

OKLAHOMA

INDIGENT DEFENSE SYSTEM



2021 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



J. KEVIN STITT
GOVERNOR

TRICIA EVEREST
SECRETARY OF PUBLIC SAFETY

CHARLES TIM LAUGHLIN
Executive Director

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CHARLES "TIM" LAUGHLIN
EXECUTIVE DIRECTOR



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STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

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September 20, 2021

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TO THE HONORABLE J. KEVIN STITT
HONORABLE GREG TREAT
HONORABLE CHARLES MCCALL
HONORABLE RICHARD DARBY
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, 2021, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

As we move forward in 2022, 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 blue ink that reads "Charles J. Laughlin".

Charles "Tim" Laughlin
Executive Director

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Past Board Members

(In Alphabetical Order)

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Chapter 1

◆ Introduction

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

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

The agency is governed by a five-person Board. Each member is appointed by the Governor, with the advice and consent of the Oklahoma Senate, for a five-year term. The agency consists of three program areas: 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 56,658 court appointments in Fiscal Year 2021. The numerical breakdown by division is as follows:

| | |
|------------------------------|---------------|
| NON-CAPITAL TRIAL | |
| <i>Staff</i> | 9,775 |
| <i>County Contracts</i> | 45,122 |
| <i>Conflicts</i> | 1,076 |
| CAPITAL TRIAL – NORMAN | 16 |
| CAPITAL TRIAL – TULSA | 18 |
| GENERAL APPEALS | 506 |
| HOMICIDE DIRECT APPEALS | 88 |
| CAPITAL POST CONVICTION | 56 |
| EXECUTIVE DIVISION CONFLICTS | 1 |
| <i>TOTAL</i> | <u>56,658</u> |

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

Due to the COVID-19 pandemic, the agency's Fiscal Year 2021 (FY2021) caseload departed from the typical trend of general, and often substantial, increases over the past 19 years. While the total agency caseload number of 56,658 for FY2021 represented a decrease of 3.73% over that of the previous fiscal year, it still represented a 13.95% increase since FY2015, and a 29.11% increase since Fiscal Year 2010.

The FY2021 caseload decrease from the previous fiscal year is a result of delayed court appointments and proceedings during the initial stages of the pandemic and its ongoing impact on FY2021 appointments. Agency staff and contract attorneys continue to diligently work with prosecutors through the pandemic to reduce jail populations, negotiating plea deals or lowered bail on behalf of clients to reduce jail populations, thereby helping alleviate the risk of virus exposure to jail personnel, clients, attorneys, and the public. While the effects of the pandemic on the criminal justice system and the agency have continued into FY2022, the agency's backlog of cases will continue to impact the scope and speed of provision of legal services.

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 2021 with an appropriation decrease of \$729,515. This decrease was due to a 4% reduction in the System's budget in anticipation of the impact of

the COVID19 crisis on the overall state budget. Most state agencies suffered appropriation reductions averaging 4% for Fiscal Year 2021.

The agency instituted several cost saving measures during Fiscal Year 2021 in a successful effort to weather the 4% appropriation reduction. The agency reduced travel expenses, delayed filling staff positions, and delayed needed technology improvements. These measures enabled the agency to maintain services with a reduced budget; however, the agency faced the likelihood of being underfunded going into Fiscal Year 2022 as court activity accelerated and new challenges arose.

In response to the agency's Fiscal Year 2022 budget request the legislature restored Fiscal Year 2021's 4% reduction and appropriated additional funding. The additional FY-2022 funding enabled the agency meet existing and new challenges. With this additional funding the agency updated computers which, on average, were more than 8 years old. The agency also filled needed staff vacancies and opened two additional non-capital trial satellite offices in areas in which contracting for these services was no longer feasible.

OIDS will face new and ongoing challenges in the years to come. One challenge the agency continues to face is the challenge of recruiting and retaining outstanding attorneys and support staff. Tribal courts and the federal government have become increasingly competitive in their efforts to recruit attorneys and skilled support staff. Our state prosecution counterparts also compete for qualified attorneys and support staff. OIDS will continue to evaluate the agency's resources and examine structural, funding, and salary disparities that may exist between the various criminal justice public services entities. As disparities are discovered, OIDS will advocate for necessary resources in support of the agency's mission.

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.

In Fiscal Year 2021, the agency entered into 60 new professional services contracts with private attorneys and expert service providers to furnish defense services in court-appointed cases, in addition to administering 44 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.

EXECUTIVE CONFLICT CASELOAD

During Fiscal Year 2021, the Executive Division maintained one pending capital conflict case carried over from a previous fiscal year.

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 2021, NCTD received 33,042 new appointments. NCTD's total FY2021 caseload, which includes cases carried forward from previous fiscal years, equaled 55,973 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 2021, 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 2021 (July 1, 2020 – June 30, 2021) with 30 attorneys. During Fiscal Year 2021, a satellite office staff attorney handled an average of 186 felony and youthful offender cases, 22 juvenile cases, and 118 misdemeanor, traffic and wildlife cases, or an average of 326 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 2021, each NCTD satellite office staff attorney did the work of 2.17 attorneys. Moreover, most attorneys 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 2021, NCTD assigned 601 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 263 of those cases. Conflicts arising out of satellite offices account for 338 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. Although the federal funding expired late in FY-2011, the agency has maintained this position. This attorney is assigned complicated cases. A second roving attorney was added in 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. The roving attorneys were assigned 18 new cases during FY2021, most of which were serious and complicated felony cases. As FY-2021 ended, the roving attorneys carried 19 open cases in counties throughout Oklahoma.

DISCUSSION

The OIDS Board awards fiscal-year contracts to private attorneys to provide non-capital trial defense services on a county-by-county basis. In response to the agency's solicitations each year, private attorneys offer to provide criminal defense services in felony, misdemeanor, traffic and (delinquent) juvenile cases in one or more counties for a flat annual rate. The contracting process is volatile, not only in terms of the

number of offers, if any, received for any particular county, but also in terms of the cost of any contract awarded. As a result, the agency's ability to provide contract coverage in many counties, especially the smaller, more rural ones, is unpredictable. Historically, the agency has spent one-third to one-half of its total budget on these fiscal-year contracts to provide non-capital legal representation.

When the agency is unable to obtain a fiscal-year contract for indigent criminal defense work in a county, the Board has two options: (1) establish a satellite office with salaried staff 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 (\$80/hour for in-court legal services; \$60/hour for out-of-court legal services) under Section 1355.8(D)(6) of the Indigent Defense Act.

In Fiscal Year 2021, 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 2021, the Non-Capital Trial Division received a total of 26,184 new county contract cases. County contractors discovered conflicts of interests in 279 of these cases. As a result, 263 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 attorneys. Once the conflict and roving attorneys' cases were subtracted from all newly assigned cases, the county contractors retained a total of 25,905 new cases in Fiscal Year 2021. The county contractors carried another 19,217 cases into FY2021 from previous fiscal years. Ultimately, the total FY2021 county contract workload equaled 45,122 cases.

The Non-Capital Trial Division satellite offices reported a total of 340 conflict of interest cases. 338 of these cases were assigned to contracted conflict counsel. Two cases were assigned to the roving attorneys. With conflict and roving attorney cases subtracted from all newly assigned cases, the satellite offices handled 6,516 new cases in Fiscal Year 2021. The satellite offices carried another 3,259 cases into FY2021 from previous fiscal years. Ultimately, the total FY2021 satellite office workload totaled 9,775 cases.

The number of new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the roving attorneys, totaled 33,040.

The 55,973 cases handled by the Non-Capital Trial Division during Fiscal Year 2021 represent a caseload decrease of 13% compared to the number of cases handled in FY-2019. This decrease is a result of delayed court appointments during the COVID19 epidemic, the statutory reclassification of some felonies to misdemeanors, and the results of the United States Supreme Court opinion in *McGirt v. Oklahoma*, 140 S. Ct. 2452, (2020). The Fiscal Year 2021 caseload represents a 2% increase since Fiscal Year 2016, and a 47% increase since Fiscal Year 2011.

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.

CASELOAD

In Fiscal Year 2021 the Norman Capital Trial Division carried over 12 cases from previous fiscal years; and opened an additional four cases during Fiscal Year 2021, bringing the total number of cases represented to 16 cases. Of those 16 cases, four were closed as follows:

FISCAL YEAR 2021 RESULTS

Jury and Non-Jury Trials

- ◇ 1* Jury trial resulting in Death Penalty
*(Although the jury trial in this case occurred in Fiscal Year 2021, sentencing did not take place until a few days into Fiscal Year 2022. Thus, this case is recorded as closed in Fiscal Year 2022.)

Guilty Pleas or Dismissals

- ◇ 1 Life-suspended except first 28 years.
- ◇ 3 One (1) Case transferred to NCT.
Two (2) Cases transferred to Federal Public Defender per the *McGirt* Decision.

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. The results set forth below reflect the outstanding work by the Division’s attorneys, investigators, and support staff.

Results of Cases Concluded

| Result | No. Of Cases |
|--|--------------|
| Death | 0 |
| Life Suspended except first 28 years | 1 |
| Transferred to NCT | 1 |
| Transferred to Federal Public Defender | 2 |
| Total | 4 |

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 half 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 2021 began with a carryover of 12 pending cases from the previous fiscal year. The Division opened six new cases during the fiscal year, bringing the total caseload for the year to 18 cases. The Division concluded 12 cases, carrying over six cases into Fiscal Year 2022.

FISCAL YEAR 2021 RESULTS

Jury and Non-Jury Trials

- ◇ 0 No Jury Trial had in Fiscal Year 2021 due to the COVID 19 pandemic.

Guilty Pleas or Dismissals

The Division represented 2 clients during Fiscal Year 2021 where cases were resolved by a plea. The results of those please are as follows:

- ◇ 2 Guilty Pleas to a Lesser Degrees of Homicide Following Negotiations.
- ◇ 1 Guilty Plea to First Degree Murder and Sentenced to Life Without Parole.

Results of Cases Concluded

| Result | No. Of Cases |
|--|--------------|
| Determined to be NGRI | 1 |
| Pled as charged (Life w/out) | 1 |
| Pled to a lesser charge | 2 |
| Charges Dismissed (Transferred to Federal Public Defender per <i>McGirt</i> Decision.) | 8 |
| Total | 12 |

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 FY-2021 with 225 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 262 cases, ending the fiscal year with 242 open cases

to be carried into Fiscal Year 2022. During the fiscal year, the Division handled 504 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 159 clients during FY-2021, and Supplemental Briefs (following remanded proceedings) in 36 cases. In addition, Division attorneys appeared for four oral arguments before the Court of Criminal Appeals in fast-track cases, filed 21 reply briefs, and two petitions for rehearing.

Twenty-five General Appeals cases were remanded for evidentiary hearings regarding the two-pronged inquiry into the client’s “Indian” status and whether the offenses were committed upon Indian reservation land, pursuant to the United States Supreme Court decision *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). By the end of FY-21, fourteen of these cases had been decided, with 13 reversed with instructions to dismiss. Sixty-five state appeals arising from cases dismissed by the trial court in Pontotoc and Seminole counties due to the *McGirt* decision were resolved either by appellate counsel’s motions to dismiss for lack of jurisdiction or motions to dismiss the appeals on the merits once the state appellate court found *McGirt* applicable to prosecutions of Indians within the Seminole and Chickasaw Nation reservations.

The Division closed 262 cases during the year, most due to the Court of Criminal Appeals reaching a final decision in the case. Most of the cases, 142, were closed because a final decision was reached by the Court of Criminal Appeals, with 105 of those decisions affirming the trial court. Relief was granted to the client by the appellate court in 35 decisions, and the State obtained reversal of two lower court rulings favoring the defendant. Other cases were closed after the appeal was dismissed. In addition to the 65 dismissed *McGirt* state appeals, an additional 7 were dismissed at the client’s request and 26 were dismissed because the Court of Criminal Appeals lacked jurisdiction to hear them or because the System was not properly

appointed to handle them. Six cases were dismissed as moot. Four cases closed because outside counsel was retained by the client, seven appeals were closed due to consolidation with other cases, and five were transferred to another agency division.

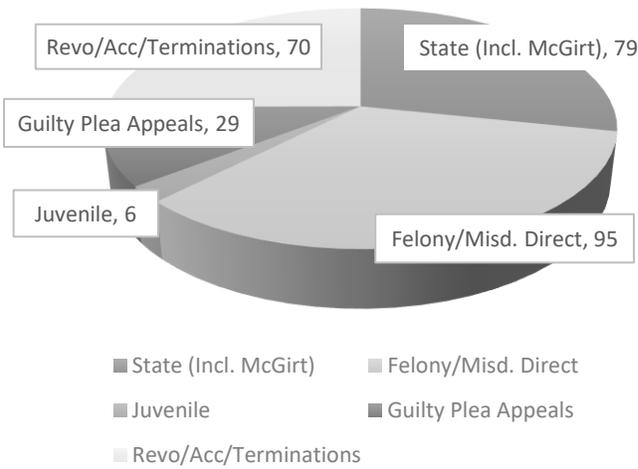
The 279 new cases were received from 53 of the State’s 77 counties. Outside of the large volume of state appeals received from Seminole and Pontotoc Counties, the counties from which the largest numbers of appeals were lodged were Cleveland, Custer, Oklahoma, and Tulsa.

ANALYSIS OF CASES RECEIVED

| <i>Types of Appeals Lodged</i> | <i># of Cases</i> | <i>%</i> |
|---|-------------------|-------------|
| Direct Appeals (Felony and Misdemeanors) | 95 | 34 |
| Revocation/Acceleration/Termination | 70 | 25 |
| Guilty Plea Appeals | 29 | 10 |
| State Appeals (Including <i>McGirt</i>) | 79 | 29 |
| Juvenile (Adjudication, YO, Certifications) | 6 | 2 |
| Total | 279 | 100% |

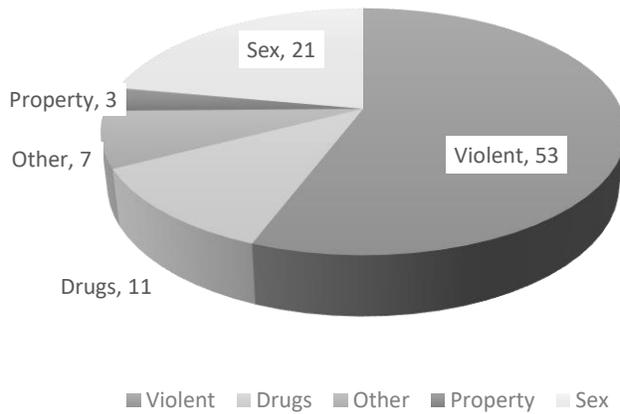
| <i>Types of Crimes Appealed</i> | <i># of Cases</i> | <i>%</i> |
|---|-------------------|-------------|
| Violent Offenses | 53 | 56 |
| Sex Offenses | 21 | 22 |
| Drug Offenses | 11 | 12 |
| Property Crimes | 3 | 3 |
| Other (i.e., DUI, escape, SORA, FA, or unknown) | 7 | 7 |
| Total | 95 | 100% |

Types of Appeals



This graph 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 appeals and responses to State appeals of adverse rulings.

Types of Offenses Appealed



The majority of the convictions in the direct cases received 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-2021

| | | | | | |
|-----------|----|------------|----|--------------|------------|
| Adair | 1 | Grady | 3 | Oklahoma | 14 |
| Atoka | 2 | Haskell | 1 | Osage | 3 |
| Beckham | 2 | Hughes | 1 | Ottawa | 5 |
| Bryan | 2 | Jackson | 7 | Pawnee | 1 |
| Caddo | 3 | Johnston | 1 | Payne | 9 |
| Canadian | 4 | Kay | 11 | Pittsburg | 4 |
| Carter | 3 | Kingfisher | 3 | Pontotoc | 19 |
| Choctaw | 1 | LeFlore | 1 | Pottawatomie | 3 |
| Cleveland | 14 | Lincoln | 4 | Rogers | 2 |
| Comanche | 8 | Logan | 2 | Seminole | 51 |
| Cotton | 1 | Marshall | 3 | Sequoyah | 2 |
| Craig | 3 | Mayes | 3 | Stephens | 8 |
| Custer | 14 | McCurtain | 3 | Texas | 2 |
| Delaware | 1 | McIntosh | 6 | Tulsa | 13 |
| Dewey | 2 | Murray | 1 | Washington | 6 |
| Ellis | 1 | Muskogee | 9 | Washita | 1 |
| Garfield | 5 | Nowata | 1 | Woodward | 5 |
| Garvin | 1 | Okfuskee | 3 | | |
| | | | | TOTAL | 279 |

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 2021 with four pending capital cases, 49 cases in which the client was convicted of some form of homicide, and one non-capital felony case. During the fiscal year, 34 non-capital homicide cases were opened. No capital cases were received, and one capital case was closed in Fiscal Year 2021. By the end of the year, 47 non-capital homicide cases and one non-capital felony case were closed, leaving the Division with 39 active cases, consisting of three capital cases, 35 non-capital homicide cases, and one non-capital felony case.

STATEWIDE DISTRIBUTION

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

County

| | |
|--------------|---|
| Canadian | 1 |
| Cleveland | 1 |
| LeFlore | 1 |
| Pottawatomie | 1 |

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

County

| | | | |
|------------|---|--------------|----|
| Atoka | 1 | McCurtain | 3 |
| Caddo | 1 | Oklahoma | 11 |
| Carter | 2 | Okmulgee | 3 |
| Cherokee | 1 | Pittsburg | 1 |
| Cleveland | 5 | Pontotoc | 1 |
| Comanche | 6 | Pottawatomie | 1 |
| Creek | 1 | Rogers | 5 |
| Custer | 1 | Seminole | 5 |
| Delaware | 2 | Stephens | 1 |
| Kay | 1 | Tulsa | 22 |
| Kingfisher | 1 | Wagoner | 1 |
| Mayes | 3 | Washington | 1 |
| McIntosh | 1 | | |

DISPOSITION OF CASES

During Fiscal Year 2021, one capital case was affirmed by the Oklahoma Court of Criminal Appeals and closed after the United States Supreme Court denied the petition for writ of certiorari. Twenty non-capital homicide cases and one non-murder case were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed. Four state appeals in non-capital murder cases were dismissed by the Court. The Court reversed and remanded with instructions to dismiss on ten non-capital murder cases. Ten non-capital homicide cases were transferred to the Capital Post-Conviction Division. Two non-capital homicide cases were

closed after the client hired private counsel. One non-capital homicide case was closed after the client elected to dismiss the appeal.

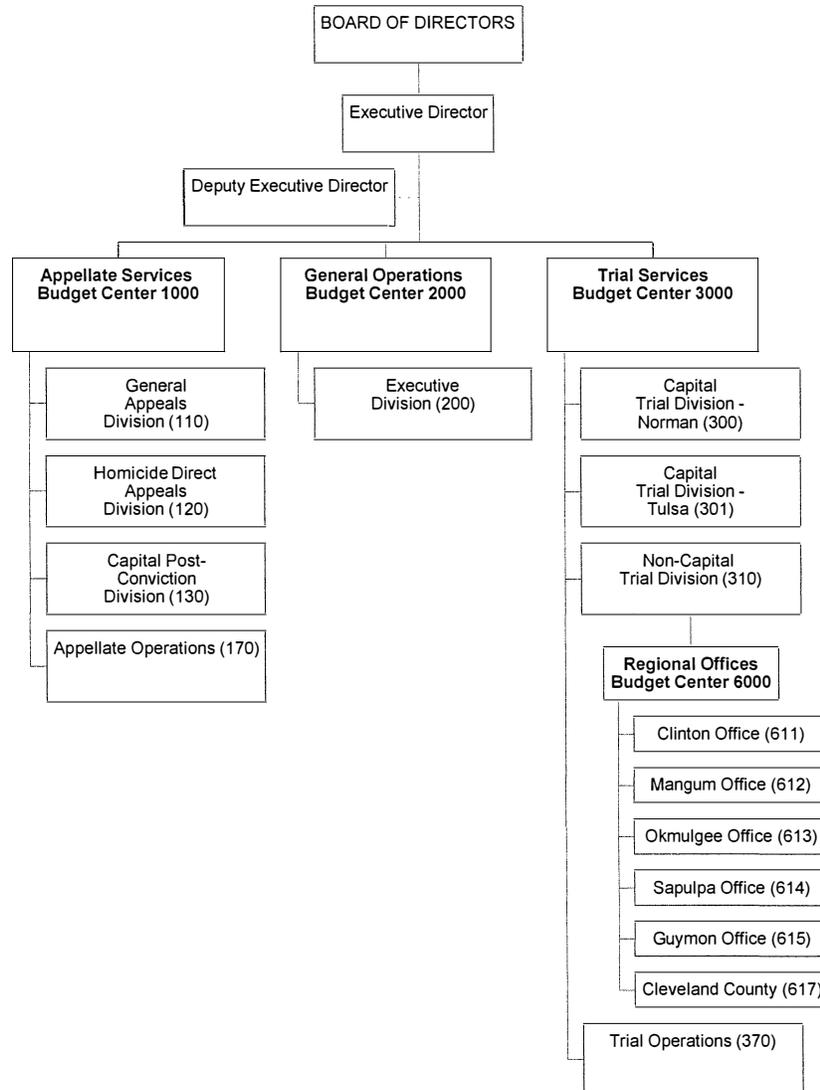
CAPITAL POST-CONVICTION DIVISION

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 2021 with 32 active cases, including seven capital post-conviction cases, one capital direct appeal case, and 24 non-capital direct appeal cases. During Fiscal Year 2021, the Division accepted 24 non-capital direct appeal cases. The Division closed a capital direct appeal case and two capital post-conviction cases. Two of these cases were transferred to the Capital Habeas Unit of the Federal Public Defender for the Western District of Oklahoma, and the third case was dismissed because the client passed away. The Division also closed 17 non-capital direct appeal cases after decisions from the Oklahoma Court of Criminal Appeals, including 4 cases which were dismissed and re-filed in federal or tribal court pursuant to *McGirt v. Oklahoma*. As a result, the Division ended Fiscal Year 2021 with a total of 36 cases, including five capital post-conviction cases and 31 non-capital direct appeal cases.

Oklahoma Indigent Defense System

Organization Chart



NOTE: Only those departments that have FTE are presented.

September 17, 2021

OKLAHOMA INDIGENT DEFENSE SYSTEM

Non-Capital Trial Division

Actual FY-2021 Workload

July 1, 2020 through June 30, 2021

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

| TYPE OF APPOINTMENT | | FEL | JUV | MISD | TRAF | WL | YO | ALL |
|---|---------------------------|---------------|--------------|---------------|------------|-----------|------------|---------------|
| FY-2021 Contract <i>LESS</i> Conflicts and Rover Cases | | 14,810 | 1,323 | 9,246 | 458 | 14 | 54 | 25,905 |
| Plus Contract Carry-Over from Prior Fiscal Years | | 12,135 | 767 | 5,980 | 279 | 20 | 36 | 19,217 |
| Total Contract Workload | | 26,945 | 2,090 | 15,226 | 737 | 34 | 90 | 45,122 |
| 2021 Satellite Office <i>LESS</i> Conflicts and Rover Cases | | 3,678 | 291 | 2,362 | 159 | 1 | 25 | 6,516 |
| Plus Satellite Office Carry-Over from Prior Fiscal Years | | 1,876 | 381 | 944 | 52 | 0 | 6 | 3,259 |
| Total Satellite Office Workload | | 5,554 | 672 | 3,306 | 211 | 1 | 31 | 9,775 |
| FY-2021 Conflicts | Contracts | 196 | 15 | 50 | 0 | 0 | 2 | 263 |
| | Satellite Offices | 244 | 18 | 71 | 1 | 0 | 4 | 338 |
| Conflicts Carryover from Prior Fiscal Years | Contract Counties | 138 | 2 | 45 | 0 | 0 | 0 | 183 |
| | Satellite Office Counties | 171 | 15 | 58 | 6 | 0 | 3 | 253 |
| FY-2021 Rover Cases | Contract Counties | 10 | 0 | 6 | 0 | 0 | 0 | 16 |
| | Satellite Office Counties | 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Rover Cases Carryover from Prior Fiscal Years | | 19 | 0 | 0 | 0 | 0 | 0 | 19 |
| Total Conflicts and Rover Cases Workload | | 780 | 50 | 230 | 7 | 0 | 9 | 1,076 |
| TOTAL FY-2021 NCT Workload | | 33,279 | 2,812 | 18,762 | 955 | 35 | 130 | 55,973 |