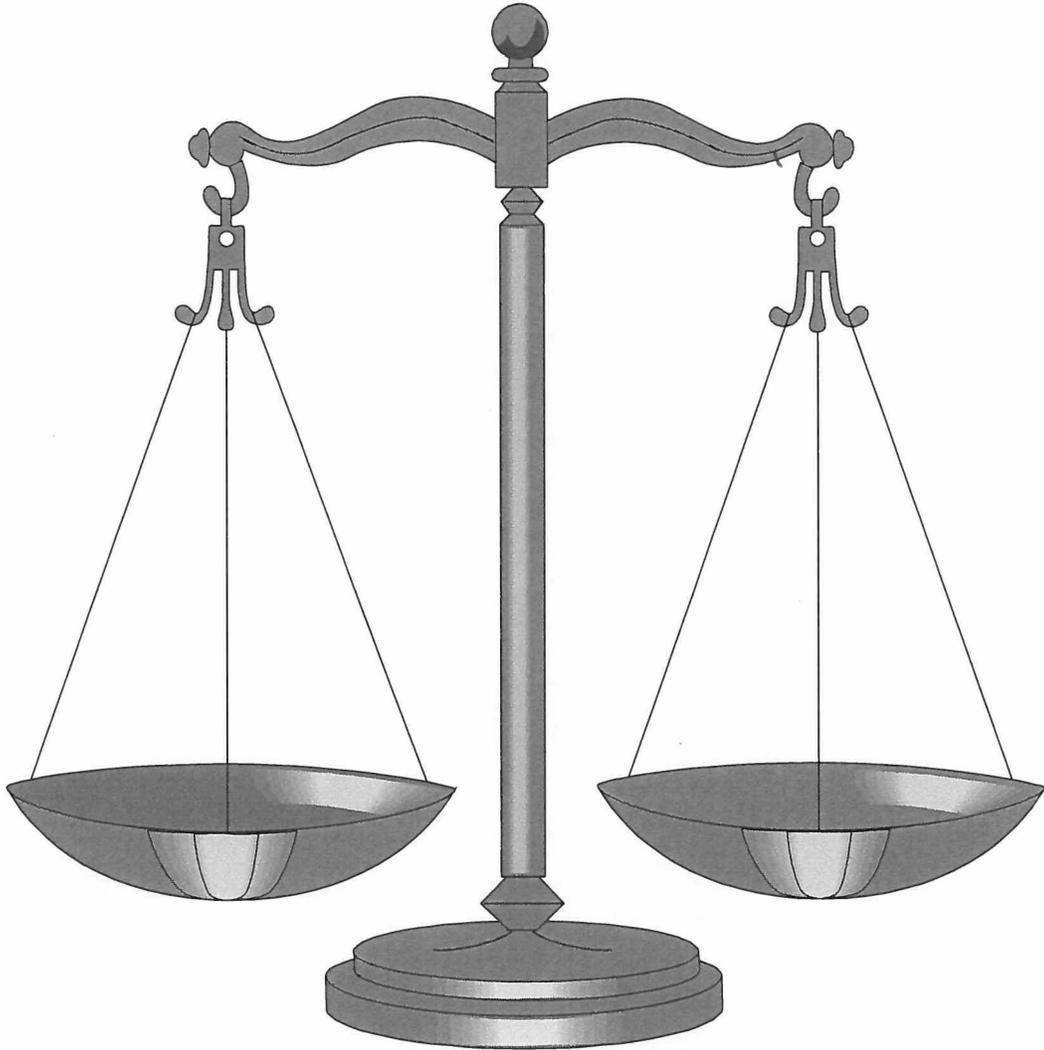


# OKLAHOMA

## INDIGENT DEFENSE SYSTEM



## 2018 Annual Report

*... to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost-effective manner possible.*

# Oklahoma

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## *Indigent Defense System*



MARY FALLIN  
GOVERNOR

CRAIG SUTTER  
Executive Director

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CRAIG SUTTER  
EXECUTIVE DIRECTOR



MARY FALLIN  
GOVERNOR

STATE OF OKLAHOMA  
OKLAHOMA INDIGENT DEFENSE SYSTEM

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September 21, 2018

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117 N. 5<sup>TH</sup> ST.  
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TO THE HONORABLE MARY FALLIN  
HONORABLE MIKE SCHULZ  
HONORABLE CHARLES MCCALL  
HONORABLE DOUGLAS COMBS  
HONORABLE GARY LUMPKIN

Enclosed is a report concerning the duties, activities and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2018, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

As we move forward in 2019, we would like to recognize all of the attorneys, investigators, administrators, secretaries and experts for their commitment to our mission and their unwavering dedication to our clients. We further wish to acknowledge the work and dedication of the private attorneys who serve generously as OIDS contractors. It is only through the efforts of all of these individuals that the right to counsel and the interests of justice are protected.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Sutter".

Craig Sutter  
Executive Director

# ◆ Board Members

JAKE JONES, III, ESQ., CHAIR  
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101 Park Avenue, Suite 800  
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## Past Board Members

(In Alphabetical Order)

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# Chapter 1

## ◆ Introduction

The mission of the Oklahoma Indigent Defense System is to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost effective manner possible.

OIDS fulfills the majority of the State's obligations under the Oklahoma and United States Constitutions to provide trial, appellate and capital post-conviction criminal defense services to persons who have been judicially determined to be entitled to legal counsel at State expense. The Oklahoma Indigent Defense Act, 22 O.S. § 1355, *et seq.*, which created the agency, sets forth the duties and responsibilities of the agency, the Indigent Defense System Board and the OIDS Executive Director.

The agency is governed by a five-person Board. Each member is appointed by the Governor, with the advice and consent of the Oklahoma Senate, for a five-year term. The agency consists of three program areas: the General Operations Program, the Trial Program and the Appellate Program. The Trial Program consists of the Non-Capital Trial Division and two capital trial divisions: Capital Trial Norman and Capital Trial Tulsa. The Appellate Program contains the General Appeals Division, the Homicide Direct Appeals Division and the Capital Post-Conviction Division.

OIDS is appointed by the trial and appellate courts of Oklahoma after an indigence determination is made by the court. OIDS is subject to appointment to provide trial representation criminal cases in 75 of Oklahoma's 77 counties, and in all 77 counties at the appellate level. During the fiscal year, OIDS contracted with private Oklahoma-licensed attorneys to handle 100% of the indigent non-capital trial caseload in 55 counties. In 20 counties, staff attorneys handled the majority of the indigent caseload. Private attorneys handle the majority of the System's conflict cases. In death penalty cases and non-capital appeals, attorneys employed by OIDS are assigned the case after OIDS has been appointed by a district court or the Oklahoma Court of Criminal Appeals.

OIDS represented a total of 61,115 court appointments in Fiscal Year 2018. The numerical breakdown by division is as follows:

<b>NON-CAPITAL TRIAL</b>	
<i>Staff</i>	12,395
<i>County Contracts</i>	46,444
<i>Conflicts</i>	1,478
<b>CAPITAL TRIAL - NORMAN</b>	22
<b>CAPITAL TRIAL - TULSA</b>	34
<b>GENERAL APPEALS</b>	573
<b>HOMICIDE DIRECT APPEALS</b>	114
<b>CAPITAL POST CONVICTION</b>	53
<b>EXECUTIVE DIVISION CONFLICTS</b>	2
<b>TOTAL</b>	<u>61,115</u>

Given the nature of criminal cases, most span more than one fiscal year. In complex cases, such as death penalty cases, OIDS may represent a client for three or more years. Accordingly, the total number of cases handled during a fiscal year includes appointments pending from the prior fiscal year in addition to the current year court appointments.

Agency caseloads have continued to substantially increase in recent years. While the total agency caseload number of 61,115 for FY 2018 represents a relatively small increase of 368 cases over the previous fiscal year, it also represents a caseload increase of 39% since FY 2013, and a 55% increase since FY 2007.

OIDS is funded by the Oklahoma Legislature through appropriations from the State's general revenue fund. OIDS also receives a varied and unpredictable amount of funds from the costs of representation assessed against a criminal defendant in certain cases.

OIDS, along with other state agencies, faced substantial funding reductions during fiscal years 2016 and 2017. The agency began FY 2016 with an appropriation of \$16,079,722. Due to a statewide revenue failure, OIDS suffered total allocation reductions of \$1,125,581 during that year. The allocation reductions were annualized for FY 2017, resulting in a substantially reduced appropriation of \$14,954,141 beginning July 1, 2016. While the agency received a partial funding return due to excessive FY 2016 allocation reductions totaling \$414,849, the decreased appropriation, combined with the loss of carryover funding from the previous fiscal year, compelled the agency to request a supplemental appropriation to continue to provide services.

The agency was fortunate to receive this requested supplemental appropriation from the Legislature in the amount of \$710,731. It

enabled OIDS to continue to provide constitutionally-mandated representation to all of its court-appointed clients during the remainder of FY 2017. Insufficient funding would have resulted in the potential release of defendants awaiting trial in certain cases where the agency lacked funds to provide counsel (*Bednar v. District Court of Kay County*, 2002 OK CR 41), the reversal of various cases in which necessary expert services could not be funded (*Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d. 53 (1985)), and would have either prevented death penalty cases from going forward or removed the death penalty as a sentencing option.

In order to avoid facing another possible constitutional crisis within the Oklahoma criminal justice system, the Legislature partially restored the agency's funding for FY 2018, appropriating \$15,960,193 for agency operations. Due to anticipated increases in agency caseloads due to changes to the court appointment process, as well as state-mandated salary increases, the Legislature raised the agency's FY 2019 appropriation to \$17,128,633.

# Chapter 2

## ◆ General Operations Program

### *EXECUTIVE DIVISION*

The Executive Division is charged with the responsibility of managing and operating the agency and implementing the Indigent Defense Act. By statute, the Executive Director is selected by and serves at the pleasure of the agency's governing Board.

To aid the Executive Director in the implementation of the Indigent Defense Act and agency operations, the Executive Division is staffed with administrative and finance personnel. OIDS provides legal representation through the services of staff members, and by contracting with private attorneys and expert service providers. At the end of the fiscal year, OIDS employed 107 full-time equivalent staff members at its main offices in Norman and its satellite offices in Clinton, Guymon, Mangum, Okmulgee and Sapulpa. Further, two employees of the Oklahoma Office of Management and Enterprise Services, who provide information technology services to the agency, were assigned to and worked in the agency's Norman Office.

In FY 2018, the agency entered into 158 new professional services contracts with private attorneys and expert service providers to furnish defense services in court-appointed cases, in addition to administering 84 contracts carried over from the previous fiscal year. The Executive Division services these contracts in addition to providing support services to its staff attorneys and investigators.

## **Statutory Duties**

- ◆ Budget
- ◆ Claims
- ◆ Contracts with private attorneys
- ◆ Improve State's criminal justice system
- ◆ Training for attorneys
- ◆ Defense representation
- ◆ Employ necessary personnel
- ◆ Set rates for attorneys who accept court appointments
- ◆ Set maximum caseloads
- ◆ Advise OIDS Board
- ◆ Conferences and training seminars
- ◆ Provide personnel to serve in advisory capacity to criminal defense attorneys
- ◆ Recommend legislation
- ◆ Track costs
- ◆ Adopt policies & procedures
- ◆ Support efforts to recoup costs of representation
- ◆ Provide for expert and investigator services

28<sup>th</sup> and 29<sup>th</sup> in Tulsa. It included presentations on such diverse topics as client mental health issues, DUIs and searches and seizures.

## ***EXECUTIVE CONFLICT CASELOAD***

The Executive Division started FY 2018 with one pending one capital conflict case contract with outside contract counsel, which was closed during the year. Another capital case conflict was opened and carried over into FY 2019.

## ***WEBSITE***

The agency's website provides information about OIDS, resources for public defenders and others interested in criminal law issues, answers to most frequently asked questions and notices of training opportunities. The website can be accessed at [www.oids.ok.gov](http://www.oids.ok.gov). The website contains many links, including those for legal research, unpublished Oklahoma Court of Criminal Appeals opinions and official agency forms used by OIDS contractors, experts and investigators.

## ***TRAINING PROGRAM***

The Indigent Defense Act requires OIDS to provide training for its staff members and private attorneys who are under contract with OIDS to accept court appointments.

OIDS co-sponsored the yearly Patrick A. Williams Criminal Defense Institute, held June

# Chapter 3

## ◆ Trial Program

The Trial Program consists of three Divisions which provide legal representation to agency clients who have been judicially determined to be unable to afford counsel to defend against criminal charges brought by the State in district court. OIDS is appointed by the district courts to represent these defendants.

The right to counsel at State expense was established by the United States Supreme Court in *Gideon v. Wainwright*, 371 U.S. 335 (1963). The right to expert assistance at State expense was established by the United States Supreme Court in *Ake v. Oklahoma*, 470 U.S. 68 (1985).

### ***Non-Capital Trial Division***

The Non-Capital Trial Division (NCTD) is responsible for defending indigent criminal defendants charged with offenses punishable by incarceration. Cases range from traffic offenses filed in state court to non-capital first degree murder. NCTD's area of responsibility spans 75 counties, with Oklahoma and Tulsa Counties being excluded. NCTD represents the agency's largest group of clients. In Fiscal Year 2018, NCTD received 39,486 new appointments. NCTD's total FY 2018 caseload, which includes

cases carried forward from previous fiscal years, equaled 60,317 active cases.

### ***Delivery of Non-Capital Trial Legal Services***

In accordance with the Indigent Defense Act, NCTD provides legal representation in the 75 counties for which it is responsible in four ways:

- (1) flat-rate fiscal year contracts with private attorneys;
- (2) satellite offices with salaried staff attorneys;
- (3) assignment of conflict cases to private attorneys who have agreed to accept such cases at established agency hourly rates, subject to statutory maximums set by the Indigent Defense Act; and
- (4) assignment of cases to one roving attorney.

In FY 2018, the Division's caseload was handled as follows:

- (1) Flat-rate Fiscal Year Contracts: In 55 counties, all NCTD representation was provided via such contracts. Since Fiscal Year 1998, OIDS has made a concerted effort to ensure that NCTD fiscal-year contracts are adequately staffed by giving weight, during the contracting process, to the number of law firms participating in an offer.
- (2) Staffed Satellite Offices: NCTD operated six satellite offices: Clinton, Guymon, Mangum, Norman (Cleveland County), Okmulgee and Sapulpa. These offices handled the entire caseload in 20 counties.

The Non-Capital Trial Division ended FY 2018 with 30 attorneys. During FY 2018, a satellite office staff attorney handled an average of 295 felony and youthful offender cases, 43 juvenile cases, and 115 misdemeanor, traffic and wildlife cases, or an average of 458 total cases.

The National Legal Aid and Defender Association (NLADA) has long established standards, endorsed by the Criminal Justice Section of the American Bar Association, that no one attorney shall handle in any given 12 month period more than 150 felony cases, OR more than 200 juvenile cases, OR more than 400 misdemeanor and traffic cases. Further, the NLADA standards assume each respective attorney operates in only ONE courthouse.

Applying the NLADA standards, in FY 2018, each NCTD satellite office staff attorney did the work of 2.5 attorneys.

Moreover, each worked in several district courts in multiple counties. In fact, the largest satellite office region covers seven courthouses and 7,544 square miles.

- (3) Conflict Counsel: Each year conflicts of interest arise in a certain number of county contract and satellite office cases and must be assigned to conflict-free counsel. During FY 2018, NCTD assigned 808 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 330 of those cases. Conflicts arising out of satellite offices account for 478 of those cases.
- (4) In FY 2010, NCTD received federal funding for one roving attorney. On December 1, 2009, NCTD hired an attorney to cover conflict cases and provide overload relief to NCTD attorneys in Western Oklahoma. Although the federal funding expired late in FY 2011, this attorney has remained in her position as the NCTD roving conflict attorney. This attorney is highly experienced and is assigned complicated cases. The roving attorney was assigned 33 new cases during FY 2018, most of which were serious and complicated felony cases. As FY 2018 ended, the roving attorney carried 102 open cases in counties throughout Oklahoma.

### ***Discussion***

The OIDS Board awards fiscal-year contracts to private attorneys to provide non-capital trial defense services on a county-by-county basis. In response to the agency's solicitations each year, private attorneys offer to provide criminal defense services in felony, misdemeanor, traffic and (delinquent) juvenile cases in one or more

counties for a flat annual rate. The contracting process is volatile, not only in terms of the number of offers, if any, received for any particular county, but also in terms of the cost of any contract awarded. As a result, the agency's ability to provide contract coverage in many counties, especially the smaller, more rural ones, is unpredictable. Historically, the agency has spent one-third to one-half of its total budget on these fiscal-year contracts to provide non-capital legal representation.

When the agency is unable to obtain a fiscal-year contract for indigent criminal defense work in a county, the Board has two options: (1) establish a satellite office with salaried attorneys to accept the System's appointments in the affected county under Section 1355.9 of the Indigent Defense Act or (2) assign the System's appointments in that county to private attorneys who have agreed to accept cases on a case-by-case basis at established agency rates (\$60/hr. for in-court legal services; \$40/hr. for out-of-court legal services) under Section 1355.8(D)(6) of the Indigent Defense Act.

In FY 2018, the Non-Capital Trial Division's satellite offices served the following counties:

***Norman Office***

- Cleveland County

***Clinton Office***

- Beckham
- Custer
- Dewey
- Ellis
- Roger Mills
- Washita
- Woodward

***Mangum Office***

- Greer
- Harmon

- Kiowa
- Jackson
- Tillman

***Okmulgee Office***

- Okfuskee
- Okmulgee

***Sapulpa Office***

- Creek (3 courthouses)

***Guymon Office***

- Beaver
- Cimarron
- Texas
- Harper

***Overall Caseload***

In FY 2018, the Non-Capital Trial Division received a total of 31,712 new county contract cases. County contractors discovered conflicts of interests in 358 of these cases. As a result, 344 of the conflict cases were assigned to contracted conflict counsel. Sixteen of the conflict cases would have otherwise been assigned to a satellite office for coverage, but were instead assigned to the roving attorney. Once the conflict cases were subtracted from all newly assigned cases, the county contractors retained a total of 31,354 new cases in FY 2018. The county contractors carried another 15,090 cases into FY 2018 from previous fiscal years. Ultimately, the total FY 2018 county contract workload equaled 46,444 cases.

The Non-Capital Trial Division satellite offices reported a total of 516 conflict of interest cases. Four hundred ninety-seven of these cases were assigned to contracted conflict counsel. Nineteen cases were assigned to the roving attorney. With conflict cases subtracted from all newly assigned cases, the satellite offices handled 7,258 new cases in FY 2018. The satellite offices carried another 5,137 cases into

FY 2018 from previous fiscal years. Ultimately, the total FY 2018 satellite office workload totaled 12,395 cases.

The number of new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the roving attorney, totaled 39,486. The 60,317 cases handled by the Non-Capital Trial Division during FY 2018 represent a 40% caseload increase since FY 2013 and a 57% increase since FY 2008.

***CAPITAL (DEATH PENALTY)  
TRIAL REPRESENTATION***

The OIDS Capital Trial Divisions are assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. The two Divisions combined represent clients throughout the State, with the exception of Oklahoma and Tulsa Counties. Both Divisions operate as separate law firms for conflict purposes. If one Division cannot accept a court appointment because of a conflict of interest arising from another court appointment, the case is generally assigned to the other. If neither Division can accept the court appointment, OIDS contracts with private counsel to represent the client under Sections 1355.7 and 1355.13 of the Indigent Defense Act.

***CAPITAL TRIAL DIVISION  
NORMAN***

The Norman Capital Trial Division represents defendants in cases filed in 46 counties and has primary responsibility for conflicts arising in the remaining counties regularly serviced by the Tulsa Capital Trial Division.

***TRIAL CASELOAD***

The Norman Capital Trial Division began Fiscal Year 2018 with 15 pending cases carried over from FY 2017. The Division received new appointments in seven cases during FY 2018.

By the end of the fiscal year, eleven of those cases were concluded and closed, and the remaining eleven cases were carried over into FY 2019. The total number of cases handled by the Division in FY 2018 was 22.

The Division continues to regularly maintain close contact with both the Tulsa Capital Trial Division and the Non-Capital Trial Division to ensure all indigent defendants facing first-degree murder charges receive representation quickly, and to efficiently resolve any conflict issues arising in multiple-defendant cases. The results set forth below reflect the outstanding work by division attorneys, investigators and support staff.

***FISCAL YEAR 2018 RESULTS***

*Jury Trials*

- ◇ One jury trial resulting in a sentence of death

*Guilty Pleas*

The Division represented three clients during the fiscal year who chose to resolve their cases by entering guilty pleas. The results of those pleas and dispositions are as follows:

- ◇ One first degree murder – life without possibility of parole sentence
- ◇ One first degree murder - life with possibility of parole sentence
- ◇ One second degree murder - sentence of 25 years

*Cases Concluded*

Result	No. of Cases
Death sentence	1
Life without parole	1
Life with parole	1
Number of years	1
Returned to NCT- no death penalty	1
Private counsel retained	1

Overflow cases- transferred to CTT 5

*Cases Concluded*

Total 11

Results No. of Cases

***CAPITAL TRIAL DIVISION  
TULSA***

Life With Parole	2
Life Without Parole	2
Determined to be Incompetent	1
Pled to Lesser Charge	3
Charge dismissed	2
Transferred to Other Divisions	7
Administrative Closure	1
<b>Total</b>	<b>18</b>

The Tulsa Capital Trial Division has the primary responsibility for defending capital and non-capital first degree murder cases in 29 counties in the Eastern-Northeastern area of the State. The Division is further assigned to conflict capital and non-capital first degree murder cases in the remaining counties served by OIDS.

***TRIAL CASELOAD***

Fiscal Year 2018 began with a carryover of 21 pending cases from the previous fiscal year. The Division opened 13 new cases during the fiscal year, bringing the total caseload for the year to 34 cases. The Division concluded 18 cases, carrying over 16 cases into FY 2019.

***FISCAL YEAR 2018 RESULTS***

*Jury and Bench Trials*

- ◇ One jury trial resulting in a life without parole sentence
- ◇ One bench trial resulted in a life sentence

*Guilty Pleas*

The Division represented five clients during FY 2018 where cases were resolved by a plea. The results of those pleas are as follows:

- ◇ Three reduced to lesser charge
- ◇ One pled as charged (first degree murder)

# Chapter

# 4

## ◆ Appellate Program

The Appellate Program consists of three Divisions which provide legal representation to agency clients who have a right under State law to appeal their convictions and sentences and who have been judicially determined to be unable to afford appellate counsel.

The right to an appeal in a criminal case is guaranteed by Article II, Section 6 of the Oklahoma Constitution, Section 1051 of Title 22 of the Oklahoma Statutes, and, in death penalty cases, Section 701.13 of Title 21 and Section 1089 of Title 22 of the Oklahoma Statutes. The right to counsel at State expense on direct appeal was established under the Federal Constitution by the United States Supreme Court in *Douglas v. California*, 372 U.S. 353 (1963). The right to counsel at State expense in capital post-conviction proceedings is found in Section 1089 of Title 22.

### ***GENERAL APPEALS DIVISION***

#### ***(NON-CAPITAL APPEALS)***

The General Appeals Division is appointed by the district courts of Oklahoma to represent clients on direct appeal from the trial court to the Oklahoma Court of Criminal Appeals in cases where the

defendant has been sentenced to a term of imprisonment up to life imprisonment without the possibility of parole.

The Division is appointed in 75 counties and in Oklahoma and Tulsa Counties when the public defenders have a conflict of interest or where the defendant was represented by retained counsel at trial and is judicially determined to be indigent on appeal. If the Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the case will be transferred to another division within the appellate program to provide representation.

The filing of General Appeals Division cases cannot be delayed because of the decision by the Tenth Circuit Court of Appeals in *Harris v. Champion*, 15 F.3d 1538 (10<sup>th</sup> Cir. 1994). The agency was a defendant in the *Harris* class action litigation, brought by agency clients who alleged prejudice from delays in filing their briefs on appeal. The Tenth Circuit held there is a rebuttable presumption of a Due Process violation if a non-capital appeal has not been decided within two years of judgment and sentence, making it mandatory for the appellate attorney to file a brief within the deadlines established by the Court of Criminal Appeals.

The General Appeals Division began Fiscal Year 2018 with 273 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 300 additional cases during the fiscal year. The Division closed 278 cases, ending the fiscal year with 295 open cases to be carried into FY 2019. During the course of the fiscal year, the Division handled 573 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 230 clients during FY 2018. Of those, seven involved clients convicted of homicide, including two clients convicted of first-degree murder, and appeals on behalf of two juveniles charged with first degree murder, regarding certification to stand trial as an adult or as a youthful offender. Division attorneys appeared for five oral arguments before the Court of Criminal Appeals in juvenile cases, filed 27 reply briefs, and filed two petitions for rehearing. A writ of mandamus also was filed to obtain transcripts at public expense after the Division was appointed to provide representation. Two evidentiary hearings were ordered by the appellate court and conducted on behalf of Division clients regarding efforts to supplement the record with additional evidence.

Of the 278 Division cases closed during the fiscal year, 192 were due to the Court of Criminal Appeals reaching a final decision in the case. In 22 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. Seventeen cases were closed by the Division when they were transferred within the agency for briefing by other by other Divisions. Forty-three appeals were closed after the appeal was dismissed, either at the client's request, because the Court of Criminal Appeals lacked jurisdiction to hear them, or the Court determined the cause moot. Fifteen cases were closed because the System was not properly appointed to handle them.

Seven cases were closed because outside counsel was retained by the client. Additionally, four appeals were closed due to consolidation with other cases. No cases were contracted to outside counsel.

Three hundred new cases were received from 53 of the State's 77 counties. Almost 22% of the incoming caseload, or 65 cases, arose from Oklahoma and Tulsa counties, and 6 of the 11 homicide cases received in the Division from across the state arose from those two counties. In 210 of the cases received in FY 2018, counsel at trial level was court-appointed, while 90 cases were handled at trial by privately-retained counsel or by the client *pro se*.

#### ***SUMMARY OF CASES CLOSED***

<i>Reason for Closing</i>	<i># of Cases</i>	<i>%</i>
Decision of Court of Criminal Appeals	192	69
Rejected or dismissed for lack of jurisdiction (dismissed at client's request)	43	16
OIDS not properly appointed/appeal out of time	15	5
Outside counsel retained by client	7	3
Transferred to another division	17	6
Other (Consolidated)	4	1
Total	278	100%

***ANALYSIS OF CASES RECEIVED***

<i>Types of Appeals Lodged</i>	<i># of Cases</i>	<i>%</i>
Direct appeals (felony and misdemeanors)	152	51
Revocation/accelerations	86	28
Guilty plea appeals	50	17
Other (juvenile, responses to state appeals)	12	4
Total	300	100%

<i>Types of Crimes Appealed</i>	<i># of Cases</i>	<i>%</i>
Violent offenses	125	42
Sex offenses	68	23
Drug offenses	79	26
Property crimes	28	9
Total	300	100%

***CAPITAL (DEATH PENALTY) APPEALS***

Although traditionally the Homicide Direct Appeals Division’s primary responsibility was to represent capital defendants in their direct appeal, the Division is also now responsible for the representation of indigent defendants who have been convicted of any form of homicide in Oklahoma District Courts in their appeals to the Oklahoma Court of Criminal Appeals. This includes defendants who have been convicted at jury trials, bench trials, and after entering pleas of guilty. A direct appeal in a capital case also includes filing a petition for a writ of certiorari to the United States Supreme Court if the case is affirmed by the

Oklahoma Criminal Court of Appeals.

The Homicide Direct Appeals Division is subject to appointment by the district courts in 75 counties and in Oklahoma and Tulsa Counties when the public defender has a conflict of interest or where the defendant was represented by retained counsel at trial but is judicially determined to be indigent on appeal.

The Capital Post-Conviction Division is appointed to represent all death-sentenced defendants in post-conviction proceedings. By statute, the Capital Post-Conviction Division must represent all death-sentenced defendants, including those who were represented by the Oklahoma County or Tulsa County public defenders on direct appeal. Legal services are provided by salaried attorneys and investigators.

Since November 1995, post-conviction applications in a death penalty case are filed in the Court of Criminal Appeals while the capital direct appeal case is still pending. Before the statutory changes, post-conviction applications in a death penalty case were treated like non-capital post-conviction cases and filed in district court after the capital direct appeal case was decided by the Oklahoma Criminal Court of Appeals.

***HOMICIDE DIRECT APPEALS DIVISION***

***CASELOAD***

The Homicide Direct Appeals Division began Fiscal Year 2018 with four pending capital cases, 48 cases in which the client was convicted of some form of homicide, and six

non-capital felony cases. During the fiscal year, one capital case, 49 new non-capital homicide cases and six non-capital felony cases were opened. By the end of the year, two capital cases, 42 non-capital homicide cases and five non-capital felony cases were closed, leaving the Division with 65 active cases, consisting of three capital cases, 55 non-capital homicide cases and seven non-capital felony cases.

**STATEWIDE DISTRIBUTION**

Following is a breakdown of the distribution of Division capital cases among the various counties:

**County**

Cleveland	1
LeFlore	1
McClain	1
Oklahoma	1
Stephens	1

The statewide distribution of the Division’s non-capital cases is as follows:

**County**

Alfalfa	1
Beckham	1
Blaine	1
Caddo	1
Carter	4
Cleveland	5
Comanche	5
Creek	3
Delaware	2
Garfield	3
Garvin	1
Grady	1
Greer	1
Haskell	1
Jackson	1
Kay	1
Leflore	1
Lincoln	2
McClain	3

McIntosh	2
McCurtain	2
Muskogee	3
Okfuskee	1
Oklahoma	13
Payne	4
Pontotoc	2
Pottowatomie	4
Rogers	1
Seminole	2
Tulsa	33
Wagoner	3
Washington	1

**DISPOSITION OF CASES**

During FY 2018, one capital case was reversed and remanded for a new sentencing hearing by the Oklahoma Court of Criminal Appeals. The United States Supreme Court denied a petition for writ of certiorari in one capital case. Twenty-two non-capital homicide cases and three non-murder cases were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed. One non-capital homicide case was reversed and remanded for a new trial by the Oklahoma Court of Criminal Appeals. The Court granted certiorari in one non-capital homicide case and modified the judgment and sentence to give the client the benefit of the original negotiated plea. Fifteen non-capital homicide cases and one non-homicide case were transferred to other divisions. One non-capital homicide case was closed after the client retained private counsel. Two non-capital homicide cases and one non-homicide case were closed after the clients elected to dismiss their appeals.

**CAPITAL POST-CONVICTION DIVISION**

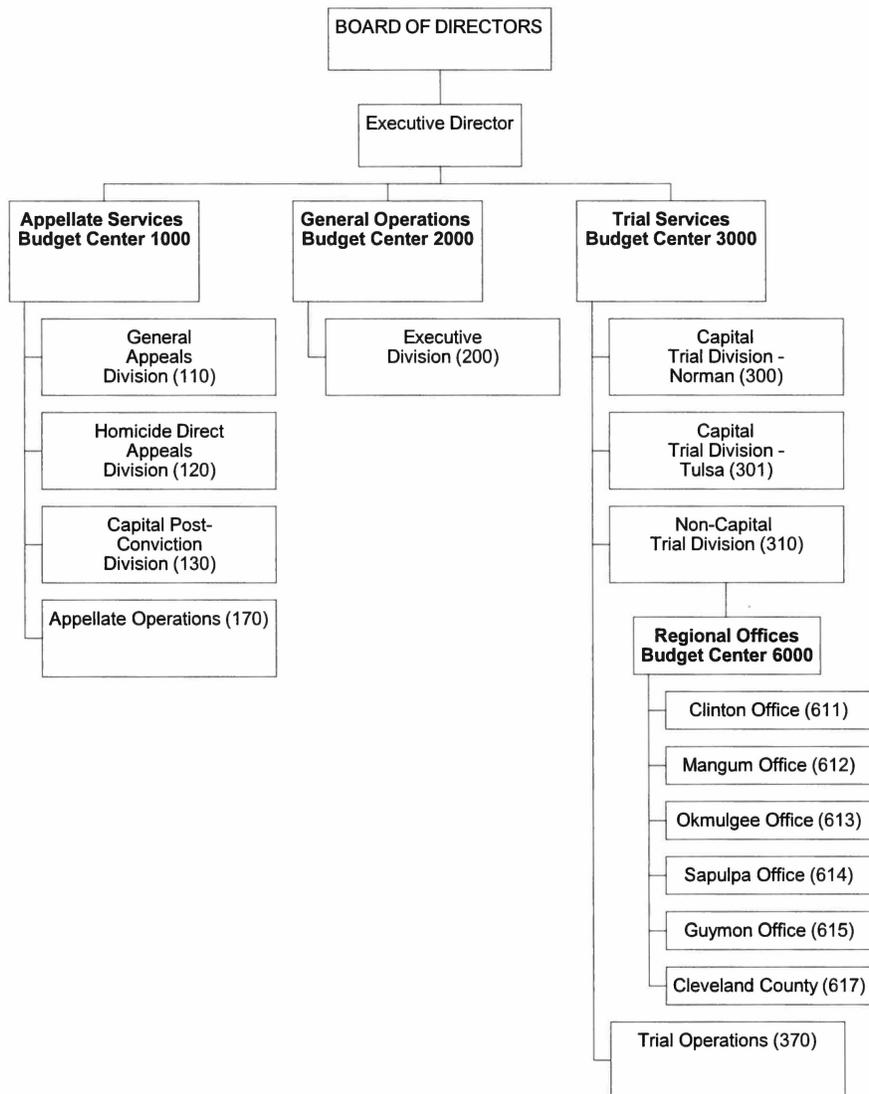
The primary mission of the Division continues to be representing clients in capital cases. This representation involves the investigation,

preparation, and filing of an original application for post conviction relief and related motions. The Division strives to provide a thorough review of each case to ensure the clients have the best chance of obtaining relief when the cases move from state court into the federal system. In addition, the Division also handles conflict and overflow cases from the General Appeals Division and the Homicide Direct Appeals Division. When workload allows, the Division has been available to serve as co-counsel in overflow or conflict non-capital homicide cases from the capital trial divisions.

The Capital Post Conviction Division began Fiscal Year 2018 with 26 active cases, including five capital post conviction cases, one capital direct appeal, and 20 non-capital direct appeal cases. During FY 2018, the Division accepted four capital post conviction cases and 23 non-capital direct appeals. The Division closed two capital post conviction cases and 14 non-capital appeals in FY 2018. One of the Division's capital cases was dismissed after receiving a resentencing from the Oklahoma Court of Criminal Appeals on appeal, and the other was transferred to federal habeas counsel after the client was denied relief in state court. As a result, the Division opened FY 2019 with a total of 37 cases, comprised of seven capital post conviction cases, one capital direct appeal, and 29 non-capital direct appeal cases.

# Oklahoma Indigent Defense System

## Organization Chart



**NOTE: Only those departments that have FTE are presented.**

**OKLAHOMA INDIGENT DEFENSE SYSTEM**  
**Non-Capital Trial Division**  
**Actual FY-2018 Workload**  
**July 1, 2017 through June 30, 2018**

**SUMMARY OF ALL CATEGORIES OF APPOINTMENTS**

TYPE OF APPOINTMENT		FEL	JUV	MISD	TRAF	WL	YO	ALL
FY-2018 Contract <i>LESS</i> Conflicts and Rover Cases		20,036	1,382	9,443	447	6	40	31,354
Plus Contract Carry-Over from Prior Fiscal Years		10,758	606	3,490	223	2	11	15,090
<b>Total Contract Workload</b>		<b>30,794</b>	<b>1,988</b>	<b>12,933</b>	<b>670</b>	<b>8</b>	<b>51</b>	<b>46,444</b>
2018 Satellite Office <i>LESS</i> Conflicts and Rover Cases		4,333	487	2,285	128	0	25	7,258
Plus Satellite Office Carry-Over from Prior Fiscal Years		3,408	638	1,059	21	0	11	5,137
<b>Total Satellite Office Workload</b>		<b>7,741</b>	<b>1,125</b>	<b>3,344</b>	<b>149</b>	<b>0</b>	<b>36</b>	<b>12,395</b>
FY-2018 Conflicts	Contracts	287	2	53	1	0	1	344
	Satellite Offices	355	43	91	7	0	1	497
Conflicts Carryover from Prior Fiscal Years	Contract Counties	178	3	45	1	0	0	227
	Satellite Office Counties	254	16	31	6	0	1	308
FY-2018 Rover Cases	Contract Counties	12	1	1	0	0	0	14
	Satellite Office Counties	17	0	2	0	0	0	19
Rover Cases Carryover from Prior Fiscal Years		48	2	19	0	0	0	69
<b>Total Conflicts and Rover Cases Workload</b>		<b>1,151</b>	<b>67</b>	<b>242</b>	<b>15</b>	<b>0</b>	<b>3</b>	<b>1,478</b>
<b>TOTAL FY-2018 NCT Workload</b>		<b>39,686</b>	<b>3,180</b>	<b>16,519</b>	<b>834</b>	<b>8</b>	<b>90</b>	<b>60,317</b>