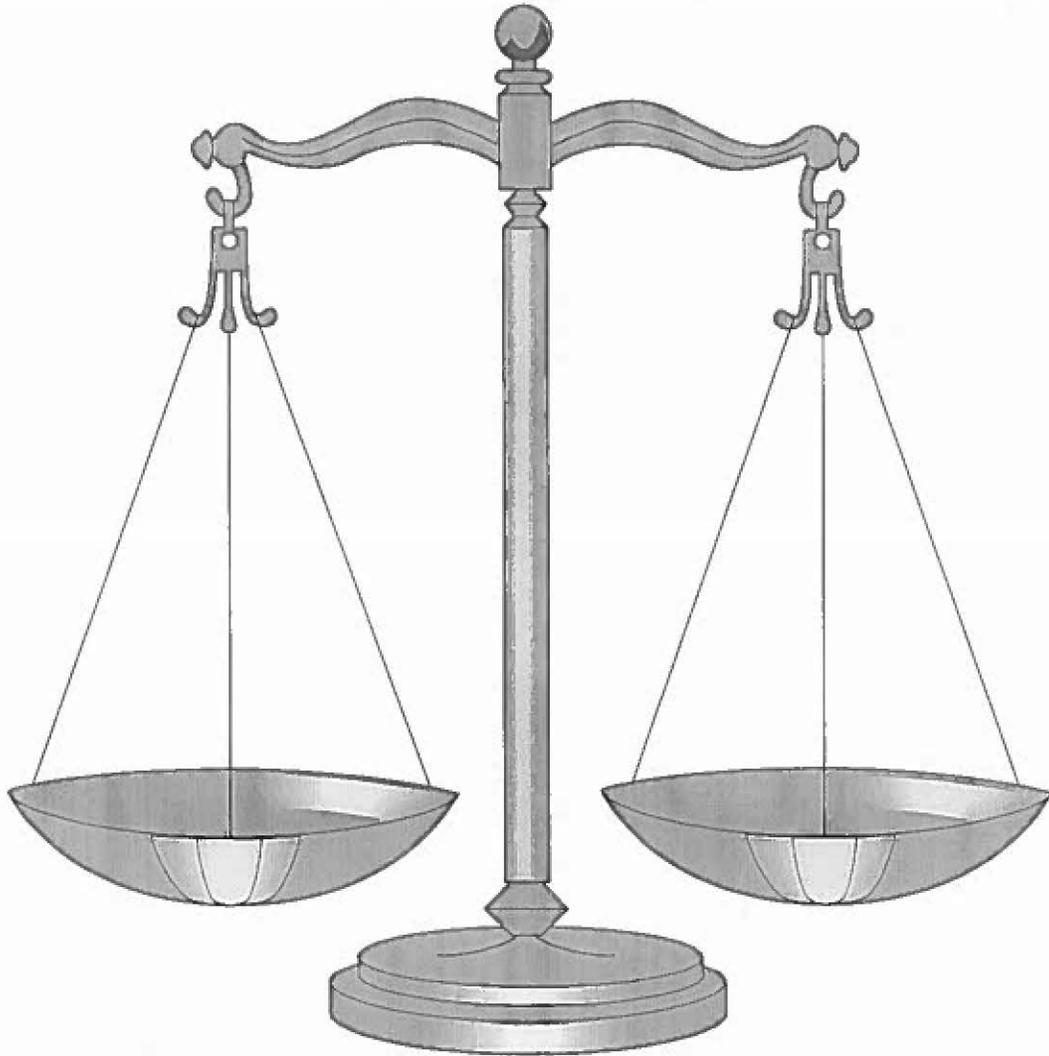


OKLAHOMA

INDIGENT DEFENSE SYSTEM



2017 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

Indigent Defense System



MARY FALLIN
GOVERNOR

MICHAEL C. THOMPSON
CABINET SECRETARY
SAFETY AND SECURITY

CRAIG SUTTER
Executive Director

This publication is printed and issued by the Oklahoma Indigent Defense System as authorized by 74 O.S. §§ 3103-3106.1. Twenty (20) copies have been prepared and distributed at a cost of \$39.20. Copies have been deposited with the Publications clearinghouse of the Oklahoma Department of Libraries.



CRAIG SUTTER
EXECUTIVE DIRECTOR

MARY FALLIN
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

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September 22, 2017

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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, 2017, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

As we move forward in 2018, 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 large, faint watermark of the signature.

Craig Sutter
Executive Director

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(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 60,747 court appointments in Fiscal Year 2017. The numerical breakdown by division is as follows:

NON-CAPITAL TRIAL	
<i>Staff</i>	12,633
<i>County Contracts</i>	45,844
<i>Conflicts</i>	1,509
CAPITAL TRIAL - NORMAN	22
CAPITAL TRIAL - TULSA	36
GENERAL APPEALS	557
HOMICIDE DIRECT APPEALS	99
CAPITAL POST CONVICTION	46
EXECUTIVE DIVISION CONFLICTS	<u>1</u>
<i>TOTAL</i>	60,747

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 60,747 for Fiscal Year 2017 represents an increase of 5% over its caseload from the previous fiscal year, 39% since Fiscal Year 2012, and 58% since Fiscal Year 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, has faced substantial funding reductions over the previous two fiscal years. The agency began Fiscal Year 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 Fiscal Year 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 Fiscal Year 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 Fiscal Year 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 Fiscal Year 2018, appropriating \$15,960,193 to OIDS to begin the fiscal year.

The agency's Executive Director, Joe Robertson, retired on February 28, 2017, after serving in that capacity since October 2008. The agency's Deputy Executive Director, Craig Sutter, was appointed by the Board to serve as the agency's new Executive Director, effective March 1, 2017.

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, three 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 2017, the agency entered into 137 new professional services contracts with private attorneys and expert service providers to furnish defense services in court-appointed cases, in addition to administering 113 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

29th and 30th in Midwest City. It included presentations on such diverse topics as jury selection, forensic interviews and death penalty defense.

EXECUTIVE CONFLICT CASELOAD

During Fiscal Year 2017, the Executive Division maintained one capital conflict case contract with outside contract counsel. That case was carried over into Fiscal Year 2018.

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. 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 2017, NCTD received 39,533 new appointments. NCTD's total FY-2017 caseload,

which includes cases carried forward from previous fiscal years, equaled 59,986 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 2017, 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 2017 (July 1, 2016 - June 30, 2017) with 29 attorneys. During Fiscal Year 2017, a satellite office staff attorney handled an average of 297 felony and youthful offender cases, 38 juvenile cases, and 100 misdemeanor, traffic and wildlife cases, or an average of 435 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 Fiscal Year 2017, each NCTD satellite office staff attorney did the work of 2.6 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 Fiscal Year 2017, NCTD assigned 886 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 377 of those cases. Conflicts arising out of satellite offices account for 509 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 carried 92 cases during the fiscal year, most of which were serious felony cases.

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 Fiscal Year 2017, 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 Fiscal Year 2017, the Non-Capital Trial Division received a total of 30,810 new county contract cases. County contractors discovered conflicts of interests in 377 of these cases. As a result, 361 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 30,433 new cases in Fiscal Year 2017. The county contractors carried another 15,411 cases into FY-2017 from previous fiscal years. Ultimately, the total Fiscal Year 2017 county contract workload equaled 45,844 cases.

The Non-Capital Trial Division satellite offices reported a total of 509 conflict of interest cases. Four hundred fifty-one of these cases were assigned to contracted conflict counsel. Fifty-eight cases were assigned to the roving attorney. With conflict cases subtracted from all newly assigned cases, the satellite offices handled 8,140 new cases in Fiscal Year 2017. The satellite offices carried another 4,493 cases into Fiscal Year 2017 from previous fiscal years. Ultimately, the total Fiscal Year 2017 satellite office workload totaled 12,633 cases.

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

attorney, totaled 39,533. The 59,986 cases handled by the Non-Capital Trial Division during Fiscal Year 2017 represent a 5% caseload increase from the previous fiscal year, a 39% increase since Fiscal Year 2013, and a 55% 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. In September 2007 a program was instituted by the agency shifted responsibility for defending selected first degree murder appointments to the Capital Trial Divisions.

***CAPITAL TRIAL DIVISION
NORMAN***

The Capital Trial Division – Norman 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.

TRIAL CASELOAD

The Capital Trial Division – Norman began Fiscal Year 2017 with 13 pending cases carried over from Fiscal Year 2016. The Division received new appointments in nine cases during the year. By the end of Fiscal Year 2017, seven of those cases were concluded and closed; the remaining 15 cases were carried over into Fiscal Year 2018. The

total number of cases handled by the Division in Fiscal Year 2017 was 22.

The Division continues to regularly maintain close contact with both the Capital Trial Division – Tulsa and 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.

FISCAL YEAR 2016 RESULTS

Jury Trials

- ◇ 1 jury trial resulting in a sentence of life without the possibility of parole

Case Disposition

The Division represented five clients during the fiscal year who chose to resolve their cases by entering guilty pleas:

- ◇ 2 First Degree Murder – life without parole sentence
- ◇ 1 First Degree Murder reduced to Conspiracy to Commit Murder I - 10 years to run concurrently with a life sentence currently being served
- ◇ 1 Second Degree Murder- sentence of 35 years
- ◇ 1 Second Degree Murder- sentence of 45 years

One case was returned to the Non-Capital Trial division because the district attorney ultimately declined to seek the death penalty.

Cases Concluded

Result	No. of Cases
Death Sentences	0
Life Without Parole	1
Plead as Charged (LWOP)	2
Pled to Lesser Charge	3
Assigned to Non-Capital	

Trial Division 1

Cases Concluded

Total 7

Results No. of Cases

***CAPITAL TRIAL DIVISION
TULSA***

Death Sentences	0
Life Without Parole	4
Pled as Charged (Life)	1
Pled as Charged (LWOP)	5
Pled to Lesser Charge	4
Charge dismissed	1

Total 15

The Capital Trial Division - Tulsa 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 2017 began with a carryover of 21 pending cases from the previous fiscal year. The Division opened 15 new cases during the fiscal year, bringing the total caseload for the year to 36 cases. The Division concluded 15 cases, carrying over 21 cases into Fiscal Year 2018.

FISCAL YEAR 2017 RESULTS

Jury Trials

- ◇ 4 jury trials, all resulting in life without parole sentences

Guilty Pleas

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

- ◇ 4 First Degree Murder reduced to lesser charges
- ◇ 6 First Degree Murder pled as charged

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 (10th 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 2017 with 257 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 282 cases, ending the fiscal year with 275 open cases to be carried into Fiscal Year 2018. During the course of the fiscal year, the Division handled 557 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 250 clients during the fiscal year. Of those, three involved clients convicted of homicide, including two clients convicted of first-degree murder. Division attorneys appeared for six oral arguments before the Court of Criminal Appeals in fast track appeals, filed 23 reply briefs, and filed one petition for rehearing.

The Division closed 282 cases during the fiscal year. The majority of closed cases, 217, were closed because a final decision was reached by the Court of Criminal Appeals. In 37 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. Forty 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; two cases were closed because the agency was not properly appointed to handle them; and three cases were closed because outside counsel was retained by the client. Additionally, 14 appeals were closed due to consolidation with other cases. Six cases were

closed due to transfer to other agency divisions.

New cases were received from 57 of the State's 77 counties. Twenty-three percent of the incoming caseload, or 69 cases, arose from Oklahoma and Tulsa counties, and two of the four first-degree murder cases received from across the state arose from those two counties. In 214 of the cases received during the fiscal year, counsel at trial level was court-appointed, while 86 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	217	77
Rejected or dismissed for lack of jurisdiction (dismissed at client's request)	40	14
OIDs not properly appointed/appeal out of time	2	1
Outside counsel retained by client	3	1
Transferred to another division	6	2
Other (Consolidated)	14	5
Total	282	100%

ANALYSIS OF CASES RECEIVED

<i>Types of Appeals Lodged</i>	<i># of Cases</i>	<i>%</i>
Direct appeals (felony and misdemeanors)	122	41
Revocation/accelerations	94	31
Guilty plea appeals	76	25
Other (juvenile, responses to state appeals)	8	3
Total	300	100%

<i>Types of Crimes Appealed</i>	<i># of Cases</i>	<i>%</i>
Violent offenses	105	35
Sex offenses	56	19
Drug offenses	57	19
Property crimes	52	17
Other (DUI, escape, state appeals or unknown)	30	10
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 2017 with five pending capital cases, 32 cases in which the client was convicted of some form of homicide, and six non-capital felony cases. During the fiscal year, 52 new non-capital homicide cases and four non-capital felony cases were opened. By the end of the year, one capital case, 36 non-capital homicide cases and three non-capital felony cases were closed, leaving the Division with 59 active cases, consisting of four capital cases, 48 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

Comanche	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
Carter	3
Cherokee	1

Cleveland	5
Comanche	6
Custer	1
Delaware	1
Garfield	4
Garvin	2
Grady	1
Haskell	1
Hughes	1
Kiowa	1
Leflore	2
Lincoln	1
Mayes	1
McClain	1
McIntosh	2
McCurtain	2
Muskogee	4
Okfuskee	1
Oklahoma	17
Osage	1
Payne	1
Pittsburg	2
Pottawatomie	3
Seminole	1
Sequoyah	1
Tulsa	23
Wagoner	1

DISPOSITION OF CASES

Twenty-two non-capital homicide cases and three non-murder cases were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed during the year. The United States Supreme Court granted a petition for writ of certiorari in one capital case, vacated the judgment, and remanded the case for further consideration. After remand, the Oklahoma Court of Criminal appeals again affirmed the conviction and death sentence. Twelve non-capital homicide cases were transferred to other divisions and two were dismissed for lack of jurisdiction.

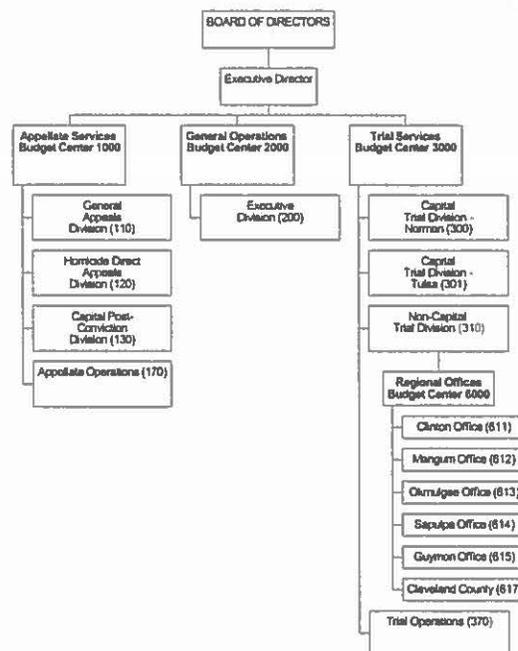
***CAPITAL POST-CONVICTION
DIVISION***

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 2017 with 27 active cases, representing six capital post conviction cases, one capital direct appeal and 20 non-capital appeal cases. During the year, the Division accepted one capital post-conviction and 18 non-capital direct appeals. The Division closed two capital post conviction cases and 18 non-capital appeal cases during the fiscal year. The closed capital cases were transferred to federal habeas counsel after the clients were denied relief in state court. The Division carried over a total of 26 cases into Fiscal Year 2018, comprised of five capital post-conviction cases, one capital direct appeal and 20 non-capital direct appeal cases.

Oklahoma Indigent Defense System

Organization Chart



NOTE: Only those departments that have FTE are presented.

Revised 6/29/2017

**OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division
Actual FY-2017 Workload**

July 1, 2016 through June 30, 2017

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FEL	JUV	MISD	TRAF	WL	YO	ALL
FY-2017 Contract <i>LESS</i> Conflicts and Rover Cases		20,777	1,534	7,666	413	10	33	30,433
Plus Contract Carry-Over from Prior Fiscal Years		11,157	517	3,501	196	11	29	15,411
Total Contract Workload		31,934	2,051	11,167	609	21	62	45,844
2017 Satellite Office <i>LESS</i> Conflicts and Rover Cases		5,656	456	1,911	106	0	11	8,140
Plus Satellite Office Carry- Over from Prior Fiscal Years		2,938	644	864	39	0	8	4,493
Total Satellite Office Workload		8,594	1,100	2,775	145	0	19	12,633
FY-2017 Conflicts	Contracts	312	3	60	2	0	0	377
	Satellite Offices	415	37	44	11	0	2	509
Conflicts Carryover from Prior Fiscal Years	Contract Counties	207	3	51	3	0	0	264
	Satellite Office Counties	203	29	32	2	0	1	267
FY-2017 Rover Cases	Contract Counties	14	0	2	0	0	0	16
	Satellite Office Counties	50	2	6	0	0	0	58
Rover Cases Carryover from Prior Fiscal Years		18	0	0	0	0	0	18
Total Conflicts and Rover Cases Workload		1,219	74	195	18	0	3	1,509
TOTAL FY-2017 NCT Workload		41,747	3,225	14,137	772	21	84	59,986