

State of Missouri

Public Defender Commission



Fiscal Year 2020

Annual Report

The Right to Counsel and the State Public Defender System in Missouri

Mary Fox, Director, Missouri State Public Defender

Greg Mermelstein, Deputy Director & General Counsel

Kathleen Lear, Comptroller

[Http://www.publicdefender.mo.gov](http://www.publicdefender.mo.gov)



MISSOURI STATE PUBLIC DEFENDER COMMISSION

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573-777-9977, ext. 201

TO: Governor Parson
Chief Justice George Draper, III
Members of the Supreme Court
Members of the General Assembly
Presiding Judges

FROM: Charles E. Atwell 
Chair, Public Defender Commission

DATE: October 1, 2020

RE: Fiscal Year 2020 Public Defender Annual Report

Attached is the Annual Report of the Missouri State Public Defender (MSPD) for Fiscal Year 2020.

As Chair of the Public Defender Commission, it is my obligation to provide this report to each of you with recommendations, comments and conclusions on behalf of the Commission. Our Annual Report reflects that MSPD has been a good steward of the funds allocated by the legislature and Governor and is a highly efficient and effective department for the State of Missouri.

MSPD attorneys and staff work tirelessly to provide high quality representation to every client who is eligible for legal representation at public expense. Their work is hampered, however, by the excessive number of cases that qualify for that representation. As a result, waitlists for services have been created in circuits throughout the State delaying the ability of MSPD to provide representation. Those waitlists delay justice for the defendants, the State and the complaining witnesses. Those waitlists also create backlogs in courts. MSPD has worked in FY 2020 to decrease those waitlists. Available funds were directed to contract out waitlist cases. Intake processes and indigence determinations have been improved to verify the eligibility of MSPD applicants. MSPD has worked with the courts to limit new misdemeanor and probation violation cases.

Even with those efforts, approximately 2,500 cases still remain on MSPD waitlists. MSPD's Legislative Budget Request for Fiscal Year 2022 is for one additional attorney for twelve trial offices with waitlists. Those offices in Carthage, Columbia, Fulton, Harrisonville, Jefferson City, Lebanon, Monett, Rolla, St. Charles, Springfield, Union, and West Plains would all be able to make significant strides in reducing or eliminating their waitlists with the addition of one attorney to their office.

Missouri State Public Defender has been tasked with the responsibility of fulfilling the State's constitutional mandate to provide counsel for the poor in these criminal cases. MSPD has taken significant steps towards resolving the excessive caseload that has plagued the system for decades. With the support of the Court, the Governor, and the General Assembly Missouri can turn the corner towards fulfilling this mandate and creating a system of equal justice for all.

Missouri State Public Defender Commission

Mr. Charles E. Atwell (D), Chair

Lawyer 2

Kansas City

Term begins: Aug 5, 2020

Term expires: Jul 26, 2026

Mr. Larry H. Ferrell (R), Vice Chair

Lawyer 1

Jackson

Term begins: Aug 16, 2019

Term expires: Aug 25, 2022

Mr. Gary B. Fuhr (R), Secretary

Public Member 1

Term begins: Aug 16, 2019

Term expires: Aug 25, 2022

Ms. Allison Crista Hogan (R)

Lawyer 4

Springfield

Term begins: Jul 17, 2014

Term expires: Jul 16, 2020

Mr. Rodney Schad (R)

Public Member 2

Versailles

Term begins: Jan 7, 2020

Term expires: Jan 6, 2026

Mr. Charles R. Jackson (D)

Public Member 3

Jefferson City

Term begins: Jul 17, 2014

Term expires: Jul 16, 2020

Vacant Slot

Lawyer 3

Ms. Mary Fox

State Public Defender Director - ex officio member

A Message from the Director....

On January 15, 1963 appointed counsel Abe Fortas argued for a poor man in the Supreme Court of the United States. At the conclusion of his argument Earl Warren, the Chief Justice of the United States, thanked Fortas. Warren noted "As important as it is, I can't escape the feeling that in many of the cases of these indigent defendants that we're talking about, problems just as fundamental and just as important as this arise, and it shows what benefit we do get from counsel in deciding those issues." *Gideon v. Wainwright* guaranteeing the right to counsel for a poor defendant was decided later that year and in 1982 our State created Missouri State Public Defender (MSPD) as the independent statutory department responsible for fulfilling that constitutional right. Having stood as the public defender next to many poor men and women, I know that every time the State files charges, my client faces fundamental and important problems that need and benefit from counsel. Chief Justice Warren was right.



Mary Fox
State Public Defender

Fortas' argument that swayed the Supreme Court was eloquent, but his words that I find most compelling are these: "It'll really work, it'll work; it sounds crazy, perhaps, but it works; it'll work, I'm sure it will." Fortas' argument makes me wonder if he was trying to convince himself that we could provide quality legal representation for the poor at the public's expense. If so, he was right. Quality legal representation is the foundation upon which MSPD exists.

Attorneys from MSPD are expected to fulfill their professional obligations to their clients of competence, communication and diligence. And they do. MSPD attorneys are skilled advocates who not only have honed their investigation, negotiation and trial skills; but also have the compassion and heart to care for and advocate for the poor and the courage to fight against the systematic injustices their clients experience every day. MSPD attorneys and the staff that support them are making it work. But we can not be blind to the fact that no matter how skilled or compassionate an advocate, when the numbers become too great the quality of the representation will suffer. And quality representation is not an option, it is a mandate from our Constitution. So how do we make it work?

Missouri has two options, to increase funding and staff for MSPD or to decrease the prosecution of its citizens through prevention, diversion, restorative justice and crisis intervention. I vote for the second, but until that happens, Missouri must increase the funding for legal representation of the poor at the public's expense. Currently over 2,500 persons eligible for legal representation are on court authorized waitlists with no legal counsel to represent them when they appear in court. Too many other eligible persons have their day in court delayed until their attorney has time to focus on their case. Over the last two decades five reports have been conducted on MSPD's workload and all have reached the same conclusion, MSPD must have more resources to fulfill the State's constitutional mandate to provide legal representation to the poor.

It sounds crazy perhaps, but it can work. Working together, Missouri can fulfill the Constitutional mandate of the Sixth Amendment, and Missouri State Public Defender stands ready to help make that happen. With the needed assistance and funding, MSPD can and will ensure that Missouri meets its Constitutional requirements on behalf of and for the benefit of all its citizens. If we do not work together, the hope and promises of Fortas and Gideon, central to our national understanding of justice and fairness, will remain unfulfilled.

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Missouri State Public Defender: Who We Are & What We Do...

What is the Missouri Public Defender System?

The Missouri State Public Defender (MSPD) is a statewide system that provides legal representation to poor people who are accused or convicted of state crimes or juvenile delinquency offenses in Missouri's trial and appellate courts. MSPD is an independent department of state government, located within, but not supervised by, the judicial branch. Instead, it is governed by a seven-member Public Defender Commission, each of whom is appointed by the governor. Commissioners serve six year terms and no more than four may be of the same political party. At least four of the Commissioners are required to be attorneys. The Director of the Missouri State Public Defender System, Mary Fox, and Deputy Director and General Counsel, Greg Mermelstein, are appointed by the Public Defender Commission.

Who qualifies for a public defender?

A person is eligible for public defender services if they are poor and are charged with an offense that is eligible for legal representation at public expense. The determination of whether a person is eligible for legal services is made by MSPD and is based on Federal Poverty Guidelines and other factors. If MSPD determines a person is not eligible, the applicant may appeal that decision to the Court by filing an objection and an affidavit setting forth their income and assets.

Who works for MSPD?

In Fiscal Year 2020, MSPD employed 615.13 employees, 387 of whom are attorneys. The department is divided into a Trial Division, an Appellate/Post-Conviction Division, a Capital Division, a Commitment Defense Unit, a Children's Defense Team, a Training Division, a Case Contracting Division, and an Operations Division. The operations staff provides centralized information technology support, fiscal, and human resources services to the 45 offices located around the state.

Mission Statement

The mission of the Missouri State Public Defender is to provide high quality, zealous advocacy for indigent people who are accused of crime in the State of Missouri.

The lawyers, administrative staff, and support staff of the Public Defender will ensure that this advocacy is not compromised.

To provide this uncompromised advocacy, the Missouri State Defender will supply each client with a high-quality, competent, ardent defense team at every stage of the process in which public defenders are necessary.

Missouri State Public Defender

Response to Covid-19



As cases of the Coronavirus disease 2019 (COVID-19) were confirmed in the U.S., the Missouri State Public Defender (MSPD) stayed abreast of the latest developments at the national, state, and local level and began planning for a possible outbreak.

By mid-March 2020 MSPD had created and implemented a plan to protect clients and staff and at the same time fulfill our responsibilities to our clients. MSPD obtained masks and hand sanitizer for staff during the time period when those supplies were hard to locate. MSPD participated in the Missouri Bar Task Force on COVID-19 helping to identify and respond to the challenges for attorneys and litigants in the court system. While the pandemic significantly changed the methods and locations of MSPD's work, the work never stopped. Throughout COVID-19 MSPD has continued:

- to accept new applications for services and provide representation to eligible applicants;
- to appear in court both in person and remotely to represent MSPD clients;
- to advocate for release from confinement for MSPD clients to protect them from COVID-19 exposure;
- to visit with clients in jails, correctional facilities, and the community either in person or remotely;
- to defend our client's cases to judges and juries throughout the state;
- to conduct investigations into the allegations against our clients;
- to write and submit appellate briefs;
- to argue for our clients in the appellate courts; and
- to litigate post conviction motions in the circuit courts.

MSPD initially closed our offices to the public to stop the spread of COVID-19, but always remained available remotely. MSPD was able to reopen in a limited fashion in June. By the end of the fiscal year the staff were working both in office and remotely to be both productive and efficient.

MSPD Information Technology staff facilitated remote work for staff without home internet connections and in areas where internet and cell service were limited. MSPD coordinated with the local jails and sheriffs by providing tablets to the jails so clients could talk with their attorneys. MSPD also worked with local courts to ensure our clients continued to have access to justice as safely as possible and helped to implement the operational directives put in place by the Supreme Court. Public defenders were some of the first attorneys in the state participating in jury trials under those directives.

Recognizing the significant risk that our incarcerated clients face from the Coronavirus pandemic, public defenders immediately collaborated to meet the needs of incarcerated clients by developing and litigating bond motions that resulted in the release of many clients from pretrial detention, lowering their risk as well as the risk of all of the people who work in our jails and prisons and live in our communities.

Work does not look the same for our staff, but we continue to accomplish much during this time. As we continue to navigate the ever changing issues caused by this pandemic, we've taken advantage of our greatest strength, our combined legal acumen and passion for social justice and are advocating even more fiercely for our clients.

MSPD OPERATIONS DIRECTOR

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Missouri State Public Defender

Trial Division

The Missouri State Public Defender Trial Division breathes life into the Constitution and protects the rights of individual citizens one client at a time. During Fiscal Year 2020, the Trial Division had the unprecedented challenge of representing our clients during a global pandemic. The pandemic heightened the need for timely contact and effective communication between public defenders and their clients. By statute, MSPD may accept a poor person as a client only after they have submitted an application for services and been found to be eligible for legal representation at public expense. Simply obtaining those applications became difficult this year causing MSPD to create an online application that allowed those unable to go to an MSPD trial office to apply for services.

While MSPD has made efforts to improve the application process, MSPD has also established a consistent approach throughout the trial offices to ensure only those persons who are indigent and have an eligible case are accepted for representation. MSPD has been the subject of five studies since the 1990's that have all determined that MSPD has too many cases for the number of counsel. MSPD's changes concerning indigence and eligibility are an effort to conserve those resources for those whose constitutional right can be fulfilled only by MSPD.

MSPD'S Trial Division is the largest division with 320 attorneys and 159.5 support staff. The division handles over 80% of MSPD cases. The Trial Division is located in thirty-three separate offices throughout the State and represents clients in all 114 counties and the City of St. Louis. The staff in these offices travel over 1.5 million miles a year to visit with their clients in jails, investigate the charges, and attend court.

Despite these hurdles, MSPD trial attorneys achieve positive outcomes for their clients every day protecting their fundamental constitutional rights one client at a time. Trial Division successes include:

- A St. Louis defense team that not only investigated the charges against their client, but actually solved the crime establishing that the



State had charged the wrong person and leading to the dismissal of all charges against our client.

- A Hannibal Trial Division defense team obtained an acquittal in a jury trial for a client facing multiple counts of serious accusations involving sexual assault.
- The Kansas City Trial Office was able to protect 98 of 164 clients accused of their first felony from becoming felons through their rigorous focus, review, investigation, analysis, and litigation.
- A Troy defense team defending a client facing 9 felony charges ensured our client received no felony convictions and our clients is now filling out college applications.
- A Trial Division defense team from our Farmington Office, through investigation and preparation, was able to establish that the report from law enforcement was inaccurate leading to a dismissal of our client's charge.

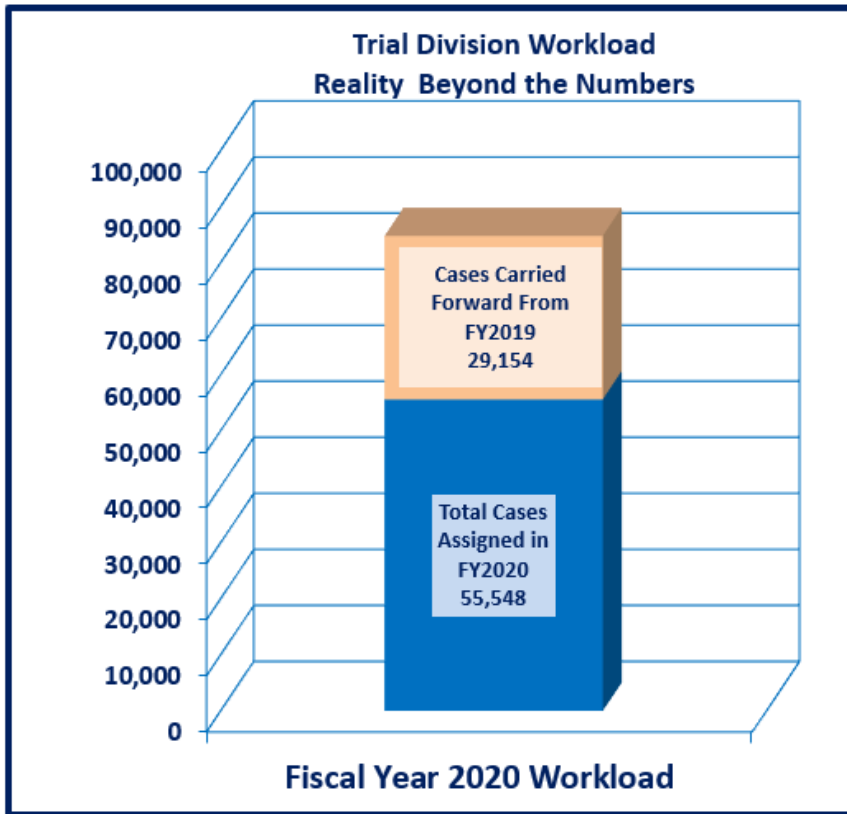
TRIAL DIVISION DIRECTOR

ELLEN BLAU

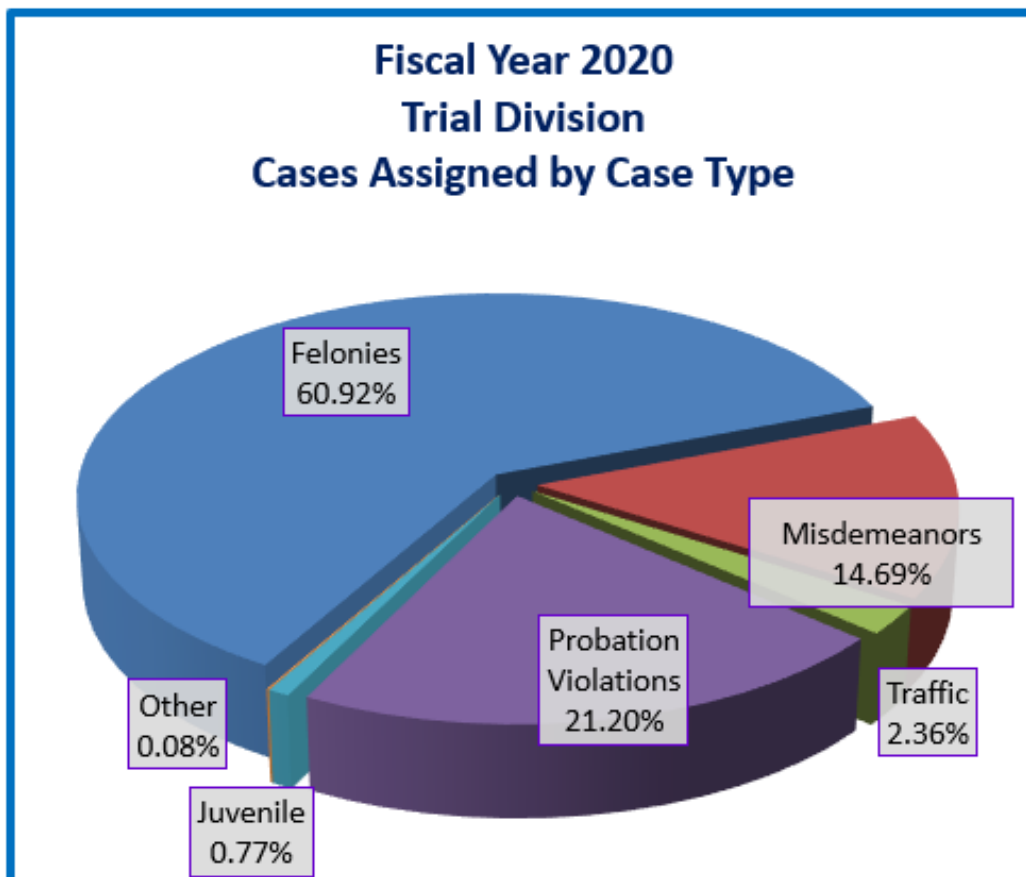
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Missouri State Public Defender

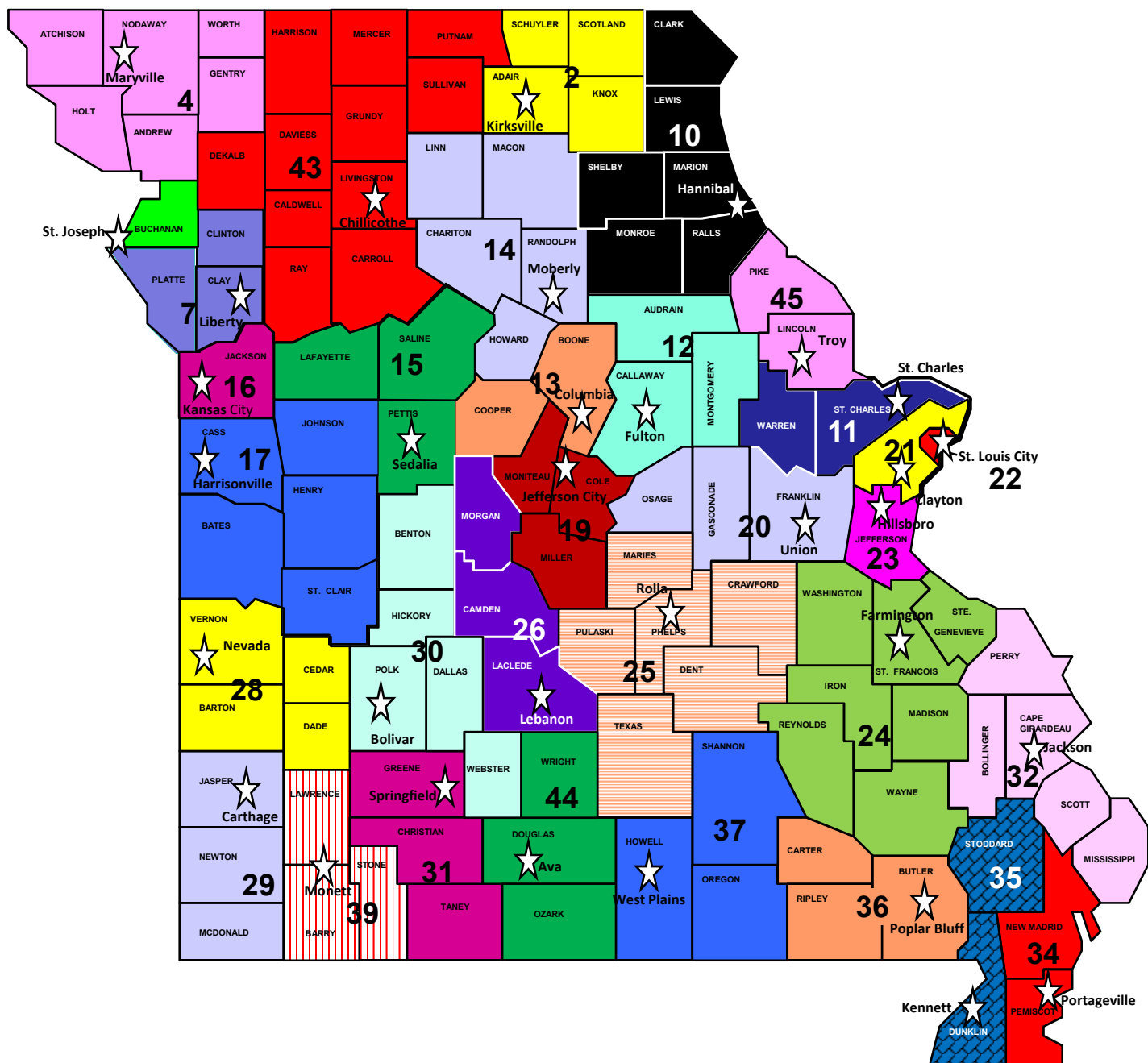
Trial Division



MSPD tracks both assigned and disposed of cases for each fiscal year. Those two numbers are generally not tracking the same cases. Many cases take more than a year from assignment to disposition and many more do not fall neatly, start to finish, within a single fiscal year. The above chart reflects the reality that no lawyer begins the fiscal year with an empty file drawer. At the start of FY2020, Missouri's Trial Division public defenders had over 29,154 pending cases already on their desks, to which another 55,548 new cases were assigned over the course of the fiscal year.



Missouri State Public Defender Trial Division District Map



Missouri State Public Defender

Trial Division Offices

Area 2 -- Adair, Knox, Schuyler, Scotland Counties

Kevin Locke, District Defender
905 E. George
Kirksville, MO 63501
660-785-2445 FAX: 660-785-2449

Area 4 -- Andrew, Atchison, Gentry, Holt, Nodaway, Worth Counties

Vacant, District Defender
305 North Market
Maryville, MO 64468
660-582-3545 FAX: 660-562-3398

Area 5 -- Buchanan County

Shayla Marshall, District Defender
120 South 5th Street, 2nd Floor
St. Joseph, MO 64501
816-387-2026 FAX: 816-387-2786

Area 7 -- Clay, Clinton, Platte Counties

Anthony Cardarella, District Defender
234 West Shrader
Liberty, Missouri 64068
816-792-5394 FAX: 816-792-8267

Area 10 -- Clark, Lewis, Marion, Monroe, Ralls, Shelby Counties

Todd Schulze, District Defender
201 North Third Street
Hannibal, MO 63401
573-248-2430 FAX: 573-248-2432

Area 11 -- St. Charles, Warren Counties

Mike Sato, District Defender
300 N. Second Street, Suite 264
St. Charles, MO 63301
636-949-7300 FAX: 636-949-7301

Area 12 -- Audrain, Callaway, Montgomery Counties

Kathryn Benson, District Defender
2800 Cardinal Drive
Suite B
Fulton, MO 65251
573-592-4155 FAX: 573-642-9528

Area 13 -- Boone County, Cooper Counties

Sarah Aplin, District Defender
601 E. Walnut
Columbia, MO 65201
573-882-9701 FAX: 573-882-9147

Area 14 -- Chariton, Howard, Linn, Macon, Randolph Counties

Ed Guinn, District Defender
3029 County Road 1325
Moberly, MO 65270
660-263-7665 FAX: 660-263-2479

Area 15 -- Lafayette, Pettis, Saline Counties

Max Mitchell, District Defender
1807 West Broadway
Sedalia, MO 65301
660-530-5550 FAX: 660-530-5545

Area 16 -- Jackson County

Ruth Petsch, District Defender
Oak Tower, 20th Floor
324 E. 11th Street
Kansas City, MO 64106-2417
816-889-2099 FAX: 816-889-2999

As of September 15, 2020

Missouri State Public Defender

Trial Division Offices

**Area 17 -- Bates, Cass, Henry,
Johnson, St. Clair Counties**
Jeffrey Martin, District Defender
502 Westchester Avenue
Harrisonville, MO 64701
816-380-3160 FAX: 816-380-7844

Area 19 -- Cole, Miller, Moniteau Counties
Justin Carver, District Defender
210 Adams Street
Jefferson City, MO 65101
573-526-3266 FAX: 573-526-1115

Area 20 -- Franklin, Gasconade, Osage Counties
Courtney Harness, District Defender
300 East Main Street
Union, MO 63084
636-583-5197 FAX: 636-583-1740

Area 21 -- St. Louis County
Stephen Reynolds, District Defender
100 S. Central, 2nd Floor
Clayton, MO 63105
314-615-4778 FAX: 314-615-0128

Area 22 -- St. Louis City
Matthew Mahaffey, District Defender
Mel Carnahan Courthouse
1114 Market Street, Suite 602
St. Louis, MO 63101
314-340-7625 FAX: 314-340-7595

Area 23 -- Jefferson County
Gina Savoie, District Defender
P.O. Box 156
116 Main Street
Hillsboro, Missouri 63050
636-789-5254 FAX: 636-789-5267

**Area 24 -- Iron, Madison, Reynolds,
St. Francois, Ste. Genevieve,
Washington, Wayne Counties**
Stephanie Zipfel, District Defender
1101 Weber Road, Suite 203
Farmington, MO 63640
573-218-7080 FAX: 573-218-7082

**Area 25 -- Crawford, Dent, Maries,
Phelps, Pulaski, Texas Counties**
Matthew Crowell, District Defender
901 Pine, Suite 200
Rolla, MO 65401
573-368-2260 FAX: 573-364-7976

Area 26 -- Camden, Laclede, Morgan Counties
Stacy Patterson, District Defender
288 Harwood
Lebanon, MO 65536
417-532-6886 FAX: 417-532-6894

Area 28 -- Barton, Cedar, Dade, Vernon Counties
Renee GotviAgehya, District Defender
329 C North Barrett
Nevada, MO 64772
417-448-1140 FAX: 417-448-1143

Area 29 -- Jasper, McDonald, Newton Counties
Darren Wallace, District Defender
115 Lincoln Street
Carthage, MO 64836
417-359-8489 FAX: 417-359-8490

As of September 15, 2020

Missouri State Public Defender

Trial Division Offices

**Area 30 -- Benton, Dallas, Hickory,
Polk, Webster Counties**

Dewayne Perry, District Defender
1901 South Wommack, Suite B
Bolivar, Missouri 65613
417-777-8544 FAX: 417-777-3082

Area 31 -- Christian, Greene, Taney Counties

Rodney Hackathorn, District Defender
630 North Robberson
Springfield, MO 65806
417-895-6740 FAX: 417-895-6780

**Area 32 -- Bollinger, Cape Girardeau,
Mississippi, Perry, Scott Counties**

Leslie Hazel, District Defender
2360 North High Street—Suite #2
Jackson, MO 63755
573-243-3949 FAX: 573-243-1613

**Area 34 -- New Madrid,
Pemiscot Counties**

John Grobmyer, District Defender
48 East State Highway 162
Portageville, MO 63873
573-379-9308 FAX 573-379-9309

Area 35 -- Dunklin, Stoddard Counties

Vacant, District Defender
P.O. Box 648
1087 Commerce Drive
Kennett, MO 63857
573-888-0604 FAX: 573-888-0614

Area 36 -- Butler, Carter, Ripley Counties

Katie New, District Defender
948 Lester Street
Poplar Bluff, MO 63901
573-840-9775 FAX: 573-840-9773

Area 37 -- Howell, Oregon, Shannon Counties

Bethany Turner, District Defender
1314 Webster Street
West Plains, MO 65775
417-257-7224 FAX: 417-257-7692

Area 39 -- Barry, Lawrence, Stone Counties

Pamela Musgrave, District Defender
P.O. Box 685
305 Dairy
Monett, MO 65708-0685
417-235-8828 FAX: 417-235-5140

**Area 43 -- Caldwell, Carroll, Daviess, DeKalb,
Grundy, Harrison, Livingston, Mercer,
Putnam, Ray, Sullivan Counties**

Kelly Miller, District Defender
500 Youssef
Chillicothe, MO 64601
660-646-3343 FAX: 660-646-4228

Area 44 -- Douglas, Ozark, Wright Counties

Kate Welborn, District Defender
P.O. Box 951
404 East Washington Street
Ava, MO 65608
417-683-5418 FAX: 417-683-5820

Area 45 -- Lincoln, Pike Counties

Michael Jacobs, District Defender
240 West College
Troy, MO 63379
636-528-5084 FAX: 636-528-5086

As of September 15, 2020

Missouri State Public Defender

Children's Defense Team

Thanks to additional funding provided by the Missouri Legislature and Governor, MSPD opened Children's Defense Team (CDT) offices in Kansas City and St. Louis this year to represent children charged with delinquent offenses in the juvenile system. The Children's Defense Team Division is headed by Sarah Johnson, MSPD Director of Juvenile Defense and Policy.

The CDT attorneys are trained as Juvenile Specialists and handle all MSPD juvenile cases in the City of St. Louis, St. Louis County, St. Charles County, Jefferson County, Franklin County and Jackson County. Walter Stokely serves as the District Defender for the CDT Office located in Kansas City. The team is hoping to expand to more counties near Kansas City in FY 2021. In addition to the attorneys trained as Juvenile Specialists in CDT, the CDT also includes investigators, administrative assistants, legal assistants, and a disposition (sentencing) specialist.

Beginning July 1, 2020, the CDT began representing 17-year-old children charged in adult court in St. Louis City Circuit Court. This representation of 17-year old children will continue, as the age of juvenile court jurisdiction will raise from 17 to 18 years old on January 1, 2021. Sarah Johnson has started planning for representation of those 17-year-olds in juvenile courts throughout the state, by training juvenile specialists in each MSPD office.

In addition to representation, the CDT also provides training to MSPD attorneys and contract attorneys who are representing children in juvenile court. MSPD held an in-person "Youth in Court Training" in July 2019; and virtual trainings on juvenile case basics, litigating certification (hearings to determine whether to send a child to adult court), training on adolescent brain development and trauma, and how to try a juvenile sex case.



**Mural in St. Louis CDT Office by artist Cbabi Bayoc,
Funded by Clark-Fox Family Foundation**

The CDT also helps attorneys throughout the state in juvenile hearings, and helps any office that is representing a child facing certification from juvenile court to adult court. This state-wide outreach also extends to any cases where the State is seeking a life without the possibility of probation or parole sentence for a child under the age of 18. One of CDT's first victories was a decision by the Missouri Supreme Court that children who are certified may appeal that certification decision to an appellate court.

The Children's Defense Team continues its work in helping stakeholders, judges, juries, legislators and communities recognize that children are different, that every child is redeemable and deserves a chance for a bright future.

Sarah Johnson
Director of Juvenile Defense and Policy

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Walter Stokely
District Defender

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Missouri State Public Defender Appellate/Postconviction Division

MSPD's Appellate-Postconviction Division represents clients throughout Missouri in appeals to the Missouri Supreme Court, the Missouri Court of Appeals, and the U.S. Supreme Court when that court occasionally hears a Missouri appellate case. The Division also represents clients in all of Missouri's 46 Circuit Courts, in 114 counties and the City of St. Louis, pursuant to the Missouri Supreme Court's postconviction rules. Postconviction cases – which may occur after a guilty plea, or after a trial or appeal – seek to correct errors that occurred in the plea, trial or appellate proceedings.

The Division has a total of 39 attorneys in six offices – two each in St. Louis, Kansas City, and Columbia. The Division has two offices in each city to be able to handle conflict cases that arise in appellate and postconviction proceedings. Obtaining appellate or postconviction relief is always an uphill battle since circuit court proceedings are generally presumed to be correct. Nevertheless, during FY20, the Division's attorneys obtained some type of appellate relief for more than 35 clients, and some type of postconviction relief for more than 25 clients.

The Division's attorneys obtained appellate relief for clients on issues such as insufficient evidence to prove guilt at trial; unconstitutional search and seizure by police; and improperly revoking probation after it had expired. Those successes included:

- authorization for juveniles to appeal sentence even if sentence completed;
- double jeopardy finding when client acquitted of charged offense but found guilty of improperly instructed lesser offense;
- clarification of Merchandising Practices Act violations;
- reduction of misdemeanor stealing to class D misdemeanor when no evidence of value presented; and
- setting aside plea of incompetent defendant.

The attorneys obtained postconviction relief for clients on issues including a double jeopardy violation; ineffective assistance of counsel; and various sentencing errors that allowed the Division's attorneys to obtain a better sentencing outcome for clients. Those corrected errors included:

- release from Department of Corrections for a client who had been sentenced to prison after his probation term had ended;
- transfer to Long Term Treatment for a client who had initially been denied treatment;
- reinstatement of a plea offer that had not been conveyed;
- resentencing after failure of initial trial attorney to present mitigation evidence for 15 year old client; and
- credit for jail time for time client spent in juvenile detention facility prior to transfer to adult court.

Appellate Central District 50

Ellen Flottman, District Defender
Ellen.Flottman@mspd.mo.gov

PCR Central District 67

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Appellate/PCR Eastern District 51 (A)

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Appellate/PCR Western District 52 (A)

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Appellate/PCR Western District 69 (B)

Damien de Loyola, District Defender
Damien.deLoyola.mspd.mo.gov

Missouri State Public Defender

Capital Division

MSPD's Capital Division provides defense representation in first degree murder cases in which the state is seeking the death penalty. A total of 15 attorneys in three Capital Offices – located in St. Louis, Kansas City, and Columbia – represent these clients throughout Missouri. These attorneys also represented children charged with first degree murder where the state was seeking a sentence of life in prison without parole in cases filed before 2019. In 2020, MSPD began assigning newly filed children's first degree murder cases to its new Children's Defense Team Offices.

Death penalty cases and cases involving children charged with first degree murder require the highest level of factual investigation, sentencing mitigation investigation, legal research, and advocacy to obtain successful outcomes for clients. During FY20, for the children's first degree murder cases that were completed, the Capital Division resolved all of them for sentences far less than life without parole. Two children received sentences of 10 and 12 years respectively. During FY20, for the cases that were completed in which the State was originally seeking the death penalty, the Division successfully resolved all of them for sentences less than death. No MSPD client has received a death sentence from a jury since 2013, or from a judge – following a hung jury since 2018.

Missouri law currently allows judges to impose a death sentence when a jury cannot agree on punishment. MSPD supports legislative change to require judges to impose a sentence of life in prison without parole – the only other available sentence for first degree murder – when jurors cannot unanimously agree on punishment in death penalty cases. The constitutional protection of a jury trial should mean that 12 citizen jurors must unanimously agree on both guilt and punishment before a person can be sentenced to death. The power to sentence a person to death is too important to leave to judges alone. Before 1983, Missouri law required judges to impose life sentences when jurors could not agree on punishment in death penalty cases. Only 25 states still actively seek the death penalty. Indiana is the only other state that allows a judge to impose a death sentence when the jury cannot agree.

MSPD Capital Office Locations, Contact Information and District Defenders

Central District

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Eastern District

Sharon Turlington, District Defender
Sharon.Turlington@mspd.mo.gov
1010 Market Street—Suite 1100
St. Louis, MO 63103
314-340-7662

Western District

Thomas Jacquinet, District Defender
Tom.Jacquinet@mspd.mo.gov
920 Main Street, Suite 500
Kansas City, MO 64105
816-889-7699

Missouri State Public Defender

Commitment Defense Unit



MSPD's Commitment Defense Unit handles cases throughout Missouri involving the state's sexual offender commitment law. After people convicted of certain sexual offenses have completed their prison sentences, the law allows the state to seek lifetime civil commitment of them to the Department of Mental Health's Sex Offender Rehabilitation and Treatment Services program. The four attorneys in MSPD's Commitment Defense Unit provide defense representation during both the initial commitment hearing and trial seeking commitment, and in subsequent proceedings to determine whether people who have been committed are later entitled to release.

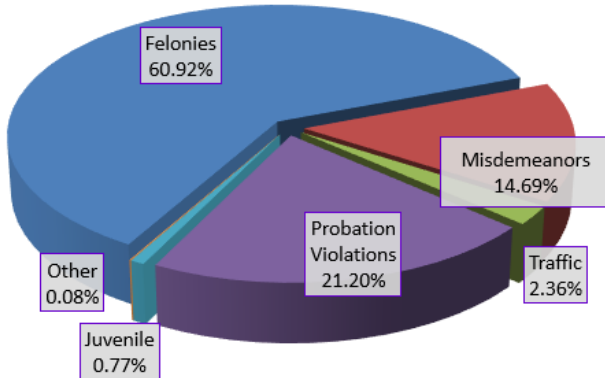
During FY20, the Commitment Defense Unit conducted 11 jury trials for initial commitment throughout Missouri. In addition, the Unit successfully petitioned for release of three clients from commitment to the Department of Mental Health. The unit's attorneys successfully convinced judges or juries in each of the three cases that their clients were no longer likely to re-offend, if released. Due to diligent fact-finding, zealous advocacy, and better education of judges and juries on release issues, the Unit's attorneys have obtained release of more MSPD clients in the past five years, than in the previous fifteen years combined.

Beginning in FY 2020 this unit also handles all requests for conditional release or unconditional release from the Department of Mental Health.

Commitment Defense Unit
Amy Clay, District Defender
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1010 Market Street, Suite 1100
St. Louis, MO 63101
314-340-7662 FAX: 314-340-7666

Missouri State Public Defender

**Fiscal Year 2020
Trial Division
Cases Assigned by Case Type**



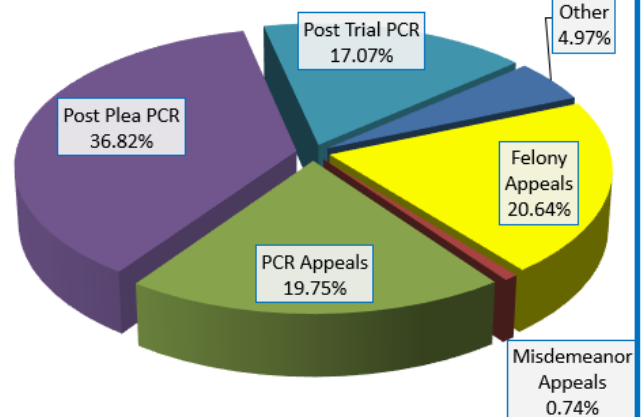
Trial Division

# of Offices	33
Cases Carried Forward into Fiscal Year 2019	29,154
# of Assigned Cases	55,548
# of Attorney FTE	320

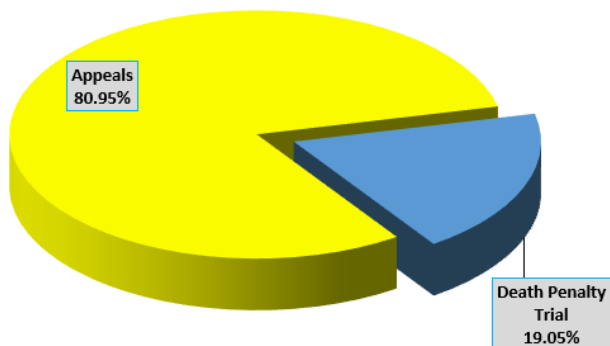
Appellate/PCR Division

# of Offices	6
Cases Carried Forward into Fiscal Year 2019 (Does Not Include Those Waiting Opinions)	1,616
# of Assigned Cases	1,347
# of Attorney FTE	39

**Fiscal Year 2019
Appellate & Post Conviction Relief
Cases Assigned by Case Type**



**Fiscal Year 2020
Capital Division Caseload
Cases Assigned by Case Type**



Capital Division

# of Offices	3
Cases Carried Forward into Fiscal Year 2019	64
# of Assigned Cases	21
# of Attorney FTE	15

Missouri State Public Defender

Case Contracting Department

Case contracting manages all cases that are assigned to private counsel as Special Public Defenders. The office consists of the Case Contracting Manager, attorney Maggie Johnston, with the assistance of her staff of three and the support of the Operations staff

In Fiscal Year 2020, MSPD contracted 11,714 cases, a record high. MSPD took advantage of the cost savings resulting from the court slow downs and remote court to use those funds to obtain counsel for many of the eligible applicants who were on the waiting list without counsel. There are 236 active contract attorneys throughout the State.

The Case Contracting office provides contract attorney support by providing legal consultation on cases; fielding and relaying client and family concerns to counsel; providing client correspondence in support of contract counsel; assisting with expert retention; reviewing litigation expense requests and payments; and processing travel invoices. MSPD Case Contracting also provides online support via the Panel Attorney Resources website (which provides access to MSPD training, caselaw updates, and other practice information).

Outstanding contract attorneys are recognized annually with the selection of a limited number of attorneys who receive recognition letters from the Director, as well as one attorney who is selected as the Outstanding Contract Defender of the year. FY 2020 Outstanding Contract Counsel was Wally Trosen from Kirksville, Missouri. Through their submission of case disposition forms, contract attorneys also receive case-specific recognition from Case Contracting staff who review the forms and provide feedback to counsel as deemed appropriate.

Missouri State Public Defender Private Counsel Fee Schedule		
Case Type	Description	Contract Rates
15	Murder 1st Degree	\$10,000
62	Sexual Predator Trial	\$8,000
20	Other Homicide	\$6,000
30D	AB Felony Drug	\$750
30F	AB Felony Other	\$1,500
30X	AB Felony Sex	\$2,000
35D	CDE Felony Drug	\$750
35F	CDE Felony Other	\$750
35X	CDE Felony Sex	\$1,500
45M	Misdemeanor	\$375
50N	Juvenile - Non Violent	\$500
50V	Juvenile - Violent	\$750
65	Probation Violation	\$375
110F	Direct Appeals - Felony	\$3,750
110S	Direct Appeal - Misdemeanor	\$3,750
124A	Rule 24.035 Appeal	\$500
124M	Rule 24.035 Motion	\$500
	Rule 24.035 Evidentiary Hearing	\$250
129A	Rule 29.15 Appeal	\$1,875
	Rule 29.15 Evidentiary Hearing	\$500
129M	Rule 29.15 Motion	\$1,000

MSPD pays additional compensation in cases resolved by Trial

Jury Trial \$1,500 for the first day and \$750 for each additional day

Bench Trial \$750 per day - prorated

Rule 29.15 Evidentiary Hearing \$500

Rule 24.035 Evidential Hearing \$250

Case Contracting Manager Maggie Johnston

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Woodrail Centre
1000 West Nifong—Building 7, Suite 100
Columbia, MO 65203
573-777-9977

Missouri State Public Defender Case Contracting Department

FISCAL YEAR 2020 NUMBER OF CASES TO PRIVATE COUNSEL BY DISTRICT AND COUNTY												
County	District #	Total	District Totals	County	District #	Total	District Totals	County	District #	Total	District Totals	
JEFFERSON	01	5		CASS	16	2		CHRISTIAN	31	132		
ST. CHARLES	01	2		JACKSON	16	450		GREENE	31	817		
ST. LOUIS CITY	01	19		Kansas City			452	TANEY	31	191		
ST. LOUIS COUNTY	01	8		BATES	17	105		Springfield			1140	
St. Louis Children's Defense			34	CASS	17	200		BOLLINGER	32	28		
ADAIR	02	154		HENRY	17	152		CAPE GIRARDEAU	32	114		
KNOX	02	4		JOHNSON	17	57		MISSISSIPPI	32	35		
SCHUYLER	02	11		ST. CLAIR	17	10		PERRY	32	35		
SCOTLAND	02	5		Harrisonville			524	SCOTT	32	143		
Kirkville			174	COLE	19	320		Jackson			355	
ANDREW	04	20		MILLER	19	122		NEW MADRID	34	63		
ATCHISON	04	5		MONITEAU		46		PEMISCOT	34	86		
GENTRY	04	7		Jefferson City			488	Portageville			149	
HOLT	04	8		FRANKLIN	20	415		BUTLER	35	1		
NODAWAY	04	21		GASCONADE	20	33		DUNKLIN	35	144		
WORTH	04	7		OSAGE	20	50		STODDARD	35	93		
Maryville			68	Union			498	Kennett			238	
BUCHANAN	05	278		ST. LOUIS COUNTY	21	205		BUTLER	36	231		
RAY	05	2		Clayton			205	CARTER	36	38		
St. Joseph			280	ST. LOUIS CITY	22	116		RIPLEY	36	52		
JACKSON	06	1		St. Louis City			116	WAYNE	36	39		
Kansas City Children's Defense			1	JEFFERSON	23	231		Poplar Bluff			360	
CLAY	07	99		Jefferson			231	HOWELL	37	270		
CLINTON	07	14		IRON	24	26		OREGON	37	56		
JACKSON	07	5		MADISON	24	18		SHANNON	37	16		
LAFAYETTE	07	1		REYNOLDS	24	9		West Plains			342	
PLATTE	30	30		ST. FRANCOIS	24	170		BARRY	39	101		
Liberty			149	STE. GENEVIEVE	24	46		LAWRENCE	39	122		
CLARK	10	17		WASHINGTON	24	84		STONE	39	86		
LEWIS	10	31		Farmington			353	Monett			309	
MARION	10	53		CRAWFORD	25	78		CALDWELL	43	22		
MONROE	10	21		DENT	25	57		CARROLL	43	24		
RALLS	10	12		MARIES	25	32		DAVIESS	43	21		
SHELBY	10	13		PHELPS	25	78		DEKALB	43	44		
Hannibal			147	PULASKI	25	139		GRUNDY	43	21		
ST. CHARLES	11	401		TEXAS	25	83		HARRISON	43	20		
WARREN	11	57		Rolla			467	LIVINGSTON	43	62		
St. Charles			458	CAMDEN	26	99		MERCER	43	9		
AUDRAIN	12	130		LACLEDE	26	110		PUTNAM	43	5		
CALLAWAY	12	318		MORGAN	26	63		RAY	43	108		
MONTGOMERY	12	68		Lebanon			272	SULLIVAN	43	12		
Fulton			516	BARTON	28	31		Chillicothe			348	
				CEDAR	28	58		DOUGLAS	44	28		
BOONE	13	974		DADE	28	20		OZARK	44	19		
COOPER	13	75		VERNON	28	149		WRIGHT	44	98		
Columbia			1049	Nevada			258	Ava			145	
CHARITON	14	10		JASPER	29	404		LINCOLN	45	77		
HOWARD	14	28		MCDONALD	29	56		PIKE	45	65		
LINN	14	55		NEWTON	29	175		Troy			142	
MACON	14	30		Carthage			635	APPELLATE		78		
RANDOLPH	14	66		BENTON	30	32		CONTRACTING		9		
Moberly			189	DALLAS	30	19		Appellate/Contracting			87	
LAFAYETTE	15	38		GREENE	30	5						
PETTIS	15	179		HICKORY	30	15				11,714	11,714	
SALINE	15	38		POLK	30	67						
Sedalia			255	WEBSTER	30	142						
				Bolivar			280					

Missouri State Public Defender

Case Contracting Department

Fiscal Year 2020 CONFLICT and CONTRACT ASSIGNMENTS - By Case Type -					
Code	Case Type Description	# of Conflict Cases Contracted	# of Overload Cases Contracted	Missouri Colition for the Right to Counsel	Total
10	Murder 1 - Death Penalty				-
15	Murder 1 - Non-Death Penalty	34	1	1	36
20	Other Homicide	44		1	45
30D	A - B Felony Drug	72	15		87
30F	A - B Felony Other	620	107	9	736
30X	A - B Felony Sex	69	20		89
35D	C - D - E Felony Drug	1,916	638	2	2,556
35F	C - D - E Felony Other	2,835	1,183	5	4,024
35X	C - D - E Felony Sex	20	7		27
45M	Misdemeanor (other than Traffic)	861	1,255		2,116
45T	Misd. - Traffic (RSMo. 301-307)	89	256		345
50N	Juvenile Non-violent (all other)	50			50
50S	Juvenile Status	6			6
50V	Juvenile Violent (crimes against persons)	58	2		60
62	Sexual Predator Trial				-
65F	Probation Violation - Felony	759	470		1,229
65M	Probation Violation - Misdemeanor	91	107		198
99	None	16	12		28
					-
110F	Direct Appeal - Felony	2	29	2	33
110I	Direct Appeal - Interlocutory				-
110J	Direct Appeal - Juvenile	1			1
110S	Direct Appeal - Misdemeanor		1		1
124A	Rule 24.035 Appeal - PCR Appeal		6		6
124M	Rule 24.035 Motion - Post Plea PCR	3	3		6
124SA	Rule 24.035 Appeal - State's Appeal				-
129A	Rule 29.15 Appeal - PCR Appeal	3	21		24
129M	Rule 29.15 Motion - Post Trial PCR	9	2		11
161a	CDU Appeal				-
175T	Writ Trial				-
Total Private Counsel Conflict & Contract Assignments		7,558	4,135	20	11,714

Missouri State Public Defender

Training Division

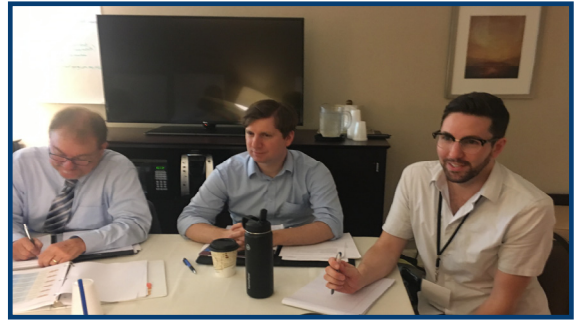
MSPD's Training Division works to ensure that all MSPD employees have access to the basic foundational knowledge and skills necessary to fill their roles as integral parts of the MSPD defense team. The Training Division also provides all attorney staff with the required Continuing Legal Education (CLE) classes mandated by the Supreme Court. Historically, this challenge was met primarily with live training programs. As MSPD adapted to a continuing pandemic, the shift has been to virtual training and the change created some surprising benefits along the way.

Pre-COVID-19 World

From August 2019 until February, 2020, MSPD provided nine state-wide training programs: New Employee Orientation on three occasions; New Defender Workshop in August, 2019 and February, 2020; Trial Skills Workshop, Support Staff Workshop, Advanced Trial Advocacy Workshop, and Defender Management and Leadership Workshop.

Post-COVID-19 – A Whole New Virtual World

In March 2020 as MSPD transitioned to a remote work environment, the Training Division quickly pivoted to virtual training and developed webinars to meet our MSPD attorney's and our contract counsel's CLE needs. Since April 15, 2020, MSPD has provided 24 webinars, totaling 63.8 hours of CLE. Eight of the webinars provided training on explicit or implicit bias, diversity, inclusion, or cultural competency, required CLE subjects under Supreme Court Rule 15. The virtual seminars allowed MSPD to bring nationally known speakers from across the country like Larry Pozner and Stephen Bright, both pioneers in their fields, to MSPD events at no cost to MSPD. Another benefit was the ability to network and connect with public defenders across the country. Using technology to provide training and resources benefiting our employees continues to be a top priority of the Training Division.



Racial Justice and Equity Training

MSPD has also placed a great emphasis on our diversity, inclusion, and racial justice and equity training. Shayla Marshall, our Area 5 District Defender and MSPD's first Diversity and Inclusion Officer, has been instrumental in helping inform and deliver quality training. In addition to our webinars, we are working with national organizations to bring quality training on racial justice and equity to all our employees. The Missouri Coalition for the Right to Counsel donated funds for our Black attorneys to join the National Legal Aid and Defender Association and its Black Public Defenders Association (BPDA) and for them to attend the BPDA Leadership training held this past summer.

Training Breeds Success

MSPD Training Division focuses not just on the fundamentals, but also on the issues that are ripe for review. MSPD presented training on eyewitness identification and the use of an expert on the subject. The training was used by both trial and appellate counsel in litigating the issue. The Missouri Supreme Court recently ruled in an MSPD case that the trial court erred in not allowing defense counsel to call an expert witness on eyewitness identification testimony. Use of that training for the individual client resulted in a new trial for that client, but also solidified the right to present a defense and call an expert to counter erroneous eyewitness identification, the leading cause of wrongful convictions.

TRAINING DIRECTOR
MELINDA PENDERGRAPH
Melinda.Pendergraph@mspd.mo.gov
Woodrail Centre

Missouri State Public Defender

Waitlist for Services

Missouri is constitutionally mandated to provide legal representation at the public's expense to poor persons who have been charged with a criminal offense who are unable to hire counsel. MSPD, as the independent statutory department created to fulfill that obligation, was established in 1982 and has struggled for much of its existence to obtain the necessary resources to fulfill that constitutional mandate. The issue of Missouri State Public Defender's excessive workload has been the subject of five different studies. Each of these investigations reached the same conclusion: Missouri does not provide funding for enough lawyers to fulfill the state's constitutional obligations to provide counsel for the poor.

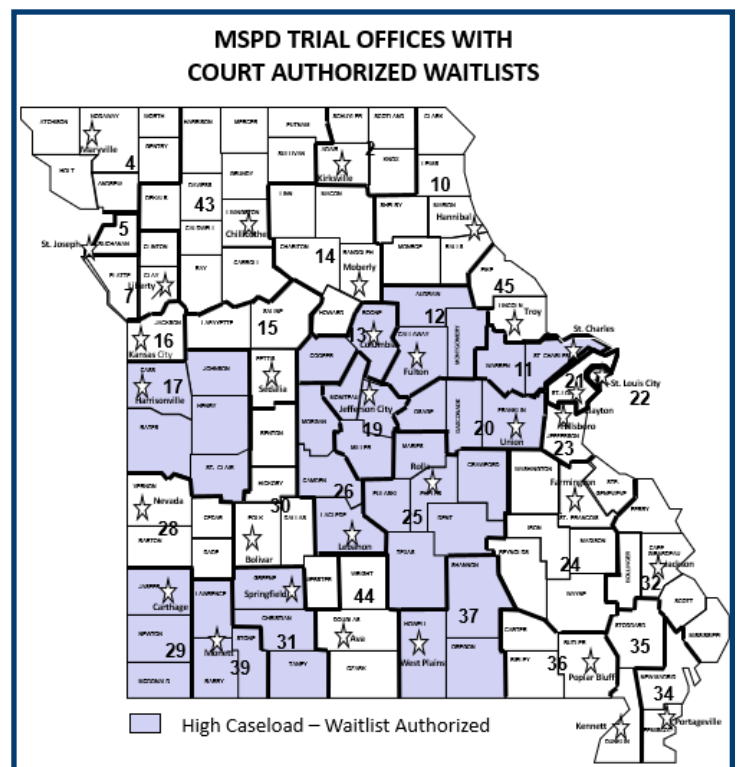
As a result of these excessive caseloads waitlists for services have been established in jurisdictions covered by twelve of MSPD's trial offices (see map). Almost 2,500 cases await an available public defender to enter as counsel for the defendant. That delay is detrimental not only to the defendant; but also to the courts, the State and the counties as the cases linger in the judicial system.

MSPD has been proactive in eliminating excessive caseload. Indigence guidelines have been tightened and consistently enforced. MSPD has limited accepting cases that will not result in the defendant's confinement. MSPD has reallocated available assistant public defender FTE positions from urban areas to areas that have seen a growth in population and/or crime. MSPD has reallocated senior management attorney positions to trial office assistant public defender positions.

MSPD has requested twelve assistant public defenders for FY 2022 in our Legislative Budget Request to



help reduce and eliminate these waitlists. One additional attorney in each of twelve trial offices that have court authorized waitlists will significantly decrease the existing waitlists and the addition of new defendants to those waitlists. The twelve trial offices are responsible for all existing and incoming eligible trial division cases in 38 of Missouri's 114 counties. MSPD also has court authorized waitlists in the Appellate/PCR Division.



Missouri State Public Defender

Appropriations

General Revenue: Missouri State Public Defender (MSPD) funding is almost entirely from state general revenue funds. It comes in three appropriations:

Personal Service: Used to pay the salaries of all MSPD employees.

Expense & Equipment: Used to pay the overhead costs of operations, such as office supplies and equipment, employee travel expenses, and rent and utilities for the statewide offices.

Litigation & Contracting Expenses: Used to pay the cost of contracting cases out to private counsel and litigation expenses on both MSPD cases and those cases contracted out to private counsel. Litigation expenses include the cost of experts, depositions, transcripts, exhibits, independent testing of evidence, etc.

Legal Defense and Defender Fund: This appropriation is not actual funds given to MSPD but the authorization to spend money collected by MSPD up to the ceiling of the appropriation. The collections associated with this fund are the result of Section 600.090 RSMo, which requires public defenders to collect fees from clients receiving public defender service. Fees are deposited into the Legal Defense and Defender Fund and used to fund all public defender training as well as pay for such miscellaneous expenditures as computer lines, WestLaw, bar dues for the system's attorneys, etc. In FY20 MSPD collected \$2.036 million through client payments.

The personal service component of the LDDF appropriation authorizes MSPD to pay the salaries of two employees, the system's Director of Training and the Training Assistant, out of the moneys collected rather than through the general revenue personal service appropriation.

Debt Offset Escrow Fund: This is not an appropriation of actual money, but an authorization for MSPD to collect funds through the state's debt offset program. Under this program, taxpayers due a refund of state income tax who owe a debt to the state may have their refund intercepted and used to pay down the debt instead. MSPD participates in this program to collect payments on the fees described above. The money collected through this program is not in addition to the LDDF collections, but a subset thereof.

Grants: Another 'permission' appropriation, rather than actual money appropriation, this authorizes MSPD to collect up to \$625,000 in grants from the federal government or other sources. The last time MSPD collected a federal grant was in the mid-.

Actual Funding: In FY20, MSPD received a total of \$48.98 million of general revenue funds and the authority to spend up to \$2.74 million of LDDF Collections. (Actual collections were \$2,036,264.)

Missouri State Public Defender

Appropriations

State Public Defender General Revenue Appropriations		
Fiscal Year	Total Amount	Total FTE
1994	\$13,770,464	410.38
1995	\$15,744,183	424.38
1996	\$18,480,875	437.88
1997	\$22,354,019	478.38
1998	\$22,935,946	507.13
1999	\$26,918,367	527.38
2000	\$28,473,301	548.88
2001	\$29,713,513	556.13
2002	\$29,808,922	556.13
2003	\$29,808,922	556.13
2004	\$28,111,874	558.13
2005	\$28,463,282	558.13
2006	\$28,463,282	558.13
2007	\$30,493,582	558.13
2008	\$32,680,606	558.13
2009	\$34,069,815	558.13
2010	\$34,207,100	570.13
2011	\$34,707,100	570.13
2012	\$34,707,100	585.13
2013	\$36,321,545	585.13
2014	\$35,290,793	585.13
2015*	\$39,739,909	585.13
2016	\$36,422,010	585.13
2017**	\$41,947,581	595.13
2018	\$42,497,581	595.13
2019	\$46,014,315	595.13
2020	\$48,329,522	613.13
2021***	\$48,979,427	613.13

* \$2,972,238 Withheld by the Governor
and Not Released

** \$3,500,000 Withheld by the Governor
and Not Released

***\$145,376 Withheld by the Governor
and Not Released

HOUSE BILL NO 12 TAFP

CCS for SCS for HCS for HB 12
100TH GENERAL ASSEMBLY
Signed by Governor – No Vetoes

Fiscal Year 2020

Section 12.400. To the Office of the State Public Defender

For funding the State Public Defender System

Personal Service and/or Expense and Equipment	\$43,608,451
Personal Service \$35,053,587 – E & E \$8,554,864	

For payment of expenses as provided by Chapter 600, RSMo associated with the defense of violent crimes and/or the contracting of criminal representation with entities outside of the Missouri State Public Defender System

\$4,721,071

From General Revenue Fund (0101)	\$48,329,522
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For expenses authorized by the Public Defender Commission as provided by Section 600.090, RSMo

Personal Service	\$138,890
Expense and Equipment	<u>\$2,850,756</u>
From Legal Defense and Defender Fund (0670)	\$2,989,646

For refunds set-off against debts as required by RSMo 143.786,

From Debt Offset Escrow Fund (0753)	\$1,700,000
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For all grants and contributions of funds from the federal government or from any other source which may be deposited in the State Treasury for the use of the Office of the State Public Defender

From Federal Funds (0112)	<u>\$125,000</u>
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Total (Not to exceed 615.13 F.T.E.) (General Revenue – 613.13 & LDDF 2.00)	\$53,144,168
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Section 12.401. To the Office of the State Public Defender

For the purpose of funding an increase in the mileage reimbursement rate in Fiscal Year 2020, Provided that these funds shall only be expended to fund an increase in the mileage rate after the appropriate core expense and equipment funds have been fully expended.

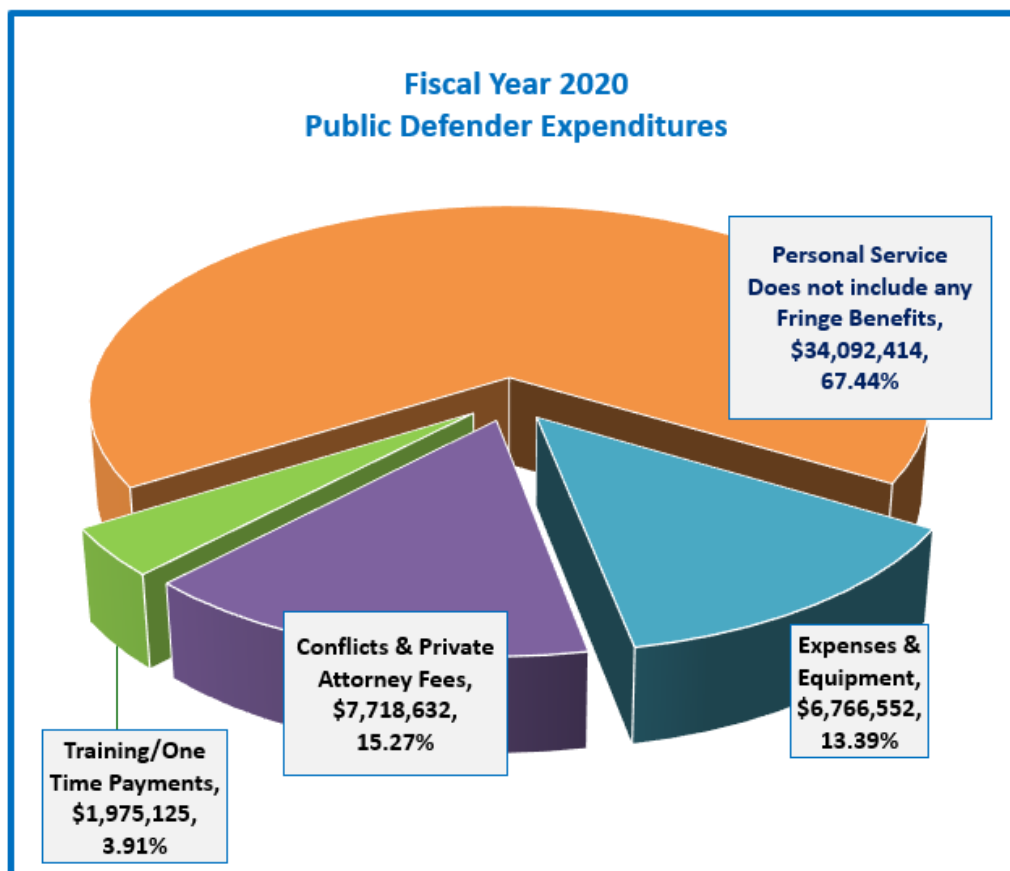
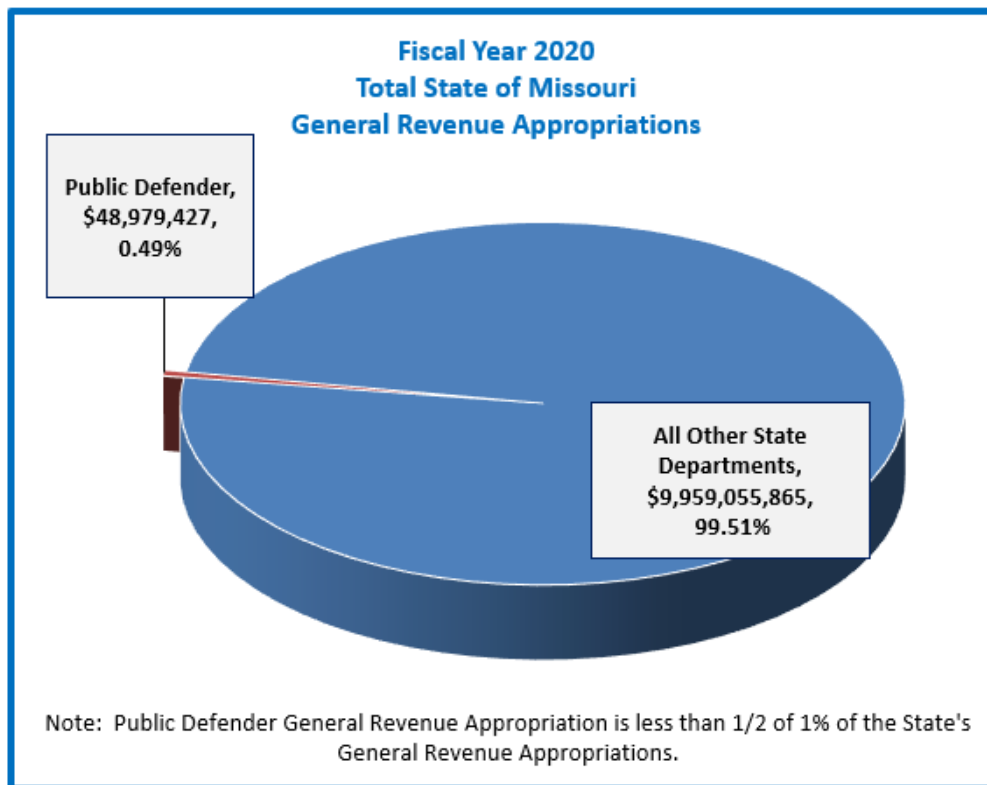
From General Revenue Fund (0101)	\$145,376
From Other Funds (0670)	<u>\$11,250</u>
Total	\$156,626

Public Defender Totals

General Revenue Funds	\$48,474,898
Federal and Other Funds	\$125,000
Other Funds – Legal Defense and Defender Fund	<u>\$3,000,896</u>
Total	\$51,600,794

Missouri State Public Defender

Appropriations



Missouri State Public Defender

Appropriations

MSPS is required by RSMo. 600.090 to collect fees from public defender clients for the indigent defense services provided to them. The fees are generally collected through two revenue streams. Approximately 80% of collections comes through State income tax refund intercepts by the Department of Revenue. The remainder is generally collected by courts who collect payments of the Public Defender fees along with court costs at the close of a case, intercepts from State lottery winnings, and payments directly from the client.

