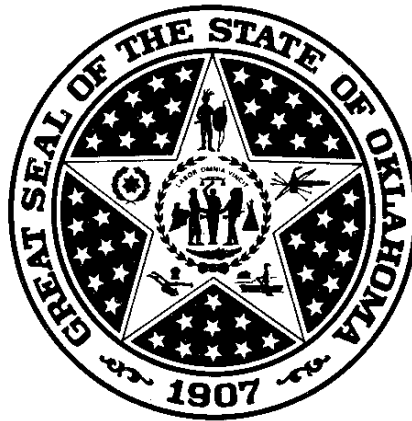


Oklahoma

Indigent Defense System



BRAD HENRY
GOVERNOR

BOB A. RICKS
CABINET SECRETARY
SAFETY AND SECURITY

JAMES D. BEDNAR
Executive Director

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JAMES D. BEDNAR
EXECUTIVE DIRECTOR



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November 14, 2003

TO THE HONORABLE BRAD HENRY
HONORABLE CAL HOBSON
HONORABLE LARRY ADAIR
HONORABLE JOSEPH M. WATT
HONORABLE CHARLES A. 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, 2003, 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 2003 from the Governor and his staff, from the Legislature, and from the Judiciary.

As we move forward in 2004, 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,

Handwritten signature of Rod Wiemer.

Rod Wiemer, Esq.
Chair

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Board Members

Fiscal Year 2003 Members &

In accordance with Title 22, Section 1355.1, the Board shall be composed of five members appointed for five-year terms by the Governor with the advice and consent of the Senate. The Governor designates one person to serve as Chair. No congressional district nor county shall be represented by more than one member. A Board member shall be eligible for reappointment and shall continue in office until his successor has been appointed, qualified and confirmed by the Senate.

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May 21, 2003 to July 1, 2007

(replacing Benjamin J. Curtis)

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Henry Burris	July 1992 to May 1997
Michael Carter	June 1998 to May 2000
Ken Feagins	May 2000 to January 2001
Cheryl Hunter	January 1997 to May 2000
Doug Inhofe	March 1994 to August 1997
Jack Ivester	October 1994 to May 1996
Richard James	August 1989 to May 1992
Marvin Martens	August 1989 to May 1992
Alan McPheron	May 1992 to July 1992
Henry A. Meyer, III	May 1992 to December 1993
John B. Nicks	October 1992 to March 1994
Douglas Parr	November 1991 to May 1996
Berry Pfefferbaum, M.D.	April 1992 to April 1993
Richard L. Reeh	November 1989 to October 1992
Charles Richardson	August 1997 to June 1998
Donald Kent Switzer	May 1989 to April 1992
Rod Uphoff	May 1996 to June 1998

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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 legal representation to certain Oklahoma citizens who are charged with criminal offenses.

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 the enactment 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's responsibilities are defined by the Indigent Defense Act and have changed with statutory amendments over the twelve-year history of the agency. The agency's fundamental duty is 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 agency consists of four program areas: the General Operations Program, the Trial Program, the Appellate Program and the DNA Forensic Testing 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 Capital Direct 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 38,251 court appointments in Fiscal Year 2003 in all divisions of the agency. The breakdown by division is as follows:

Non-Capital Trial:	
<i>Staff</i>	6,516
<i>Conflicts</i>	682
<i>Contracts</i>	30,075
Capital Trial - Norman	44
Capital Trial - Tulsa	46
General Appeals	682
Capital Direct Appeals and DNA Program	116
Capital Post Conviction	64
Executive Division Conflicts:	
<i>Capital Trial Divisions</i>	8
<i>Non-Capital Direct Appeals</i>	13
<i>Capital Direct Appeals</i>	1
<i>Capital Post Conviction</i>	4
TOTAL	38,251

Given the nature of criminal cases, most cases 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 59 counties and a portion of the caseload in 1 county. In 15 counties, staff attorneys handle 100% of the indigent caseload, and in 1 county they handle a portion of the indigent caseload. In 1 of these counties, responsibility for the non-capital trial indigent caseload is shared between contract attorneys and staff attorneys. 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.

Funding

At the time of its creation in 1991, OIDS received federal funding as a federal resource center responsible for providing state and federal post-conviction and habeas representation in death penalty cases. This funding ended in October 1995, when Congress closed all of the federal resource centers in the country. OIDS was forced to seek state appropriations to replace the federal funds that had been used for state post-conviction representation.

During its twelve-year history, OIDS repeatedly has been forced to seek supplemental appropriations from the Legislature. The first, received in early 1992, averted a shutdown of the agency soon after it was created. The original funding mechanism, a \$13.00 increase in statutory court costs on traffic tickets issued by the Oklahoma Highway Patrol, did not generate enough revenue for

OIDS to meet its payroll.

OIDS funding for Fiscal Year 1993, through direct appropriations, included an additional \$6 million to finance the cost of contracting with private attorneys around the State to initiate OIDS's statewide defender services in non-capital trial cases in 75 counties. These fiscal-year contracts are awarded by the OIDS Board after considering offers to contract submitted by private attorneys on a county-by-county basis.

In Fiscal Year 1994, the Legislature reduced OIDS's appropriation by \$1 million based on a prediction that the difference in prior and current-year appropriations would be made up by revolving fund collections of OIDS's share of fees assessed against criminal defendants.

In Fiscal Year 1995, OIDS received no additional appropriated funds except for a state pay plan. Revolving fund income fell drastically, from \$1.5 million in Fiscal Year 1992 to \$94,079 in Fiscal Year 1995. In Fiscal Year 1996, OIDS' appropriations were reduced by 2.5%, followed by the loss of all federal funding in October 1995. OIDS requested a Fiscal Year 1996 supplemental appropriation of \$1.4 million, but only received \$240,000.

In Fiscal Year 1997, OIDS again suffered a funding crisis. The effect of the previous fiscal year's funding losses was compounded by the veto of an appropriation of \$919,155 for Fiscal Year 1997. These funding losses resulted in OIDS being fiscally unable to award annual contracts to the private attorney providers for non-capital trial representation. OIDS was forced to assign cases to private attorney providers on a case-by-case basis at hourly rates. The result was significantly higher costs to the agency. In March 1997, OIDS received a supplemental appropriation in the

amount of \$2.1 million to fund the non-capital trial representation costs.

In Fiscal Year 1998, OIDS received \$566,000 in additional appropriations to annualize the previous year's supplemental appropriation.

After five years of service, the previous Executive Director submitted his resignation to the agency's governing Board on August 8, 1997. The Board selected the current Executive Director, who assumed his duties on December 1, 1997. With the change in agency management, an intensive review of all of OIDS programs began. Many deficiencies in OIDS delivery of services were identified.

For Fiscal Year 1999, OIDS received \$652,521 in additional appropriations to address some of the identified deficiencies. This additional funding was used to pay for mandatory state pay raises and increased benefit costs, a much needed new telephone system, increased staffing in the Executive Division, and costs associated with the opening of satellite offices by the Board to represent the non-capital trial clients in those counties where acceptable contracts with private attorney providers could not be obtained. The additional staffing was added to address identified deficiencies in OIDS' ability to track and report financial and caseload data, to provide data processing support, and to improve the agency's ability to comply with state and federal law.

By the fall of 1998, the Executive Director recognized that OIDS would not be able to meet its Fiscal Year 1999 obligations because of the continued effect of the non-capital trial representation crisis in Fiscal Year 1997. Management projected a \$1.3 million shortfall in funds needed for Fiscal Year 1999 professional services for both the Trial Program and the Appellate Program, including funds for private-

attorney expenses, experts, and investigators in both capital and non-capital cases. A supplemental appropriation in that amount was obtained in the spring of 1999.

The Fiscal Year 1999 supplemental appropriation was subsequently added to the agency's appropriation base beginning with Fiscal Year 2000. This annualized appropriation enabled the agency to continue to contract with and pay its conflict and overload attorneys, expert witnesses, investigators and translators.

For Fiscal Year 2002, OIDS' initial base appropriation amount was \$16,042,393. However, beginning in January 2002, a state-wide revenue shortfall resulted in across-the-board allocation reductions by the Oklahoma Office of State Finance. The agency's allocation reductions totaled \$607,354 in Fiscal Year 2002, leaving it with an actual appropriation in the amount of \$15,435,039 by the end of the year.

During May 2002, the Executive Director developed a plan to ensure better and more cost-effective expert services were provided to agency clients. He created two separate areas within the Executive Division to address all of OIDS' client needs for forensic and psychological services. The Chief of Forensic Services, a DNA Expert, and the Chief of Psychological Services, an attorney/psychologist, assists the Executive Director in determining what services are appropriate for each individual client. These two OIDS professionals meet with attorneys and experts, and either perform the requested testing or evaluation for the client, or make recommendations to the Executive Director as to the appropriate expert to be used. This process enables the agency to be more effective and utilize tax dollars more efficiently.

OIDS' initial base appropriation amount

for Fiscal Year 2003 was reduced by \$802,120. Beginning in September 2002, the continuing statewide revenue shortfall resulted in new allocation reductions, totaling \$1,196,361 through the remainder of the fiscal year.

To address funding reductions, OIDS initially implemented a furlough plan beginning July 2002. The furlough plan provided that all agency employees would be furloughed a maximum of two days without pay per pay period. The plan continued until September 2002.

The rapidly deteriorating budget picture forced OIDS to take further drastic measures. It adopted a reduction-in-force plan, which eliminated 27 positions, including 10 attorney positions, effective December 31, 2002. While the reduction-in-force hindered the agency's ability to effectively represent its clients, the lack of adequate funding left it with no viable alternatives.

Another critical measure taken by OIDS was to decline to enter into private conflict counsel contracts, where agency attorneys or county contract attorneys were unable to provide representation due to a conflict of interest. The agency filed motions to vacate agency appointments in conflict cases arising throughout the state, on the basis that unencumbered funds did not exist to pay for conflict counsel, and to enter into such contracts would violate the State Constitution, as well as the Central Purchasing Act and the Oklahoma Criminal Code. The District Court of Kay County denied two such motions filed in two separate criminal cases, prompting the agency to seek a writ of prohibition against the district court in the Oklahoma Supreme Court. Upon refusal of the Oklahoma Supreme Court to assume original jurisdiction, the district court issued contempt citations against the Executive Director directing him to show cause why he should not be held in contempt for refusing to provide conflict

counsel. The contempt citations prompted the Executive Director to file a petition for writ of prohibition in the Oklahoma Court of Criminal Appeals.

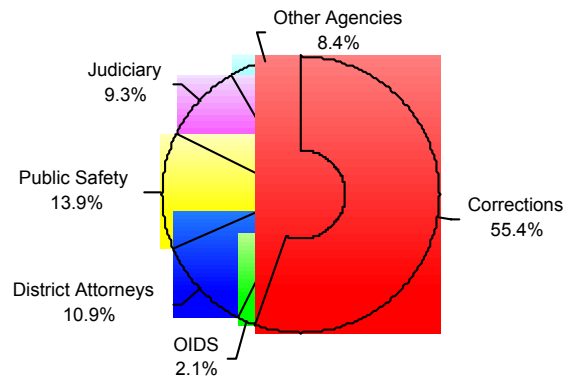
On November 26, 2002, the Court of Criminal Appeals issued its order in *Bednar v. District Court of Kay County*, 2002 OK CR 41, 60 P.3d 1. The court first held that contempt proceedings were not properly before the court, as other adequate remedies existed. However, the court stated that the issues presented in the case were complex and involved multiple conflicting constitutional and statutory provisions, such as the prohibition from entering into a contract if unencumbered funds are unavailable. The court further stated that the case raised important separation of powers questions and potential conflicts in jurisdiction between it and the Oklahoma Supreme Court. More importantly, the court affirmed the *State's* ultimate responsibility to provide counsel, regardless of whether counsel is furnished and paid by OIDS, the court fund or the general fund. Therefore, the court ordered the district court to provide counsel at State expense by December 6, 2002, or the defendants in the underlying criminal cases would be released.

As a result, the Governor-Elect, the Senate President Pro Tempore Designate, the Speaker of the House, and the Chief Justice and Vice-Chief Justice of the Oklahoma Supreme Court entered into an agreement providing that the court fund would guarantee payment for conflict counsel representation until the Legislature provided supplemental funding. The agreement became effective December 5, 2002. OIDS was then able to enter into contracts with private conflict counsel to provide representation to its clients.

In May 2003, OIDS received a \$600,000 supplemental appropriation for the purpose of payment for conflict counsel. After the end of the fiscal year, OIDS

received \$174,123 in additional allocations as a result of better than expected state-wide collections. This amount was treated as carryover into Fiscal Year 2004. The adjusted final appropriation received for Fiscal Year 2003 was \$14,818,035.

Judiciary, Safety & Security Agencies FY2003 Budgeted Expenditures



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. These assessments, authorized by Section 1355.14 of the Indigent Defense Act, if collected, are deposited in the Indigent Defense System Revolving Fund.

While the statute provides for collection of costs, it is unspecific as to the amount to be collected. Therefore, in January 2003, the Oklahoma Indigent Defense System Board approved a client cost assessment program. The Board recommended to the Oklahoma District Courts a schedule of minimum fees to be assessed to OIDS clients as the cost of representation. While some clients are able to meet this minimal assessment cost, these clients are entitled to services, constitutionally and by statute, regardless of whether they are able to

make payment.

The agency would note that each year, about half of its entire budget finds its way back into the Oklahoma economy through expenditures to private firms and individuals for professional and support services.

Organization Chart

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– 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, finance and computer operations personnel.

OIDS provides legal representation through the services of staff members and by contracting with private attorneys, experts and investigators. OIDS employed 121 full-time staff members at its main offices in Norman and its satellite offices in Sapulpa, Okmulgee, Mangum, and Clinton.

In Fiscal Year 2003, the agency entered into 292 professional services contracts with private attorneys, experts and investigators to provide defense services

in court-appointed cases. The Executive Division services these contracts in addition to providing support services to its staff attorneys and investigators.

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

~ Legislation _____

OIDS sponsored one piece of legislation during the 1st Session of the 49th Legislature which was passed and signed by the Governor.

Senate Bill 772 addressed 19 O.S. 138.7 and 138.9, which provided for reassignment of death penalty cases to the Oklahoma Indigent Defense System. This bill was requested by OIDS to remove the provision that allowed the district courts of Oklahoma and Tulsa counties to appoint OIDS at the trial level where a conflict of interest existed between multiple defendants and more than one was subject to the death penalty.

Even though death penalty cases from these two counties were assigned to the Oklahoma Indigent Defense System for representation, many times a conflict of interest also existed within the System which resulted in OIDS having to pay for outside counsel. As a result of the Fiscal Year 2003 budget and allocation reductions, OIDS no longer had the personnel or monetary resources to continue the representation of Oklahoma and Tulsa County capital conflict cases. The Executive Director recognized the need to reduce costs associated with these cases and successfully sponsored this piece of legislation. Senate Bill 772 became effective May 7, 2003.

~ Website _____

OIDS' website provides information about the agency, how to apply for DNA testing, 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.state.ok.us/~oids or through the State website at www.youoklahoma.com, by selecting "Agency Directory." The OIDS website contains many links, including those for legal research, unpublished Court of Criminal Appeals opinions issued since July 2000, 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. A training plan was implemented that focused on utilizing in-state and out-of-state experts to conduct seminars at Oklahoma locations for OIDS staff members and private attorneys.

Training during the year included seminars entitled "Fingerprint Analysis and Polygraph Examination" and "Defending Child Abuse Investigations." OIDS also co-sponsored the Criminal Defense Institute held June 26-27, 2003.

~ Office Relocation _____

The Oklahoma Indigent Defense System offices have been located on the campus of the University of Oklahoma. However, due to growth of the University and expansion of its offices, OIDS was notified of the need to locate new space. Subsequently, arrangements were made with the Oklahoma Department of Mental Health and Substance Abuse Services to renovate space at Griffin Memorial Hospital. During this fiscal year, partial space was completed in November 2002 enabling the Executive Division and Non-Capital Trial Division to move. Remodeling will continue throughout Fiscal Year 2004 and as completed, other divisions will move accordingly.

CONFLICT CASELOAD

During Fiscal Year 2003, the Executive Division contracted with outside attorneys for representation on a total of 26 cases.

The year began with 6 pending death penalty cases, and appointments in 2 new cases were received. Four death penalty cases were concluded, and 4 were carried over into Fiscal Year 2004.

Additionally, the Executive Division started Fiscal Year 2003 with no pending capital direct appeal cases but received 1 new case during the year which was carried over into Fiscal Year 2004.

One non-capital appeal case was pending at the beginning of the year with the Division receiving 12 new conflict appointments during this period of time. Five cases were concluded with a total of 8 carried into Fiscal Year 2004.

The Executive Division began Fiscal Year 2003 with no pending capital post conviction cases, with 4 new appointments received and 1 case concluded during this period of time.

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– 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 providing defense representation for the agency's largest group of clients, with the number of new court appointments approximately that of the previous fiscal year, at 26,811 criminal cases. NCTD is responsible for providing trial level indigent defense representation in all criminal cases where the potential sentence includes incarceration, up to life without the possibility of parole. This ranges from incarcerable traffic offenses to first degree murder where the death penalty is

not at issue. NCTD is responsible for legal defense services in 75 counties.

In June 1997, due to problems in securing fiscal-year contracts covering the entire caseload in twelve counties¹ and a portion of the caseload in two others², the agency's governing Board directed management to open three non-capital trial offices (Clinton, Mangum and Okmulgee) to begin accepting the System's appointments in the affected counties as of September 1, 1997. In Fiscal Year 1999, the Board expanded the Mangum satellite office to cover a 15th county (Jackson) because no private attorney offered to contract for the work after offers were solicited a second time. In Fiscal Year 2000, the Board expanded the Mangum office to cover a 16th County (Tillman) after one contractor was allowed to cancel his contract. The Board also created a fourth satellite office (Sapulpa) for Creek County in September 1999, removing that county from the Okmulgee office caseload.

¹ Beckham, Creek, Custer, Dewey, Ellis, Greer, Harmon, Kiowa, Okfuskee, Okmulgee, Roger Mills and Washita.

² Blaine and Woodward.

In Fiscal Year 2000, OIDS also re-assumed responsibility for providing non-capital trial defense services in Bryan County. Court appointments in Bryan County had been paid for by the Bryan County District Court Fund under a pilot project authorized in 1997 by Section 1355.8(M) of the Indigent Defense Act. OIDS entered into a fiscal-year, flat-rate contract effective July 1, 1999, with private attorneys to provide trial level indigent defense representation in Bryan County.

In prior fiscal years, the Clinton office handled only 25% of the Non-Capital Division appointments in Woodward county. In Fiscal Year 2001, the Board decided not to renew the flat-rate contract covering 75% of the Woodward County caseload, electing instead to have the Clinton satellite office assume responsibility for 100% of the Woodward County caseload.

The Non-Capital Trial Division satellite offices are staffed with 20 attorneys who handled 6,516 active cases during Fiscal Year 2003, a 14.8% increase over last year with 2 fewer attorneys. The average staff attorney handles 181 felonies, 46 juvenile cases, 82 misdemeanor cases, and 17 traffic cases per year, for an average of 326 cases. According to a formula utilized by the National Legal Aid and Defenders Association, each satellite office attorney does the work of 1.70 attorneys who operate in only one courthouse. All satellite office attorneys handle work in several different county district courts.

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 three ways:

- (1) flat-rate fiscal year contracts with private attorneys;

- (2) satellite offices with salaried staff attorneys; and
- (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.

In Fiscal Year 2003, the Division's caseload was handled as follows:

- (1) Flat-Rate Fiscal Year Contracts: In 59 counties, all NCTD representation was provided via such contracts. In 1 other county (Blaine County), a portion of the Division's representation was provided by such contracts.
- (2) Staffed Satellite Offices: NCTD operated 4 satellite offices: Clinton, Mangum, Okmulgee and Sapulpa. These offices handled the entire caseload in 15 counties and part of the caseload in 1 other. The Clinton Satellite Office provided representation in all indigent (delinquent) juvenile, misdemeanor and traffic cases in Blaine County.
- (3) Conflict/Overload Counsel: 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. In addition, as caseloads permit, the satellite offices, and in particular the Okmulgee and Sapulpa offices, continue to handle one another's conflict cases.

During Fiscal Year 2003, NCTD assigned 263 new conflict cases to conflict counsel. This number is down tremendously from the previous fiscal year total of 821. Reasons for the decline include the budget crisis which necessitated that satellite offices take

one another's conflict cases to reduce costs, and the fact that the System early in the Fiscal Year 2003 exhausted its professional services budget for conflict cases, leading to court litigation before funding could be identified. In Fiscal Year 2004 other measures to reduce conflict case costs will be undertaken.

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 Board awards fiscal-year contracts in June, after OIDS' appropriation bill has been signed into law but only a week or two before the contract term begins on July 1. The contracting process is volatile, not only in terms of the number of offers, if any, received for any particular county, but also 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 OIDS appointments in the affected county under Section 1355.9 of the Indigent Defense Act or (2) assign OIDS 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 2003, the Non-Capital Trial Division's satellite offices served the

following counties:

CLINTON OFFICE

- C Custer
- C Dewey
- C Ellis
- C Roger Mills
- C Washita
- C Woodward
- C Blaine (*all of the Division's delinquent juvenile, misdemeanor, and traffic caseload*)

MANGUM OFFICE

- C Beckham
- C Greer
- C Harmon
- C Kiowa
- C Jackson
- C Tillman

OKMULGEE OFFICE

- C Okfuskee
- C Okmulgee

SAPULPA OFFICE

- C Creek

As a result of budget allocation reductions imposed during Fiscal Year 2003, the satellite offices continued to handle each other's conflict cases as well as conflicts cases arising in adjoining counties covered by fiscal year contracts, where there existed sufficient resources to do so. Since State revenues were flat at the close of the Fiscal Year, it was anticipated these and other belt-tightening measures would continue throughout Fiscal Year 2004.

OVERALL CASELOAD

In Fiscal Year 2003, NCTD received a total of 22,428 new contract cases, of which 107 resulted in conflicts. As a result, 22,321 new cases were handled under the county contracts. This was slightly more than the previous year. NCTD satellite offices received 4,383 new cases, of which 156 arose as conflicts. Thus, the division satellite

offices handled 4,227 new cases in Fiscal Year 2003. Total new cases for the division equaled 26,811. The total Fiscal Year 2003 caseload, which includes cases continuing from the previous fiscal year, was 37,273 cases.

descending caseload shows that Cleveland County had the highest number of cases (1,461), while Cimarron had the lowest (19).

The list of counties in order of

NON-CAPITAL TRIAL DIVISION
Actual FY-2003 Workload
July 1, 2002 through June 30, 2003

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FELONY	JUVENILE	MISDEMEANOR	TRAFFIC	TOTAL
FY-2003 Contract LESS Conflicts		14,018	2,246	5,584	473	22,321
Contract Carry-Over from Prior Fiscal Years		4,487	1,653	1,496	118	7,754
Total FY-2003 Contract Workload		18,505	3,899	7,080	591	30,075
Satellite Office		2,460	405	1,107	255	4,227
Satellite Office Carry-Over from Prior Fiscal Years		1,155	518	539	77	2,289
Total FY-2003 Satellite Office Workload		3,615	923	1,646	332	6,516
FY-2003 Conflicts	Contracts	72	9	23	3	107
	Satellite Offices	116	20	17	3	156
Conflicts Carry-Over from Prior Fiscal Years	Contract Counties	138	20	23	0	181
	Satellite Office Counties	172	38	26	2	238
Total Conflicts Workload		498	87	89	8	682
TOTAL FY-2003 NCT Workload		22,618	4,909	8,815	931	37,273

Capital (Death Penalty) Trial Representation

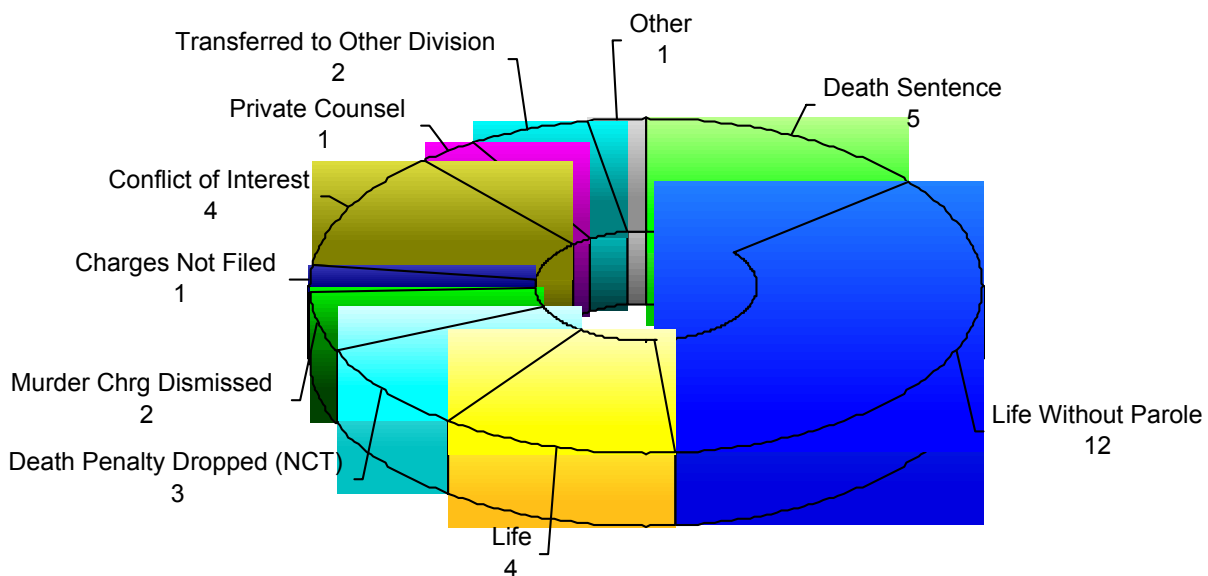
The Capital Trial Divisions in Norman and Tulsa are assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. They further represented clients in Oklahoma and Tulsa Counties when the public defender had a conflict of interest. Legal services are provided by salaried attorneys and investigators, assisted in some cases by private attorneys under contract to serve as co-counsel and by contracts with expert witnesses.

The Capital Trial Divisions in Norman and Tulsa operate as separate law firms for conflict purposes. If one of the Divisions cannot accept a court appointment because of a conflict of interest arising from another court appointment, the case is generally assigned to the other Division. If neither Division can accept the court appointment, OIDS contracts with private counsel to represent the client under the provisions of the Indigent Defense Act, Sections 1355.7 & 1355.13.

The Capital Trial Divisions began Fiscal Year 2003 with 36 pending trial level cases. A total of 74 trial level cases were handled during this time with 35 completed. Results of these cases concluded during Fiscal Year 2003 are shown in the chart below, and are further discussed by each division in the following sections.

Further, the capital trial divisions began Fiscal Year 2003 with 8 pending death penalty appeals and 1 pending life without parole appeal carried over from Fiscal Year 2002. These two divisions received new appointments for appeals in 7 cases during the fiscal year, bringing the total appellate caseload for Fiscal Year 2003 to 16 cases. The capital trial divisions concluded 5 appeals by the end of the fiscal year, resulting in 11 appeals carried over into Fiscal Year 2004.

Capital Trial Case Results Norman and Tulsa Division



35 Cases Concluded at Trial Level

Capital Trial Division - Norman Office

The Capital Trial Division-Norman, was the agency's original Division to represent clients in death penalty cases. The Division represents defendants in capital cases filed in 46 counties (until May 2003, representation included Oklahoma County cases when the public defender had a conflict of interest) and has primary responsibility for conflicts arising in the remaining counties.

Fiscal Year 2003 was marked by several personnel changes for the Capital Trial Division-Norman. The year began with 11 attorneys, 8 investigators, 3 full time and 1 part time support personnel. Due to a combination of resignations and terminations, the year ended with 9 attorneys, 6 investigators and 3 full time support personnel. The changes resulted in 3 attorneys new to the division, including a new division chief.

In spite of the changes, the division maintained its level of excellence in obtaining results for clients with only 1 death penalty resulting from 17 cases concluded during the fiscal year.

The most significant development for this fiscal year was the adoption of legislation eliminating the agency's obligation to handle conflict cases in Oklahoma County. One of the more difficult tasks facing this division during the upcoming fiscal year will be assessing the staffing needs resulting from this change.

TRIAL CASELOAD

The Capital Trial Division-Norman began Fiscal Year 2003 with 18 pending death penalty cases. The Division received appointments in 22 new cases during the fiscal year, bringing the total caseload for Fiscal Year 2003 to 40 cases. By the end of the fiscal year, 17 cases were concluded and 23 were carried over into Fiscal Year 2004.

Results of 3 cases tried in Fiscal Year 2003:

- " 1 death sentence
- " 2 life sentences (one case/defendant)
- " 2 mistrials (one case/defendant)

Results from cases in which a guilty plea was entered:

- " 5 life without parole sentences
- " 3 life sentences (*one plea involved charge reduced to second degree murder*)

FINAL RESULTS OF TRIAL CASES CONCLUDED

Result	No. Cases
Death Sentence	1
Life Without Parole	5
Life with Parole <i>(One defendant received 2 life sentences)</i>	4
Charges Not Filed	1
Death Penalty Dropped - Referred to Non-Cap Trial	3
Conflict of Interest	1
Referred to Capital Trial Tulsa (Overload)	2
Total	17

APPELLATE CASELOAD

The Capital Trial Division-Norman began Fiscal Year 2003 with 2 pending death penalty appeals carried over from FY 2002 and 1 pending life without parole appeal carried over from FY 2002. The Division retained appointments for appeals in 1 case during the fiscal year, bringing the total caseload for Fiscal Year 2003 to 4 cases. Capital Trial - Norman had 1 appeal concluded by the end of the fiscal year and 3 cases were carried over into Fiscal Year 2004.

Capital Trial Division - Tulsa Office

The Capital Trial Division-Tulsa was created at the beginning of Fiscal Year 1997 to represent clients in counties in the Eastern-Northeastern area of the State. Historically, that region produced a significantly higher number of first degree murder charges than the remainder of the state, and the new Division was necessary to reduce the expense for conflict counsel and provide better geographical availability for OIDS clients and the courts. The Division represents clients in 31 counties in the Eastern third of the State (until May 2003, representation included Tulsa County when the public defender had a conflict of interest), in addition to having primary responsibility for conflicts arising in the remaining counties. Beginning in Fiscal Year 2004, the division will assume responsibility from the Capital Trial Division-Norman for an additional county in the Eastern part of the state.

During this fiscal year, one trial and one appellate attorney left the Division, and two attorneys were hired to fill the vacancies. In Fiscal Year 2003 the staff of the Capital Trial Division-Tulsa Office consisted of a chief capital counsel with a full caseload, 4 first-chair trial attorneys, and 3 attorneys with second chair and appellate responsibilities. The Division employed 4 investigative staff and 3 support staff.

TRIAL CASELOAD

Fiscal Year 2003 began with a carryover of 18 cases pending from the previous fiscal year. The Division opened 16 new cases, bringing the total caseload for the year to 34 cases. The Division concluded 18 cases and carried over 16 cases into Fiscal Year 2004.

The Division tried 4 cases, 2 by jury trial and 2 by non-jury trial this fiscal year resulting in:

" 4 death sentences.

The Division had 2 cases in which the murder charges were dismissed.

The Bill of Particulars was dropped in 7 cases resulting in:

" 7 pleas to a life without parole sentence.

One case was closed as a result of the client hiring private counsel, 3 cases were conflict cases which were referred out of the division, and 2 cases were closed in which no action was taken.

FINAL RESULTS OF TRIAL CASES CONCLUDED*

Result	No. Cases
Death Sentence	4
Life Without Parole	7
Dismissal of Murder II Charge	2
Conflict of Interest	3
Retained Private Counsel	1
Other	1
Total	18

*As set forth above, LWOP, includes negotiated pleas and negotiated dismissals of Bill of Particulars.

APPELLATE CASELOAD

Six appeals were carried over from Fiscal Year 2002. Six new appeals were initiated and 4 appeals were completed during Fiscal Year 2003. Eight cases carried over to Fiscal Year 2004.

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.

The Appellate Program is appointed to represent clients in accordance with the Indigent Defense Act, Sections 1355 - 1369, and the Uniform Post-Conviction Procedure Act, Section 1089 (capital

cases) of Title 22 of the Oklahoma Statutes.

~ 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 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 County and Tulsa County 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, in rare cases, by a private attorney under contract after a case has been remanded to the trial court for a hearing. 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, the agency enters into contracts with private attorneys on a case-by-case basis to represent Division clients on appeal.

If the General Appeals 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.

The General Appeals Division began Fiscal Year 2003 with 307 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 375 additional cases during the fiscal year. The Division closed 381 cases, ending the fiscal year with 301 open cases to be carried into Fiscal Year 2004.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 277 clients during Fiscal Year 2003. Of those, 30 involved clients convicted of homicide, including 15 clients convicted of first-degree murder. In addition,

Division attorneys appeared for 11 oral arguments before the Court of Criminal Appeals in fast track cases, and filed 29 reply briefs and 6 petitions for rehearing. An additional 25 cases were transferred for briefing outside the division. Thirteen cases, including 10 involving convictions for first degree murder, were transferred to the OIDS Capital Direct Appeals division for briefing. Another 12 cases, including 3 first degree murder cases, were contracted to outside counsel.

The Division closed 381 cases during the year, most due to the Court of Criminal Appeals reaching a final decision in the case. The Court decided 258 Division cases, and granted some type of relief in 63 of those cases.

Additionally, 14 cases, 10 of them first-degree murder cases, were transferred within the agency for briefing and 11 cases were closed because they were contracted to outside counsel. Fifty-two appeals were dismissed for various reasons, usually at the client's request or because the Court of Criminal Appeals lacked jurisdiction to hear them; 32 cases were closed because the System was not properly appointed to handle them; 8 cases were closed because outside counsel was retained by the client, and 6 cases were consolidated (multiple charges or cases for one client).

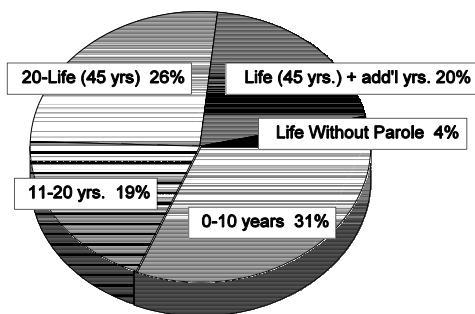
INCOMING CASES

New cases were received from 57 of the State's 77 counties. Cases arising from Oklahoma and Tulsa counties (105) accounted for more than one-fourth the incoming caseload (28 percent), and 15 of the 25 first degree murder cases received. The number of cases received from each county is shown in Appendix B, Page B-1.

SUMMARY OF CASES CLOSED

<u>Reason for Closing</u>	<u>Number of Cases</u>	<u>%</u>
Decision of Court of Criminal Appeals	258	68%
Contracted to Outside Counsel (Conflict & Backlog)	11	3%
Rejected or Dismissed for Lack of Jurisdiction	52	14%
OIDs not properly appointed/appeal out of time	32	8%
Outside Counsel Retained by Client	8	2%
Transferred to another Division	14	4%
Other (consolidated cases)	6	1%
TOTAL	381	100%

Length of Sentence

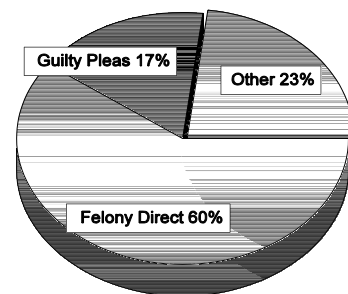


ANALYSIS OF INCOMING CASES

Fiscal Year 2003

The graph below demonstrates the types of appeals handled by the General Division. Except for juvenile and misdemeanor cases, which are handled on an accelerated docket, appeals involve opening briefs of up to 50 pages in length. Other appeals include appeals from revocation of suspended sentences, acceleration of deferred sentences, juvenile/youthful offender certification, misdemeanor and State appeals of adverse rulings

Types of Appeals



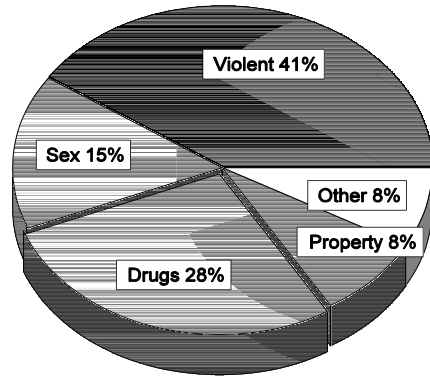
LENGTH OF SENTENCE

An analysis of the sentences received by clients in the incoming cases received by the General Division indicates that almost one-fourth of the clients have been incarcerated with sentences greater than life imprisonment; and more than half are serving sentences of greater than 20 years imprisonment.

The majority of the convictions in the cases appealed by the General Appeals Division are violent crimes, including all degrees of murder and manslaughter, child abuse, assaults, robberies, kidnapping and first degree arson.

The subcategory of sexual offenses includes such violent offenses as rape and molestation, as well as related crimes such as failure to register as a sex offender. Drug offenses are the second leading category of offenses appealed.

Types of Offenses Appealed
FY 2003



Capital (Death Penalty) Appeals

The Capital Direct Appeals Division represents indigent defendants who have been convicted of murder in the first degree and sentenced to death in Oklahoma District Courts. This includes defendants who have been convicted at jury trials, bench trials, and after entering pleas of guilty. Although the Division's primary responsibility is to represent these defendants in their direct appeal to the Oklahoma Court of Criminal Appeals (OCCA), the Division often serves clients in three different courts.

OIDS is appointed by the district courts of Oklahoma to represent clients on direct appeal from the trial court to the OCCA in cases where the defendant is sentenced to die. Direct appeal in a capital case also includes filing a petition for a writ of certiorari in the United States Supreme Court if the case is affirmed by the OCCA.

The Capital Direct Appeals Division is appointed by the district courts in all 77 counties where the defendant was represented by retained counsel at trial but is judicially determined to be indigent on appeal, or where OIDS' capital trial divisions or Oklahoma County or Tulsa County public defenders have a conflict of interest.

At the beginning of Fiscal Year 2001, in an effort to reduce the need to raise ineffective assistance of counsel claims against agency attorneys and to enhance capital representation at the trial level, OIDS restructured the Capital Appellate Program. Personnel and resources were internally transferred from the Capital Direct Appeals Division to the two Capital Trial Divisions. Both the Capital Trial Division-Norman and Capital Trial Division-Tulsa began handling the direct appeals of cases tried by their respective Divisions which resulted in a sentence of death or life without parole. The Capital

Direct Appeals Division will continue to handle the direct appeals of cases in which the client retained private counsel at trial but is judicially determined to be indigent on appeal or when the two capital trial divisions have a conflict of interest and an OIDS contract attorney is hired to represent the client at trial.

The appellate attorneys in the Capital Trial Division-Norman are appointed to perfect capital direct appeals in 46 counties (until May 2003, new appointments included Oklahoma County when the public defender had a conflict of interest), in addition to primary responsibility for conflicts arising in the remaining counties. Appellate attorneys in the Capital Trial Division-Tulsa are appointed by the district courts of 31 counties in the Eastern third of the State (until May 2003, new appointments included Tulsa County when the public defender had a conflict of interest), in addition to primary responsibility for conflicts arising in the remaining counties.

If the appellate attorneys in the two Capital Trial Divisions, the Capital Direct Appeals Division, or the Capital Post-Conviction Division are 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 clients 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 OCCA.

Legal services in both Divisions are provided by salaried attorneys and investigators, assisted in some cases by a private attorney under contract after a case has been remanded to the trial court for a hearing.

~ Capital Direct Appeals Division _____

The Division is appointed by the District Court to represent the client in a direct appeal from that court's judgment and sentence. In many cases the Division will file a supplemental designation of the record with that court, and on occasion will represent the client at an evidentiary hearing in the District Court when OCCA remands the case back to the trial court for such a hearing. The direct appeal is heard and decided by OCCA. If OCCA affirms the judgment and sentence, the Division will represent the client in his attempt to obtain direct review in the United States Supreme Court. This representation entails the filing of a Petition for a Writ of Certiorari and further briefing and oral argument in the Supreme Court if the writ is granted.

In the normal course of events the Division's representation does not end until relief is either obtained for the client or is denied in the Supreme Court.

The usual exceptions are waivers of appeals by the client, or the death of a client.

While the Division's workload is normally limited to capital cases, in Fiscal Year 2000, for purposes of organizational economy and inter-divisional cooperation, the Division began accepting appeals from first degree murder convictions where the sentence of death was not imposed.

CASELOAD

The Capital Direct Appeals Division began Fiscal Year 2003 with 5 pending capital cases and 3 cases in which the client was convicted of murder in the first degree but sentenced to life or life without parole. During the fiscal year, 5 new capital cases and 13 new non-capital cases were opened, meaning the Division represented a total of 26 cases during the fiscal year. By the end of the year, 4 capital cases and 1 non-capital case were closed, leaving the Division with 21 active cases, 6 of these being capital, and 15 non-capital cases.

SOURCE OF NEW CASES FOR FISCAL YEAR 2003

Statewide Distribution

The Capital Direct Appeals Division receives death penalty cases tried by private or conflict counsel from all 77 counties of the State. Beginning in Fiscal Year 2001, the direct appeals of death penalty cases tried by OIDS' two Capital Trial Divisions were handled by these respective Divisions unless a conflict of interest developed. Although Oklahoma and Tulsa Counties have their own public defender organizations which handle appeals of cases tried by lawyers from those agencies, the Capital Direct

Appeals Division would occasionally receive cases when a conflict of interest prevented the Oklahoma County or Tulsa County public defenders from representing these clients in their direct appeals. The following is a breakdown of the distribution of Division cases among the various counties:

County

(1) McIntosh	10%
(2) Oklahoma	20%
(3) Osage	10%
(4) Rogers	10%
(5) Tulsa	40%
(6) Wagoner	10%

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

County

(1) Carter	6%
(2) Comanche	13%
(3) Kay	6%
(4) LeFlore	6%
(5) Muskogee	13%
(6) Oklahoma	31%
(7) Sequoyah	6%
(8) Stephens	6%
(9) Tulsa	13%

DISPOSITION OF CASES

One non-capital case was affirmed by OCCA and subsequently closed during Fiscal Year 2003. Of the 4 capital cases closed during Fiscal Year 2003, 1 client was sentenced to Life Without Parole in the district court following a resentencing hearing, 1 case was affirmed by OCCA, 1 case was closed after being transferred to the Capital Trial Division-Tulsa, and 1 case was transferred to contract counsel because of a Division conflict.

Capital Post Conviction Division

In June 2002, the United States Supreme Court issued two landmark decisions: *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242 (2002), and *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002). In *Atkins*, the Supreme Court declared it was unconstitutional to execute the mentally retarded. In *Ring*, the Supreme Court struck down Arizona's capital scheme where the trial judge determined whether the defendant convicted of first degree murder would be sentenced to death rather than the jury who determined guilt. In Oklahoma, the combination of these two cases have resulted in the Court of Criminal Appeals ordering jury trials in several successor post conviction cases on the issue of whether the petitioner was mentally retarded.

These issues were raised in OCCA, resulting in Division attorneys becoming experts in the field of mental retardation litigation. At the conclusion of Fiscal Year 2003, the attorneys conducted 4 evidentiary hearings on the question of whether the clients' mental retardation renders them ineligible for the death penalty. Two of the mental retardation cases were remanded for jury trials on the mental retardation issue during this fiscal year.

CASELOAD

At the beginning of Fiscal Year 2003, the Capital Post Conviction Division was appointed in 21 cases. During the fiscal year, the Division acquired 43 new cases, and closed 27 cases. The Division began Fiscal Year 2004 with 37 cases.

During Fiscal Year 2003, one attorney was terminated and the forensic analyst was reassigned to another division. In order to handle the increased caseload, the Division hired 2 additional investigators. Unfortunately, the reduction-in-force plan that took effect December 31, 2002, left the Division with 1 less attorney and 1 less secretary.

Although the main focus of the Division for the past year has been on mental retardation cases, the Division has filed original applications for post conviction relief. The Division continues to strive to provide a complete and thorough review and investigation of these cases.

chapter 5

– DNA Testing Program

The DNA Forensic Testing Act, *Title 22 O.S. §§ 1371, et seq.*, became effective July 1, 2000, creating the DNA Forensic Testing Program. The Program is affiliated with the Capital Direct Appeals Division and is available to indigent persons who are presently incarcerated on felony offenses and have a claim of factual innocence based on scientific evidence. The Program is currently staffed with two attorneys and an investigator.

TOTAL CASES

Since its inception, the Program has distributed 692 applications in response to initial inquiries and requests. In Fiscal Year 2003, the Statewide Program received 144 new applications. Thus far, a total of 308 applications have been rejected. One Hundred Forty-Nine of these applicants were not eligible because they were convicted in jurisdictions outside the State of Oklahoma. One Hundred Fifty-Nine Oklahoma inmates were rejected either because their case did not meet Program criteria or viable

test samples could not be obtained. The remaining cases are in various stages of the assessment process.

In Fiscal Year 2003, the Program conducted DNA testing on behalf of four Oklahoma inmates. Testing in all four cases implicated the inmate. Currently, investigations in several other cases are almost complete and formal requests for testing in 2004 are anticipated.

STATEWIDE DISTRIBUTION OF APPLICATIONS

There were 90 official in-state applicants to the Program in Fiscal Year 2003. These applicants came from the following counties, as shown in the following “Program Applications” chart.

PROGRAM APPLICATIONS	
<u>COUNTY</u>	<u># APPS</u>
Adair	1
Bryan	2
Carter	1
Cleveland	1
Comanche	1
Creek	1
Kay	1
Lincoln	2
Oklahoma	62
Pontotoc	1
Rogers	1
Seminole	1
Stephens	3
Tulsa	11
Washington	1
TOTAL	90

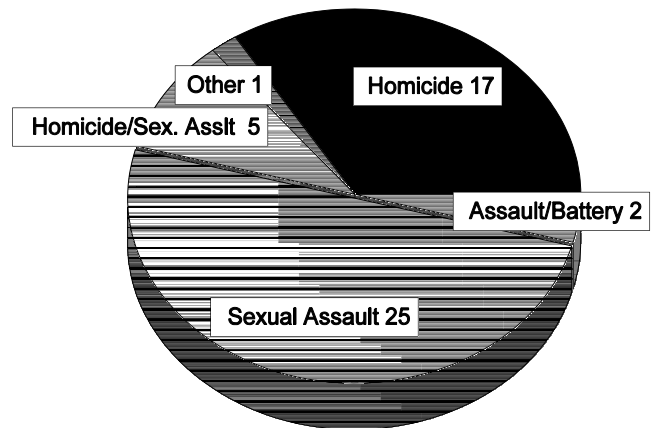
Total 72

CAPITAL CASE APPLICANTS

Cases Closed Or Testing Rejected by State	5
Testing Authorized (Agreement reached with State)	4
Testing Currently in Progress:	1
Testing Completed and Outcome:	2
1 Testing Confirmed State's Case	
1 Testing Inconclusive	
Total	12

The DNA Program is currently assessing 50 applications. The crimes associated with these applications are categorized as follows:

Crimes Associated with DNA Applications



NONCAPITAL CASE APPLICANTS

Cases Closed or to be closed:	67
Cases in Assessment:	1
Testing to be Performed by FBI:	1
Testing Currently in Progress:	1
Testing Completed and Outcome:	2
2 testing confirmed State's case	

Multi-Agency Investigation of Oklahoma City Police Chemist Joyce Gilchrist

In May 2001, the DNA Forensic Testing Program joined the Oklahoma State Bureau of Investigation and the Office of the Attorney General in forming a multi-agency task force to investigate the work of former Oklahoma City Police Department Forensic Chemist Joyce Gilchrist.

OSBI'S REVIEW OF GILCHRIST FILES

The OSBI received 1,448 case files when the Gilchrist investigation began. At that time, case files from 1980, 1981 and 1990 were missing. Of these 1,448 cases, 424 were "no analysis" cases meaning that Gilchrist did not do any forensic work in the case. An additional 400 to 500 files were marked "hold" which means there was only limited analysis performed. At the end of June 2001, the OSBI received an additional 203 case files from 1990. Of these 203 cases, 70 were "no analysis" cases.

In total, the OSBI received 1,651 case files of which 494 were not reviewed because no analysis had been performed by Gilchrist. The OSBI team reviewed 1,193 total case files, of which they recommended further review in 195 cases.

PROGRAM'S REVIEW OF GILCHRIST FILES

The DNA Forensic Testing Act requires that the defendant must be "presently incarcerated." Of the 1,193 cases reviewed by the OSBI, only about 500 of those cases are ones in which a suspect was arrested and eventually prosecuted. In many of these case files, the suspect was unknown. While the OSBI can still review Gilchrist's forensic work in these cases, the Program cannot retest the case

because there is no corresponding convicted defendant. Of those 500 cases where a defendant could be identified, approximately 300 of these individuals are no longer incarcerated. From the entire OSBI case file list, the Program was only able to identify 203 inmates who are currently incarcerated. Applications were sent to all of these individuals. Since the inception of the investigation, 84 of these applications were returned (72 noncapital and 12 capital).

PROGRAM'S REVIEW OF 195 RECOMMENDED CASES

Of the 195 cases on the OSBI's recommended list, the Program was only able to identify 72 individuals who are still incarcerated. To date, 35 inmates have submitted applications.

TOTAL NUMBER OF GILCHRIST CASES REVIEWED THROUGH FISCAL YEAR 2003

† Applications sent to incarcerated inmates identified on OSBI lists totaled **203**.

† Applications submitted to date (capital and noncapital cases) totaled **84**.

Appendix A

Appendix A

NON-CAPITAL TRIAL DIVISION FY-2003 Ranking of Caseloads by Counties

Rank	County	FY-2003 Appts	Rank	County	FY-2003 Appts	Rank	County	FY-2003 Appts
1	Cleveland	1,461	26	Cherokee	395	51	Blaine	157
2	Pottawatomie	1,128	27	Jackson	388	52	Nowata	147
3	Payne	1,007	28-A	McClain	375	53	Haskell	142
4	Custer	989	28-B	Mayes	375	54	Tillman	141
5	Creek	965	30	McIntosh	342	55-A	Pawnee	134
6	Muskogee	934	31	Lincoln	310	55-B	Woods	134
7	Kay	928	32	Woodward	308	57	Hughes	131
8	Garfield	906	33	Delaware	298	58	Noble	127
9	Pittsburg	797	34	Seminole	293	59	Johnston	121
10	Canadian	725	35	Choctaw	284	60	Washita	118
11	McCurtain	712	36	Beckham	276	61	Love	113
12	Washington	686	37	Sequoyah	271	62	Greer	100
13	Bryan	639	38	Latimer	256	63	Grant	93
14	Garvin	598	39	Atoka	247	64	Dewey	88
15	LeFlore	596	40	Osage	245	65	Cotton	84
16	Carter	588	41	Adair	244	66	Kingfisher	65
17	Comanche	558	42	Coal	242	67	Major	56
18	Caddo	531	43	Murray	229	68	Jefferson	45
19	Ottawa	507	44-A	Kiowa	223	69	Roger Mills	41
20	Rogers	501	44-B	Logan	223	70	Ellis	36
21	Grady	472	46	Pushmataha	203	71	Beaver	32
22	Okmulgee	432	47	Okfuskee	179	72	Alfalfa	31
23	Stephens	428	48	Texas	171	73	Harmon	29
24	Pontotoc	414	49	Marshall	165	74	Harper	26
25	Wagoner	396	50	Craig	161	75	Cimarron	19
Total New Appts for Fiscal Year								26,811

Appendix B

Appendix B

GENERAL APPEALS DIVISION

FY 2003 INCOMING CASES

<u>County</u>	<u>New Cases Received</u>	<u>County</u>	<u>New Cases Received</u>
Adair	0	Love	0
Alfalfa	0	Major	0
Atoka	2	Marshall	5
Beaver	0	Mayes	3
Beckham	2	McClain	2
Blaine	1	McCurtain	3
Bryan	13	McIntosh	3
Caddo	7	Murray	0
Canadian	1	Muskogee	15
Carter	7	Noble	1
Cherokee	1	Nowata	1
Choctaw	5	Okfuskee	1
Cimarron	0	Oklahoma	61
Cleveland,	16	Okmulgee	3
Coal	0	Osage	0
Comanche	14	Ottawa	9
Cotton	2	Pawnee	1
Craig	1	Payne	5
Creek	13	Pittsburg	6
Custer	7	Pontotoc	4
Delaware	3	Pottawatomie	11
Dewey	1	Pushmataha	3
Ellis	0	Roger Mills	2
Garfield	6	Rogers	3
Garvin	0	Seminole	4
Grady	5	Sequoyah	3
Grant	0	Stephens	18
Greer	2	Texas	3
Harmon	0	Tillman	0
Harper	0	Tulsa	44
Haskell	2	Wagoner	3
Hughes	4	Washington	10
Jackson	7	Washita	4
Jefferson	0	Woods	0
Johnston	0	Woodward	0
Kay	5	TOTAL	* 375
Kingfisher	0		
Kiowa	6		
Latimer	1		
Leflore	3		
Lincoln	4		
Logan	3		