

OKLAHOMA

INDIGENT DEFENSE SYSTEM



2012 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

JOE P. ROBERTSON
Executive Director

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JOE P. ROBERTSON
EXECUTIVE DIRECTOR



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STATE OF OKLAHOMA
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TO THE HONORABLE MARY FALLIN
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HONORABLE STEVEN W. TAYLOR
HONORABLE ARLENE JOHNSON

It is our privilege to submit a report concerning the duties, activities and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2012, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

The Oklahoma Indigent Defense System is grateful for the support that it received during Fiscal Year 2012 from the Governor and her staff, from the Legislature and from the Judiciary.

As we move forward in 2013, 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 also 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 flourishes in Oklahoma and the interests of justice are protected.

Sincerely,

A handwritten signature in black ink that reads "Joe P. Robertson".

Joe P. Robertson
Executive Director

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◆ Contents

	Page
<i>Introduction</i>	I
<i>General Operations Program</i>	3
Executive Division	3
Website	4
Training Program	4
<i>Trial Program</i>	5
<i>Non-Capital Trial Division</i>	5
Clinton Office	7
Mangum Office	7
Okmulgee Office	7
Sapulpa Office	7
Panhandle Office	7
Overall Caseload	7
<i>Capital (Death Penalty) Trial Representation</i>	8
<i>Capital Trial Division - Norman Office</i>	8
Caseload	8
Final Results of Cases Concluded	9
<i>Capital Trial Division - Tulsa Office</i>	9
Caseload	10
Final Results of Cases Concluded	10
<i>Appellate Program</i>	11
<i>General Appeals Division (Non-Capital Appeals)</i>	11
Cases Closed	12
Types of Appeals	13
<i>Capital (Death Penalty) Appeals</i>	13
<i>Homicide Direct Appeals Division</i>	13
Caseload	14
Source of New Cases for Fiscal Year 2012	14
Disposition of Cases	14
<i>Capital Post Conviction Division</i>	14
<i>Appendix A</i>	15

Contents

(Continued)

Organizational Chart	15
<i>Appendix B</i>	16
Non Capital Trial Division	
FY-2012 Workload	16

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 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 Appeals Division and the Capital Post-Conviction Division. These programs and divisions are discussed in more detail throughout this report.

OIDS represented a total of 43,712 court appointments in Fiscal Year 2012. The numerical breakdown by division is as follows:

NON-CAPITAL TRIAL	
<i>Staff</i>	7,468
<i>County Contracts</i>	34,739
<i>Conflicts</i>	670
CAPITAL TRIAL - NORMAN	44
CAPITAL TRIAL - TULSA	54
GENERAL APPEALS	540
HOMICIDE DIRECT APPEALS	114
CAPITAL POST CONVICTION	79
EXECUTIVE DIVISION CONFLICTS	
<i>Capital Trial Divisions</i>	3
<i>Capital Post Conviction</i>	1
TOTAL	<u>43,712</u>

This figure represents a substantial increase of 1,7474 cases, or 4.2%, since Fiscal Year 2011, and increase of 11% since Fiscal Year 2009.

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.

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 non-capital criminal cases in 75 of Oklahoma's 77 counties. OIDS contracts with private Oklahoma-licensed attorneys to handle 100% of the indigent non-capital trial caseload in 56 counties. In 19 counties, staff attorneys handle the majority of the indigent caseload. Private attorneys handle the majority of the System's conflict cases and all overload 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 was created after the Oklahoma Supreme Court decided *State v. Lynch*, 1990 OK 82, 796 P.2d 1150. The Supreme Court held that Oklahoma's method of compensating private attorneys in court-appointed criminal cases at the trial level was unconstitutional under the State Constitution. In response to *Lynch*, the Oklahoma Legislature undertook sweeping reform of the State's delivery of criminal defense services. Legislative action resulted in the Indigent Defense Act, which created OIDS as a new state agency under 22 O.S. §§ 1355 *et seq.*, effective July 1, 1991. The Act instituted major changes in the funding and delivery of defense services at trial and on appeal.

Before passage of the Indigent Defense Act, criminal appeals in court-appointed cases were the responsibility of the Oklahoma Appellate Public Defender System (APD). The APD began in 1979 as a federally-funded project at the Oklahoma Center for Criminal Justice and by 1988 had evolved into a small state agency that represented indigents on appeal in state court and, in death penalty cases, in federal court.

The APD became a part of OIDS under the Indigent Defense Act in 1991 and continued its

representation of indigents on appeal. The Act also created a division within OIDS to represent indigents at trial who were charged with capital murder offenses and directed OIDS to begin accepting court appointments to provide legal representation in non-capital cases in 75 counties beginning July 1, 1992, its second year of operation.

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. Due to the nationwide economic downturn, OIDS, along with the majority of state agencies, received a large reduction in its appropriation Fiscal Year 2010. The agency's appropriation was reduced by \$999,986, or 6% of the previous fiscal year appropriation. This left the agency with an appropriation of \$15,720,785 to start Fiscal Year 2010, which as set forth below, was subsequently reduced even further. In order to make up for the initial budget reduction, the agency eliminated the further assignment of non-capital trial and direct appeal overload cases to private contract attorneys, and separated two staff members from employment in July 2009, as well as eliminating three vacant positions. These actions resulted in a substantial increase in cases assigned to already overburdened staff attorneys.

As statewide revenue collections deteriorated during Fiscal Year 2010, a 5% monthly funding allocation reduction was imposed beginning in August by the Oklahoma Office of State Finance, with that monthly reduction increasing to 10% in December for the remainder of the fiscal year. Total allocation reductions during the fiscal year amounted to \$1,179,064. These forced the agency to implement further cost-cutting measures involving the termination of an additional 11 staff members in December 2009 and instituting employee furloughs.

OIDS received a net appropriation reduction of \$580,051 in Fiscal Year 2011, followed by a reduction of \$454,618 from its appropriation for Fiscal Year 2012. This latest funding reduction forced the agency to implement a reduction in force, resulting in the termination of four employees and elimination of their positions.

While weakened by successive funding reductions and a substantial caseload increase, the agency will continue to utilize all available resources in the best manner possible to ensure its court-appointed indigent clients receive constitutionally mandated legal representation.

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. The five members on the Board are appointed by the Governor with the advice and consent of the Senate.

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, experts and investigators. At the end of the fiscal year, OIDS employed 102 full-time equivalent staff members at its main offices in Norman and its satellite offices in Clinton, Guymon, Mangum, Okmulgee and Sapulpa. Three employees providing IT services to the agency were technically transferred to the Oklahoma Office of Management and Enterprise services during the fiscal year pursuant to Oklahoma House Bill 1304. They remain under the supervision of an office within the System even though they are no longer identified as agency employees.

In Fiscal Year 2012, the agency entered into 189 new professional services contracts with private attorneys and experts to provide defense services in court-appointed cases, in addition to administering 91 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

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.

The agency conducted its 2012 Oklahoma Capital Defense Training Conference on May 23rd through the 25th, 2012 in Oklahoma City, with funding provided through a United States Department of Justice grant. The conference provided capital defense training to defense attorneys and investigators with a format utilizing both lectures and intensive workshops.

OIDS further co-sponsored the yearly Patrick A. Williams Criminal Defense Institute, held June 28th and 29th in Tulsa, Oklahoma. It included presentations on diverse topics as arson investigation, electronic data forensics, eyewitness identification, plea negotiations and toxicology.

EXECUTIVE CONFLICT CASELOAD

During Fiscal Year 2012, the Executive Division maintained contracts with outside attorneys for representation in a total of four conflict cases.

The year began with two pending district court death penalty cases. One new case was opened, while another was closed, resulting in two cases being carried over into Fiscal Year 2013. The Division began Fiscal Year 2012 with one pending capital post conviction case, which remained open during the fiscal year and was carried over into Fiscal Year 2013.

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. Thus, NCTD represents the agency's largest group of clients.

In Fiscal Year 2012, NCDT received 31,528 new appointments. NCTD's total FY-2012 caseload, which includes cases carried forward from previous fiscal years, equaled 42,877 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 and over-load 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 assigned to Western Oklahoma.

In Fiscal Year 2012, the Division's caseload was handled as follows:

- (1) Flat-rate Fiscal Year Contracts: In 56 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 five satellite offices: Clinton, Mangum, Okmulgee, Sapulpa and Guymon. These offices handled the entire caseload in 19 counties.

In Fiscal Year 2012, the Non-Capital Trial Division satellite offices ended the fiscal year with 21 attorneys. During Fiscal Year 2012, a satellite office staff attorney handled an average of 355 cases, which includes an average of 221 felonies, 36 juvenile cases, 88 misdemeanor cases and 9 traffic cases. According to a formula utilized by the National Legal Aid and Defenders Association, in Fiscal Year 2012 each satellite office attorney did the work of 1.9 attorneys who operate in only one courthouse. All satellite office attorneys handled work in several district courts. The largest satellite office region covered eight courthouses and 8,623 square miles.

From FY-2005 through FY-2009, the Non-Capital Trial Division utilized annual funding designated to provide overload attorneys in the satellite office areas. No overload funding for new cases was provided NCTD in FY-2010,

FY-2011 or FY-2012. In previous fiscal years, the overload funding had enabled NCTD to improve the workload per attorney to more acceptable levels.

- (3) Conflict/Overload Counsel: Each year conflicts of interests arise in a certain number of county contract and satellite office cases and must be assigned to conflict-free counsel. During Fiscal Year 2012, NCTD assigned 385 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 185 of those cases. Conflicts arising out of satellite offices account for 200 of those cases.
- (4) In FY-2010, NCTD was fortunate to receive 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 Western Oklahoma roving conflict attorney. The roving attorney was assigned 61 new cases during FY-2012, many of which were serious felony cases. As FY-2012 ended, this attorney carried 100 open cases in many Western Oklahoma counties.

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 2012, the Non-Capital Trial Division's satellite offices served the following counties:

Clinton Office

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

Mangum Office

- Greer
- Harmon
- Kiowa
- Jackson
- Tillman

Okmulgee Office

- Okfuskee
- Okmulgee (2 courthouses)

Sapulpa Office

- Creek (3 courthouses)

Guymon Office

- Beaver
- Cimarron
- Texas

Overall Caseload

In Fiscal Year 2012, the Non-Capital Trial Division received a total of 26,383 new county contract cases. County contractors discovered conflicts of interests in 222 of these cases. As a result, 185 of the conflict cases were assigned to contracted conflict counsel. Nineteen of the conflict cases would have otherwise been assigned to a satellite office for coverage, but were instead assigned to the Western Oklahoma roving attorney. Eighteen of these cases were assigned to satellite office attorneys. Once the conflict cases were subtracted from all newly assigned cases, the county contractors retained a total of 26,161 new cases in Fiscal Year 2012. The county contractors carried another 8,578 cases into FY-2012 from previous fiscal years. Ultimately, the total FY-2012 county contract workload equaled 34,739 cases.

The Non-Capital Trial Division satellite offices reported a total of 359 conflict of interest cases. Two hundred of these cases were assigned to contracted conflict counsel. Forty-two cases were assigned to the Western Oklahoma roving attorney, while 117 were assigned to other satellite offices. With conflict cases subtracted from all newly assigned cases, the satellite offices handled 4,921 new cases in Fiscal Year 2012. The satellite offices carried another 2,547 cases into FY-2012 from previous fiscal years. Ultimately, the total FY-2012 satellite office workload totaled 7,468 cases.

The number of new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the Western Oklahoma roving attorney, totaled 31,528.

Although the reduction in overload and conflict case assignments reflects sound budget planning, the reduction resulted in increased work loads for the agency's satellite attorneys. In Fiscal Year 2008, each satellite attorney did the work of 1.37 attorneys. In Fiscal Year 2010, each satellite attorney did the work of 1.71 attorneys. In Fiscal Year 2011, the satellite office attorney workload improved moderately to each attorney doing the work of 1.63 attorneys. In Fiscal Year 2012, that trend reversed, resulting in each satellite office attorney doing the work of 1.9 attorneys. As stated above, this calculation presupposes that each attorney practices in one courthouse, when, in fact, all NCTD satellite attorneys practice in several courthouses and drive hundreds of miles per week to make court appearances and counsel clients. It should be noted that the without the addition of the Western Oklahoma roving attorney, the above attorney workload would have been considerably higher.

The 42,877 cases handled by the Non-Capital Trial Division during Fiscal Year 2012 represents a 1,794 case increase from the Fiscal Year 2011 workload. The overall NCTD workload has increased 11% 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 OFFICE

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 2012 with 28 pending cases carried over from Fiscal Year 2011. The Division received new appointments in 16 cases during Fiscal Year 2012. By the end of the fiscal year, 22 of those cases were concluded and closed; the remaining 22 cases were carried over into Fiscal Year 2013. The total number of cases managed by the Division in Fiscal Year 2012 was 44 cases.

In an effort to meet the overall agency mission of providing the highest quality of representation to indigent defendants, using the most cost-effective and efficient means possible, the Division continued to accept appointments for non-capital clients charged with murder in the first degree. 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 2012 RESULTS

Jury and Non-Jury Trials

Result of four cases tried in Fiscal Year 2012:

- ◇ 0 death sentences
- ◇ 1 life without the possibility of parole sentence
- ◇ 1 25 year sentence

Guilty Pleas

The Division represented nine clients during Fiscal year 2012 who chose to resolve their cases by entering guilty pleas. The results of those pleas are as follows:

- ◇ 5 First Degree Murder – Life Without Parole sentences
- ◇ 2 Second Degree Murder- one sentence of 30 years and one sentence of 28 years
- ◇ 1 Manslaughter I – one sentence of 55 years
- ◇ 1 Robbery II and Conspiracy to Commit Robbery- one sentence of 5 years with each count to run concurrent

Additionally, the Division re-opened a case which was closed the previous fiscal year in order to handle a one-year sentence review. In that case, the client had been charged with First Degree Murder. Division attorneys negotiated a plea to Enabling Child Abuse, resulting in a 20-year sentence with 10 years suspended. At the one-year review, the Division obtained a modification resulting in suspension of the sentence in its entirety and release of the client.

The Division also handled a one-year sentence review in another case, resulting in sentence modification as follows: Accessory After the Fact-Murder I (45 years to 20 years in and 25 out); Robbery First Degree (20 years) to run concurrent with Count I above, and credit for time served.

Misc. Disposal

- ◇ 2 Returned to Non-Capital Trial Division
- ◇ 1 Private attorney
- ◇ 1 Returned to Federal Public Defender
- ◇ 1 Conflict
- ◇ 1 Died of natural causes
- ◇ 4 Inactive cases closed
- ◇ 1 Sentence modification

FINAL RESULTS OF CASES CONCLUDED

Result	No. of Cases
Life Without Parole	6
Murder II- number of years	3
Manslaughter	1
Conspiracy to Commit Robbery	1
Sentence Modification	1
Death by natural causes	1
Conflict	1
Private Counsel	1
Returned to Non-Capital Division	2
Returned to Federal Public Defender	1
Inactive cases closed	4
Total	22

***CAPITAL TRIAL DIVISION
TULSA***

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.

CASELOAD

Fiscal Year 2012 began with a carryover of 26 pending cases from the previous fiscal year. The Division opened 28 new cases during the fiscal year, bringing the total caseload for the year to 54 cases. The Division concluded 26 cases, carrying

over 28 cases into Fiscal Year 2013.

RESULTS

There were no death penalties imposed against any Division clients during the fiscal year - the seventh year in a row. The Division experienced great success in negotiating good pleas on behalf of its clients. One example was a client's plea of guilty to the lesser charge of Accessory After the Fact and sentenced to 15 years with 10 years suspended. In a number of cases the clients' first degree murder charge was reduced to manslaughter. One client received a 20-year sentence with 18 years suspended. These are a few examples of a number of exceptional results obtained for Division clients due to a thorough investigation and persuasive presentation of the circumstances of these cases to the juries, the court and the prosecution. These results are due to the dedication, commitment and hard work of Division attorneys, investigators and support staff.

Jury and Bench Trials

Result of cases tried in 2012

- 2 First Degree Murder trials resulting in both defendants being convicted of the lesser included offense of First Degree Manslaughter, one sentenced to 10 years and one sentenced to 12 years
- 1 First Degree Murder trial resulting in an acquittal
- 1 First Degree Murder trial resulting in a conviction and sentence of life with parole
- 1 Competency jury trial resulting in a finding the defendant was competent
- 1 Competency trial to the court resulting in a finding that the defendant was incompetent and unable to achieve

competency

- 1 Trial to the court resulting in Not Guilty by Reason of Insanity

Guilty Pleas

The Division represented 13 clients during Fiscal year 2012 where cases were resolved by a plea. The results of those pleas are as follows:

- 3 First Degree Murder – Life Without Parole sentences
- 1 First Degree Murder – Life With Parole sentence
- 6 Manslaughter I
- 2 Accessory to Murder After the Fact
- 1 First Degree Murder dismissed, plea to second degree robbery and conspiracy (15 years)

FINAL RESULTS OF CASES CONCLUDED

Result	No. of Cases
Death Sentences	0
Life Without Parole	4
Determined to be Incompetent	1
Life With Parole	1
NGRI	1
Pled	2
Pled to Lesser Charge	6
Jury Trials Guilty of Lesser Offense	2
Jury Trials Acquittal	1
Conflict of Interest	2
Retained Private Counsel	1
Charges Dismissed	2
Closed - No Action Taken	1
Closed - Transferred to CTN	2
Total	26

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 Appellate Program is appointed to represent clients in accordance with the Indigent Defense Act and 22 O.S. § 1089.

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. Legal services are provided by salaried attorneys and, under certain circumstances, by a private attorney. The cost of expert assistance and investigative services, if any, are funded in the Division budget. If the General Appeals Division has difficulties meeting court deadlines because of an unusually high number of court appointments, and adequate funding is available, the agency enters into contracts with private attorneys on a case-by-case basis to represent Division clients on appeal. If the Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the agency enters into a contract with a private attorney on a case-by-case basis to represent the client on appeal.

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. Due to caseloads greatly exceeding nationally-recognized standards, which were caused in part by an agency-wide reduction-in-force at the beginning of Fiscal Year 2003, the agency received a supplemental appropriation during the last part of Fiscal Year 2005, which was annualized. The Division received a substantial portion of that appropriation to alleviate the Division's caseload. However, with the recent economic downturn and reductions in the agency's appropriations, the Division's ability to assign contract overload appeals to private counsel has been severely curtailed.

The General Appeals Division began FY-2012 with 261 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 279 additional cases during the fiscal year. The Division closed 266 cases, ending the fiscal year with 274 open cases to be carried into Fiscal Year 2013. During the course of the fiscal year, the Division handled 540 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 220 clients during Fiscal Year 2012. Division attorneys appeared for eight oral arguments before the Court of Criminal Appeals in fast-track appeals, filed 29 reply briefs and filed one petition for rehearing.

The Division closed 266 cases during the year. Of most of the cases closed, 170 were closed because a final decision was reached by the Court of Criminal Appeals. In 33 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. Four cases contracted to outside counsel were closed upon completion. Fifty-two 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; one case was closed because the agency was not properly appointed to handle it; and five cases were closed because outside counsel was retained by the client. Additionally, seven appeals were closed due to consolidation with other cases. Twenty-seven cases were closed due to transfer to other agency divisions.

New cases were received from 58 of the State's 77 counties. Almost 20% of the incoming caseload, or 55 cases, arose from Oklahoma and Tulsa counties. In 196 of the cases received in FY-2012, counsel at trial level was court-appointed, and 83 cases were handled at trial by privately-retained counsel or by the client pro se.

SUMMARY OF CASES CLOSED

<u>Reason for Closing</u>	<u># of Cases</u>	<u>%</u>
Decision of Court of Criminal Appeals	170	64
Contracted outside and completed	4	1
Dismissed for Lack of Jurisdiction (Dismissed at Client's request)	52	19
OIDS not properly appointed	1	1
Outside Counsel Retained by Client	5	2
Transferred to another Division	27	10
Other (Consolidated)	7	3
Total	266	100%

The majority of the convictions in the new cases appealed by the General Appeals Division were for drug offenses (95 cases). The second leading category of offenses appealed are for violent crimes, including all degrees of murder and

manslaughter, child abuse, assaults, robberies, kidnapping and first degree arson (76 cases). 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 (67 cases). Property crimes accounted for 32 cases. The primary types of appeals received by the General Appeals Division were felony and misdemeanor direct appeals (129), revocations, accelerations and drug court terminations (85) and guilty pleas (48). Except for juvenile appeals, all non-capital appeals involve opening briefs of up to 50 pages in length. Other appeals involve juvenile and responses to State appeals of adverse rulings (17).

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 2012 with six pending capital cases and 48 cases in which the client was convicted of some form of homicide. During the fiscal year, 48 new non-capital homicide cases and 12 other non-capital cases were opened. By the end of the year, three capital cases and 56 non-capital cases were closed, leaving the Division with 55 active cases, three of these being capital, and 52 non-capital homicide cases.

STATEWIDE DISTRIBUTION

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

COUNTY

Oklahoma	17%
Cleveland	32%
Blaine	17%
Grady	17%
Comanche	17%

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

COUNTY

Atoka	1%
Beckham	1%
Blaine	1%
Canadian	1%
Carter	2%
Cleveland	1%

Comanche	4%
Cotton	1%
Creek	1%
Garfield	4%
Jackson	2%
Kay	2%
Latimer	1%
LeFlore	1%
Logan	1%
Marshall	1%
Mayes	1%
McCurtain	3%
McIntosh	1%
Muskogee	1%
Okfuskee	1%
Oklahoma	18%
Okmulgee	3%
Osage	1%
Ottawa	1%
Pawnee	1%
Payne	1%
Pontotoc	2%
Pottawatomie	3%
Pushmataha	1%
Seminole	1%
Sequoyah	1%
Stephens	1%
Tulsa	28%
Wagoner	2%
Washington	3%
Woodward	1%

DISPOSITION OF CASES

Thirty-four non-capital homicide cases were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed during Fiscal Year 2012. One non-capital homicide case was remanded for a new sentencing hearing. Three capital cases were closed during Fiscal Year 2012, after being affirmed by the Court of Criminal Appeals and denied certiorari by the United States Supreme Court.

CAPITAL POST CONVICTION DIVISION

The primary mission of the Division continues to be representing 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. The Division has recently been handling conflict and overflow cases from the General Appeals Division and the Homicide Direct Appeals Division. In addition, 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.

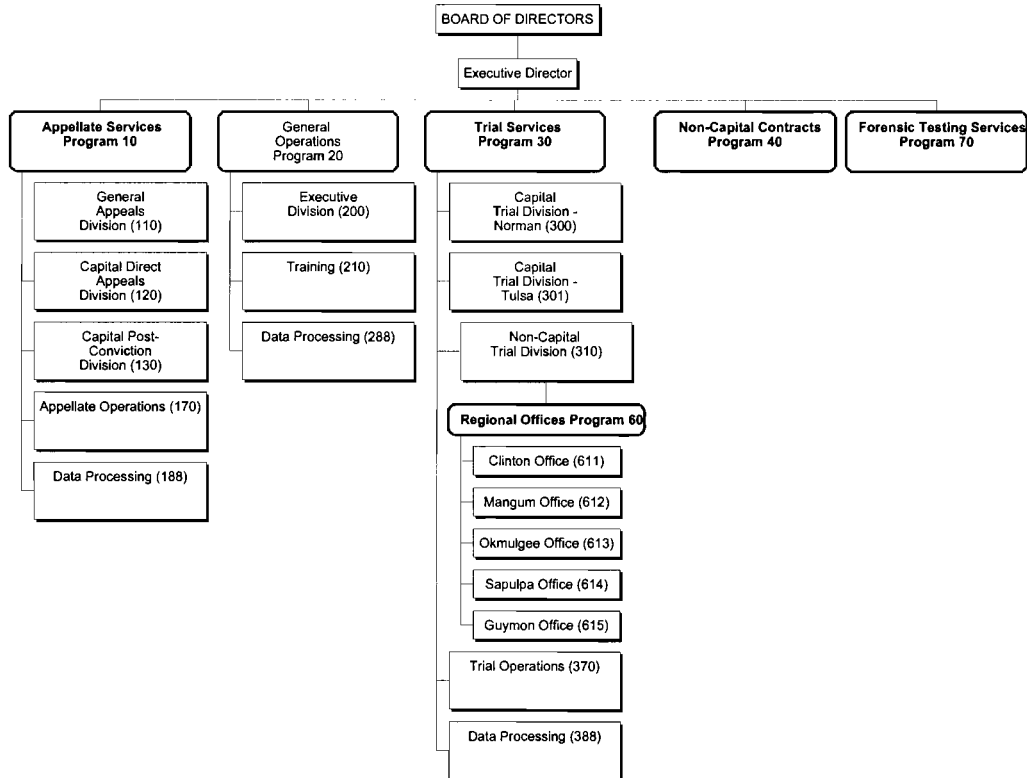
The Capital Post Conviction Division began Fiscal Year 2012 with 43 cases, representing 17 capital cases and 26 non-capital cases. During Fiscal Year 2012, the Division accepted 36 non-capital direct appeal cases. In addition, the Division served as co-counsel with the Tulsa Capital Trial Division in two non-capital homicide cases in Pushmataha and Choctaw Counties

During Fiscal Year 2012, five capital cases were closed. Four of those cases were transferred to federal habeas counsel after relief was denied by the Oklahoma Court of Criminal Appeals and the other case was closed after the Oklahoma Court of Criminal Appeals modified the appellant's death sentence to life imprisonment without the possibility of parole. In addition, 33 non-capital appeal cases were closed during Fiscal Year 2012. As a result, the Division opened Fiscal Year 2013 with a total of 41 cases, comprised of 12 capital post conviction cases and 29 non-capital direct appeal cases.

Due to budget constraints, the Division has lost three FTE appellate defense counsel positions since FY 2009, the last position in August 2011. Since August 2011, the Division has been comprised of four appellate defense counsel, two investigators and one executive secretary.

Oklahoma Indigent Defense System

Organization Chart



OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division
Actual FY-2012 Workload
July 1, 2011 through June 30, 2012

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FEL	JUV	MISD	TRAF	WL	YO	ALL
FY-2012 Contract <i>LESS</i> Conflicts and Viol Cases		16,485	1,648	7,451	515	25	37	26,161
Plus Contract Carry-Over from Prior Fiscal Years		5,405	658	2,323	170	7	15	8,578
Total Contract Workload		21,890	2,306	9,774	685	32	52	34,739
2011 Satellite Office <i>LESS</i> Conflicts and Viol Cases		3,155	343	1,251	168	3	1	4,921
Plus Satellite Office Carry-Over from Prior Fiscal Years		1,499	414	604	29	0	1	2,547
Total Satellite Office Workload		4,654	757	1,855	197	3	2	7,468
FY-2012 Conflict Contracts	Contracts	150	7	26	0	0	2	185
	Satellite Offices	154	16	22	2	0	6	200
Conflicts Carryover from Prior Fiscal Years	Contract Counties	79	1	15	0	0	0	95
	Satellite Office Counties	52	15	11	1	0	1	80
FY-2012 Viol Cases		49	3	7	2	0	0	61
Viol Case Carryover from Prior Fiscal Years		39	0	10	0	0	0	49
Total Conflicts and Viol Cases Workload		523	42	91	5	0	9	670
TOTAL FY-2012 NCT Workload		27,067	3,105	11,720	887	35	63	42,877