



ACTIVITIES AND EXPENDITURES REPORT

July 1, 2020 – March 31, 2021

The following report of activities and expenditures of the State Public Defender is submitted in accordance with Miss. Code §§ 99-18-1 and 99-18-15. Agency expenditures can be found at www.transparency.ms.gov. A docket of potential death penalty eligible cases in the circuit courts and rosters of all death penalty cases in the state are available on our webpage at <http://www.ospd.ms.gov/CapDefInfo.htm>.

STATE DEFENDER

In July, the Office of the State Public Defender (“OSPD”) submitted a revised 5-Year Strategic Plan and FY 2022 Budget Request. OSPD working with local defender leaders has 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 existing county based public defender programs would be eligible for supplements to remedy three of the most serious deficiencies identified by the taskforce studies: 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 and is working 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 Oversight Taskforce met regularly to work on a legislative agenda and prepare its annual report. These meetings are in person. The Commission and Parent Representation Taskforce is meeting virtually.

In December the State Defender testified before the House Judiciary B Committee regarding the State Medical Examiner Office. The State Defender also presented the plan for system reform to the Legislative Black Caucus. During the 2021 Legislative session the State Defender met frequently with legislators to assist with a broad range of reforms to the criminal legal system.

Contributions were made to successful efforts to preserving political independence for the medical examiner program, passing parole reform and establishing a pilot work-release program operated by the Rankin County Sheriff. The indigent defense reform plan was revised to address legislative concerns and will be represented to the 2022 Legislature. The State Defender also assisted the Hinds County Public Defender develop and present a plan for CARES Act funding to address critical needs in their county.

CAPITAL DEFENSE

Capital Defense staffing has been in flux. A long-time capital defender retired June 30 and a second capital defender and only capital appeals defender retired in December. The careful planning for these retirements by bringing in and training two replacements was upset by the departure of each of these lawyers. One to become Deputy Chief Defender in Hinds County and the other to join the national non-profit Bail Project that has expanded into the Southeastern United States and hired two of our attorneys.

We have filled the attorney positions in the Capital Division with experienced criminal defense attorneys but neither has tried a death penalty case. At present OSPD has only one Rule 7.4 qualified lead trial attorney. However, at current staffing Capital Defense continues to be able to handle up to 10 new trial level cases per year. This assumes local counsel will be appointed. Through contracts and State Defender coverage the cases will be staffed in compliance with the rules as new attorneys become fully qualified.

Currently the division is representing 8 clients at the trial level and three clients at the direct appeal stage. These are all the direct appeal cases pending. The office closed one case in the first quarter when the prosecution elected to no longer seek the death penalty. Two cases were closed in the second quarter, one by plea to the lesser charge of murder and the other when the prosecution dropped pursuit of the death penalty. Three cases were closed in the third quarter. One client plead to a non-homicide charge, one case was tried to verdict and one client died in custody.

Capital Defense conducted limited field investigations due to COVID-19 but continued to visit clients in-person and make court appearances include the trial. This level of activity was significantly more than death penalty defense nationwide. We accomplished this without a team member contracting the virus. The entire Capital Defense staff functioned as true heroes and the result was cases continued to move appropriately and most importantly our clients were served. With relaxing of restrictions and vaccinations the office has resumed regular operations.

INDIGENT APPEALS

Since July 1, 2020, Indigent Appeals (“IAD”) has filed 43 briefs. IAD currently has 101 open cases including 15 awaiting the filing of the record and briefing schedule. Four cases raising *Miller v. Alabama* juvenile sentencing issues are stayed awaiting the Supreme Court of the United States decision in *Jones v. Mississippi*. There are an additional two cases with independent outside counsel due to conflicts of interest between clients.

One case has been assigned to a *pro bono* lawyer from the firm of Forman, Watkins and Krutz LLP. The firm has previously worked with OSPD providing *pro bono* representation in Miller cases. We hope this is the beginning of a long-term partnership.

The staff attorneys of IAD routinely answer questions and conduct research for trial level defenders in the field. IAD also assists with moot courts for defenders inside and outside the office preparing for oral arguments and handling 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 staff attorney Erin Briggs. Erin also served as a faculty member for the National Legal Aid and Defender Association's Anti-Racism Training and has been involved with the Training Division in developing Mississippi training around this issue. Erin is transitioning to the role of Training Director and will be replaced in IAD with an entry level attorney.

DEFENDER TRAINING

In July the Training Division launched the *Distance Learning Project* and conducted virtual trainings. The DLP uses a dedicated platform to deliver a mix of live virtual presentations, pre-recorded lessons, and small group virtual follow-up. The first DLP training was a juvenile defense program. The participating lawyers were required to complete the multi-week program to earn credit. Those completing received 12 hours of juvenile justice training.

The Division conducted a 6-hour virtual CLE program for parent defenders. Essentially conducting the cancelled April seminar virtually. The Division also provided a virtual program for new defenders and a one-hour ethics program addressing the potential pitfalls of virtual court.

Through all of these programs 30 lawyers received statutorily mandated training in juvenile defense and 27 as parent defenders. Eleven new defenders got support they need as they begin their careers serving some of Mississippi's most vulnerable people and 40 defenders received their required ethics hour.

During the third quarter the Division presented a 12-hour DLP program for juvenile defenders and four short courses virtually training 90 attorneys on the criminalization of pregnancy, electronic evidence, Geofense warrants and "shaken baby syndrome." Two attorneys were able to get death penalty certification training virtually through the office. The Division has established a collaboration with the federal defenders in Mississippi for training. The first joint training is scheduled as part of the regular Spring defender training.

The Division continued the weekly defender Zoom meetings for defenders to discuss issues presented primarily by Covid-19. The Division continues to provide technical assistance to attorneys handling cases for juvenile facing life without parole sentences (JLWOP).

The Division provides support to the Parent Representation program and system reorganization plan. The Training Division is providing on-going technical assistance to trial level defenders and is involved in the privately organized Mississippi Bail Fund Collective. The cutting edge partnership with the Bail Fund lead to long time Training Director Beau Rudder being hired by the national Bail Project to become their project organizer for their expansion into much of the southeastern US.

PARENT DEFENSE

The State Defender working with local judges and counties has reworked several of the parent defense models to operate the projects more efficiently. These modifications are also designed to facilitate better data collection and the drawdown of federal funds. The fund drawdown must flow through the Department of Child Protection Services. OSPD and DCPS are working on an agreement to accomplish this. OSPD with the taskforce has developed a plan for expanded multidisciplinary defense teams in multiple sites. This plan is included in OSPD's 2022 budget request. Working with our partners at the Center for Legal Services in Gulfport and Hattiesburg

we are making lawyers available to parents in more counties. We are available to take cases in Pearl River and Jones and have several cases now open in Stone County. With additional support from the Legislature OSDP will hire a fulltime Parent Defense Program Manager. The program manager will ensure parents are receiving the services they deserve, and the taxpayers are receiving the best value for their investment. The program manager will provide technical assistance to local defenders and evaluate services provided, assist the training division with planning training and provide limited direct representation, especially on appeal.