief to 40 days.

A.1.1. STRATEGY: Maintain and/or recruit highly-trained and experienced staff.

Output: Manageable caseload for each appellate attorney.

Output: Continue relationship with law school clinical programs

Efficiency: Continued high-quality, timely briefs

Explanatory: Unexpected increase in caseload due to a spike in the crime rate and/or number of trials resulting in conviction

Program 3: Public Defender Training

GOAL A: Provide continuing professional legal education to all of Mississippi public defenders. (Miss. Code Ann. §99-40-1(4)(a))

OBJECTIVE A.1. Make training conferences available to accommodate all of Mississippi's public defenders and appointed indigent defense providers.

Outcome: Provide at least four training sessions during the year to allow public defenders both high quality and cost-effective required continuing legal education.

A.1.1. STRATEGY: Recruit state experts and nationally-known presenters and speakers to train in Mississippi.

Output: Conduct training which is rated good to excellent on 95% of conference evaluations.

Efficiency: Local, in-state training is significantly less-expensive than out of state travel to conferences

Explanatory: Reduction in OSPD budget

GOAL B: Develop specialized annual training for new public defenders and chief public defenders. (Miss. Code Ann. §99-40-1(4)(a)) and establish and implement a training and certification program for Youth Court Defenders (HB 772, 2016 Regular Session)

OBJECTIVE A.1. Implement specialized and regional training tailored to specific groups of defenders.

Outcome: Provide specialized training sessions every year for all new public defenders and those public defenders in supervisory positions and to address specialized needs.

A.1.1. STRATEGY: Tailor training to specific groups to increase attendance and proficiency in defending indigent clients.

Output: Conduct training annually for new public defenders

Output: Conduct training annually for public defender supervisors

Output: Conduct training for Youth Court Defenders

Output: Conduct at least one new training conference on a specific criminal law subject

Efficiency: Local, in-state training is significantly less-expensive than out of state travel to conferences

Explanatory: Reduction in OSPD budget