OKLAHOMA

INDIGENT DEFENSE SYSTEM

2004 Annual Report

. . . to provide indigents with legal representation comparable to that obtainable by those who can affordcounsel and to do so in the most cost-effectivemanner possible.

Oklahoma

Indigent Defense System

BRAD HENRY
GOVERNOR

KEVIN WARD
CABINET SECRETARY
SAFETY AND SECURITY

JAMES D. BEDNAR
Executive Director

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JAMES D. BWNAR
EXECUTIVE DIRECTOR

BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

November 19,2004

TO THE HONORABLE BRAD HENRY
HONORABLE CAL HOBSON
HONORABLE TODD HIETT
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, 2004, 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 2004 from the Governor and his staff, from the Legislature, and from the Judiciary.

As we move forward in 2005, 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,

Rod Wiemer, Esq.
Chair

Jake Jones, Esq.
Vice-Chair

Paul Brunton, Esq.

Randolph S. Meacham. Esq.

Don G. Pope, Esq.

P.O. BOX 926 • NORMAN, OK 73070 • (405) 801-2601 • FAX (405) 801-2649

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Board Members

Fiscal Year 2004 Members

In acoordanoe 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.

ROD WIEMER, Ese. • CHAIR
McCulloch Bldg., Suite 200
114 North Grand
Okmulgee, OK 74447
Term of Office:
April 1993 to July 1, 2008
designated Chair June 30, 2003

JAKE JONES, Ese. • VICE CHAIR
Driskill & Jones
2350 Bank One Center
100 North Broadway
Oklahoma City, OK 73102
Term of Office:
February 2001 to July 1, 2005

MICHAEL BLEVINS, Ese.
122 W. Main
P.O. Box 249
Sayre, OK 73662
Term of Office:
June 1998 to July 1, 2004

PAUL BRUNTON, Ese.
3507 S. Lewis
Tulsa, OK 74105
Term of Office:
July 2000 to July 1, 2006

DON G. POPE, Ese.
2424 Springer Drive, Suite 201
Norman, OK 73069
Term of Office:
May 21, 2003 to July 1,2007
(replacing Benjamin J. Curtis)

Past Board Members

William Burkett	May 1996 to January 1997
Henry Burris	July 1992 to May 1997
Michael Carter	June 1998 to May 2000
Benjamin J. Curtis	May 1997 to May 2003
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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I

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 Publio 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 Aot 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 aocepting 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 thirteen-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 Forensio Testing Program. The Trial Program oonsists 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 39,125 court appointments in Fiscal Year 2004 in all divisions of the agency. The breakdown by division is as follows:

Non-Capital Trial:	
Staff	6,979
Conflicts	704
Contracts	30,624
Capital Trial - Norman	40
Capital Trial - Tulsa	45
General Appeals	600
Capital Direct Appeals and DNA Program	65
Capital Post Conviction	45
Executive Division Conflicts:	
Capital Trial Divisions	7
Non-Capital Direot Appeals	5
Capital Direct Appeals	2
Capital Post Conviction	9
TOTAL	39,125

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 oriminal oases in 75 of Oklahoma's 77 counties.

OIDS oontracts 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 contraot 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 oourt 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 farced to seek state appropriations to replace the federal funds that had been used for state post-conviction representation.

During its thirteen-year history, OIDS repeatedly has been forced to seek supplemental appropriations from the Legislature. The first, received in early 19/92, 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 noncapital trial cases in 76 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 $919,165 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 oasestaprivate 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 noncapital trial representation costs.

In Fiscal Year 1998, OIDS received $666,000 in additional appropriations to annualize the previous year's supplemental appropriation.

After five years of service, the previous Exeoutive Director submitted his resignation to the agency's governing Board on ,August 8, 1997. The Board selected the current Executive Direotor, 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 associJed 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 and Appellate Programs, 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 Fisoal 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 Direotor in determining what services are appropriate for eaoh 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 Exeoutive 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.

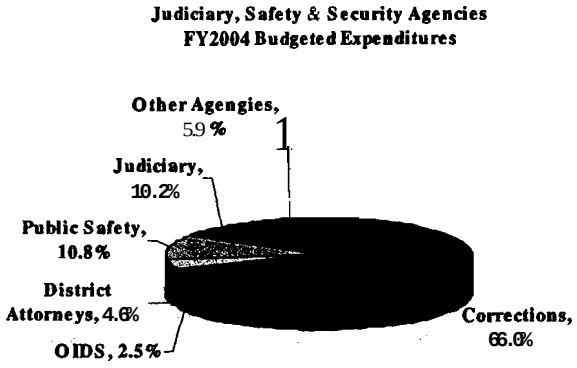
To address funding reductions, OIDS initially implemented a furlough plan beginning July 2002. The furlough plan provided that all agency employees would be furloughed a maximum of two days without pay per pay period. The plan continued until September 2002.

The rapidly deteriorating budget picture forced OIDS to take further drastio 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. However, that amount was not annualized for Fiscal Year 2004. The adjusted final appropriation received for Fiscal Year 2004 was $14,243,912.

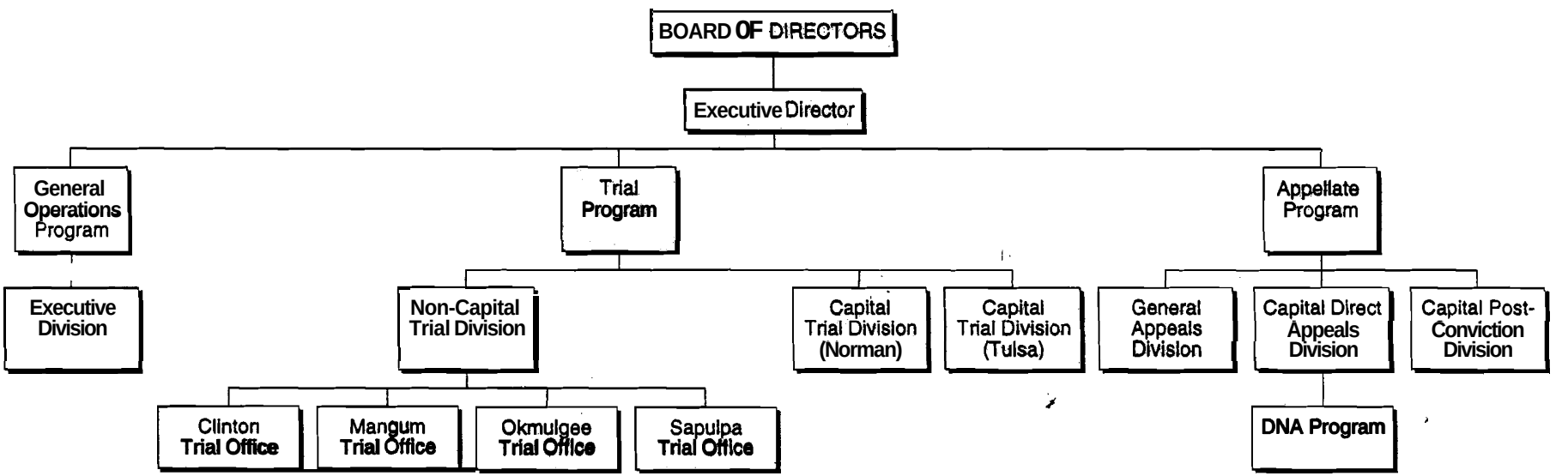
OIDS is funded by the Oklahoma Legislature through appropriations from the State's general revenue fund. OIDS also receives a varied and unpredictable

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.

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.

Oklahoma Indigent Defense System

Organization Chart



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chapter

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General Operations Program

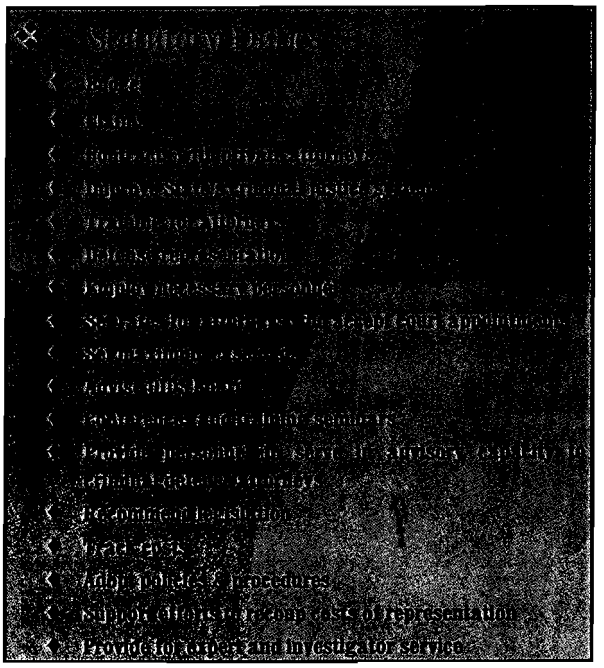
Executive Division

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 2004, the agency entered into 470 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.



❖ Legislation

OIDS sponsored one piece of legislation during the 2st Session of the 49'' Legislature which was passed and signed by the Governor.

Senate Bill 1399 amended 22 O.S. § 1355.14, which provides for assessment of costs of legal representation to OIDS clients. Prior to the amendment, there was no state-wide uniformity in such cost assessments. This bill was requested to ensure not only uniformity but also an increase in assessments and an increase in collections of those assessments.

The bill provides that upon a plea of guilty, costs shall be $150 for a misdemeanor and $250 for a felony. For a case tried to a jury, $500 for a misdemeanor and $1,000 for a felony. For a hearing on an application to revoke a suspended sentence or accelerate a deferred sentence, $200 for a misdemeanor and $300 for a felony. For all other criminal proceedings, the assessment shall not exoeed $250. The costs shall be assessed unless ordered waived upon good cause shown by the defendant, or unless another amount is specifically requested by the defendant's counsel and approved by the court.

Senate Bill 1399 also contains an unrelated provision requiring municipal, county and state forensic laboratories to provide laboratory examination reports to OIDS regarding cases accepted for investigation under the DNA Forensic Testing Program, 22 O.S. § 1371.1 *et seq.* This provision is designed to avoid costly re-testing of evidence.

Senate Bill 1399 became effective April 19,2004.

❖ 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.youroklahoma.com, by selecting *"Agency Directory."* The OIDS website contains many links, including those for legal researoh, unpublished Court of Criminal Appeals opinions issued since July 1999, and official agenoy 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 for OIDS staff members and private attorneys.

OIDS co-sponsored the Patrick A. Williams Criminal Defense Institute held June 24-25, 2004. It included presentations on such diverse topics as crime scene reconstruction, defending DUI cases and case strategies for defense lawyers.

❖ office Relocation

The Oklahoma Indigent Defense System offices had 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 Fiscal Year 2003, partial space was completed, enabling the

Executive and Non-Capital Trial Divisions 'to move. Remodeling was completed during Fiscal Year 2004, enabling the Capital Direct Appeals and Capital Post-Conviction Divisions to move during July and the Capital Trial · Norman and General Appeals Divisions to move during November.

❖ Conflict Caseload

During Fiscal Year 2004, the Executive Division contracted with outside attorneys for representation on a total of 23 cases.

The year began with 4 pending death penalty cases. Appointments in 3 new cases were received. One death penalty case was concluded, and 6 were carried over into Fiscal Year 2005.

Additionally, the Executive Division started Fiscal Year 2004 with 1 pending capital direct appeal case and received 1 new case during the year. Neither case was concluded, resulting in both being carried over into Fiscal Year 2005.

Three non-capital appeal cases were pending at the beginning of the fiscal year with the Division receiving 2 new conflict appointments during this period of time. No cases were concluded with a total of 5 carried into Fiscal Year 2005.

The Executive Division began Fiscal Year 2004 with 7 pending capital post conviction cases. Two new appointments were received and 1 case was concluded, with a total of 8 carried into Fiscal Year 2005.

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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 seventy-five **(75)** counties, with Oklahoma and Tulsa Counties being excluded. 'Thus, NCTD represents the agency's largest group of clients. In Fiscal Year 2004, the Division received 28,661 new 'appointments - a 6.9% increase over Fiscal Year 2003.

❖ Non-Capital Trial Legal Representation

In accordance with the Indigent Defense Act, NCTD provides legal representation in the seventy-five **(75) counties** for which it is responsible in three ways:

(1) flat-rate fisoal 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 agenoy hourly rates, sub jeot to statutory maximums set by the Indigent Defense Act.

In Fiscal Year 2004, 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), a portion of the Division's representation was provided via contraot.

(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. In Fiscal Year 2004 the Non-Capital Trial Division satellite offices were staffed with 21 attorneys who handled 6,979 aotive cases, a 7.1% increase over last fiscal year. The average staff attorney handles 185 felonies, 46 juvenile cases, 85 misdemeanor cases and 16 traffic cases per year, for an average of 332 cases. According to a formula utilized by the National Legal Aid and Defenders Association, eaoh satellite office attorney does the work of 1.71 attorneys who operate in only one courthouse. All satellite office attorneys handle work in several district courts.

(3) **Conflict/Overload** Counsel: Since Fiscal Year 1998, OIDS has made a concerted effort to ensure that Non-Capital Trial Division fiscal-year contracts are adequately staffed by giving weight, during the contracting process, to the number of law firms participating in an offer. During Fiscal Year 2004, NCTD assigned 494 conflict cases to conflict counsel. Four Hundred Forty-four of those cases were assigned to outside conflict counsel, while 60 were assigned to the various satellite offices.

❖ 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 the System's appropriationbill has been signed into law but only a week or two before the contract term begins on July 1. The contracting prooess is volatile, not only in terms of the number of offers, if any, received for any particular county, but also the oost 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 fisoal-year contracts to provide non-capital legal representation.

When the agency is unable to obtain a fisoal-year contraot for indigent criminal defense work in a county the Board has two options: (1)establish a satellite office with salaried attorneys to accept the System's appointments in the affeoted county under Section 1355.9 of the Indigent Defense Aot or **(2)** assign the System's appointments in that county to private attorneys who have agreed to accept cases on a case-by-case basis at established agency rates **($60/hr.** for in-court legal services; **$40/hr.** for out-of-oourt legal services) under Seotion **1355.8(D)(6)** of the Indigent Defense Act.

In Fiscal Year 2004, the Non-Capital Trial Division's satellite offices served the following counties:

❖ Clinton Office

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

❖ Mangum Office

- **Beckham**
- **Greer**
- Harmon
- Kiowa
- Jackson
- **Tillman**

❖ Okmulgee Office

- Okfuskee
- Okmulgee (2 courthouses)

❖ Sapulpa Office

- Creek (3 courthouses)

As indicated above, satellite offices continued to handle each other's conflict cases as well as conflicts cases arising in adjoining counties covered by fiscal year contracts.

❖ Overall Caseload

In Fiscal Year 2004, the Non-Capital Trial Division received a total of 24,187 new contract cases, of **which** 207 resulted in conflicts. As a result, 23,980 new cases were handled under the county contracts. This represents a 7.4% increase in appointments from the previous year. OIDS Non-Capital Trial Division satellite offices received 4,474 new cases, of which 287 were conflicts. Thus, the satellite offices handled 4,187 new cases in Fiscal Year 2004.

Total new cases for the division equaled 28,661, an increase of 6.9% over Fiscal Year 2003. The list of counties in order of descending **caseload** shows that Cleveland County had the highest number of cases **(1,454),** while Harper had the lowest (6). See Appendix A.

OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division
Actual **FY-2004** Workload
July **1, 2003** through June **30, 2004**

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FELONY	JUVENILE	MISD.	TRAFFIC	TOTAL
FY-2004 Contract ***LESS*** Conflicts		14,940	2,506	5,997	537	23,980
Plus Contract Carry-**Over** from Prior Fiscal Years		4,118	1,040	1,404	82	6,644
Total Contract Workload		19,058	3,546	7,401	619	30,624
2004 Satellite Office ***LBSS*** Conflicts		2,425	416	1,105	241	4,187
Plus Satellite Office Carry-Over from Prior Fiscal Years		1,469	540	686	97	2,792
Total Satellite Office Workload		3,894	956	1,791	338	6,979
FY-2004 Conflicts	Contracts	150	25	30	2	207
	Satellite Offices	232	19	24	12	287
Conflicts **Carry-**Over from Prior **Fiscal** Years	Contract Counties	72	11	16	2	101
	Satellite Office Counties	73	20	16	0	109
Total Conflicts Workload		454	55	70	16	595
TOTAL FY-2004 NCT Workload		23,479	4,577	9,278	973	38,307

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❖ Capital (Death Penalty) Trial Representation

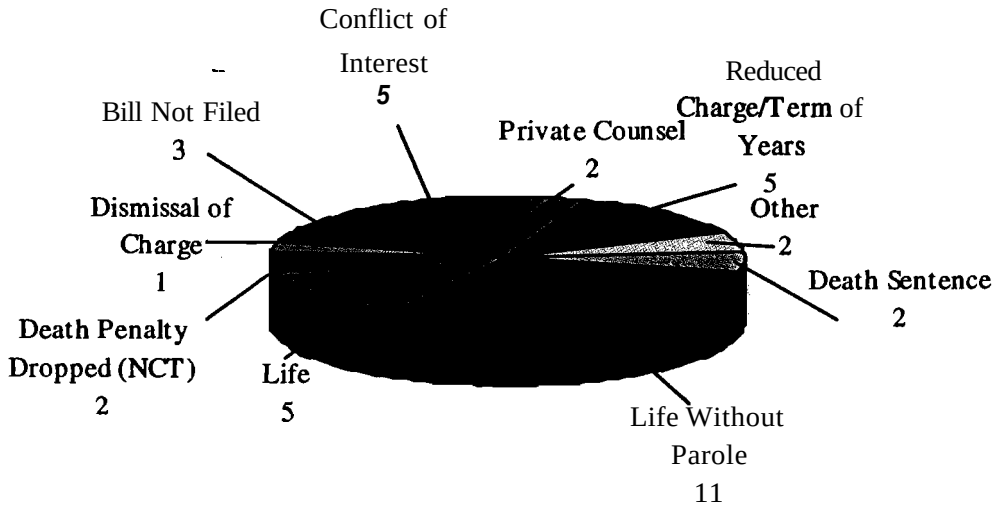
The Capital Trial Divisions in Norman and Tulsa are assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. They further represented clients in Oklahoma and Tulsa Counties assigned prior to May, 2003 when. the public defender had a conflict of interest. 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 contraots with private counsel to represent the client under the provisions of the Indigent Defense Aot, Sections 1355.7 & 1388.13.

The Capital Trial Divisions began Fiscal Year 2004 with 38 pending trial level oases. A total of 70 trial level cases were handled during this time with 38 completed. Results of these cases conoluded during Fiscal Year 2004 are shown in the chart below, and are discussed by each Division in the following sections.

Further, the Capital Trial Divisions began Fiscal Year 2004 with 11 appeals carried over from Fiscal Year 2003. These two Divisions received new appointments for appeals in 4 cases during the fisoal year, bringing the total appellate caseload for Fisoal Year 2004 to 15 cases. The Capital Trial Divisions concluded 1 appeal by the end of the fiscal year, resulting in 14 appeals carried over into Fiscal Year 2005.

Capital Trial Case Results
Norman and Tulsa Divisions



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 45 counties and has primary responsibility for conflicts arising in the remaining counties. In May 2003 the Division ceased receiving new conflict cases from Oklahoma County.

Fiscal Year 2004 was marked by several personnel changes for the Division. The year began with 9 attorneys, 6 investigators and 3 full-time support personnel. Due to a combination of transfers, resignations and terminations, the year ended with 8 attorneys, 5 investigators, 2 full-time support personnel and 1 support personnel reclassified as part-time. The changes resulted in one Division Chief returning to the Capital Trial - Tulsa Division. Also, 3 attorneys transferred from Capital Trial Division - Tulsa to the Capital Trial Division - Norman, including the current Division Chief.

In spite of the changes, the Division maintained its level of excellence in obtaining results for clients with no death penalties resulting from 20 cases concluded during the fiscal year.

❖ Trial Caseload

The Capital Trial Division-Norman began Fiscal Year 2004 with 22 pending death penalty cases. The Division received appointments in 13 new cases during the fiscal year, bringing the total caseload for Fiscal Year 2004 to 35 cases. By the end of the fiscal year, 20 cases were concluded and 15 were carried over into Fiscal Year 2005. Fiscal Year 2004 was the first full year the Division did not receive new conflict case appointments from Oklahoma County. However, the Division began Fiscal Year 2004 with 6 Oklahoma County cases (4 pending and 2 inactive status) and ended the year with 1 pending, 2 inactive and closing 3.

❖ Fiscal Year 2004 Results

Result of 1 case tried in Fiscal Year 2004:

- ◊ 1 life without parole sentence (client pro se court appointed standby counsel)

Results of 13 cases in which a guilty plea was entered:

- ◊ 6 life without parole sentences (first degree murder)
- ◊ 2 life sentences (first degree murder)
- ◊ 1 life sentence (charge reduced to first degree manslaughter)
- 0 1 - 45 year sentence (charge reduced to second degree murder)
- 0 1 - 35 year sentence (charge reduced to first degree manslaughter)
- 0 2 - 25 year sentences (charges reduced to first degree manslaughter)

❖ Final Results of Trial Cases Concluded

Result	Cases
Life without parole	7
Life with parole	3
Reduced charge/term of years	4
Death penalty dropped - referred to Non-Capital Trial	2
Conflict of interest	3
Private counsel	1
Total	20

In addition, an evidentiary hearing was handled by the Capital Trial Division - Norman for the Post Conviction Division and was not counted as opened or closed.

❖ Appellate Caseload

The Capital Trial Division-Norman began Fiscal Year 2004 with 3 pending death penalty cases (1 death penalty case carried over from FY 2003; 1 death penalty case carried over from FY 2002; and 1 death penalty oase carried over from FY 2001). The Division retained appointments for appeals in 2 cases during the fiscal year, bringing the total qaseload for Fiscal Year 2004 to 5 cases. Capital Trial-Norman had no appeals concluded by the end of the fiscal year and 5 cases were carried over into Fiscal Year 2005.

❖ Capital Trial Division - Tulsa

The Capital Trial Division • Tulsa was oreated 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 32 counties primarily in the eastern portion of the state, in addition to having primary responsibility for conflicts arising in the remaining counties. In Fiscal Year 2004, 3 trial attorneys, 1 Administrative Assistant II, and 1 investigator left the Division. One trial attorney and 1 investigator were hired to fill the vacancies. In Fiscal Year 2004 the staff of the Division consisted of a chief capital counsel, chief deputy counsel, both with a full caseload, 3 first-chair attorneys, and 4 attorneys with second-chair and appellate responsibilities. The Division employed 4 investigators and 3 support staff.

❖ Trial Caseload

Fiscal Year 2004 began with a carryover of 16 oases pending from the previous fiscal year. The Capital Trial Tulsa Division opened 19 cases, bringing the total caseload for the year to 35 cases. The division conoluded 18 oases and carried 17 cases over into the Fisoal Year 2005.

❖ Fiscal Year 2004 Results

Result of 2 cases tried in Fiscal Year 2004 (1 jury trial and 1 re-sentencing jury trial):

-2 death sentences.

The Division had 6 cases in whioh the bill of particulars was dropped, resulting in 6 negotiated pleas as follows:

-4 life without parole sentences
-2 life with parole sentences

The Division had 1 oase where the negotiated plea was to a lesser charge of second degree murder, sentenced to 35 years with credit for time served.

The Division had 1 olient that was found incompetent without likelihood of obtaining competency in the future. The division had 1 case in whioh the oharges were dismissed. The olient remains in jail on other oharges.

There were 3 cases closed in whioh no aotion was taken during Fiscal Year 2004; 2 conflict oases whioh were referred out of the division; 1 client who hired private counsel, and 1 client that died while charges were pending.

❖ Final Results of Caseload Concluded

Death sentence	2
Life without parole*	4
Life with parole	2
Reduced charge/term of years	1
Closed - no action taken**	3
Conflict of interest	2
Dismissal of Charge	1
Retained private counsel	1
Incompetent	1
Died while charges pending	1
Total	***18***

**** As set forth above - LWOP includes negotiated pleas and negotiated dismissal of Bill of Particulars.***
***** The State did not file Bill of Particulars.***

❖ Appellate Caseload

Eight appeals were carried over from Fiscal Year 2003. Two new appeals were initiated and 1 appeal was completed during Fiscal Year 2004. There are 9 appellate cases carried over to Fiscal Year 2005.

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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 Doughs *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 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 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 Qeneral 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-2004 with 301 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 299 additional cases during the fiscal year. The Division olosed 315 cases, ending the fiscal year with 285 Qpen cases to be carried into Fiscal Year 2005. A map showing the distribution of cases handled, by county, is attaohed as Appendix B.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 241 clients during Fiscal Year 2004. Of those, 19 involved clients convicted of homicide, including 16 clients convicted of first-degree murder. In addition, Division attorneys appeared for 14 oral arguments before the Court of Criminal Appeals in fast track cases, and filed 18 reply briefs and 8 petitions for rehearing.

The Division closed 315 cases during the year, most due to the Court of Criminal Appeals reaching a final decision in the case. In 64 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. Seven cases, including 6 first-degree murder cases, were closed by the Division when they were transferred within the agency to the OIDS Capital Direct Appeals Division for briefing. Three cases were closed because they were contracted to outside counsel. Thirty-one appeals were closed after the appeal was dismissed, either at the client's request or because the Court of Criminal Appeals lacked jurisdiction to hear them; 9 cases were closed because the System was not properly appointed to handle them; and 3 cases were olosed beoause outside counsel was retained by the client. Additionally, 4 appeals were closed due to consolidation with other oases.

❖ *Incoming Cases*

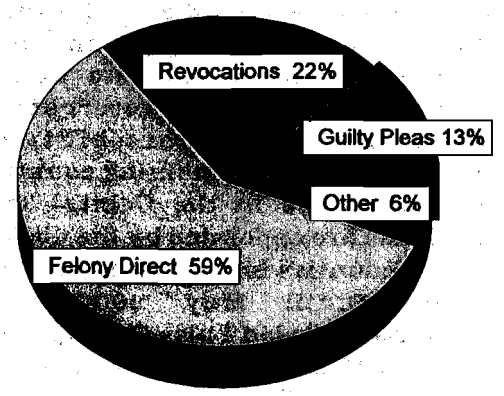
Two hundred ninety-nine new cases were received from 54 of the State's 77 counties. Almost one-fourth of the incoming caseload, or 70 cases, arose from Oklahoma and Tulsa counties, and 9 of the 25 first-degree murder cases received from across the state arose from those two counties. The incoming caseload also included drug trafficking and sex offender cases with sentences of life without parole.

Summary of Cases Closed

Reason for Closing	Number of Cases	%
Decision of Court of Criminal Appeals	258	82 %
Cantracted to Outside Counsel (Conflict & Backlog)	3	1 %
Rejected or Dismissed for Lack of Jurisdiction (Dismissed at Client's request)	31	10 %
QIDS not properly appointed/ appeal out of time	9	3 %
Outside Counsel Retained by Client	3	1 %
Transferred to another Division	7	2 %
Other (Consolidated)	4	1%
TOTAL	315	100%

Analysis of Incoming Cases

Types of Appeals



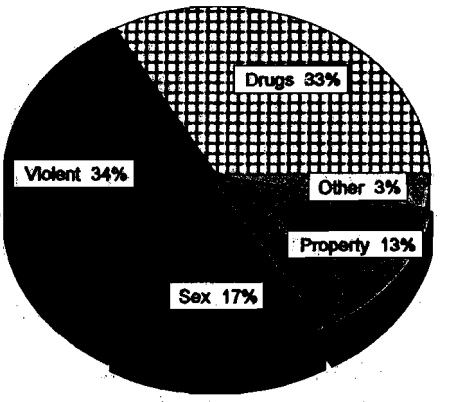
The graph above demonstrates the types of appeals handled by the General Division.

Except for juvenile appeals (included in the "other" category), appeals of everything from burglary to first degree murder involve opening briefs of up to 50 pages in length. Other appeals involve juvenile and misdemeanor appeals, as well as responses to State appeals of adverse rulings.

The General Appeals Division receives cases from clients who were represented by either appointed counsel or retained counsel at trial. Almost one-third of the incoming General Division clients in FY-04 were represented at trial by retained counsel.

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

Types of Offenses Appealed

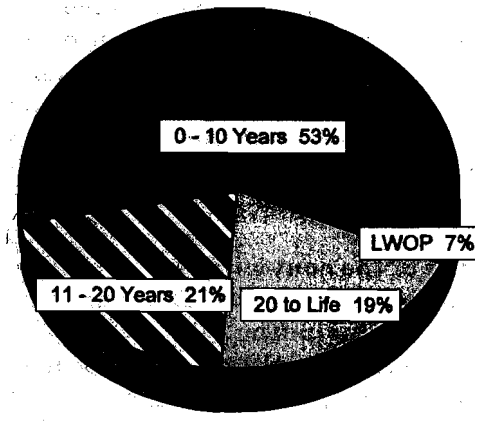


offenses includes such violent offenses as rape and molestation, as well as related crimes such as failure to register as a sex offender. Drug offenses are the second leading category of offenses appealed.

An analysis of the sentences received by clients in the incoming cases received during Fiscal Year 2004 by the General Division reflects that almost one-fourth of the clients have been incarcerated with sentences greater than life imprisonment; and more than one-third are serving sentences of greater than 20 years

imprisonment (Cases where sentencing information was not available are not reflected in this chart).

Length of Sentences Appealed



❖ Capital (Death Penalty) Appeals

The Capital Direct Appeals Division represents indigent defendants who have been oonvicted 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, 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 Court of Criminal Appeals 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 Court of Criminal Appeals.

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 respeotive 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 45 counties (until May 2003, new appointments included Oklahoma County when the public defender had a confliot of interest), in addition to primary responsibility for conflicts arising in the remaining counties. Appellate attorneys in the Capital Trial Division-Tulsaare appointed by the district courts of 32 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 oapital 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 Court of Criminal Appeals.

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 direot 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 the Court of Criminal Appeals remands the case back to the trial court for such a hearing. The direct appeal is heard and decided by the Court of Criminal Appeals. If the Court of Criminal Appeals 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 oapital cases, in Fisoal 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 2004 with 6 pending capital cases and 15 cases in whioh the client was convicted of murder in the first degree but sentenced to life or life without parole. During the fiscal year, 4 new capital cases and 6 new non-capital cases were opened. By the end of the year, 2 oapital cases and 15 non-capital case were closed, leaving the Division with 14 active cases, 8 of these being capital, and 6 non-capital cases.

❖ Statewide Distribution

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

❖ County

(1) Canadian	10%
(2) Grady	10%
(3) Oklahoma	10%
(4) Osage	10%
(5) Pontotoc	10%
(6) Rogers	10%

(7) Tillman	10%
(8) Tulsa	30%

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

❖ *County*

(1) Carter	5%
(2) Comanche	14%
(3) Kay	5%
(4) Kiowa	5%
(5) LeFlore	5%
(8) Muskogee	5%
(7) Oklahoma	33%
(8) Sequoyah	5%
(9) Tulsa	23%

❖ *Disposition* of Cases

Twelve non-capital cases were affirmed by the Court of Criminal Appeals and subsequently closed during Fiscal Year 2004. One non-capital case was reversed and remanded for a new trial, 1 non-capital client received a sentence modification and 1 non-capital oase was affirmed in part and reversed in part by the Court of Criminal Appeals. Of the 2 capital cases closed during Fiscal Year 2004, 1 case was reversed and remanded for a new sentenoing hearing and the other case was closed after being transferred to contract counsel because of a Division conflict.

❖ Capital Post Conviction Division

At the beginning of fiscal year 2004, the Capital Post Conviction Division was appointed in 37 cases. Through the year, the Division acquired 8 new cases, and closed 13 cases. The Division started fiscal year 2005 with 32 cases.

After the Supreme Court issued the landmark decision in Atkins v. Virginia, 538 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), prohibiting the execution of the mentally retarded, the Division was assigned the task of representing several clients on this issue. The representation of these clients continues into fiscal year 2005.

During fiscal year 2004, the Division conducted 2 evidentiary hearings and 5 jury trials on the issue of mental retardation. The 2 cases where evidentiary hearings were conducted have subsequently been remanded for jury trials on the mental retardation issue. The 5 cases that went to jury trial are at various stages of review at the Court of Criminal Appeals. One mental retardation case that had been remanded for a jury trial was resolved when the State agreed the client was mentally retarded. The trial judge modified the death sentence to life without parole and the Court of Criminal Appeals affirmed that disposition of the case, thereby removing the client from death row. The Division was forced to withdraw from 2 of these mental retardation cases when a conflict arose the prohibited the Division's continued representation.

Another successor post conviction case involving misconduct by Joyce Gilchrist, the former forensic chemist from the Oklahoma City Police Department, was remanded for an evidentisry hearing. Those proceedings continued into Fiscal Year 2005.

Although the main focus of the Division has continued to be the mental retardation cases, the Division has continued to investigate, prepare and file original applications for post conviction relief. 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.

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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 **763** applications in response to initial inquiries and requests. In Fisoal Year 2004, the Statewide Program received a total of 71 new applications. Thus far, a total of **393** applications have been rejected. One hundred and eighty of these applicants were not eligible because they were convicted in jurisdictions outside the State of Oklahoma. Two hundred and thirteen 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.

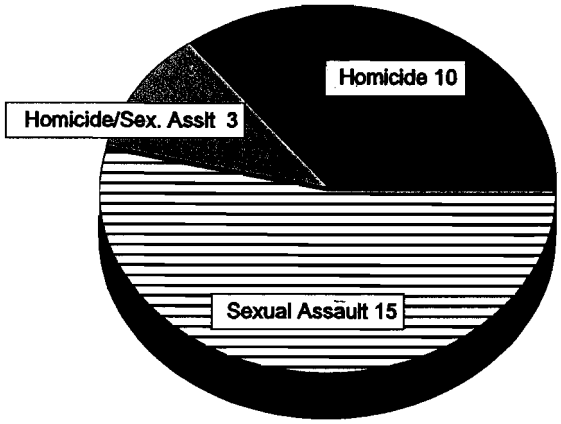
In Fisoal Year 2004, the Program conducted DNA testing on behalf of **6** Oklahoma inmates. DNA testing completely' exonerated 1 inmate, Calvin Scott, whose conviction was out of Pontotoc County. The Program assisted outside counsel with DNA testing in 2 cases. Although testing in those cases did not implicate the inmates, the testing did not completely exonerate them and pleadings have been filed addressing the results from this testing. Testing in 2 other cases implicated the inmates. On the request of the Program, 1 case associated with the **Gilchrist** investigation was tested by the FBI. The results from this testing were inconclusive and further testing is anticipated. Currently, investigations in several other cases are almost complete and formal requests for testing in Fiscal Year 2005 are anticipated.

❖ Statewide Distribution of Cases

There were 34 official in-state applicants to the Program in Fiscal Year 2004. These Applicants came from the following counties, as shown in the "Program Applications" chart:

PROGRAM	
COUNTY	# APPS
Cleveland	2
Comanche	4
Creek	1
Custer	2
Grady	1
Kay	1
McClain	1
McCurtain	2
Oklahoma	11
Payne	1
Rogere	1
Tulsa	4
Washington	1
Washita	1
Wagoner	1
TOTAL	34

The DNA Program is currently assessing 28 applications. The crimes associated with these applications are categorized as follows:



❖ 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 (OSBI) 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** investigationbegan. 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 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 suspeot was arrested and eventually prosecuted. In many of these case files, the suspeot was unknown. While the OSBI **can** still review **Gilchrist's** forensic work in these cases, the Program oannot 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 incaroerated. Applioations 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 2004*

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

✓ Applications submitted to date (capital and noncapital cases) totaled 88.

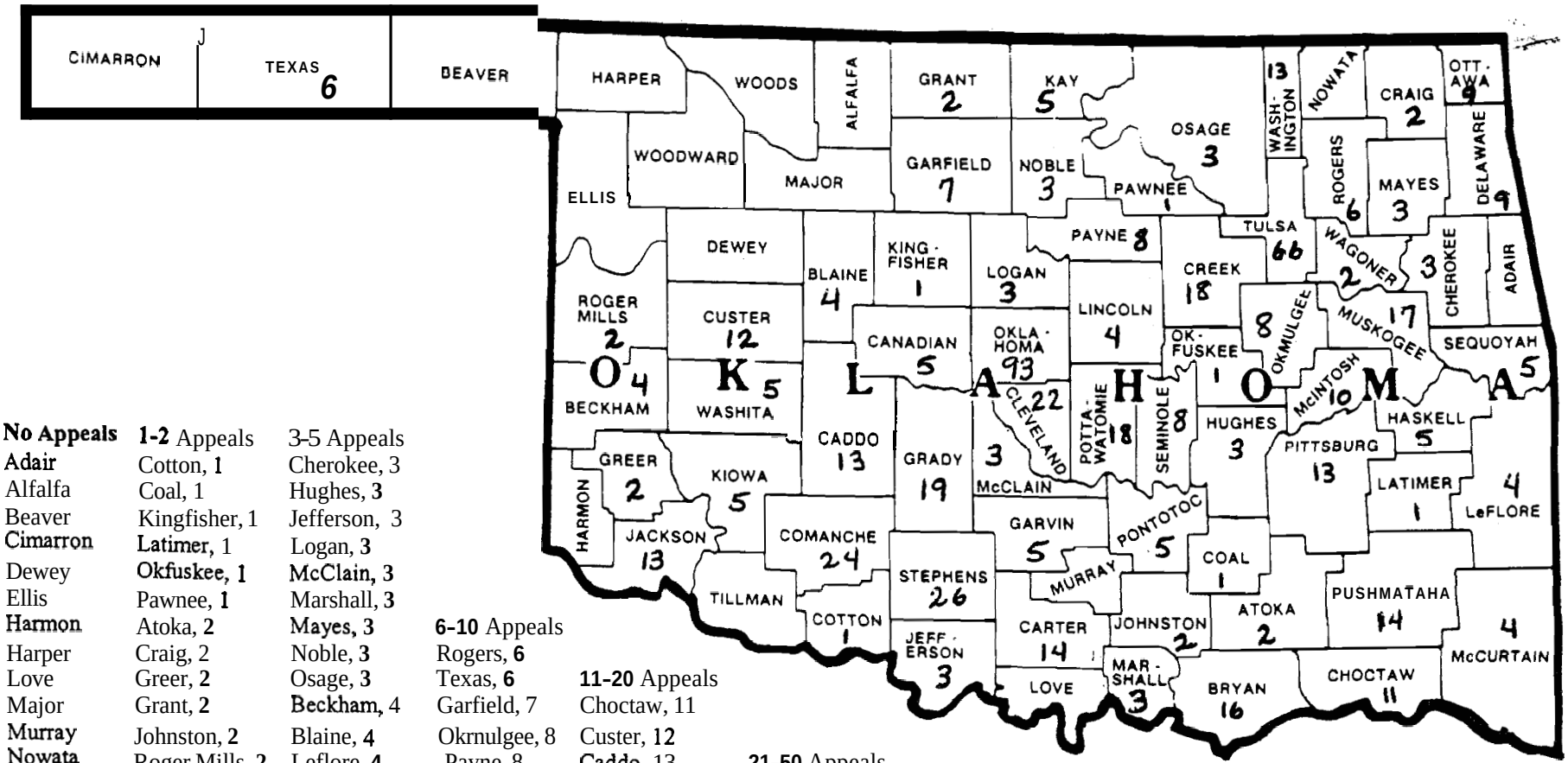
Appendix A

OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division
FY-2004 New Appointments
(Contracts and Field Offices)

	County	# of Appts		County	# of Appts		County	# of Appts
1	Cleveland	1,454	30	McIntosh	389	59	Johnston	129
2	Pottawatomie	1,270	31	Lincoln	387	60	Craig	124
3	Payne	1,117	32	Osage	368	61	Dewey	110
4	Garfield	1,012	33	Seminole	361	62	Greer	98
5	Custer	957	34	Sequoyah	332	63	Cotton	94
	Kay	957	35	Woodward	320	64	Grant	92
7	Muskogee	951	36	Latimer	316	65	Woods	83
8	Creek	937	37	Choctaw	315	66	Major	69
9	Pittsburg	907	38	Beckham	299	67	Alfalfa	55
10	Bryan	861	39	Logan	294	68	Jefferson	54
11	Canadian	825	40	Adair	291	69	Kingfisher	50
12	McCurtain	800	41	McClain	282	70	Harmon	47
13	LeFlore	629	42	Coal	236	71	Roger Mills	39
14	Comanche	613	43	Kiowa,	233	72	Cimarron	30
15	Washington	603	44	Pushmataha	222	73	Ellis	25
16	Carter	551	45	Atoka	219	74	Beaver	24
17	Garvin	536	46	Texas	209	75	Harper	6
18	Ottawa	535	47	Okfuskee	204			
19	Caddo	528	48	Murray	195	75-County TOTAL		28,661
20	Grady	490	49	Noble	187			
21	Wagoner	482	50	Marshall	184			
22	Stephens	477	51	Haskell	176			
23	Cherokee	457	52	Hughes	163			
24	Rogers	449	53	Nowata	154			
25	Jackson	445		Tillman	154			
26	Pontotoc	441	55	Blaine	138			
27	Okmulgee	412	56	Love	135			
28	Mayes	410	57	Pawnee	134			
29	Delaware	398	58	Washita	131			

Appendix B

GENERAL APPEALS DMSION
600 Cases Handled During FY-04
Distribution by County



No Appeals
Adair
Alfalfa
Beaver
Cimarron
Dewey
Ellis
Harmon
Harper
Love
Major
Murray
Nowata
Tillman
Woods
Woodward

1-2 Appeals
Cotton, 1
Coal, 1
Kingfisher, 1
Latimer, 1
Okfuskee, 1
Pawnee, 1
Atoka, 2
Craig, 2
Greer, 2
Grant, 2
Johnston, 2
Roger Mills, 2
Wagoner, 2

3-5 Appeals
Cherokee, 3
Hughes, 3
Jefferson, 3
Logan, 3
McClain, 3
Marshall, 3
Mayes, 3
Noble, 3
Osage, 3
Beckham, 4
Blaine, 4
Leflore, 4
Lincoln, 4
McCurtain, 4
Canadian, 5
Garvin, 5
Haskell, 5
Kay, 5
Kiowa, 5
Pontotoc, 5
Sequoyah, 5
Washita, 5

6-10 Appeals
Rogers, 6
Texas, 6
Garfield, 7
Okrnulgee, 8
Payne, 8
Seminole, 8
Delaware, 9
Ottawa, 9
McIntosh, 10

11-20 Appeals
Choctaw, 11
Custer, 12
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