

# Mississippi Public Defender Task Force



**2015 Annual Report**

**Mississippi Public Defenders Task Force  
Report to the Mississippi State Legislature  
December 30, 2015**

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December 30, 2015

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AND COUNSEL

The Honorable Tate Reeves  
Distinguished Members of the Senate  
The Honorable Phillip Gunn  
Distinguished Members of the House  
The Capitol  
Jackson, Mississippi 39201

Dear Friends:

The Mississippi Public Defender Task Force was created in HB 602 during the 2015 Legislative Session. The Legislature established three duties for the Task Force:

- 1) Make a comprehensive study of the needs of the circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts.
- 2) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal delinquency cases.
- 3) Study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

The Task Force conducted its first meeting on July 27, 2015. Supreme Court Justice James W. Kitchens was elected chairman, and Demetrice Williams, President of the Mississippi Public Defenders Association, was elected vice-chairman. The Office of State Public Defender (OSPD) was tasked with keeping a record of the meeting. (A copy of the minutes of the meeting is attached as Appendix A.)

In summary, OSPD provided a recapitulation of the work of the last Task Force, and a general discussion ensued as to what path this new Task Force should take. There was a consensus that it would not be productive to make a recommendation to the Legislature until the Task Force had identified the deficiencies of the current system. It also was determined that even basic data, such as total indigent caseload statistics by circuit court districts, is not available from the Administrative Office of the Courts (AOC), and that there is no state-level collection of such data.

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The lack of reliable data from AOC is largely the result of inconsistent reporting by the State's circuit court clerks.

OSPD has been in the process of gathering limited data with the help of the National Legal Aid and Defender Association (NLADA), and hoped to have a report to discuss at the next Task Force meeting. It was agreed that when OSPD had received preliminary numbers for the Task Force, a second meeting would be conducted. However, NLADA did not produce its report for the Task Force until mid-December of 2015. (A copy of this report is attached as Appendix B.) Additionally, the Sixth Amendment Center also submitted a proposal in December to assist Mississippi with data collection and recommendations for a statewide indigent defense system. (A copy of this proposal is attached as Appendix C.) Because of the limited time available before the Legislature reconvenes, the Task Force will not meet again until the 2016 Session has begun.

Based on the limited reliable data now available, it is clear that an effective data collection process must be established. In future Task Force meetings, we will discuss these proposals, as well as the need to give the Office of State Public Defender statutory authority to collect needed information from the court clerks across the State, specifically adding OSPD to the distribution of reports required to be submitted by clerks to the AOC by Section 65 of HB 585. Without the continued help of outside organizations, additional funding may become necessary to enable OSPD to analyze the data collected.

Respectfully submitted,



Justice James W. Kitchens, Chairman  
Public Defenders Task Force

cc: Supreme Court Justices

# **Appendix A**

## Public Defenders Task Force Meeting Minutes

July 27, 2015  
(UNOFFICIAL)

MS Supreme Court 4<sup>th</sup> Floor

Conference Room

*10:30am Justice Jim Kitchens called the meeting to order and expressed support for a statewide public defender system.*

*10:40am Senator Hob Bryan moved to begin the nomination for Chair and Vice-Chair of the task force.*

### Members in Attendance:

Demetrice Williams (President, Mississippi Defenders Association)  
Angel Myers (President, Mississippi Prosecutors Association)  
Ta'Shia Gordon (Administrative Office of Courts Director)  
Justice James W. Kitchens (Mississippi Supreme Court)  
Jerrolyn Owens (Special Assistant Attorney General)  
Tony Sandridge (Mr. Sandridge attended as Perry Hood's designee representing the Mississippi Association of Supervisors)  
Jennie Eichelberger (Mississippi Bar)  
Tanisha Gates (President, Magnolia Bar Association)  
Chairman Hob Bryan (Senate Judiciary Committee, Division B)  
Chairman Mark Baker (House Judiciary En Banc Committee)  
Chairman Herb Frierson (House Appropriations Committee)

### Members not in Attendance:

Judge Michael M. Taylor (Circuit Court Judge)  
Chairman Eugene S. Clarke (Senate Appropriations Committee)

### Invited Guest in Attendance:

Leslie Lee (State Public Defender)  
Andre De Gruy (Capital Defense Counsel, Office of State Public Defender)  
Beau Rudder, (Director, Training Division, Office of State Public Defender)

### Order of Business:

Election of Chairman and Vice Chairman:

1. Senator Baker nominated Justice Kitchens for Chair of the Public Defender Task Force. *Justice Kitchens accepted the nomination.*
2. Ta'Shia Gordon nominated Demetrice Williams to be Vice-Chair. *Mrs. Williams accepted nomination.*
3. Justice Kitchens moved to vote on the proposed candidates. *The Task Force voted unanimously in favor of Justice Kitchens and Demetrice Williams.*

Recap of prior task force minutes:

1. Leslie Lee: The last task force meeting dealt with issues of gathering data. The only comprehensive report on the state's indigent defense system was done a couple of years back, it shows how money is spent on indigent defense and its broken down by counties and how indigent defense is delivered along with the cost of providing those services. The movement toward an independent commission in the 2015 Legislative session was for the purpose of gathering better data. The proposed commission would have been able to assess how much is actually being spent. The 6<sup>th</sup> Amendment center assisted in data collection led by David Carroll. Offers have been made by the National Legal Aid and Defense Association to collect data. The task force could not come to a decision as to how the system would work because some judges were comfortable with their current systems because they had authority over their public defenders. The ABA has guidelines for independent indigent defense systems however following those guidelines is a tough situation when arguing in front of Judge who could either hire or fire you. The commission should have been described to the legislature noting that the commission was not in place to fire or hire public defenders but to gather information and make recommendations to the legislature. The proposal was intended to make a more unified system within the State and focus on what other States are doing in regard to indigent defense regulation.

Responses from respective groups/ associations:

1. Justice Kitchens: We are a task force and we should assume that it is our duty to create a system and what should be presented to the legislature. *Asked Leslie Lee to explain the issue.*
2. Leslie Lee: The main objective is independence, there are no standards established for workload or caseload standards in the state. We are only one of six states left that does not have state oversight of their public defenders. The main purpose is to establish standards within the state.
3. Justice Kitchens explained that after Gideon v. Wainwright every person who was not afforded an attorney was entitled to one by the law. Judges in the past would appoint lawyers to an indigent defendant, then request the lawyer's bill at the end and submit it to a board of supervisors that would pay that bill after vastly cutting the bill at the end. In his view, one of the problems with our current system is that cases are being retried and dismissed because of ineffective assistance of counsel. So, what should we be doing differently and how should we pay for it?

4. Leslie Lee: We are the only southern state that does not have statewide oversight; it is understandable that someone in Tupelo does not want me telling them how to do their jobs from Jackson. The system would focus on establishing standards and giving guidance to localized systems on how to implement those standards. The fear of losing independence in Louisiana was just the same with local systems however ninety percent of those attorneys agreed with systems in the long run. Alabama used to have private counsel just bill the state. Their new state oversight (according to the director of their indigent defense board) estimated a savings of over 20 million dollars with their new state-wide system. The key is to assist the counties. Michigan's system oversees and caps counties budgets and the rest is left up to the state to cover but the current funding counties receive would not be limited thus making the initial system start up less financially burdensome on the state.
5. Tony Sandridge asked whether or not there would be a blanket cap for all counties?
6. Leslie Lee responded that the cap would be calculated on per capita basis or something in that realm.
7. Tony Sandridge: Essentially the caps would be based on what the counties are already spending meaning they would not spend above that amount in excess.
8. Leslie Lee: It would still be a bargain because it's a line item that counties could be comfortable with because that number would be stable.
9. Beau Rudder: It's probably difficult to budget for these counties that fluctuate back and forth for example Warren County where there is appointed counsel. However, stagnant cost within counties would make budgeting easier.
10. Tony Sandridge: Some counties really want to reserve that funding and other counties are just afraid to upset local judges.
11. Justice Kitchens: The flip side is that the state is struggling for funding and if we alleviate county stress then it's put back on the state. Moving the burden from the counties to State is basically the direction that the system aims to accomplish.
12. Leslie Lee: Sometimes it's hard to predict future savings resulting from reform; however standards could make these savings more visible.
13. Justice Kitchens: Early case resolution could result from attorneys that follow through with their entire cases. Preliminary hearings eliminate many cases. If public defenders have evaluated the cases properly then case resolutions



would be more prominent thus alleviating county courts and decongesting the courts. A system that produces better quality representation at this level would be effective.

14. Leslie Lee: There is a financial reason attorneys are not representing clients at initial appearance. The problem is that there are specific attorneys hired for initial hearings (Rankin County) and are not present for the entire case besides that type of representation which affects the establishment of attorney client-relationships.
15. Mark Baker: The regional contract system is consistent and cheaper (Newton County), why are there inconsistencies across the state when it comes to salaries throughout the counties?
16. Leslie Lee: Scott County was sued because defendants were not given attorneys at their initial appearances and people were only being appointed defendants at the indictment stage.
17. Andre De Gruy: At the last meeting the discrepancies were at issue, however per capita tells part of the story, crime rates differ throughout the state, there are many factors as to how counties calculate these costs, caseloads are lower than per capita cost should be lower.
18. Mark Baker: The other issue is trying to describe this contribution from the state that has an eerie sound, because it sounds like MAEP. The house has two public defenders. There must be agreement between these two to move forward in reaction to proposed legislation of this nature for anything to move the House. My position is that the public defenders within the House are going to have to be on board with the system as well.
19. Senator Bryan: One of the questions is what is going on out there in these individual counties because there are circumstances where attorneys are appointed sparingly which is inefficient; there are also issues with my constituents with public defenders for not responding to their calls.
20. Mark Baker: The solution for him comes back to population. The number of public defenders required should be based on the population of the county.
21. Justice Kitchens: This is about indigence, for example Rankin County is thriving and Carroll County is not, the problem is that Carroll County is going to have more indigent than Rankin County so it's questionable whether population should be the common denominator, however not disagreeing that it shouldn't be.
22. Mark Baker: There is some way to find out what the number is and from that information we decide where to go from there.

23. Angel Myers: Is there a structure for each office? Is there a set number of members within an office and staff for each office? How can you implement standards before structure? How do you impose standards on the counties from here without overreaching?
24. Leslie Lee: For example, in Alabama every judicial district decided on the structure of their own offices while the state issued the standards for those offices. Not every office needs a large number of public defenders, however I would like to see at least one full time public defender in each county that could manage the caseloads in their respective counties also to show what is needed in those counties specifically.
25. Angel Myers: Why don't we just rely on the attorney standards, the prosecutors association relied on the ABA standards for assigning attorneys to certain caseloads.
26. Leslie Lee: We could use those standards however another goal is to keep the cost down as well.
27. Andre De Gruy: From 2000 to about 2007 or 2008 there have been about 4 or 5 task force reports, Judge Chapman at the time decided that we should just mirror the prosecutor's structure. Establishing a structure before numbers would offer some guidance, designing a system before would allow the analysis of the data collected to be processed more fluently.
28. Angel Meyers asked about what type of numbers are needed and what numbers have not been obtained yet to make these decisions.
29. Andre De Gruy: The AOC potentially has numbers and these numbers could be retrieved from the individual counties, but you need the average number of cases going back at least 5 years and breaking the number up by types of cases. The data we don't have is how many of these people are indigent.
30. Justice Kitchens: Speaking to the reliability of AOC data, he stated for example jury trials comparisons data in relation to 20 years ago are not reliable because the problem is according to Chief Justice Waller is that the circuit clerks are not uniform in their reporting, the information may not be completely reliable until the electronic court system is established.
31. Ta'Shia Gordon: The issue is that circuit courts use different data collections, the reports are difficult to decipher because of their various methods of collection, and staffing is inadequate to process the amounts of data being received for review. Under House Bill 585 there is potential that the data would be more accurate.

32. Mark Baker asked what exactly was the purpose of House Bill 585?
33. Ta'Shia Gordon: HB 585 focuses on defendant names, the actual charge, the actual statute code under the charge, and how many charges are filed.
34. Mark Baker inquired as to when the AOC would be able to acquire data.
35. Ta'Shia Gordon: The data will be submitted to PEER and they will decipher the data we have currently and we may be able to view this data by September. The issue is with the speed of case resolution; a system is needed to provide standards for effective counsel.
36. Mark Baker: Favors the Alabama system.
37. Justice Kitchens stated that the general consensus from the responses is that there is a need for the system and whether there was any member who had opposition to the system. No one voiced opposition to a statewide public defender system.
38. Leslie Lee asked Demetrice Williams whether she saw a need for a statewide system in the Delta.
39. Demetrice Williams: She does see a need. In her district, in Sunflower County, public defenders provide ninety-eight percent of the criminal defense in the county. As an example, Washington County experiences a heavy caseload of criminal offenses; they have implemented a full time office which is apparently working effectively there.
40. Mark Baker responded that she described two systems and that it does work in some cases, however should we focus on the percentage of indigent persons in those counties to determine how many public defenders there should be in those counties? For instance, if 75% of the defendants are indigent then couldn't we just multiply the number of prosecutors by 75% to determine the number of public defenders needed?
41. Andre De Gruy: Establishing a system through that specific focus of data collection could be effective.
42. Tony Sandridge: If we had a system in place, how would that system affect Sunflower County? *Question directed toward Demetrice Williams.*
43. Demetrice Williams: There is no support system, part time public defenders conduct full time work and it's possible that establishing a system that addresses case load disparity can address specific needs of particular counties.

44. Justice Kitchens responded asking whether or not after establishing a fulltime staff would a single lawyer be able to handle the case load.
45. Demetrice Williams: Because it can often be confusing to work on the same client with another attorney in different stages of their cases they operate separately within their office and there would still be a need for multiple attorneys along with that full time staff.
46. Tanisha Gates: The number of indigent persons within Holmes county determines how many public defenders were needed, the three counties within her district adjusted the amount of public defenders based on their need for them within those counties apart from just a set number. The indigent population should be a determining factor in how many public defenders are appointed in each county.
47. Mark Baker: A district by district comparison would be the determining factor because not every county functions the same. The Judges would have to be following some type of standard to appoint attorneys. Is every Judge using the same standard to determine who is indigent?
48. Justice Kitchens: It is possible that a statutory mandate would be able address this issue.
49. Tony Sandridge: Since other states have established, should we view those models and adjust them accordingly in Mississippi?
50. Leslie Lee: Data collection is an issue that must be addressed to form a foundation.
51. Ta'Shia Gordon: The method by which data is collected is an issue; a more uniform method would make data collection easier.
52. Hob Bryan: For example attempting to collect simple information such as new cases divided by the number of judges. I have suggested that we hire an individual to call every county to collect this data, and proposed to shut down the Administrative Office of Courts and shift the funding to the State Public Defender's office. The starting point is how many assistant D.A's are employed and the number of indictments each county issues would be a starting point to collect data.
53. Judge Kitchens: It is important to conduct a meeting on the data that we actually have now to focus on a benchmark.
54. Mark Baker: Is there some indication that the result of ineffective counsel is the source of the overall problem?

55. Justice Kitchens: It is difficult to determine who the public defender was in the lower courts in order to determine where the deficiencies spring from. A state system with a hierarchy would be able to better handle the quality of attorneys that take on indigent defendants.
56. Leslie Lee: A system would ultimately solve the problem.
57. Justice Kitchens: Meeting times must be determined and it is possible that a meeting will be held at the end of October.
58. Mark Baker: Data collection should be the starting point to determine what should be done ultimately.
59. Leslie Lee: We will be producing a report on what we can gather in the next 2-3 months.
60. Hob Bryan: Based a reading of the statute, focus on the section where there must be a yearly report, there should be report for the past 3 years, 2017 would be the prime year to propose legislation, file a report mid 2016 for the proposal. The legislature lacks lawyers, not even 20% within the legislature, this is a subject that most of them could not possibly comprehend without time to review the reports and proposal.
61. Justice Kitchens: Years about during a meeting on reducing crime, former state district attorney and later U.S. attorney Dunn Lampton told the group there needed to be more public defenders. The criminal justice cannot work better without more public defenders. He then asked Andre De Gruy for closing remarks.
62. Andre De Gruy: If anyone was interested in assisting the data collection there would be information on the website as far as caseload and performance standards.
63. Leslie Lee: Clarified that the Task Force was asking OSPD to gather data and report back to the Task Force.

*11:38am - Justice Kitchens adjourned the meeting.*

# Appendix B



# MISSISSIPPI INDIGENT DEFENSE DATA PROJECT:

Recommendations for the Mississippi Public  
Defender Task Force

December 2015

Prepared by the National Legal Aid & Defender Association on behalf of  
the Mississippi Office of State Public Defender

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# Chapter 1: Background and Recommendations

## Report Objective

In July 2015, the chairman of the Mississippi Public Defender Task Force, Mississippi Supreme Court Justice James Kitchens, asked the National Legal Aid & Defender Association<sup>1</sup> to provide technical assistance to the Task Force. Specifically, Justice Kitchens asked NLADA to identify a methodology for acquiring accurate and reliable data from the circuit courts to determine the needs of the state's indigent defense system. This methodology would help the Task Force fulfill its legislatively mandated duty to make "a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts."<sup>2</sup>

NLADA undertook this project through grant funding we receive from the Open Society Foundations to expand the capacity of the indigent defense community to embrace and utilize data, research and analysis. To develop our report, NLADA conducted site work, fielded a survey to indigent defense attorneys, and reviewed background reports and materials. The report provides recommendations, findings and action steps to assist the Task Force and sets out a methodology for a pilot data collection project. We hope that the report helps inform recommendations for an institutionalized indigent defense data collection mechanism in Mississippi.

## Why Mississippi Needs a Data Collection System

In today's data-enabled culture, it is imperative for government to carry out its functions using accurate data and information. Data automation tools make it irresponsible to claim a lack of resources exist to produce basic decision-making data. In the criminal justice system nationally, the indigent defense function has been slower than some other criminal justice system sectors to embrace the importance of using data to drive decision-making and inform resource allocation. However, it is rapidly catching up.

In Mississippi, implementation of the right to counsel is primarily a local responsibility.<sup>3</sup> For non-capital, trial level cases, Mississippi's 82 counties and multiple localities have the responsibility to select the type of delivery system used, determine the amount of funding required, and appropriate necessary funds.<sup>4</sup> Counties have implemented an array of service models to provide indigent defense representation,

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<sup>1</sup> Founded in 1911 and located in Washington, DC, NLADA is America's oldest and largest nonprofit association dedicated to excellence in the delivery of legal services to those who cannot afford counsel.

<sup>2</sup> Mississippi Code Section 25-32-71

<sup>3</sup> The Sixth Amendment of the U.S. Constitution guarantees the right to assistance of counsel for defendants in criminal matters. In 1963, the Supreme Court decision *Gideon v. Wainwright* clarified that this right extends to people who are unable to afford an attorney in state felony cases. Subsequent opinions extended the right to counsel to misdemeanors which carry a possible punishment of incarceration and to juvenile delinquency matters. States have taken differing approaches to carrying out this constitutionally and statutorily mandated government function.

<sup>4</sup> Statutory specification for the provision of indigent defense services is found in Miss. Code Ann. § 25-32-1 et. seq. § 99-15-15 and § 99-15-17