



ANNUAL REPORT  
July 1, 2022 – June 30, 2023

The Office of State Public Defender (OSPD) was created by the Legislature in 2011 through the consolidation of the Office of Capital Defense Counsel (OCDC) and the Office of Indigent Appeals (OIA).

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. In 2007 the Defender Training Division was added to provide training and technical assistance to all working in indigent defense. Also in 2007, the scope of services was expanded to allow Indigent Appeals to handle appeals from youth court.

In 2016 the scope of services was again expanded to authorize OSPD to handle defense of parents in matters brought by Child Protection Services alleging abuse or neglect or seeking to terminate parental rights and appeal of such matters.

The value of the consolidation is clear. The agency was created with 25 positions. We are providing more and higher quality services today with 21 full-time staff. One example of how this works in practice is the use of an Indigent Appeals attorney to work with a Capital Defense attorney to handle a death penalty appeal. Other OIA attorneys provided editing support on the case. Another example is the conversion of an OIA administrative assistant position to a data research position. The first project of the research assistant was to establish a new case management system which allows more efficient operations allowing us to do more with less.

Better data collection and analysis facilitates better support of criminal legal system reforms as well as planning and development of the indigent defense system. We are developing the capacity to provide tailored data evaluations for local defenders to address system needs and case-specific research.

While we have yet to realize the state-wide system developed in collaboration with the Public Defender Task Force, we continue to present a more modest “next step” proposals to the Legislature and provide guidance to local stakeholders as they struggle to improve delivery of these constitutionally mandated services.

The four primary goals of system reform are: 1. Enable early entry in cases; 2. Ensure reasonable workloads; 3. Close the pay gap with prosecutors; and 4. Expand multi-disciplinary defense.

## STATE DEFENDER

In July, the Office of the State Public Defender (“OSPD”) submitted a revised 5-Year Strategic Plan and FY 2024 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 proposal is to help create three pilot projects, one in each Supreme Court District. The southern and northern districts would be multi-county systems to help rural county delivery services in the most efficient way. The central district project would be tailored to the unique needs of the City of Jackson. The goal of the proposal is to remedy four of the most serious deficiencies identified by the taskforce studies: lack of early entry in cases, lack of pay parity between defenders and prosecutors, lack of support services such as social workers and excessive caseloads.

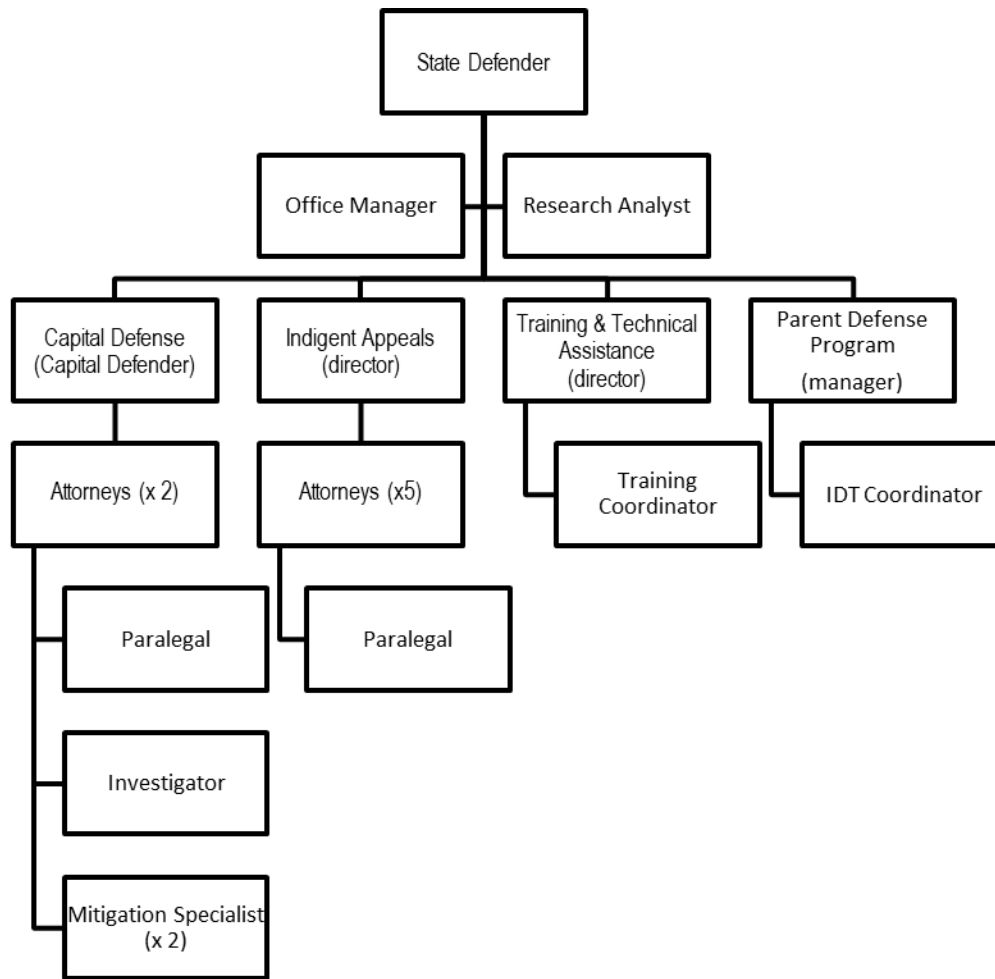


The State Defender serves on the Corrections and Criminal Justice Oversight Taskforce and the Supreme Court’s Children’s Justice Commission. In October, the State Defender provided testimony to the House Judiciary B Committee on Crime in the Capitol City. He also submitted written testimony to the Senate Study Committee on Women, Children and Families regarding the vital role parent defenders play in the Child Welfare System.

The 2023 Legislative Session was dominated by proposals to reform the Hinds County criminal legal system and institute mandatory minimum sentencing. OSPD actively opposed the attempted rollbacks of past sentencing reforms. Most of the negative proposals were defeated. OSPD worked with the Hinds County Public Defender to ensure that indigent defense was included in the reforms. In the end OSPD received a \$441,000 appropriation to support the local office. While this is far less than OSPD sought for a Jackson-Hinds pilot site, it represents the first direct assistance to a local defender project.

Beginning in April, OSPD and the Hinds County Public Defender began working on a plan to restructure the local office based on the new state funding. In May, the State Defender and County Defender presented the plan to the Hinds County Board of Supervisors. With their approval, the state funded positions were advertised, and positions were filed effective July 1.

Moving forward, HCPDO will have three units - each headed by a state funded deputy defender. Two units will consist of trial teams to represent clients under indictment. Each deputy will handle a caseload in addition to managerial responsibilities. The third unit will handle non-indicted cases, including misdemeanor cases brought in the CCID court, if implemented. While this restructuring will significantly enhance the ability to deliver services in a timely manner the office will continue to struggle with pay disparity for the county funded positions. Additionally, the support staff shortage may worsen.



## **CAPITAL DEFENSE**

At current staffing Capital Defense can handle up to 10 new trial level cases per year and 2 new appellate cases per year. This assumes local counsel will be appointed at the trial level.

Currently the division represents 10 clients at the trial level and one client at the direct appeal stage. The division filed the Brief of Appellant in one case on September 28, 2022. A Petition for Certiorari in a second case was filed on November 8, 2022. This petition was denied on June 30, 2023. Three justices dissented from the denial of review. One case was tried to verdict in December. One case closed with guilty plea to a reduced charge of manslaughter on March 1, 2023.

Capital Defender Kelsey Rushing and Training Director Erin Briggs have begun planning for the 2024 Deep South Capital Defense Conference. They will again be producing the training certification program in partnership with the National Legal Aid and Defender Association.

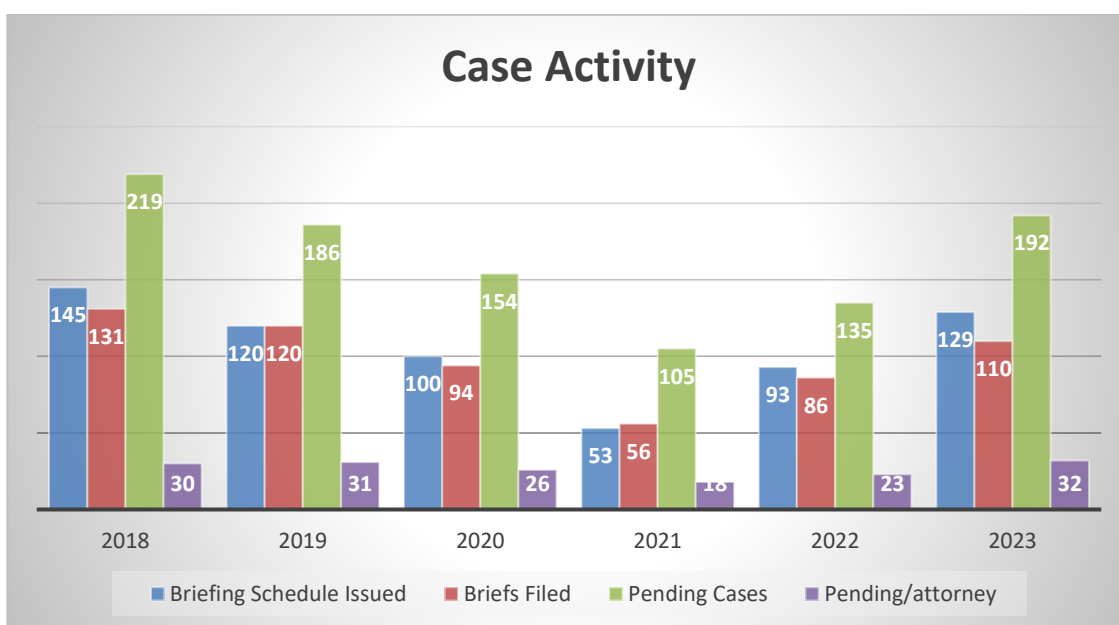
## **INDIGENT APPEALS**

Since July 1, 2022, Indigent Appeals (“IAD”) filed 110 briefs. IAD currently has 192 open cases including 51 awaiting the filing of the record and briefing schedule. Three cases have been assigned to a *pro bono* lawyer from the firm of Forman, Watkins and Kritz

LLP. The firm previously worked with OSPD providing *pro bono* representation in *Miller* cases and is now in its second year of partnering on appeals. There are nine additional cases with independent outside counsel hired on contract due to conflicts.

Staff attorney Hunter Aikens serves as co-counsel in a death penalty appeal handled by the Capital Division. This assignment took him out of the regular case assignment rotation for about nine months. Justin Cook and Mollie McMillin had oral arguments before the Court of Appeals in Starkville November 9.

IAD caseload has returned to pre-pandemic levels. The number of briefing schedules issued and number awaiting briefing schedule are at their highest since Q3 of SFY 2018. The number of pending cases is higher than the Q2 2020 level. The briefs in progress are highest since Q3 2019. This year saw the most briefing notices filed and number pending at year end since 2018. That year IAD had 7 attorneys and 2 paralegals. Current staff is 6 attorneys and 1 paralegal.



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. In April Justin Cook presented an appellate courts update to the Public Defender Conference and in June Zakia Butler presented on appellate brief writing to the Mississippi Association for Justice Annual Conference and CLE in New Orleans.

## DEFENDER TRAINING

The Training Division continues to offer trainings in multiple formats: distance learning, virtual, in person and hybrid. Two hybrid trainings were held in September 2022 and a third in October.

The Parent Defender Certification Training was held September 21-22, 2022, at the Golden Nugget Hotel and Casino in Biloxi, Mississippi. We offered 7 CLE hours

(including 1 ethics hour). There were 20 in-person attendees and 11 virtual attendees. In total, there were 27 attorneys that were certified at this training. Forty-seven attorneys are current with certification.

The Youth Defender Certification Training was held September 22-23, 2022, at the Golden Nugget Hotel and Casino in Biloxi, Mississippi. We offered 7 CLE hours (including 1 ethics hour). There were 32 in-person attendees and 13 virtual attendees. In all, there were 37 attorneys that were certified at this training. Sixty attorneys are current with certification.

In October the general criminal defense training seminar was held in Tupelo. Twelve and one-half hours of CLE (including 1 ethics hour) were provided. The program was designed with assistance from the state-federal training working group and participants included both state public defenders and appointed counsel as well as lawyers from the federal defender office in Mississippi and CJA panel attorneys. Honored guests included members of the Magnolia Defenders, a student organized group at the University of Mississippi School of Law. A total of 92 attended in person and 26 virtually.

In addition to these trainings, Training Director Erin Briggs, became a member of the inaugural NLADA Racial Equity Institute – Diversity Equity and Inclusion Fellowship. This six-month training institute is aimed at introducing and equipping fellows with the core competencies on racial equity required to launch and implement DEI initiatives within our organizations and beyond. The fellowship is virtual with monthly meetings concluding in February 2023.

In January 2023, Erin secured a Bureau of Justice Assistance Grant through the National Association of Criminal Defense Lawyers to provide funding for technical assistance in planning the MS Public Defender Association Conferences. As a result, she was able to provide a more diverse training in Spring 2023, creating sessions specifically for appellate attorneys, mitigation specialist, investigators and trial attorneys. The grant is still being funded to help with planning future trainings.

In March 2023, the Training Division sponsored the first regional federal and state public defender townhall meet up in Ocean Springs, Mississippi. This event was coordinated with Jason Payne, President of the MS Public Defenders Association, as well as Omodare Jupiter, the Federal Public Defender. Thirteen attorneys from the two county public defender offices (Jackson and Harrison) as well as the Federal Defenders Offices, met and discussed ways that they could help each other and their clients.

Parent Defense training was held March 22-23, 2023, at the Graduate in Oxford. There are currently 52 certified parent defenders available for appointment in 33 counties. A Youth Defense training was also held in Oxford following the parent defense program. There are currently 70 certified youth defenders available for appointment in 52 counties.



In 1967 the Supreme Court of the United States recognized that children accused of acts of delinquency had a constitutional right to the assistance of legal counsel. The Legislature has recognized that counsel in these important matters must have specialized training and OSPD provides that training. For years OSPD has supported these lawyers through training and technical assistance provided by Brenda Locke as a part-time contract resource counsel. Brenda came to OSPD after retiring as a fulltime youth defender in Jackson County. This year Brenda decided to retire again and return to working directly with “her children” this time in her new home in Louisiana.

The Spring general criminal defense seminar was held in Bay St. Louis in April. Thirteen hours of CLE were provided including an ethics hour. One hundred twenty-three people attended in person and an additional twenty-eight attended virtually.

In June 2023, Erin served as a co-presenter and facilitator at the Saint Louis University School of Law and Missouri State Public Defender's 2023 Client Centered Advocacy Workshop. This training was held in St. Louis, Missouri. She presented on the topic of *Cultural Humility with a Focus on the Impact of Race on the Client and Public Defender Relationships*.

## **PARENT DEFENSE**

The Parent Defense Program has worked closely with Casey Family Programs and Be Better Now Mentoring to pilot a Parent Partner Program which will provide clients with a Parent Partner, a person with lived experience in the child welfare process trained to assist parent/clients. OSPD is piloting this program on the Gulf Coast and in Lee County.

This is the final piece of our efforts to introduce interdisciplinary defense teams (IDT) in Mississippi. These teams consist of attorneys, social workers, and Parent Partners and have been shown to reduce removals to foster care and get children who are removed back home quickly and safely.

To facilitate proper training and supervision OSPD has added an IDT Coordinator to the Parent Partner Program. Tonya Rogillio, a long time CPS social work supervisor began serving in this position June 1, 2023, after having served in the capacity through the CFP grant during the planning and development phase.

There is strong evidence supporting this model. Gerber et al, *Effects of an interdisciplinary approach to parental representation in child welfare*, *Children and Youth Services Review*, 102 (2019) 42-55, [www.elsevier.com/locate/childyouth](http://www.elsevier.com/locate/childyouth); Courtney, M. E., & Hook, J. L. (2012). *Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care*. *Children and Youth Services Review*, 34(7), 1337-1343.

This model has been utilized for many years in Washington and Colorado and is being piloted in New Orleans. The Taskforce partnered with the Orleans Defender and the

Kellogg Foundation in early expansion of the Mississippi efforts and looks to their project for guidance.

OSPD has long advocated multidisciplinary defense, has included working with investigators and social workers as part of its training programs and introduced this practice to Mississippi Parent Defenders at the November 2019 Parent Defender Training.

The first parent defender project OSPD participated in developing, Jackson County, included a social service support component. This project, initially funded by county, state and Casey Foundation funds, is now fully funded by the county. We believe this commitment from the court and the county is a testament to the model's success.

This model has support from the federal government which has authorized Title IVE funding reimbursement for multidisciplinary defense services. This funding source could be used for future program growth. OSPD has been working with the state Department of Child Protection Services to draw down these funds.

Parent Defense continues to provide training and technical assistance to parent defenders across the state and provides expertise across the system. Jennifer Morgan, program director, participated in a panel discussion at the Youth Court Judges and Referees conference in September and presented at the Judicial College GAL training program in December. She also spoke at the Access to Justice Commission as well as the Youth Court Prosecutors Spring Training. To keep defenders connected, she has started parent defender monthly townhall meetings on Zoom.

In the direct representation area, we are managing joint state-local projects in the First Chancery District (seven counties with six part-time attorneys), Lee County (interdisciplinary team of two part-time attorneys, a fulltime social worker and a parent partner), a part-time defender in Hinds, two attorneys at the Center for Legal Services (Gulfport office serving the Coast and Hattiesburg office serving the Pine Belt), and fulltime defenders in Hancock and DeSoto. Parent Defense has also filed appellate briefs in four cases.

OSPD began administering funding from Casey Family Programs on January 1. OSPD and Casey are helping fund parent defense in Bolivar, Lamar, Rankin, Warren, Washington, and Yazoo counties and a social worker in Lee County with these funds. OSPD provides oversight at the level of the state funded projects.

Overall, the program continues to show positive results. In calendar year 2022, MDCPS saw a decrease of children in custody from 3,849 to 3,673 (a 4.6% rate of decrease). Counties that receive funding from OSPD saw a decrease of children in custody during this same time from 1,959 to 1,831, a 6.5% rate of decrease. Counties not receiving support also saw a decrease but significantly lower at 2.5%.

### **Special Defender Unit for 7<sup>th</sup> Circuit Court District**

The 2022 Legislature appropriated \$744,532 to the Office of State Public Defender (OSPD) from the Coronavirus State Fiscal Recovery Fund. (HB 1627) The purpose of the appropriation was to create and operate a public defender office to augment criminal



defense services to indigent defendants in the 7<sup>th</sup> Circuit Court District. OSPD has designated this office the OSPD Special Defender Unit. The unit works under the State Defender in collaboration with the Hinds County Public Defender Office (HCPDO) to help reduce any case backlog associated with the Covid-19 pandemic.

Staffing and service delivery was modeled on the Division of Capital Defense Counsel at OSPD. OSPD has assembled a team of attorneys, a social worker, investigator, and administrative support (legal secretary). The attorneys began work August 1, 2022, and the legal secretary began work on September 1, 2022. OSPD contracts with a private investigator for fact investigation and with a forensic social worker for client's social service needs and case development.

Initial case assignments were as co-counsel with office attorneys prioritizing clients in-jail with indictments for murder, armed robbery, or carjacking. Early on it was realized that a significant backlog existed with not-indicted in-jail or "dead-zone" cases.

A total of 126 dead-zone clients with 218 charges were assigned to the SDU. Working with the District Attorney who assigned several prosecutors to review cases, and Senior Circuit Court Judge Winston Kidd who set aside a designated review day the HCPDO not-indicted caseload was reduced by 39% by the end of May.

- Of all the people represented, even when indicted, cases were sped up significantly. Representation resulted in a resolution, freedom, or other change in status within just a week to a few months.
- 65% of all represented cases resolved "favorably" without any indictment at all: Guilty plea to Bill of Information with less time than facing if went to trial, release, or a "no true bill."
- Of those cases that resolved "favorably," 77% resolved with either a dismissal or release.

Based on the significant reductions in the dead-zone caseload and restructuring of the HCPDO beginning July 1, it was decided that this phase of the project would be wrapped up. Reassignments of indicted cases were then made. All indicted cases assigned to special circuit courts were assigned or reassigned to SDU attorneys only. Select additional cases in the elected courts were also assigned to SDU attorneys only.

Since August 1, 2022, OSPD Special Defender Unit has opened 311 cases (488 charges), 185 indicted cases (270 charges) and 126 dead-zone cases (218 charges). One hundred-ninety involved a violent charge(s) (61%) including 71 cases involving a homicide charge or charges (23%).

On June 30, 2023, the Unit had 122 active cases (176 charges). Seventy-seven involve a violent charge(s) (63%) including 33 cases involve a homicide charge(s) (27% of total). Forty-five of the 98 individual clients are in jail including one in MDOC custody (46%).