OKLAHOMA

INDIGENT DEFENSE SYSTEM

2011 Annual Report

. . . to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost-effective manner possible.

Oklahoma

Indigent Defense System

MARY FALLIN
GOVERNOR

MICHAEL C. THOMPSON
CABINET SECRETARY
SAFETY AND SECURITY

JOE P. ROBERTSON
Executive Director

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JOE P. ROBERTSON
EXECUTIVE DIRECTOR

MARY FALLIN
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

September 23, 2011

TO THE HONORABLE MARY FALLIN
HONORABLE BRIAN BINGMAN
HONORABLE KRIS STEELE
HONORABLE STEVEN W. TAYLOR
HONORABLE ARLENE JOHNSON

It is our privilege to submit a report concerning the duties, activities and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2011, 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 2011 from the Governor and her staff, from the Legislature and from the Judiciary.

As we move forward in 2012, 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,

Joe P Robertson

Joe P. Robertson
Executive Director

♦ Board Members

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Charles Richardson
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Chapter 1

◆ Introduction

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

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

The agency consists of three program areas: the General Operations Program, the Trial Program and the Appellate Program. The Trial Program consists of the Non-Capital Trial Division and two capital trial divisions: Capital Trial Norman and Capital Trial Tulsa. The Appellate Program contains the General Appeals Division, the Homicide Appeals Division and the Capital Post-Conviction Division. These programs and divisions are discussed in more detail throughout this report.

OIDS represented a total of 41,965 court appointments in Fiscal Year 2011. The numerical breakdown by division is as follows:

NON-CAPITAL TRIAL	
Staff	7,295
County Contracts	33,232
Conflicts	549
Overload	7
CAPITAL TRIAL - NORMAN	53
CAPITAL TRIAL - TULSA	59
GENERAL APPEALS	609
HOMICIDE DIRECT APPEALS	95
CAPITAL POST CONVICTION	60
EXECUTIVE DIVISION CONFLICTS	
Capital Trial Divisions	3
Capital Post Conviction	3
TOTAL	41,965

This figure represents a substantial increase of 2,580 cases, or 6.5%, since Fiscal Year 2009.

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

OIDS is appointed by the trial and appellate courts of Oklahoma after an indigence determination is made by the court. OIDS is subject to appointment to provide trial representation in non-capital criminal cases in 75 of Oklahoma's 77 counties. OIDS contracts with private Oklahoma-licensed attorneys to handle 100% of the indigent non-capital trial caseload in 56 counties. In 19 counties, staff attorneys handle the majority of the indigent caseload, with overload cases handled by private contract counsel. Private attorneys handle the majority of the System's conflict cases and all overload cases. In death penalty cases and non-capital appeals, attorneys employed by OIDS are assigned the case after OIDS has been appointed by a district court or the Oklahoma Court of Criminal Appeals.

OIDS was created after the Oklahoma Supreme Court decided *State v. Lynch*, 1990 OK 82, 796 P.2d 1150. The Supreme Court held that Oklahoma's method of compensating private attorneys in court-appointed criminal cases at the trial level was unconstitutional under the State Constitution. In response to *Lynch*, the Oklahoma Legislature undertook sweeping reform of the State's delivery of criminal defense services. Legislative action resulted in the Indigent Defense Act, which created OIDS as a new state agency under 22 O.S. §§ 1355 *et seq.*, effective July 1, 1991. The Act instituted major changes in the funding and delivery of defense services at trial and on appeal.

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

The APD became a part of OIDS under the Indigent Defense Act in 1991 and continued its representation of indigents on appeal. The Act also created a division within OIDS to represent indigents at trial who were charged with capital murder offenses and directed OIDS to begin accepting court appointments to provide legal representation in non-capital cases in 75 counties beginning July 1, 1992, its second year of operation.

OIDS is funded by the Oklahoma Legislature through appropriations from the State's general revenue fund. OIDS also receives a varied and unpredictable amount of funds from the costs of representation assessed against a criminal defendant in certain cases. During its 20-year history, OIDS has repeatedly 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 the agency's statewide defender services in non-capital trial cases in 75 counties.

In Fiscal Year 1994, the Legislature reduced the agency'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' 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, the agency's 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.

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.

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 James Bednar as the new 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 the agency's 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 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, the agency's 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. Allocation reductions totaled $607,354 in Fiscal Year 2002, leaving OIDS with an actual appropriation in the amount of $15,435,039 by the end of the year.

The agency's 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.
With an Increasing caseload, coupled with a reduced staff due to the fiscal year 2003

reduction-in-force, this left the agency with caseload numbers per staff attorney greatly exceeding the maximum set by national standards. In response, the Legislature passed a supplemental appropriation during fiscal year 2005 in the amount of $1,000,000 to enable the agency to contract with private attorneys to reduce the burgeoning caseload in the appellate and noncapital trial Divisions.

A substantial increase in the cost of flat-rate fiscal year contracts with private attorneys for the upcoming fiscal year prompted the Legislature to increase the agency's 2007 appropriation by $280,000. For fiscal year 2008, the agency unsuccessfully sought an increase of $392,500 to offset increasing contract costs and a desperately needed satellite office in the Oklahoma panhandle region. However, for Fiscal Year 2009, the agency received an increase in its appropriation, enabling it to establish the new satellite office and address increasing county contracting costs.

In September 2008, Executive Director James Bednar announced his retirement from the agency. At its October 31, 2008 meeting, the Indigent Defense System Board selected Joe P. Robertson, formerly the Chief of the OIDS Capital Trial - Tulsa Division, as the new Executive Director, effective November 1, 2008.

Due to the nationwide economic downturn, OIDS, along with the majority of state agencies, received a large reduction in its appropriation Fiscal Year 2010. The agency's appropriation was reduced by $999,986, or 6% of the previous fiscal year appropriation. This left the agency with an appropriation of $15,720,785 to start Fiscal Year 2010, which as set forth below, was subsequently reduced even further. In order to make up for the initial budget reduction, the agency eliminated the further assignment of non-capital trial and direct appeal overload cases to private contract attorneys, and separated two staff members from employment in July 2010, as well as eliminating three vacant positions. These actions resulted in a substantial increase in cases assigned to already overburdened staff attorneys. This burden was ameliorated somewhat by applying for and obtaining a United States Department of Justice grant in October to hire an attorney solely for the purpose of handling non-capital conflict of interest cases arising throughout western Oklahoma. Despite this assistance from the federal government, the state appropriation reduction adversely impacted the agency's ability to carry out its mission, a situation which worsened throughout the fiscal year.

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

OIDS received a net appropriation reduction of $580,051 in Fiscal Year 2011, followed by a reduction of $454,618 from its appropriation for Fiscal Year 2012.

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

Chapter 2

◆ General Operations Program

EXECUTIVE DIVISION

The Executive Division is charged with the responsibility of managing and operating the agency and implementing the Indigent Defense Act. By statute, the Executive Director is selected by and serves at the pleasure of the agency's governing Board. The five members on the Board are appointed by the Governor with the advice and consent of the Senate.

To aid the Executive Director in the implementation of the Indigent Defense Act and agency operations, the Executive Division is staffed with administrative, finance and computer operations personnel.

OIDS provides legal representation through the services of staff members and by contracting with private attorneys, experts and investigators. At the end of the fiscal year, OIDS employed 112 full-time equivalent staff members at its main offices in Norman and its satellite offices in Clinton, Guymon, Mangum, Okmulgee, and Sapulpa.

In Fiscal Year 2011, the agency entered into 208 new professional services contracts with private attorneys and experts to provide defense services in court-appointed cases, in addition to administering 84 contracts carried over from the previous fiscal year. The Executive Division services these contracts in addition to providing support services to its staff attorneys and investigators.

Statutory Duties

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

WEBSITE

The agency's website provides information about OIDS, resources for public defenders and others interested in criminal law issues, answers to most frequently asked questions and notices of training opportunities. The website can be accessed at www.oids.ok.gov. The website contains many links, including those for legal research, unpublished Oklahoma Court of Criminal Appeals opinions and official agency forms used by OIDS contractors, experts and investigators.

TRAINING PROGRAM

The Indigent Defense Act requires OIDS to provide training for its staff members and private attorneys who are under contract with OIDS to accept court appointments.

On August 28, 2009, the agency received a United States Department of Justice Grant to be used for training under the Oklahoma Capital Case Training and Assistance Program. That program provides in-depth training of both defenders and prosecutors. OIDS sponsored two training conferences during the fiscal year.

The first was the 2010 Oklahoma Capital Defense Training Conference, held December 1st through 3rd in Norman, Oklahoma. It provided intensive training to attorneys and investigators engaged in capital defense litigation. Expert capital defense trainers from all over the country participated, conducting training utilizing the "bring your own case" format on a wide variety of topics.

The second conference paid for by the grant was hosted by OIDS May 18th through 19th, entitled "2011 Colorado Method of Jury Selection in Capital Cases Training." This conference also involved recognized out-of-state experts who trained participants on new jury selection techniques utilized in capital cases.

OIDS further co-sponsored the yearly Patrick A. Williams Criminal Defense Institute, held June 23rd and 24th in Norman, Oklahoma. It included presentations on diverse topics as juvenile and adult mental health issues affecting criminal cases, sex offender registration, perfecting appeals, DUI mechanics and state and federal case updates.

EXECUTIVE CONFLICT CASELOAD

During Fiscal Year 2011, the Executive Division maintained contracts with outside attorneys for representation in a total of six conflict cases.

The year began with three pending district court death penalty cases. One was closed, resulting in two cases being carried over into Fiscal Year 2012. The Division began Fiscal Year 2011 with three pending capital post conviction cases. Two cases were closed, resulting in the carryover of one case into Fiscal Year 2012.

Chapter 3

◆ Trial Program

The Trial Program consists of three Divisions which provide legal representation to agency clients who have been judicially determined to be unable to afford counsel to defend against criminal charges brought by the State in district court. OIDS is appointed by the district courts to represent these defendants.

The right to counsel at State expense was established by the United States Supreme Court in *Gideon v. Wainwright,* 371 U.S. 335 (1963). The right to expert assistance at State expense was established by the United States Supreme Court in *Ake v. Oklahoma,* 470 U.S. 68 (1985).

Non-Capital Trial Division

The Non-Capital Trial Division (NCTD) is responsible for defending indigent criminal defendants charged with offenses punishable by incarceration. Cases range from traffic offenses filed in state court to non-capital first degree murder. NCTD's area of responsibility spans 75 counties, with Oklahoma and Tulsa Counties being excluded. Thus, NCTD represents the agency's largest group of clients. In Fiscal Year 2011, NCDT received 30,466 new appointments. NCTD's total FY-2011 caseload, which includes cases carried forward from previous fiscal years, equaled 41,083 active cases.

Delivery of Non-Capital Trial Legal Services

In accordance with the Indigent Defense Act, NCTD provides legal representation in the 75 counties for which it is responsible in four ways:

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

(2) satellite offices with salaried staff attorneys;

(3) assignment of conflict and over-load cases to private attorneys who have agreed to accept such cases at established agency hourly rates, subject to statutory maximums set by the Indigent Defense Act; and

(4) assignment of cases to one federally-funded roving attorney assigned to Western Oklahoma.

In Fiscal Year 2011, the Division's caseload was handled as follows:

(1) Flat-rate Fiscal Year Contracts: In 56 counties, all NCTD representation was provided via such contracts. Since Fiscal Year 1998, OIDS has made a concerted effort to ensure that NCTD fiscal-year contracts are adequately staffed by giving weight, during the contracting process, to the number of law firms participating in an offer.

(2) Staffed Satellite Offices: NCTD operated five satellite offices: Clinton, Mangum, Okmulgee, Sapulpa and Guymon. These offices handled the entire caseload in 19 counties.

In Fiscal Year 2011, the Non-Capital Trial Division satellite offices ended the fiscal year with 23 attorneys. The offices also handled 7,184 active cases over the course of the year. During Fiscal Year 2011, a satellite office staff attorney handled an average of 312.34 cases, comprised of 188.91 felonies, 32.52 juvenile cases, 82.26 misdemeanor cases and 8.65 traffic cases. According to a formula utilized by the National Legal Aid and Defenders Association, in Fiscal Year 2011 each satellite office attorney did the work of 1.63 attorneys who operate in only one courthouse. All satellite office attorneys handled work in several district courts. The largest satellite office region covered eight courthouses and 8,623 square miles.

From FY-2005 through FY-2009, the Non-Capital Trial Division utilized annual funding designated to provide overload attorneys in the satellite office areas. No overload funding for new cases was provided NCTD in FY-2010 or FY-2011. In previous fiscal years, the overload funding had enabled NCTD to improve the workload per attorney to more acceptable levels.

(3) Conflict/Overload Counsel: Each year conflicts of interests arise in a certain number of county contract and satellite office cases and must be assigned to conflict-free counsel. During Fiscal Year 2011, NCTD assigned 460 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 182 of those cases. Conflicts arising out of satellite offices account for 278 of those cases.

(4) In FY-2010, NCTD was fortunate to receive federal funding for one roving attorney. On December 1, 2009, NCTD hired an attorney to cover conflict cases and provide overload relief to NCTD attorneys in Western Oklahoma. Although the federal funding expired late in FY-2011, this attorney has remained in her position as the NCTD Western Oklahoma roving conflict attorney. She was assigned 82 cases during FY-2011, many of which were serious felony cases.

Discussion

The OIDS Board awards fiscal-year contracts to private attorneys to provide non-capital trial defense services on a county-by-county basis. In response to the agency's solicitations each year, private attorneys offer to provide criminal defense services in felony, misdemeanor, traffic and (delinquent) juvenile cases in one or more counties for a flat annual rate. The contracting process is volatile, not only in terms of the number of offers, if any, received for any particular county, but also in terms of the cost of any contract awarded. As a result, the agency's ability to provide contract coverage in many counties, especially the smaller, more rural ones, is unpredictable. Historically, the agency has spent one-third to one-half of its total budget on these fiscal-year contracts to provide non-capital legal representation.

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

In Fiscal Year 2011, the Non-Capital Trial Division's satellite offices served the following counties:

Clinton Office

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

Mangum Office

- Greer
- Harmon
- Kiowa
- Jackson
- Tillman

Okmulgee Office

- Okfuskee
- Okmulgee (2 courthouses)

Sapulpa Office

- Creek (3 courthouses)

The Panhandle Office

- Beaver
- Cimarron
- Texas

Overall Caseload

In Fiscal Year 2011, the Non-Capital Trial Division received a total of 25,445 new county contract cases. County contractors discovered conflicts of interests in 182 of these cases. As a result, 160 of the conflict cases were assigned to contracted conflict counsel. Six of the conflict cases would have otherwise been assigned to a satellite office for coverage, but were instead assigned to the Western Oklahoma roving attorney. Sixteen of these cases were assigned to satellite office attorneys. Once the conflict cases were subtracted from all newly assigned cases, the county contractors retained a total of 25,263 new cases in Fiscal Year 2011. The county contractors carried another 7,969 cases into FY-2011 from previous fiscal years. Ultimately, the total FY-2011 county contract workload equaled 33,232 cases.

Non-Capital Trial Division satellite offices received 4,939 new cases. The satellite offices reported a total of 278 conflict of interest cases. One hundred fifty-seven of these cases were assigned to contracted conflict counsel. Seventy-six cases were assigned to the Western Oklahoma roving attorney, while 45 were assigned to other satellite offices. Once the conflicts were subtracted from all newly assigned cases, the satellite offices handled 4,661 new cases in Fiscal Year 2011. The satellite offices carried another 2,523 cases into FY-2011 from previous fiscal years. Ultimately, the total FY-2011 satellite office workload equaled 7,184 cases.

Total new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the federally funded roving attorney, equaled 30,466.

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

The 41,083 cases handled by the Non-Capital Trial Division during Fiscal Year 2011 represents a moderate decrease from the Fiscal Year 2010 workload. However, the number of cases has increases by 2,462 over the previous two fiscal years, representing an overall increase of 6.4%

CAPITAL (DEATH PENALTY) TRIAL REPRESENTATION

The OIDS Capital Trial Divisions are assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. The two Divisions combined represent clients throughout the State, with the exception of Oklahoma and Tulsa Counties. Both Divisions operate as separate law firms for conflict purposes. If one Division cannot accept a court appointment because of a conflict of interest arising from another court appointment, the case is generally assigned to the other. If neither Division can accept the court appointment, OIDS contracts with private counsel to represent the client under Sections 1355.7 and 1355.13 of the Indigent Defense Act. In September 2007 a program was instituted by the agency shifted responsibility for defending selected first degree murder appointments to the Capital Trial Divisions.

The Capital Trial Divisions began Fiscal Year 2010 with 71 pending trial level cases. A total of 112 trial level cases were handled during this time with 58 completed by the end of the fiscal year.

CAPITAL TRIAL DIVISION NORMAN OFFICE

The Capital Trial Division – Norman represents defendants in capital cases filed in 46 counties and has primary responsibility for conflicts arising in the remaining counties regularly serviced by the Capital Trial Division – Tulsa.

Fiscal Year 2011 began with seven attorneys, three investigators, and two full-time administrative personnel. Two staff changes occurred during Fiscal Year 2011. In November 2010 the Division Chief position became vacant, and in June 2011 one attorney position became vacant. The current number of full-time staff within the Division is now ten: five attorneys, three investigators, and two administrative personnel. The Division has no part-time employees. Although Fiscal Year 2011 ended with two full-time attorney vacancies, due to a state-wide fiscal year legislative shortfall, only one of these vacancies will be filled at this time. The Deputy Division Chief assumed full responsibility for all Division operations in November 2010. There is currently no separate Deputy Chief for the Division.

TRIAL CASELOAD

The Capital Trial Division – Norman began Fiscal Year 2011 with 40 pending cases carried over from Fiscal Year 2010. The Division received new appointments in 13 cases during Fiscal Year 2011. By the end of the fiscal year, 25 of those cases were concluded and closed; the remaining 28 cases were carried over into Fiscal Year 2012. The total number of cases managed by the Division in Fiscal Year 2011 to 53 cases. Although the Capital Trial Division – Norman ceased taking on any new conflict case appointments from Oklahoma County in 2003, the Division continues to monitor one remaining inactive Oklahoma County case to which the Division was appointed prior to 2003 and which is still reflected in statistical reports filed by the Division. The Division, in the same manner, reports three other inactive cases.

During Fiscal Year 2011, the Division was able to secure very positive results in several cases where first-degree murder charges were filed in spite of such a high work load. Some of the representative cases where first-degree murder was originally charged and settlements reached were: (A) murder charges dismissed, five years imprisonment for first degree manslaughter, four years suspended with one year credit for time served; (B) murder charges dismissed, 10 years imprisonment for Accessory After the Fact; (C) child abuse murder charges dismissed, 20 years imprisonment for Enabling Child Abuse with 10 of those years suspended; (D) murder charges dismissed, 15 years imprisonment for unlawful delivery of a controlled dangerous substance to a minor to run concurrent with another prior case; and (E) complete dismissal of all charges at preliminary hearing. The Division, in spite of its reduced staff and greatly increased work-load during Fiscal Year 2011, continues to prove its ability to provide the highest quality representation possible to its clients.

FISCAL YEAR 2011 RESULTS

Jury and Non-Jury Trials

Result of four cases tried in Fiscal Year 2011:

- ◇ 1 death sentence
- ◇ 1 life without the possibility of parole sentence (non-jury trial)
- ◇ 1 mental retardation jury trial terminated by judge during proceedings; now pending appeal
- ◇ 1 life with the possibility of parole

Guilty Pleas

The Division represented 16 clients during Fiscal year 2011 who chose to resolve their cases by entering guilty pleas. The results of those pleas are as follows:

- ◇ 3 First Degree Murder – Life Without Parole sentences
- ◇ 6 First Degree Murder – Life With Parole sentences.
- ◇ 4 Murder II
- ◇ 1 Manslaughter I – five (5) year sentence, 1 year in county jail, credit for time served.
- ◇ 1 Accessory to Murder After the Fact- 10 year sentence with credit for time served.
- ◇ 1 Enabling Child Abuse (Murder I count dismissed)- 20 year sentence with 10 years suspended.

Misc. Disposal

Five cases were disposed of without either a trial or plea negotiation. One case was dismissed completely; one case was transferred to the Non-Capital Trial Division for further representation; and one case was taken by private counsel. The two other cases had conflicts of interest develop during representation that required withdrawal of the Division:

- ◇ 1 Dismissal
- ◇ 1 Returned to NCT
- ◇ 1 Private attorney
- ◇ 2 Conflict of interest developed

FINAL RESULTS OF CASES CONCLUDED

Result	No. of cases
Death Penalty	1
Life Without Parole	4
Life with Parole	7
Murder II	4
Manslaughter I	1
Accessory After the Fact	1
Enabling Child Abuse	1
Unlawful Delivery of CDS	1
Conflicts	2
Miscellaneous Non-Conflict Disposal	3
Total	25

CAPITAL TRIAL DIVISION TULSA

The Capital Trial Division - Tulsa has the primary responsibility for defending capital and non-capital first degree murder cases in 29 counties in the Eastern-Northeastern area of the State. The Division is further assigned to conflict capital and non–capital first degree murder cases in the remaining counties served by OIDS.

CASELOAD

Fiscal Year 2011 began with a carryover of 31 pending cases from the previous fiscal year. The Division opened 28 new cases during the fiscal year, bringing the total caseload for the year to 59 cases. The Division concluded 33 cases, carrying over 26 cases into Fiscal Year 2012.

RESULTS

There were no death penalties imposed against any Division clients during the fiscal year - the sixth year in a row. The Division experienced great success in negotiating good pleas on behalf of its clients. One example was a plea of second degree murder, with a sentence of twenty years with five suspended. Of several clients whose first degree murder charge was reduced to manslaughter, one received a sentence of ten years and one a sentence of fifteen years. A client charged with the murder of her daughter ultimately pled to aiding a minor child to commit a drug offense and was sentenced to twenty years with ten suspended. These are a few examples of a number of exceptional results obtained for our clients due to a thorough investigation and persuasive presentation of the circumstances of these cases both to the court and the prosecution. These results are due to the dedication, commitment and hard work of Division attorneys, investigators and support staff.

FINAL RESULTS OF CASES CONCLUDED

Result	No. of Cases
Death Sentences	0
Life Without Parole	1
Determined to be Incompetent	0
Life With Parole	4
Pled	1
Pled to Lesser Charge	14
Bench Trials	1
Conflict of Interest	1
Retained Private Counsel	5
Charges Dismissed	1
Closed - No Action Taken	1
Closed - Transferred to CTN	4
Total	33

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 and 22 O.S. § 1089.

GENERAL APPEALS DIVISION (NON-CAPITAL APPEALS)

The General Appeals Division is appointed by the district courts of Oklahoma to represent clients on direct appeal from the trial court to the Oklahoma Court of Criminal Appeals in cases where the defendant has been sentenced to a term of imprisonment up to life imprisonment without the possibility of parole.

The Division is appointed in 75 counties and in Oklahoma and Tulsa Counties when the public defenders have a conflict of interest or where the defendant was represented by retained counsel at trial and is judicially determined to be indigent on appeal. Legal services are provided by salaried attorneys and, under certain circumstances, by a private attorney. The cost of expert assistance and investigative services, if any, are funded in the Division budget. If the General Appeals Division has difficulties meeting court deadlines because of an unusually high number of court appointments, and adequate funding is available, the agency enters into contracts with private attorneys on a case-by-case basis to represent Division clients on appeal. If the Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the agency enters into a contract with a private attorney on a case-by-case basis to represent the client on appeal.

The filing of General Appeals Division cases cannot be delayed because of the decision by the Tenth Circuit Court of Appeals in *Harris v. Champion*, 15 F.3d 1538 (10th Cir. 1994). The agency was a defendant in the *Harris* class action litigation, brought by agency clients who alleged prejudice from delays in filing their briefs on appeal. The Tenth Circuit held there is a rebuttable presumption of a Due Process violation if a non-capital appeal has not been decided within two years of judgment and sentence, making it mandatory for the appellate attorney to file a brief within the deadlines established by the Court of Criminal Appeals. Due to caseloads greatly exceeding nationally-recognized standards, which were caused in part by an agency-wide reduction-in-force at the beginning of Fiscal Year 2003, the agency received a supplemental appropriation during the last part of Fiscal Year 2005, which was annualized. The Division received a substantial portion of that appropriation to alleviate the Division's caseload. However, with the recent economic downturn and reduction in the agency's Fiscal Year 2010 appropriation, the Division's ability to assign contract overload appeals to private counsel has been severely curtailed.

The General Appeals Division began FY-2011 with 285 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 324 additional cases during the fiscal year. The Division closed 347 cases, ending the fiscal year with 262 open cases to be carried into Fiscal Year 2012. During the course of the fiscal year, the Division handled 609 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 200 clients during Fiscal Year 2011. Division attorneys appeared for four oral arguments before the Court of Criminal Appeals in fast-track appeals, filed 39 reply briefs and filed one petition for rehearing.

The Division closed 347 cases during the year. Of most of the cases closed, 195 were closed because a final decision was reached by the Court of Criminal Appeals. In 23 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. Thirty cases contracted to outside counsel were closed upon completion. Sixty 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; twelve cases were closed because the agency was not properly appointed to handle them; and nine cases were closed because outside counsel was retained by the client. Additionally, ten appeals were closed due to consolidation with other cases. Thirty-one cases were closed due to transfer to other agency divisions.

New cases were received from 54 of the State's 77 counties. Almost 18% of the incoming caseload, or 58 cases, arose from Oklahoma and Tulsa counties. In 235 of the cases received in FY-2011, counsel at trial level was court-appointed, and 89 cases were handled at trial by privately-retained counsel or by the client pro se.

SUMMARY OF CASES CLOSED

Reason for Closing	# of Cases	%
Decision of Court of Criminal Appeals	195	56
Contracted outside and completed	30	9
Dismissed for Lack of Jurisdiction (Dismissed at Client's request)	60	17
OIDS not properly appointed	12	3
Outside Counsel Retained by Client	9	3
Transferred to another Division	31	9
Other (Consolidated)	10	3
Total	**347**	**100%**

The majority of the convictions in the new cases appealed by the General Appeals Division were for violent crimes, including all degrees of murder and manslaughter, child abuse, assaults, robberies, kidnapping and first degree arson (114 cases). The subcategory of sexual offenses includes such violent offenses as rape and molestation, as well as related crimes such as failure to register as a sex offender (51 cases). Drug offenses are the second leading category of offenses appealed (100 cases). Property crimes accounted for 59 cases.

The primary types of appeals received by the General Appeals Division were felony and misdemeanor direct appeals (122), revocations, accelerations and drug court terminations (124) and guilty pleas (64). Except for juvenile appeals, all non-capital appeals involve opening briefs of up to 50 pages in length. Other appeals involve juvenile and responses to State appeals of adverse rulings (14).

CAPITAL (Death Penalty) APPEALS

Although traditionally the Homicide Direct Appeals Division's primary responsibility was to represent capital defendants in their direct appeal, the Division is also now responsible for the representation of indigent defendants who have been convicted of any form of homicide in Oklahoma District Courts in their appeals to the Oklahoma Court of Criminal Appeals. This includes defendants who have been convicted at jury trials, bench trials, and after entering pleas of guilty. A direct appeal in a capital case also includes filing a petition for a writ of certiorari to the United States Supreme Court if the case is affirmed by the Oklahoma Criminal Court of Appeals.

The Homicide Direct Appeals Division is subject to appointment by the district courts in 75 counties and in Oklahoma and Tulsa Counties when the public defender has a conflict of interest or where the defendant was represented by retained counsel at trial but is judicially determined to be indigent on appeal.

The Capital Post-Conviction Division is appointed to represent all death-sentenced defendants in post-conviction proceedings. By statute, the Capital Post-Conviction Division must represent all death-sentenced defendants, including those who were represented by the Oklahoma County or Tulsa County public defenders on direct appeal. Legal services are provided by salaried attorneys and investigators.

Since November 1995, post-conviction applications in a death penalty case are filed in the Court of Criminal Appeals while the capital direct appeal case is still pending. Before the statutory changes, post-conviction applications in a death penalty case were treated like non-capital post-conviction cases and filed in district court after the capital direct appeal case was decided by the Oklahoma Criminal Court of Appeals.

HOMICIDE DIRECT APPEALS DIVISION

CASELOAD

The Homicide Direct Appeals Division began Fiscal Year 2011 with eight pending capital cases and 45 cases in which the client was convicted of some form of homicide. During the fiscal year, one new capital case, 34 new non-capital homicide cases and seven other non-capital cases were opened. By the end of the year, three capital cases and 38 non-capital cases were closed, leaving the Division with 54 active cases, six of these being capital, and 48 non-capital homicide cases.

STATEWIDE DISTRIBUTION

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

COUNTY	
Oklahoma	25%
Tulsa	10%
Cleveland	25%
Blaine	10%
Grady	10%
McClain	10%
Comanche	10%

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

COUNTY	
Tulsa	22%
Oklahoma	22%
Beckham	3%
Blaine	1%
Canadian	1%
Comanche	5%
Garfield	4%
Muskogee	1%
Pontotoc	1%
Creek	1%
Carter	3%
Cherokee	1%
Cleveland	1%
Hughes	3%
Jackson	1%
Kay	4%
Latimer	1%
Lincoln	1%
Marshall	1%
Okfuskee	4%
Okmulgee	3%
Ottawa	3%
Osage	1%
Pottawatomie	3%
McCurtain	4%
McIntosh	1%
Seminole	1%
Sequoyah	1%
Wagoner	1%
Woodward	1%

DISPOSITION OF CASES

Twenty-eight non-capital homicide cases were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed during Fiscal Year 2011. Two non-capital homicide cases were reversed for new trials and one non-capital homicide case was reversed and vacated. Three capital cases were closed during Fiscal Year 2011, after being affirmed by the Court of Criminal Appeals and denied certiorari by the United States Supreme Court.

CAPITAL POST CONVICTION DIVISION

The primary mission of the Division continues to be representing capital cases. This representation involves the investigation, preparation, and filing of an original application for post conviction relief and related motions. The Division strives to provide a thorough review of each case to ensure the clients have the best chance of obtaining relief when the cases move from state court into the federal system. The Division has recently been handling conflict and overflow cases from the General Appeals Division and the Homicide Direct Appeals Division. In addition, when workload allows, the Division has been available to serve as co-counsel in overflow or conflict non-capital homicide cases from the capital trial divisions.

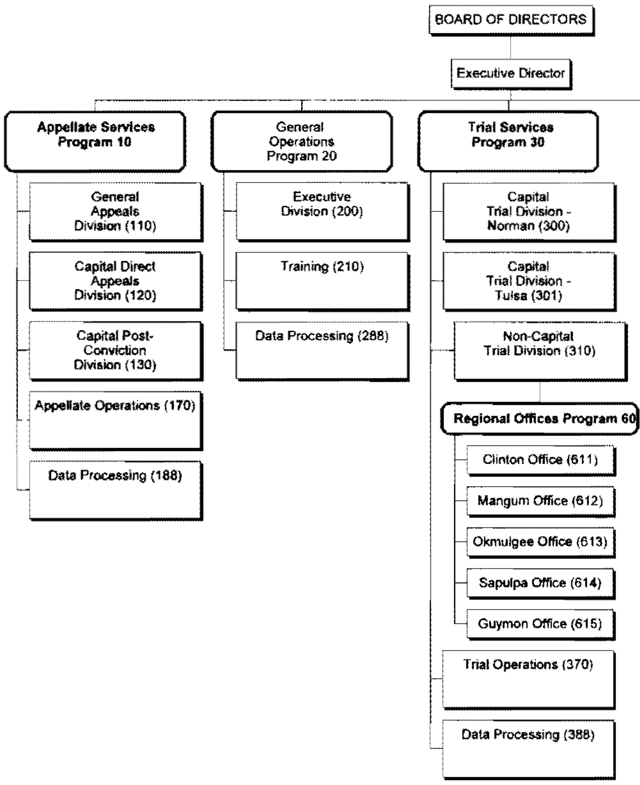
The Capital Post Conviction Division began Fiscal Year 2011 with 33 cases. During Fiscal Year 2011, the Division was appointed to one new capital post conviction case from Comanche County and accepted 26 non-capital direct appeal cases. In addition, the Division served as co-counsel with the Tulsa Capital Trial Division in a non-capital homicide case in McCurtain County District Court. The Division also continues to represent one death row inmate in his competency to be executed appeal. The case was recently transferred from the Oklahoma Supreme Court to the Oklahoma Court of Criminal Appeals, where additional briefing was ordered.

During Fiscal Year 2011, four capital cases were closed. Each of those cases was transferred to federal habeas counsel after relief was denied by the Oklahoma Court of Criminal Appeals. In addition, 13 non-capital appeal cases were closed during Fiscal Year 2011. As a result, the Division opened Fiscal Year 2012 with a total of 43 cases, comprised of 17 capital post conviction cases and 26 non-capital direct appeal cases.

Due to budget constraints, the Division was forced to give up two FTE appellate defense counsel positions in Fiscal Year 2009. In addition, the Division lost its paid research and writing assistant position in Fiscal Year 2010. Throughout Fiscal Year 2011, the Division was comprised of five appellate defense counsel, two investigators and one executive secretary.

Oklahoma Indigent Defense System

Organization Chart



OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division
Actual FY-2011 Workload
July 1, 2010 through June 30, 2011

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FEL	JUV	MISD	TRAF	WL	YO	ALL
FY-2011 Contract *LESS* Conflicts and Viol Cases		15,885	1,633	7,186	514	17	28	**25,263**
Plus Contract Carry-Over from Prior Fiscal Years		5,134	602	2,106	124	1	2	7,969
Total Contract Workload		**21,019**	**2,235**	**9,292**	**638**	**18**	**30**	**33,232**
2011 Satellite Office *LESS* Conflicts and Viol Cases		2,970	335	1,222	134	0	0	**4,661**
Plus Satellite Office Carry-Over from Prior Fiscal Years		1,375	413	670	65	0	0	**2,523**
Total Satellite Office Workload		**4,345**	**748**	**1,892**	**199**	**0**	**0**	**7,184**
FY-2011 Conflicts	Contracts	149	3	29	1	0	0	**182**
	Satellite Offices	202	34	37	4	0	1	**278**
Conflicts Carryover from Prior Fiscal Years	Contract Counties	34	0	14	0	0	0	**48**
	Satellite Office Counties	31	5	0	5	0	0	**41**
FY-2011 Viol Cases		68	2	12	0	0	0	**82**
Viol Case Carryover from Prior Fiscal Years		25	1	3	0	0	0	**29**
Overload Cases Carry-Over from Prior Fiscal Years		7	0	0	0	0	0	**7**
Total Conflicts, Overload and Viol Cases Workload		**516**	**45**	**95**	**10**	**0**	**1**	**667**
TOTAL FY-2011 NCT Workload		**25,880**	**3,028**	**11,279**	**847**	**18**	**31**	**41,083**

Appendix"B"

General Appeals Cases Received By County
FY-11

Adair	0	Greer	2	Oklahoma	19
Alfalfa	0	Harmon	0	Okmulgee	2
Atoka	9	Harper	0	Osage	4
Beaver	0	Haskell	0	Ottawa	7
Beckham	9	Hughes	1	Pawnee	1
Blaine	0	Jackson	1	Payne	21
Bryan	9	Jefferson	1	Pittsburg	6
Caddo	7	Johnston	0	Pontotoc	12
Canadian	3	Kay	7	Pottawatomie	10
Carter	8	Kingfisher	2	Pushmataha	1
Cherokee	1	Kiowa	0	Roger Mills	0
Choctaw	0	Latimer	0	Rogers	1
Cimarron	0	Leflore	3	Seminole	8
Cleveland	14	Lincoln	1	Sequoyah	0
Coal	0	Logan	2	Stephens	8
Comanche	4	Love	0	Texas	2
Cotton	1	McClain	3	Tillman	1
Craig	0	McCurtain	6	Tulsa	39
Creek	4	McIntosh	1	Wagoner	5
Custer	5	Major	0	Washington	18
Delaware	6	Marshall	0	Washita	6
Dewey	0	Mayes	4	Woods	0
Ellis	0	Murray	2	Woodward	2
Garfield	12	Muskogee	12	TOTAL	324
Garvin	2	Noble	2		
Grady	4	Nowata	0		
Grant	1	Okfuskee	2		

Appendix"C"