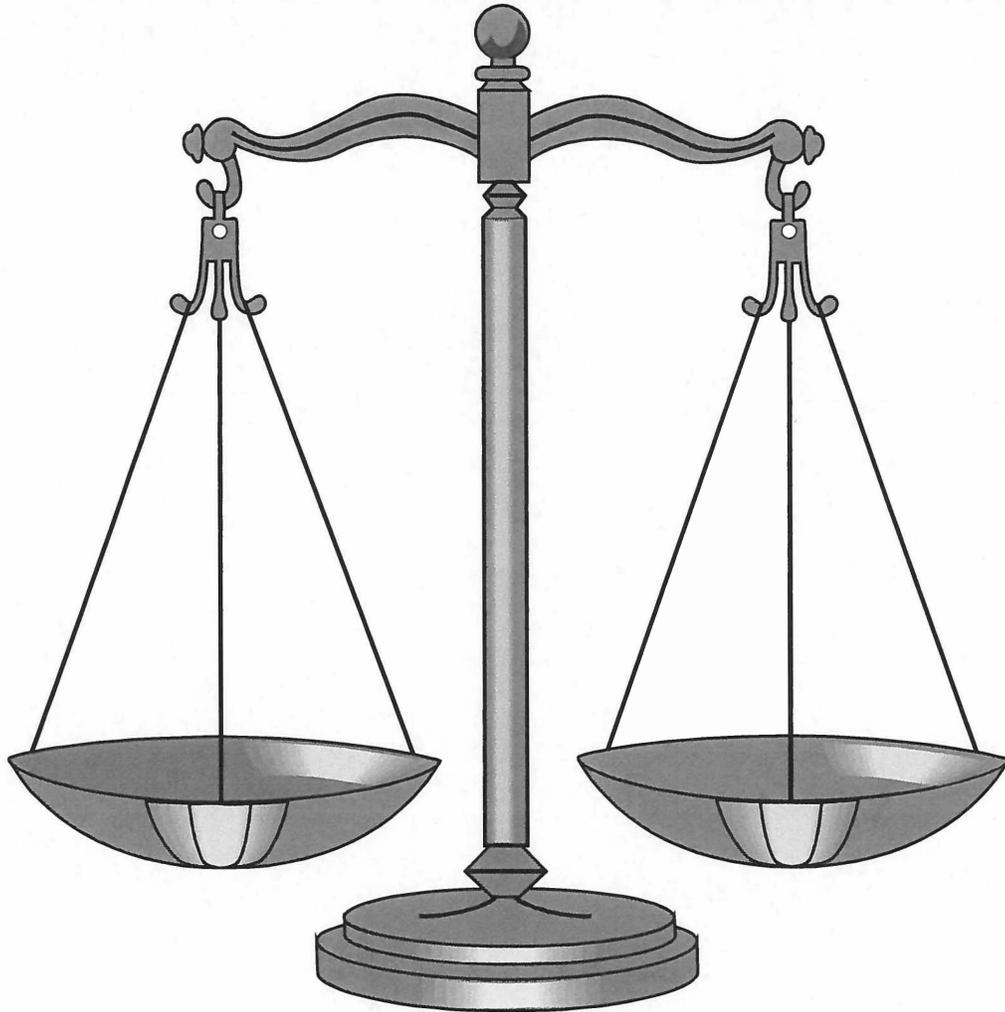


# OKLAHOMA

## INDIGENT DEFENSE SYSTEM



## 2019 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*



**J. KEVIN STITT**  
GOVERNOR

**CHIP KEATING**  
SECRETARY OF PUBLIC SAFETY

CRAIG SUTTER  
Executive Director

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CRAIG SUTTER  
EXECUTIVE DIRECTOR



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STATE OF OKLAHOMA  
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TO THE HONORABLE J. KEVIN STITT  
HONORABLE GREG TREAT  
HONORABLE CHARLES MCCALL  
HONORABLE NOMA D. GURICH  
HONORABLE DAVID B. LEWIS

Enclosed is a report concerning the duties, activities and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2019, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

As we move forward in 2020, 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 "CS", written over a faint, larger signature.

Craig Sutter  
Executive Director

September 23, 2019

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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 consists of 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 in 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 64,897 court appointments in Fiscal Year 2019. The numerical breakdown by division is as follows:

NON-CAPITAL TRIAL	
<i>Staff</i>	13,665
<i>County Contracts</i>	49,001
<i>Conflicts</i>	1,467
CAPITAL TRIAL – NORMAN	14
CAPITAL TRIAL – TULSA	23
GENERAL APPEALS	553
HOMICIDE DIRECT APPEALS	110
CAPITAL POST CONVICTION	61
EXECUTIVE DIVISION CONFLICTS	3
<i>TOTAL</i>	<hr/> 64,897

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. The total agency caseload number of 64,897 for Fiscal Year 2019 represents an increase of 6% over its caseload from the previous fiscal year, 34% since Fiscal Year 2014, and 65% since Fiscal Year 2009.

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.

The agency began Fiscal Year 2019 with an appropriation increase of \$1,274,307. In addition to implementing mandated state employee raises, this enabled the agency to increase the cost-per-case averages paid to private fiscal year county contract attorneys, thereby ensuring continued constitutionally effective representation of System clients. The increase further allowed the System to absorb a caseload increase resulting from statutory changes to eligibility requirements for appointment of System attorneys in criminal cases.

Going forward into Fiscal Year 2020, the agency received an increase in its appropriation of \$1,109,245. This enabled the System to increase its non-capital conflict contract hourly rate from \$40 out-of-court/\$60 in-court to \$60 out-of-court/\$80 in-court. The increase further enabled the agency to increase its capital conflict contract hourly rate for lead counsel from \$60 out-of-court/\$80 in-court to \$80 out-of-court/\$100 in-court, and the hourly rate for

co-counsel from \$50 out-of-court/\$70 in-court to \$60 out-of-court/\$80 in-court. The appropriation increase further permitted the agency to increase staff attorney salaries to achieve salary parity with their prosecutor counterparts.

# 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 Fiscal Year 2019, the agency entered into 153 new professional services contracts with private attorneys and expert service providers to furnish defense services in court-appointed cases, in addition to administering 88 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

on such diverse topics as jury selection, search and seizure, and cross-examination.

### ***EXECUTIVE CONFLICT CASELOAD***

During Fiscal Year 2019, the Executive Division maintained one pending capital conflict case carried over from the previous fiscal year, and opened two new capital conflict cases. All three cases were carried over into Fiscal Year 2020.

### ***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 27<sup>th</sup> and 28<sup>th</sup> in Tulsa. It included presentations

# 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 2019, NCTD received 40,450 new appointments. NCTD's total FY-2019 caseload, which includes cases carried forward from previous fiscal years, equaled 64,133 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 Fiscal Year 2019, 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 Fiscal Year 2019 (July 1, 2018 – June 30, 2019) with 27 attorneys. During Fiscal Year 2019, a satellite office staff attorney handled an average of 307 felony and youthful offender cases, 40 juvenile cases, and 156 misdemeanor, traffic and wildlife cases, or an average of 503 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 400 misdemeanor and traffic cases. Further, the NLADA standards assume each respective attorney operates in only ONE courthouse.

Applying the NLADA standards, in Fiscal Year 2019, each NCTD satellite office staff attorney did the work of 2.61 attorneys. Moreover, most attorneys worked 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 Fiscal Year 2019, NCTD assigned 972 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 317 of those cases. Conflicts arising out of satellite offices account for 655 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 45 new cases during FY-2019, most of which were serious and complicated felony cases. As FY-2019 ended, the roving attorney carried 80 open cases in counties throughout Oklahoma. A second roving attorney was added during FY-2019 whose responsibilities include assisting other counsel in cases involving mental health issues. This attorney participates with assigned counsel in trial strategy formulation, pre-trial litigation and trial advocacy. This roving attorney was assigned 32 cases in FY-2019.

## *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) assigned 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 under Section 1355.8(D)(6) of the Indigent Defense Act.

In Fiscal Year 2019, 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 (2 courthouses)

#### ***GUYMON OFFICE***

- Beaver
- Cimarron
- Texas
- Harper

#### ***OVERALL CASELOAD***

In Fiscal Year 2019, the Non-Capital Trial Division received a total of 31,924 new county contract cases. County contractors discovered conflicts of interests in 349 of these cases. As a result, 317 of the conflict cases were assigned to contracted conflict counsel. Thirty-two 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 and roving attorney cases were subtracted from all newly assigned cases, the county contractors retained a total of 31,575 new cases in Fiscal Year 2019. The county contractors carried another 17,426 cases into FY-2019 from previous fiscal years. Ultimately, the total FY-2019 county contract workload equaled 49,001 cases.

The Non-Capital Trial Division satellite offices reported a total of 668 conflict of interest cases. 655 of these cases were assigned to contracted conflict counsel. Thirteen cases were assigned to the roving attorneys. With conflict and roving attorney cases subtracted from all newly assigned cases, the satellite offices handled 7,858 new cases in Fiscal Year 2019. The satellite offices carried another 5,727 cases into FY-2019 from previous fiscal years. Ultimately, the total FY-2019 satellite office workload totaled 13,585 cases.

The number of new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the roving attorneys, totaled 40,450.

The 64,133 cases handled by the Non-Capital Trial Division during Fiscal Year 2019 represent a 6% increase from the previous fiscal year, a 35% increase since Fiscal Year 2014, and a 66% increase since Fiscal Year 2009.

### ***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 capital cases filed in 46 counties and has primary responsibility for conflicts arising in the remaining counties regularly serviced by the Capital Trial Division – Tulsa.

In Fiscal Year 2019 the Norman Capital Trial Division carried over 11 cases from the previous fiscal year. The Division opened three cases during Fiscal Year 2019, bringing the total number of cases litigated during the fiscal 14. During the fiscal year, two cases were tried to a jury. One jury trial resulted in a conviction with

a death sentence imposed. The other jury trial resulted in a sentence of life without parole on one count and a sentence of life on the other count.

### ***CAPITAL TRIAL DIVISION - TULSA***

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 half of the State. The Division is further assigned to conflict capital murder cases in the remaining counties served by OIDS.

Fiscal Year 2019 began with 16 pending cases carried over from the previous fiscal year. The Division opened seven new cases, bringing the total caseload for the year to 23 cases. The Division concluded 11 cases, carrying over 12 cases into Fiscal Year 2020.

During the fiscal year, the Division resolved five cases by entering pleas as charged, resulting in sentences of life without parole. One case was closed due the charge being dismissed, three cases were transferred to another division, and two were administrative closures.

# 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 2019 with 295 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 258 additional cases during the fiscal year. The Division closed 290 cases, ending the fiscal year with 263 open

cases to be carried into Fiscal Year 2020. During the course of the fiscal year, the Division handled 553 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 213 clients during FY-2019. Of those, four involved clients convicted of homicide, including three clients convicted of first-degree murder. In addition, Division attorneys appeared for seven oral arguments before the Court of Criminal Appeals in fast track cases, and filed 25 reply briefs and one petition for rehearing.

The Division closed 290 cases during the year. Most of the cases closed, 204, were closed because a final decision was reached by the Court of Criminal Appeals. In 25 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. Nineteen cases were closed by the Division when they were transferred within the agency to the OIDS Capital Direct Appeals Division for briefing. One case was closed because it was contracted to outside counsel. Forty-five appeals were closed after the appeal was dismissed, either at the client's request or because the Court of Criminal Appeals lacked jurisdiction to hear them; six cases were closed because the System was not properly appointed to handle them; and five cases were closed because outside counsel was retained by the client. Additionally, 10 appeals were closed due to consolidation with other cases.

New cases totaling 258 were received from 50 of the State's 77 counties. Almost 19% of the incoming caseload, or 49 cases, arose from Oklahoma and Tulsa counties, and one of the five first-degree murder cases received from across the state arose from those two counties. In 174 of the cases received in FY-2019, counsel at trial level was court-appointed, and 84 cases were handled at trial by privately-retained counsel or by the client pro se.

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

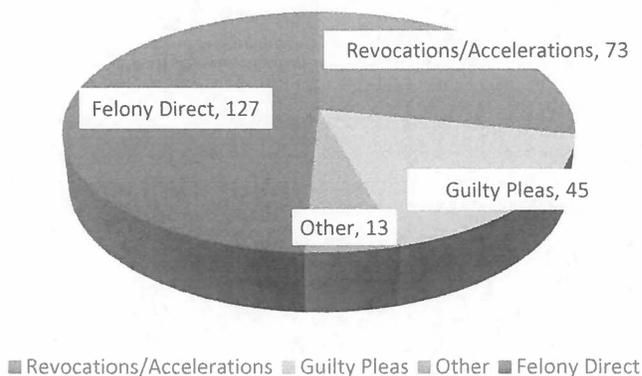
<i>Reason for Closing</i>	<i># of Cases</i>	<i>%</i>
Decision of Court of Criminal Appeals	204	70
Contracted to Outside Counsel (Conflict & Backlog)	1	
Rejected or Dismissed for Lack of Jurisdiction (Dismissed at Client's request)	45	16
OIDS not properly appointed/appeal out of time	6	2
Outside Counsel Retained by Client	5	2
Transferred to another Division	19	7
Other (Consolidated)	10	3
<b>Total</b>	<b>290</b>	<b>100%</b>

### ***ANALYSIS OF CASES RECEIVED***

<i>Types of Appeals Lodged</i>	<i># of Cases</i>	<i>%</i>
Direct Appeals (Felony and Misdemeanors)	127	49
Revocation/Accelerations	73	28
Guilty Plea Appeals	45	18
Other (Juvenile, Responses to State Appeals)	13	5
<b>Total</b>	<b>258</b>	<b>100%</b>

<i>Types of Crimes Appealed</i>	<i># of Cases</i>	<i>%</i>
Violent Offenses	91	35
Sex Offenses	65	25
Drug Offenses	56	22
Property Crimes	39	15
Other (i.e., DUI, escape, state appeals or unknown)	7	3
<b>Total</b>	<b>258</b>	<b>100%</b>

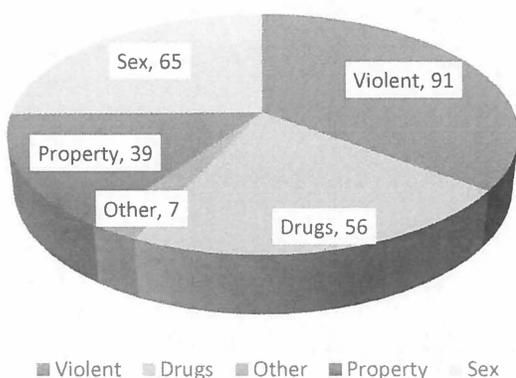
### Types of Appeals



The graph at left demonstrates the types of appeals received by the General Appeals Division. Except for juvenile appeals (included in the "other" category), appeals of everything from burglary to first degree murder involve opening briefs of up to 50 pages in length. Other appeals involve juvenile and responses to State appeals of adverse rulings.

---

### Types of Offenses Appealed



The majority of the convictions in the cases appealed by the General Appeals Division are violent crimes, including all degrees of murder and manslaughter, child abuse, assaults, robberies, kidnapping and first degree arson. The subcategory of sexual offenses includes such violent offenses as rape and molestation, as well as related crimes such as failure to register as a sex offender. Drug offenses are the second leading category of offenses appealed.

Cases Received By County  
FY-2019

Alfalfa	1	Grady	4	Okfuskee	9
Beckham	3	Haskell	2	Oklahoma	26
Blaine	1	Jackson	7	Okmulgee	6
Bryan	5	Jefferson	5	Ottawa	5
Caddo	4	Johnston	3	Payne	3
Canadian	1	Kay	7	Pontotoc	5
Carter	7	Kingfisher	2	Pottawatomie	5
Cherokee	5	LeFlore	2	Rogers	3
Choctaw	2	Lincoln	6	Seminole	5
Cleveland	8	Logan	1	Sequoyah	1
Comanche	12	McClain	1	Stephens	7
Craig	1	McCurtain	4	Tulsa	23
Creek	4	McIntosh	5	Wagoner	1
Custer	6	Marshall	4	Washington	1
Delaware	6	Mayes	4	Washita	2
Garfield	9	Muskogee	15	Woodward	3
Garvin	3	Nowata	3	<b>TOTAL</b>	<b>258</b>

## *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 2019 with three pending capital cases, 54 cases in which the client was convicted of some form of homicide, and eight non-capital felony cases. During the fiscal year, 42 non-capital homicide cases and three non-capital felony cases were opened. No capital cases were received or closed in Fiscal Year 2019. By the end of the year, 46 non-capital homicide cases and nine non-capital felony cases were closed, leaving the Division with 55 active cases, consisting of three capital cases, 50 non-capital homicide cases and two non-capital felony cases.

## ***STATEWIDE DISTRIBUTION***

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

<b><i>County</i></b>	
Cleveland	1
LeFlore	1
Stephens	1

The statewide distribution of the non-capital cases handled by the Division is as follows:

<b><i>County</i></b>			
Alfalfa	1	Lincoln	2
Beckham	1	McClain	2
Blaine	1	McIntosh	1
Caddo	1	McCurtain	6
Carter	2	Muskogee	2
Cleveland	4	Okfuskee	2
Comanche	7	Oklahoma	14
Craig	1	Ottawa	1
Creek	4	Payne	3
Delaware	2	Pittsburg	1
Garfield	2	Pontotoc	1
Garvin	1	Pottawatomie	2
Greer	1	Rogers	4
Hughes	1	Seminole	2
Jackson	2	Tulsa	27
Kingfisher	1	Wagoner	1
Kiowa	2	Washington	1
LeFlore	1		

## ***DISPOSITION OF CASES***

During Fiscal Year 2019, 31 non-capital homicide cases and three non-murder cases were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed. One non-murder certiorari appeal was reversed and remanded with instructions to dismiss by the Court. The Court granted certiorari and ordered new evidentiary hearings on the motions to withdraw in two non-capital homicide guilty plea appeals. The Court also reversed and dismissed one revocation non-

murder appeal. Thirteen non-capital homicide cases were transferred to other divisions. One non-capital homicide case was closed after it was discovered the Oklahoma County Public Defender's Office had been appointed to perfect the appeal. Three non-capital homicide cases were closed after the clients elected to dismiss their appeals.

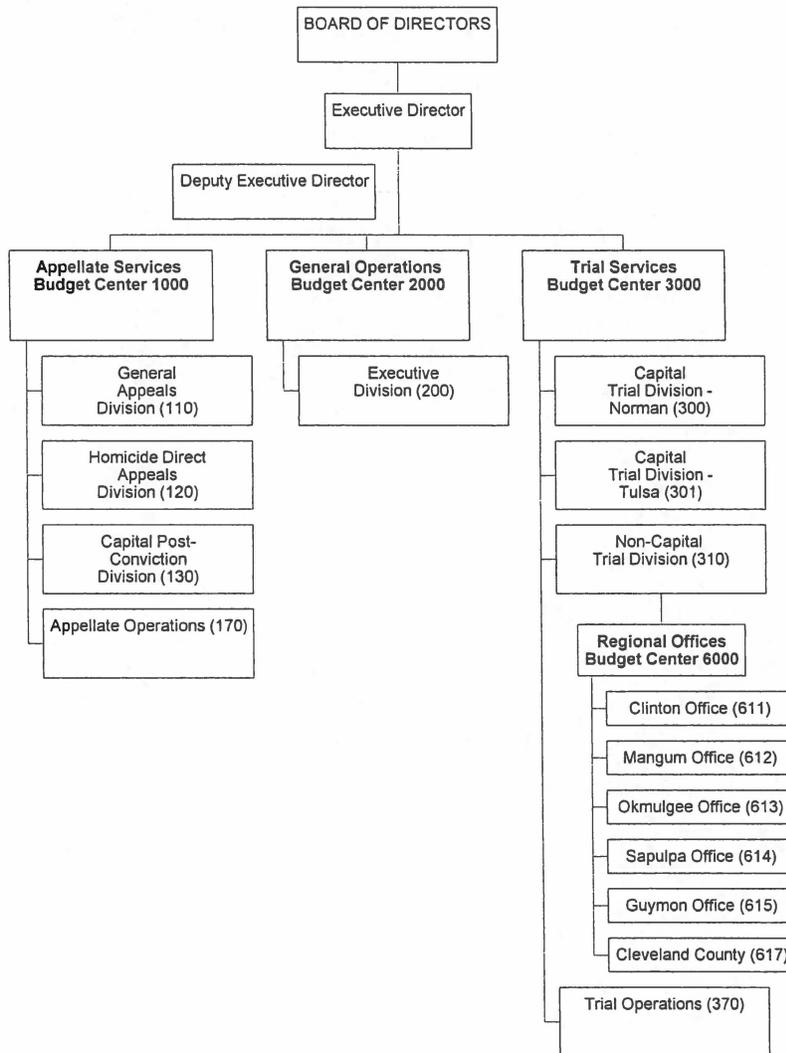
## ***CAPITAL POST-CONVICTION DIVISION***

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 2019 with 37 active cases, including seven capital post conviction cases, one capital direct appeal, and 29 non-capital direct appeal cases. During Fiscal Year 2019, the Division accepted 24 non-capital direct appeals. The Division closed two capital post conviction cases and 24 non-capital appeals in Fiscal Year 2019. Both of the Division's closed capital post conviction cases were transferred to federal habeas counsel after the client was denied relief in the Oklahoma Court of Criminal Appeals. As a result, the Division opened Fiscal Year 2020 with a total of 35 cases, comprised of five 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.**

September 11, 2019

**OKLAHOMA INDIGENT DEFENSE SYSTEM**

**Non-Capital Trial Division**

**Actual FY-2019 Workload**

**July 1, 2018 through June 30, 2019**

**SUMMARY OF ALL CATEGORIES OF APPOINTMENTS**

TYPE OF APPOINTMENT		FEL	JUV	MISD	TRAF	WL	YO	ALL
FY-2019 Contract <i>LESS</i> Conflicts and Rover Cases		18,472	1,296	11,228	536	4	39	31,575
Plus Contract Carry-Over from Prior Fiscal Years		12,075	690	4,408	233	8	12	17,426
<b>Total Contract Workload</b>		<b>30,547</b>	<b>1,986</b>	<b>15,636</b>	<b>769</b>	<b>12</b>	<b>51</b>	<b>49,001</b>
2019 Satellite Office <i>LESS</i> Conflicts and Rover Cases		4,582	383	2,749	134	0	10	7,858
Plus Satellite Office Carry-Over from Prior Fiscal Years		3,677	696	1,311	13	0	30	5,727
<b>Total Satellite Office Workload</b>		<b>8,259</b>	<b>1,079</b>	<b>4,060</b>	<b>147</b>	<b>0</b>	<b>40</b>	<b>13,585</b>
FY-2019 Conflicts	Contracts	247	6	62	0	0	2	317
	Satellite Offices	495	48	104	4	0	4	655
Conflicts Carryover from Prior Fiscal Years	Contract Counties	158	3	45	1	0	0	207
	Satellite Office Counties	240	17	25	5	0	1	288
FY-2019 Rover Cases	Contract Counties	30	0	2	0	0	0	32
	Satellite Office Counties	12	1	0	0	0	0	13
Rover Cases Carryover from Prior Fiscal Years		33	1	1	0	0	0	35
<b>Total Conflicts and Rover Cases Workload</b>		<b>1,215</b>	<b>76</b>	<b>239</b>	<b>10</b>	<b>0</b>	<b>7</b>	<b>1,547</b>
<b>TOTAL FY-2019 NCT Workload</b>		<b>40,021</b>	<b>3,141</b>	<b>19,935</b>	<b>926</b>	<b>12</b>	<b>98</b>	<b>64,133</b>