

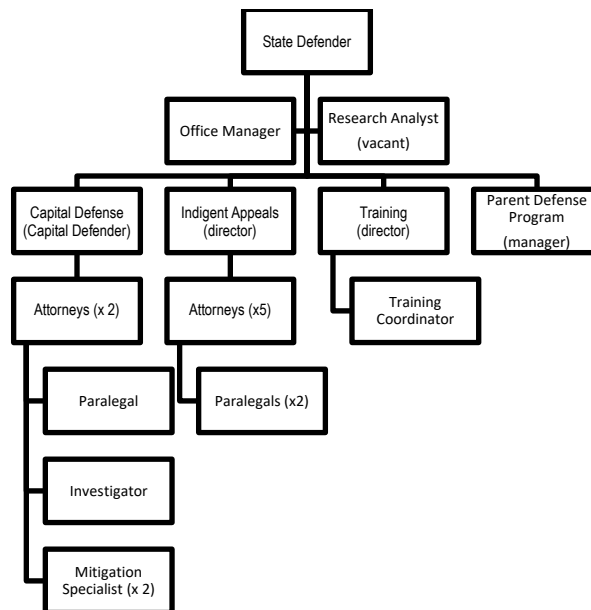


ANNUAL REPORT
July 1, 2020 – June 30, 2021

The Office of State Public Defender (OSPD) was created by the Legislature in 2011 through the consolidation of the Office of Capital Defense Counsel and the Office of Indigent Appeals. Capital Defense was opened in 2001 to provide Sixth Amendment services in death penalty eligible cases at trial and direct appeal. Indigent Appeals was created in 2005 to handle non-death felony appeals.

The Defender Training Division was added to provide training and technical assistance to all working in indigent defense. The scope of services was expanded to allow Indigent Appeals to handle appeals from youth court, and again in 2016 to authorize the OSPD to handle defense of parents accused of abuse or neglect in youth court and on appeal.

The value of the consolidation is clear. The agency was created with 25 positions. We are providing more and higher quality services today with 20 full-time staff. We have one critical need that is not being met, we must develop an in-house data research capacity. Working with our partners at NLADA we hope to have a full-time, grant-funded person on board in a few months. This will allow us to do more in criminal legal system overall reforms as well as planning and development of the indigent defense system. It may also allow us to provide tailored data evaluations for local defenders to address system needs and case-specific research.



As we ended the first decade of service, we adjusted our leadership team. George Holmes continues as Appeals director, a job he has held for the last decade. Kristi Mullen who joined OSPD as office manager during the merger continues in that role. Erin Briggs, after over a decade as an appellate defender, became Training director in April. Effective June 1, Jennifer Morgan joined our staff as the first Parent Defense Program Manager. Also on June 1, we formally recognized Kelsey Rushing as the Capital Defense director. Kelsey has been a staff attorney for over ten years and as the division staff changed over the last year, he assumed more of a mentoring role in the division. He has now assumed the day-to-day operations of the division.

While we have yet to realize the state-wide system developed in collaboration with the Public Defender Task Force, we have a more modest “next step” proposal we will be presenting to the Legislature over the next few months. The proposal will expand our authority to allow us to support defense services in all criminal cases and juvenile matters. Phase 1 proposes 3 pilot sites, one in each supreme court district. There are two models, and each includes defenders working in full-time offices as well as part-time private contractors in the same manner as most counties today. Investigators and social workers are also included. The four primary goals of the proposal are to: 1. Enable early entry in cases; 2. Ensure reasonable workloads; 3. Close the pay gap with prosecutors; 4. Expand multi-disciplinary defense.

STATE DEFENDER

In July, OSPD submitted a revised 5-Year Strategic Plan and FY 2022 Budget Request. OSPD, through working with local defender leaders, has developed a new proposal for state support in the arena 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 preserve 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 re-presented to the 2022 Legislature. The State Defender also assisted the Hinds County Public Defender in developing for presentation a plan for CARES Act funding to address critical needs in their county.

CAPITAL DEFENSE

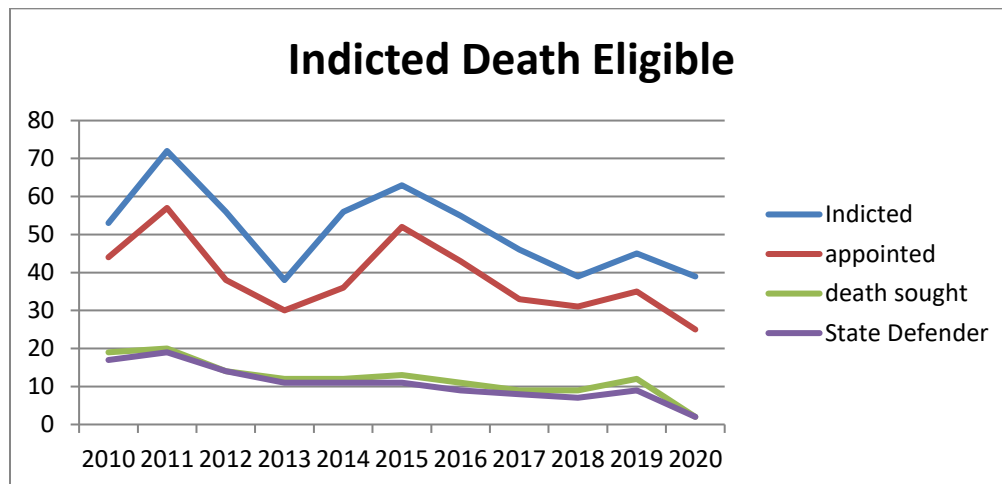
Capital Defense staffing was in flux throughout the year. A long-time capital defender retired June 30, 2020, and a second capital defender and only capital appeals defender retired in December. The careful planning for these retirements by bringing in and training two replacements was upset by the departure of each of these lawyers. One of the lawyers left to become Deputy Chief Defender in Hinds County and the other capital defense attorney left to join the national non-profit Bail Project that has expanded into the Southeastern United States, and added two, now former, OSPD attorneys to their own ranks.



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.

Statewide there was a decline in new death penalty prosecutions. The pandemic was a contributing factor. Because mitigation investigations and trials, especially with sequestered juries and extended deliberations, were not possible prosecutors opted to settle cases sooner rather than face unknown delays.



The division closed the year representing 8 clients at the trial level and two 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 to second degree murder and one case was tried to verdict. Two cases closed in fourth quarter when one client died in custody and a petition for certiorari in the Supreme Court of the United States was denied.

Capital Defense conducted limited field investigations due to COVID-19 for most of the year but continued to visit clients in person and make court appearances including at 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 that cases continued to move appropriately and, most importantly, our clients were served. The office resumed regular operations with relaxing of restrictions and the advent of vaccinations.

DEFENDER TRAINING

The Training Division (“Division”) launched the *Distance Learning Project* (“DLP”) in July 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, which gave participants to attend the canceled April 2020 training on a virtual platform. The Division also provided a virtual program for new defenders and a one-hour ethics program addressing the potential pitfalls of virtual court.

Through these programs 57 lawyers received statutorily mandated training, 30 of those in juvenile defense and 27 in parent defense. 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, Geofence warrants, and “shaken baby syndrome.” Two attorneys were able to get death penalty certification training virtually through the Division. The Division has established a collaboration with the federal defenders in Mississippi for training. The first joint training occurred during the regular Spring defender training.

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



In addition to the above, the Division also provides support to the Parent Representation program and system reorganization plan; and provides on-going technical assistance to trial level defenders while also being 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 the project organizer for their expansion into much of the southeastern US.

With Beau's departure, Erin Briggs assumed the role of Training Director. Recognizing the significant additional duties the new training models have placed on Berenda Pendelton, the longtime Division administrative assistant, her position was reclassified to Training Coordinator.

The new training team produced the regular Spring Defender training virtually and began work on the return to in person and hybrid trainings. They also trained three parent defenders through the DLP and 29 parent defenders attended the virtual ABA parent defense conference. The year concluded with a virtual juvenile defender program attended by 45 lawyers.

In State Fiscal Year ("SFY") 2020 the Division produced 13 programs offering a total of 108 CLE hours to approximately 400 defenders.

INDIGENT APPEALS

Indigent Appeals ("IAD") filed 53 briefs. IAD currently has 105 open cases including 30 awaiting the filing of the record and briefing schedule. There are an additional three cases with independent outside counsel due to conflicts of interest between clients. The number of briefs filed and cases opened are at less than 50% of pre-pandemic levels. However, the number of cases awaiting briefing schedule at the close of the year is back to the pre-pandemic level indicating SFY 2022 is likely going to be a return to normal caseloads.

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 Training Director 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. After Erin transitioned to the role of Training Director, Zakia Butler came on board to work in IAD. Zakia is a 2018 graduate of Mississippi College School of Law and former law clerk to Judge Latrice Westbrook of the Mississippi Court of Appeals.

Fiscal Year 2020-21						
	2020/21 Q1	2020/21 Q2	2020/21 Q3	2010/21 Q4	TOTALS	
Briefing Sched. Issued	18	7	15	13	53	Total
Briefs Filed	20	16	7	13	56	Total
average days to file briefs	63	75	47	65	63	Average
percent filed w/in 60 days	40%	37%	57%	46%	45%	Overall
Total Pending Cases at close of Quarter	138	115	101	105	115	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	13	16	17	30		
briefs in progress	12	3	11	11		
pending rehearing motions - appellant	14	9	12	10		
pending rehearing motions - appellee	1	2	2	2		
pending cert. petitions - appellant	9	9	5	9		
pending cert. petitions - appellee	0	1	1	1		
state briefs due	13	18	7	10		
awaiting decision	63	46	37	28		
pending post decision	12	11	9	4		
misc.	1	0	0	0		
Fiscal Year 2019-20						
	2019/20 Q1	2019/20 Q2	2019/20 Q3	2019/20 Q4	TOTALS	
Briefing Sched. Issued	31	27	22	20	100	Total
Briefs Filed	30	20	24	20	94	Total
average days to file briefs	47	65	64	62	60	Average
percent filed w/in 60 days	46%	42%	50%	40%	45%	Overall
Total Pending Cases at close of Quarter	222	177	174	154	182	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	41	31	37	25		
briefs in progress	17	22	16	15		
pending rehearing motions - appellant	n/a	6	6	11		
pending rehearing motions - appellee	n/a	1	0	0		
pending cert. petitions - appellant	n/a	4	0	3		
pending cert. petitions - appellee	n/a	0	0	0		
state briefs due	31	26	23	17		
awaiting decision	81	76	65	61		
pending post decision	n/a	11	26	21		
misc.			1	1		
*n/a due to computer system event of 10/1/19						
Fiscal Year 2018-19						
	2018/19 Q1	2018/19 Q2	2018/19 Q3	2018/19 Q4	TOTALS	
Briefing Sched. Issued	28	29	44	19	120	Total
Briefs Filed	26	33	29	32	120	Total
average days to file briefs	42	47	46	61	49	Average
percent filed w/in 60 days	88%	85%	69%	40%	71%	Overall
Total Pending Cases at close of Quarter	214	209	208	186	204	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	38	40	31	28		
assigned to Ole Miss	11	10	10	0		
briefs in progress	18	17	28	16		
pending rehearing motions - appellant	10	6	5	11		
pending rehearing motions - appellee	2	1	3	1		
pending cert. petitions - appellant	10	13	9	6		
pending cert. petitions - appellee	1	2	2	2		
state briefs due	25	34	37	25		
awaiting decision	79	65	68	77		
pending post decision	19	19	14	20		
misc. pending	1	2	1	0		
Fiscal Year 2017-18						
	2017/18 Q1	2017/18 Q2	2017/18 Q3	2017/18 Q4	TOTALS	
Briefing Sched. Issued	41	42	28	34	145	Total
Briefs Filed	27	42	29	33	131	Total
average days to file briefs	40	49	51	50	48	Average
percent filed w/in 60 days	93%	85%	77%	79%	84%	Overall
Total Pending Cases at close of Quarter	228	231	238	219	229	Avg. Caseload
<i>Status of Pending Cases</i>						
awaiting briefing schedule	48	42	47	37		
assigned to Ole Miss	9	7	9	9		
briefs in progress	26	23	20	20		
pending rehearing motions - appellant	13	13	14	13		
pending rehearing motions - appellee	3	3	2	1		
pending cert. petitions - appellant	9	8	9	6		
pending cert. petitions - appellee	1	0	1	1		
state briefs due	38	40	32	36		
awaiting decision	59	75	82	76		
pending post decision	21	19	21	19		
misc. pending	1	1	1	1		

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, along with the Supreme Court's Parent Representation Taskforce, has developed a plan for expanded multidisciplinary defense teams in multiple sites. This plan is included in OSPD's 2022 budget request. By 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 Counties, and have cases now open in Covington, Forrest, Harrison, Lamar, Marion, Perry and Stone Counties. We also now have private contract lawyers available to serve parents in the 7 counties of the First Chancery Court District and Lee County Court.



With additional support from the Legislature OSPD has now hired a full-time Parent Defense Program Manager. Jennifer Morgan, a long-time parent defender in DeSoto County and the frontline parent defender's choice to represent them on the Taskforce joined the OSPD staff in June.

As program manager Jennifer 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.