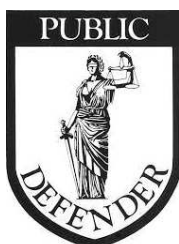


# THE RIGHT TO COUNSEL AND THE STATE PUBLIC DEFENDER SYSTEM IN MISSOURI

FISCAL YEAR 2021 ANNUAL REPORT • STATE OF MISSOURI PUBLIC DEFENDER COMMISSION



**Mary Fox • Director**  
**Greg Mermelstein • Deputy Director & General Counsel**

<http://www.publicdefender.mo.gov>



**MISSOURI STATE PUBLIC DEFENDER COMMISSION**  
**1000 WEST NIFONG – BUILDING 7 – COLUMBIA, MO 65201**  
**573-777-9977, EXT. 201**

To: Governor Michael L. Parson  
Chief Justice Paul C. Wilson  
Members of the General Assembly

Date: October 1, 2021

Dear Governor Parson and Chief Justice Wilson,

Attached is the Annual Report of the Missouri State Public Defender (MSPD) for fiscal year 2021. As Chair of the Public Defender Commission it is my obligation to provide this report to you, to the Chief Justice of the Supreme Court and to the members of the General Assembly.

One year ago, we implored the State of Missouri to provide additional assistance to Missouri State Public Defender to fulfill the state's constitutional obligation to provide the right to counsel for the indigent accused. I am gratified to report that our plea was heard and that Missouri State Public Defender has turned the corner and is on its way to accomplishing that obligation. With bipartisan support the General Assembly authorized an additional fifty-three attorneys for MSPD trial offices, and as a result waitlists have been significantly reduced. In addition, a Parole Revocation Defense Team has been established.

As we move forward, the MSPD Commission sees four needs for the future. Currently MSPD has no avenue to accept grants or gifts. MSPD will be requesting a change in chapter 600 to establish a fund where grant and gift funds authorized by section 600.042.1(9) may be deposited for use by MSPD. MSPD will also be requesting a transfer authorization increase from the Legal Defense and Defender Fund. MSPD will be requesting an increase in the amount of grant funds MSPD may obtain from \$625,000. Finally, MSPD is requesting an increase in legal assistant and investigator staff to allow the attorney staff to be more efficient in the performance of their legal duties.

During my tenure on the Missouri State Public Defender Commission I have been impressed with the knowledge, skill and dedication of the attorneys and staff of MSPD. It is an efficient and effective organization that is dedicated to the representation of their clients and improvement of the criminal legal system. Missouri can and should be proud of Missouri State Public Defender. I join the Commission in thanking the Legislature and Governor for their support of Missouri State Public Defender.

Sincerely,

Charles E. Atwell  
Chair, Missouri State Public Defender Commission



# PUBLIC DEFENDER COMMISSION

**CHARLES E. ATWELL • CHAIR • LAWYER MEMBER**

DEMOCRAT • KANSAS CITY

---

**LARRY H. FERRELL • VICE-CHAIR • LAWYER MEMBER**

REPUBLICAN • CAPE GIRARDEAU

---

**GARY B. FUHR • SECRETARY • PUBLIC MEMBER**

REPUBLICAN • IMPERIAL

---

**A. CRISTA HOGAN • LAWYER MEMBER**

REPUBLICAN • SPRINGFIELD

---

**RODNEY SCHAD • PUBLIC MEMBER**

REPUBLICAN • VERSAILLES

---

**MARY FOX • DIRECTOR**

COLUMBIA • EX-OFFICIO MEMBER

---

---

The governing body of the Missouri State Public Defender System is a Commission appointed by the Governor. The term of office of each commissioner is six years or until a successor is selected. Commissioners may succeed themselves. The Public Defender Commission is responsible for the hiring of the State Public Defender Director. They review the budget request prepared by the Director and provide support of the request before the Legislature. They make any rules needed for the administration of the State Public Defender System.



# A MESSAGE FROM THE DIRECTOR

On June 10, 2021 Missouri State Public Defender (MSPD) hosted its first Career Fair to recruit law students and attorneys to fill the fifty-three new attorney FTE's authorized by the General Assembly and Governor. The fair brought together new and experienced attorneys to hear why a career with MSPD would allow them to fulfill their career dreams of fighting for justice and caring for the poor. The fair, and the prospect of adding fifty-three new attorneys to MSPD Trial offices, was the culmination of years of work focused on the need for Missouri to fulfill the Constitutional mandate of the Sixth Amendment.

I am deeply grateful to the 101st General Assembly and to Governor Parson for the appropriation to fund these 53 new attorneys, as well as four new staff to create a Parole Revocation Defense Team. The support from the House of Representatives, the Senate and the Governor will allow MSPD to create an effective and efficient organization that can fulfill their professional obligations to their clients of competence, communication and diligence. As a career trial attorney, I was often out of my comfort zone advocating for MSPD in the Legislature, and inexperienced in understanding many of the processes and procedures of the legislative process. Throughout my contact with all levels of government, every member of the Legislature, the Budget Office and the Governor's Office was willing to listen, to discuss and to help with the plight and needs of MSPD and our clients. By working together, we have succeeded in addressing an issue that has plagued Missouri for decades.

And by working together, we can also continue to improve the criminal legal system as a whole. I have seen many inequalities, injustices and disparities that have permeated the criminal legal system. As attorneys for the indigent accused, public defenders are advocates for individual clients. We keep the interests and humanity of those individual clients at the center of our work. We must also advocate for changes in the criminal legal system that will positively affect those individual clients and all members of our communities. In the past five years, I have seen a willingness to decrease the prosecution of our citizens. Through prevention, diversion, restorative justice and crisis intervention, we can divert our energies away from incarcerating our fellow citizens to improving their lives. The result will be beneficial to all our citizens and our communities throughout Missouri.



**Mary Fox • Director**



# TABLE OF CONTENTS

<b>MESSAGE FROM THE CHAIR OF THE PUBLIC DEFENDER COMMISSION .....</b>	<b>2</b>
<b>PUBLIC DEFENDER COMMISSION .....</b>	<b>3</b>
<b>MESSAGE FROM THE DIRECTOR .....</b>	<b>4</b>
<b>WHO WE ARE &amp; WHAT WE DO .....</b>	<b>6</b>
<b>TRIAL DIVISION .....</b>	<b>7-8</b>
<b>DISTRICT MAPS .....</b>	<b>9-15</b>
<b>SPECIALTY PRACTICES .....</b>	<b>16</b>
<b>APPELLATE/POST-CONVICTION RELIEF .....</b>	<b>17-18</b>
<b>CAPITAL DEFENSE TEAMS .....</b>	<b>19-21</b>
<b>COMMITMENT DEFENSE UNIT .....</b>	<b>22-24</b>
<b>CHILDREN'S DEFENSE TEAM .....</b>	<b>25</b>
<b>PAROLE REVOCATION DEFENSE TEAM .....</b>	<b>26</b>
<b>CASE CONTRACTING .....</b>	<b>27-28</b>
<b>TRAINING DIVISION .....</b>	<b>29-32</b>
<b>AWARDS &amp; RECOGNITION .....</b>	<b>33-34</b>
<b>APPROPRIATIONS .....</b>	<b>35-37</b>
<b>RECOMMENDATIONS FOR STATUTORY CHANGES .....</b>	<b>38</b>
<b>WAITLIST LITIGATION .....</b>	<b>39</b>
<b>DIVERSITY AND INCLUSION .....</b>	<b>40</b>





# MISSOURI STATE PUBLIC DEFENDER: WHO WE ARE & WHAT WE DO

## What is Missouri State Public Defender?

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 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 2021, MSPD employed 615.13 employees, 389 of who were attorneys. The department is divided into a Trial Division, an Appellate/Post-Conviction Division, a Capital Division, a Commitment Defense Team, 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 46 offices located around the state. The Fiscal Year 2022 budget also provides for the creation of a Parole Revocation Defense Team. That team began work in July, 2021. The Fiscal Year 2022 budget also authorized funding for 53 additional attorneys in the trial offices. 35 of those attorneys have already been hired and MSPD is recruiting candidates for the additional slots.

### 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.

# TRIAL DIVISION

The Missouri State Public Defender Trial Division met the challenges of protecting the constitutional rights of our clients and providing zealous representation during Fiscal Year 2021 in many different ways, despite the ongoing challenges of a global pandemic. Below are just a few examples of our work during Fiscal Year 2021.

## JURY TRIALS DURING COVID-19

In jurisdictions throughout the State of Missouri, while many courts ceased almost all in-person proceedings due to Covid-19 for at least several months, Missouri Public Defenders in the Trial Division balanced both public health risks and the needs of our clients to a speedy trial by holding jury trials in whole or in part in unusual locations. These locations included churches, school gymnasiums, community centers, and public libraries all to ensure social distancing and safety, while also meeting the needs of our clients and the constitution. These efforts led to numerous acquittals securing the freedom of our clients from jails throughout the State.

More recently, as the Covid vaccine became widely available, many courts have returned to “normal,” allowing our lawyers to get back into the courtroom.

Litigation teams from our Lebanon Trial Office highlight this transition. In May, 2021 the office conducted 2 jury trials in one week. In one of the cases, our client was accused of murder and other charges. In the other case, our client was accused of possessing methamphetamine. Both are serious felonies with significant penalties. Both clients were found not guilty at their jury trials thanks to the hard work of their knowledgeable Missouri Public Defender litigation teams.

The Farmington Trial Office staff tried 8 cases in the last 8 months. They obtained full acquittals for our clients in over half of these cases and lower sentences or charges in all but one of the others. In the last month, (June-July) teams of litigators from our Jackson Trial Office obtained acquittals for two of our clients in jury trials.

In Kansas City, the pandemic created limitations to accessing courts for jury trials. Despite these limitations, however, litigation teams from our Kansas City Trial Office tried 6 cases in October and November of 2020 and 15 cases between March and June of 2021, obtaining many beneficial results for clients including 6 acquittals, not to mention the over 30 cases that were dismissed within weeks of the trial settings. Our



*The 2021 Class of New Defenders at their first MSPD training workshop August 16-20, 2021.*

Kansas City Defenders first tried one case in the fall of 2020 and it resulted in a mistrial. One of the jurors was so confident of our client's innocence that she came to the 2nd trial in the Spring of 2021, to watch a second trial. That jury reached a verdict acquitting our client who had spent over 3 years in jail awaiting trial.

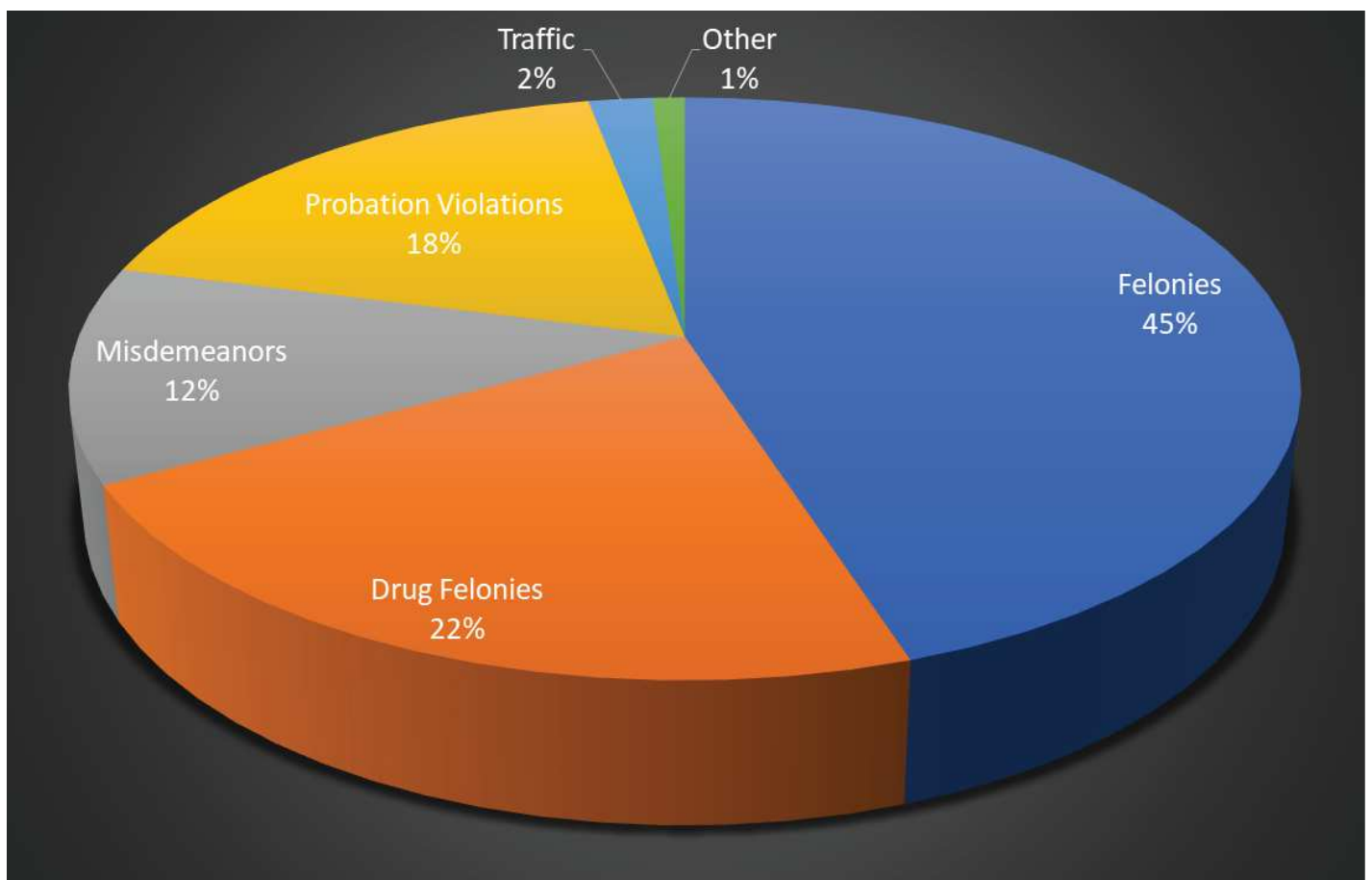
## SHIFTING COUNTIES TO MEET CLIENT AND HIRING NEEDS

The Missouri State Public Defender System Trial Division has the responsibility of representing all eligible clients in each of Missouri's 114 Counties and the City of St. Louis. This means that Missouri Public Defender Trial Division lawyers are needed in all 115 jurisdictions to represent eligible clients charged in these counties. In order to meet this responsibility, the Trial Division maintains 33 Trial Offices throughout the State. Some areas have many lawyers and large candidate pools for recruiting. Other areas present significant challenges for the Missouri State Public Defender to recruit and retain lawyers. In order to better meet these needs, in Fiscal Year 2021, we shifted responsibility for handling the representation of clients charged in several counties. Specifically, Wayne County, a part of the 42nd Judicial Circuit, switched from our Area 36, Poplar Bluff Trial Office to our Area 24, Farmington Trial Office and Stoddard County, a part of the 35th Judicial Circuit, switched from our Area 35, Kennett Trial Office to our Area 32, Jackson Trial Office. This flexibility allowed us to recruit and retain lawyers to meet the needs of our clients.



## TRIAL DIVISION - FISCAL YEAR 2020 CASES BY CASE TYPE

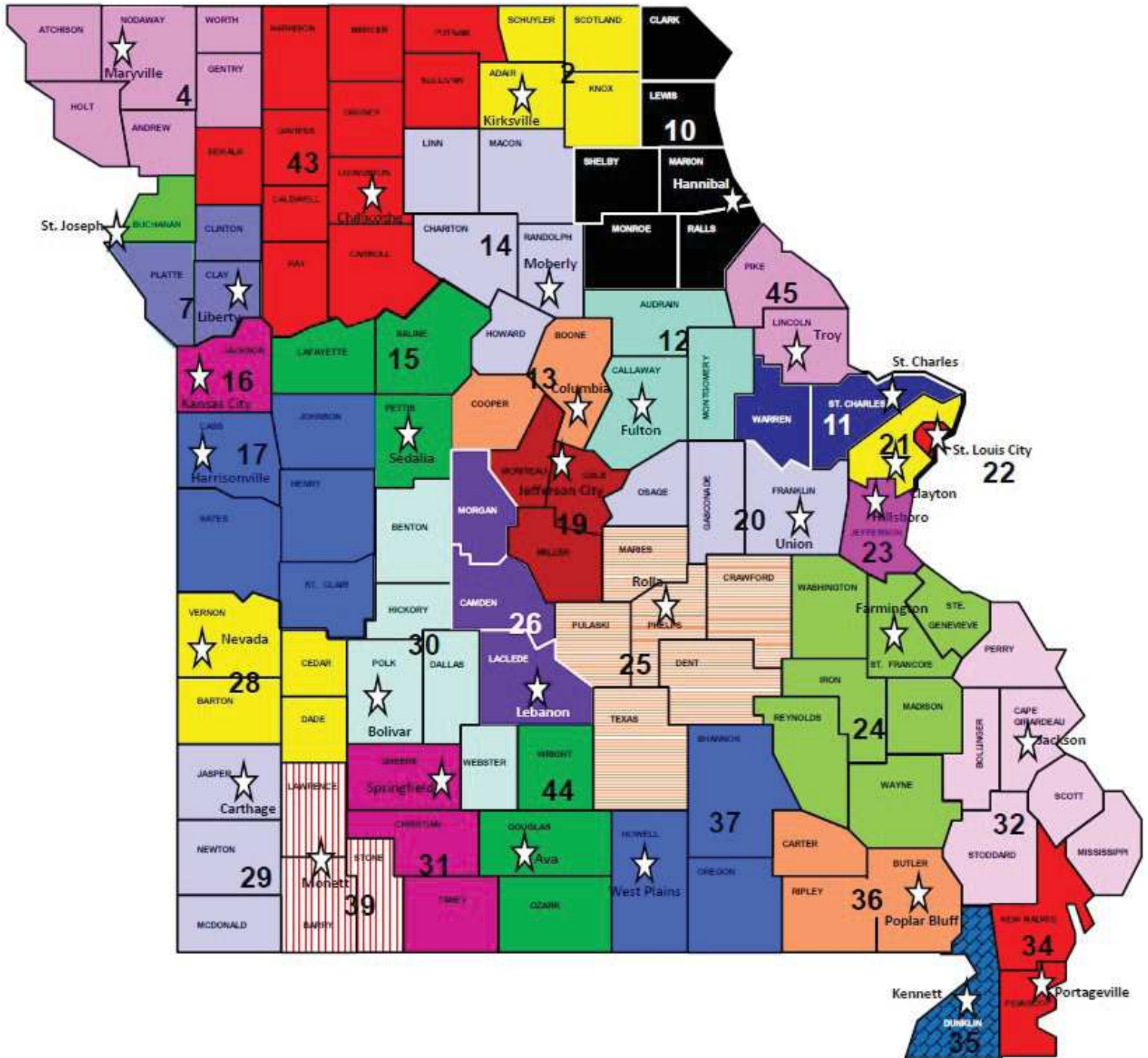
Missouri State Public Defender tracks both assigned and disposed cases for each fiscal year. Many cases take more than a year from assignment to disposition and many more do not fall neatly within a single fiscal year. No assistant public defender starts the fiscal year with an empty file drawer. At the start of FY 2021 MSPD's Trial Division public defenders had over 28,000 cases pending. During the fiscal year another 51,000 cases were initiated in the Trial Division.



PROTECTING FUNDAMENTAL  
CONSTITUTIONAL RIGHTS ONE  
CLIENT AT A TIME

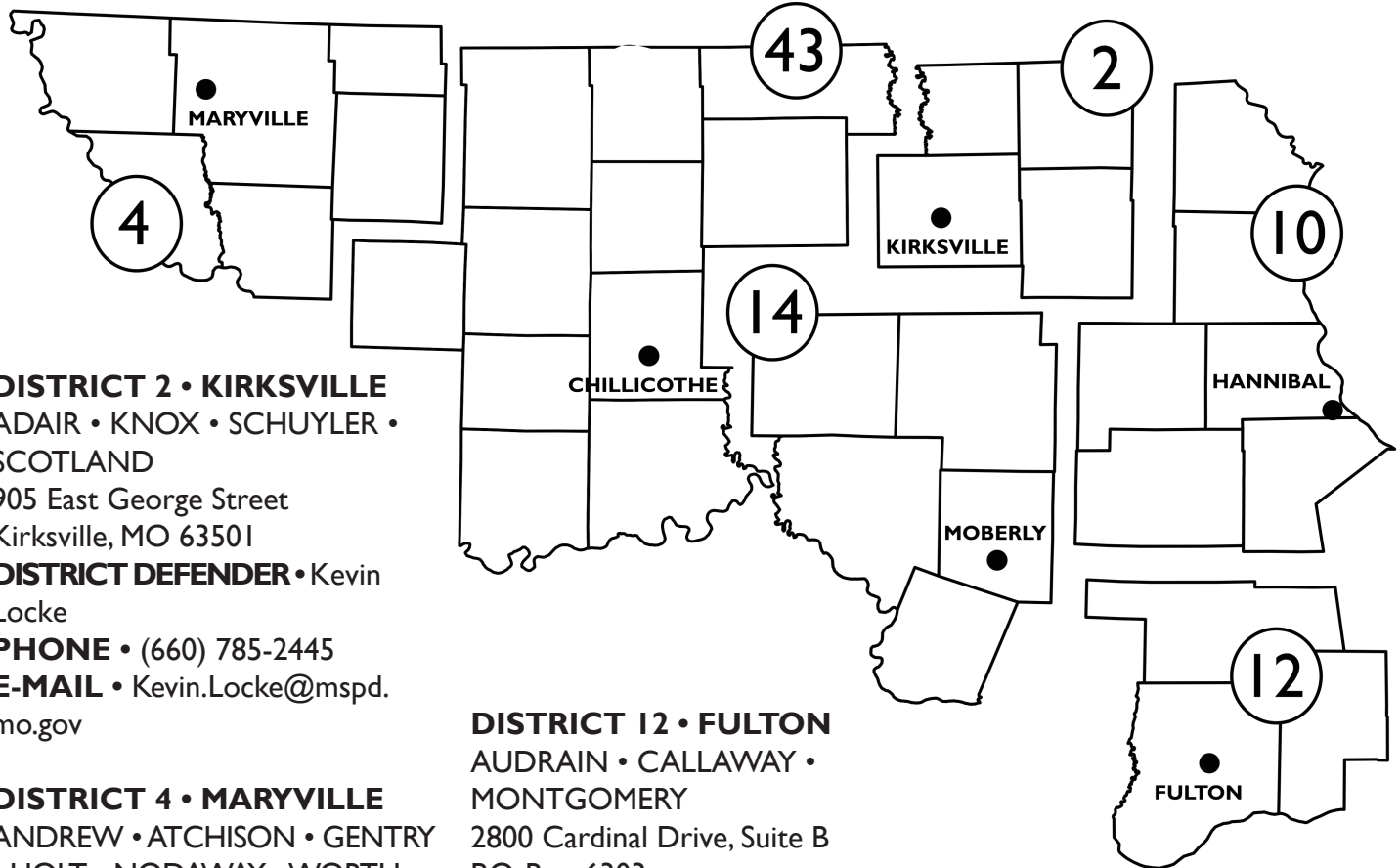


# TRIAL DIVISION DISTRICT MAP





## NORTH MISSOURI



### **DISTRICT 2 • KIRKSVILLE**

ADAIR • KNOX • SCHUYLER •  
SCOTLAND

905 East George Street  
Kirksville, MO 63501

**DISTRICT DEFENDER** • Kevin  
Locke

**PHONE** • (660) 785-2445

**E-MAIL** • Kevin.Locke@mspd.  
mo.gov

### **DISTRICT 4 • MARYVILLE**

ANDREW • ATCHISON • GENTRY  
• HOLT • NODAWAY • WORTH

305 North Market Street  
Maryville, MO 64468

**DISTRICT DEFENDER** • Ryan  
Williams

**PHONE** • (660) 582-3545

**E-MAIL** • Ryan.Williams@mspd.  
mo.gov

### **DISTRICT 10 • HANNIBAL**

CLARK • LEWIS • MARION •  
MONROE • RALLS • SHELBY

201 N. Third Street, Suite 301  
Hannibal, MO 63401

**DISTRICT DEFENDER** • Todd  
Schulze

**PHONE** • (573) 248-2430

**E-MAIL** • Todd.Schulze@mspd.  
mo.gov

### **DISTRICT 12 • FULTON**

AUDRAIN • CALLAWAY •  
MONTGOMERY

2800 Cardinal Drive, Suite B  
P.O. Box 6303

Fulton, MO 65251

**DISTRICT DEFENDER** •

Kathryn Benson

**PHONE** • (573) 592-4155

**E-MAIL** • Kathryn.Benson@  
mspd.mo.gov

### **DISTRICT 14 • MOBERLY**

CHARITON • HOWARD • LINN  
• MACON • RANDOLPH

3029 County Road 1325

Moberly, MO 65270

**DISTRICT DEFENDER** • Aaron

Rowley

**PHONE** • (660) 263-7665

**E-MAIL** • Aaron.Rowley@mspd.  
mo.gov

### **DISTRICT 43 • CHILLI- COTHE**

CALDWELL • CARROLL • DA-  
VIESS • DEKALB • GRUNDY •  
HARRISON • LIVINGSTON •  
MERCER • PUTNAM • RAY •  
SULLIVAN

500 Youssef

Chillicothe, MO 64601

**DISTRICT DEFENDER** • Kelly  
Miller

**PHONE** • (660) 646-3343

**E-MAIL** • Kelly.Miller@mspd.  
mo.gov



# EASTERN MISSOURI

## **DISTRICT 11 • ST. CHARLES**

ST. CHARLES • WARREN  
300 N. Second Street, Suite 200  
St. Charles, MO 63301

**DISTRICT DEFENDER •** vacant

**PHONE •** (636) 949-7300

**E-MAIL •** vacant

## **DISTRICT 21 • CLAYTON**

ST. LOUIS COUNTY  
100 S. Central, 2nd Floor  
Clayton, MO 63105

**DISTRICT DEFENDER •**

Beverly Hauber

**PHONE •** (314) 615-4778

**E-MAIL •** Beverly.Hauber@mspd.  
mo.gov

## **DISTRICT 22 • ST. LOUIS**

ST. LOUIS CITY  
Mel Carnahan Courthouse  
1114 Market Street, Suite 602  
St. Louis, MO 63101

**DISTRICT DEFENDER •**

Matthew Mahaffey

**PHONE •** (314) 340-7625

**E-MAIL •** Matthew.Mahaffey@  
mspd.mo.gov

## **DISTRICT 23 • HILLSBORO**

JEFFERSON  
P.O. Box 156  
116 Main Street  
Hillsboro, MO 63050

**DISTRICT DEFENDER •** Gina  
Savoie

**PHONE •** (636) 789-5254

**E-MAIL •** Gina.Savoie@mspd.  
mo.gov

## **DISTRICT 45 • TROY**

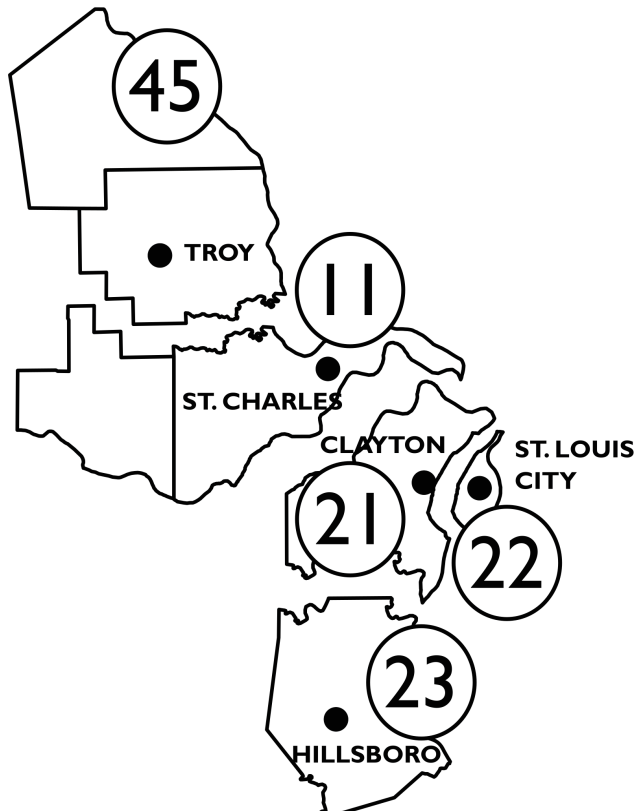
LINCOLN • PIKE  
240 West College  
Troy, MO 63379

**DISTRICT DEFENDER •**

Michael Jacobs

**PHONE •** (636) 528-5084

**E-MAIL •** Michael.Jacobs@mspd.  
mo.gov





## WESTERN MISSOURI

### DISTRICT 5 • ST. JOSEPH

BUCHANAN

518 Felix Street

St. Joseph, MO 64501

**DISTRICT DEFENDER** • Shayla Marshall

**PHONE** • (816) 387-2026

**E-MAIL** • Shayla.Marshall@mspd.  
mo.gov

### DISTRICT 7 • LIBERTY

CLAY • CLINTON • PLATTE

234 W. Shrader

Liberty, MO 64068

**DISTRICT DEFENDER** • Tiffany Leuty

**PHONE** • (816) 792-5394

**E-MAIL** • Tiffany.Leuty@mspd.  
mo.gov

### DISTRICT 16 • KANSAS CITY

JACKSON

Oak Tower, 20th Floor

324 E. 11th Street

Kansas City, MO 64106-2417

**DISTRICT DEFENDER** • Ruth Petsch

**PHONE** • (816) 889-2099

**E-MAIL** • Ruth.Petsch@mspd.  
mo.gov

### DISTRICT 15 • SEDALIA

LAFAYETTE • PETTIS • SALINE

1807 West Broadway

Sedalia, MO 65301

**DISTRICT DEFENDER** •

Matthew Palmer

**PHONE** • (660) 530-5550

**E-MAIL** • Matthew.Palmer@  
mspd.mo.gov

### DISTRICT 17 • HARRISONVILLE

BATES • CASS • HENRY • JOHNSON

• ST. CLAIR

502 Westchester Avenue

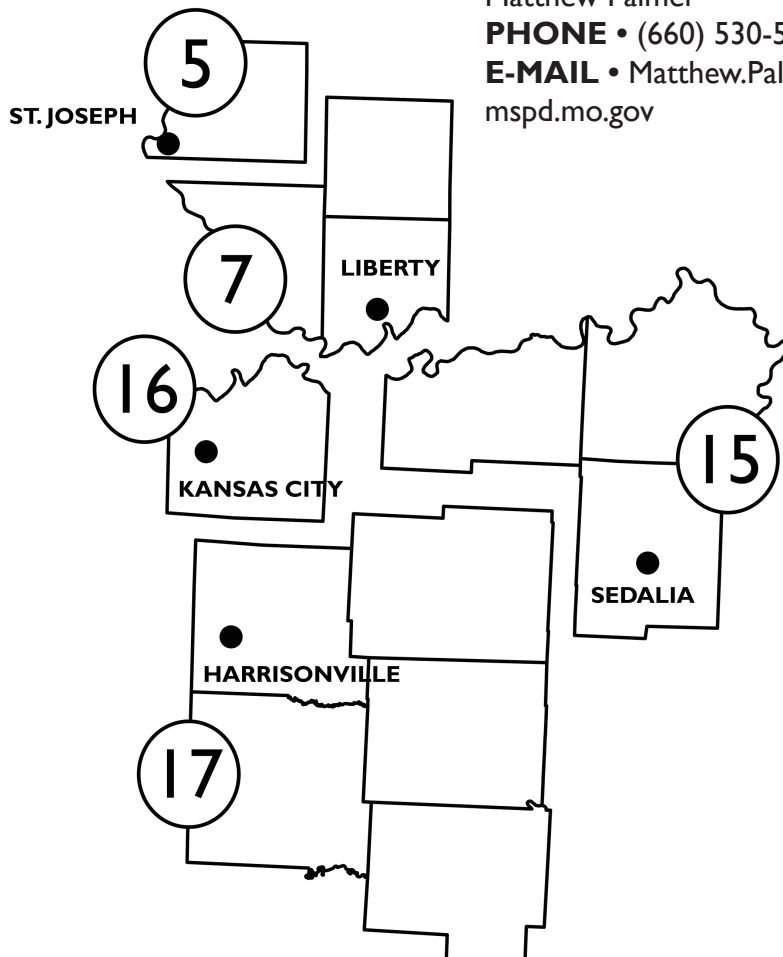
Harrisonville, MO 64701

**DISTRICT DEFENDER** •

Jeffrey Martin

**PHONE** • (816) 380-3160

**E-MAIL** • Jeffrey.Martin@mspd.  
mo.gov





# MID-MISSOURI

## DISTRICT 13 • COLUMBIA

BOONE • COOPER

601 E. Walnut

Columbia, MO 65201

**DISTRICT DEFENDER •** Kevin O'Brien

**PHONE •** (573) 447-8087

**E-MAIL •** Kevin.O'Brien@mspd.mo.gov

## DISTRICT 19 • JEFFERSON CITY

COLE • MILLER • MONITEAU

210 Adams Street

Jefferson City, MO 65101

**DISTRICT DEFENDER •** Justin Carver

**PHONE •** (573) 526-3266

**E-MAIL •** Justin.Carver@mspd.mo.gov

## DISTRICT 20 • UNION

FRANKLIN • GASCONADE •

OSAGE

300 E. Main Street

Union, MO 63084

**DISTRICT DEFENDER •** Matt Shellenberger

**PHONE •** (636) 583-5197

**E-MAIL •** Matt.Shellenberger@mspd.mo.gov

## DISTRICT 25 • ROLLA

CRAWFORD • DENT • MARIES •

PHELPS • PULASKI • TEXAS

901 N. Pine Street, Suite 200

Rolla, MO 65401

**DISTRICT DEFENDER •**

Matthew Crowell

**PHONE •** (573) 368-2260

**E-MAIL •** Matthew.Crowell@mspd.mo.gov

## DISTRICT 26 • LEBANON

CAMDEN • LACLEDE •

MORGAN

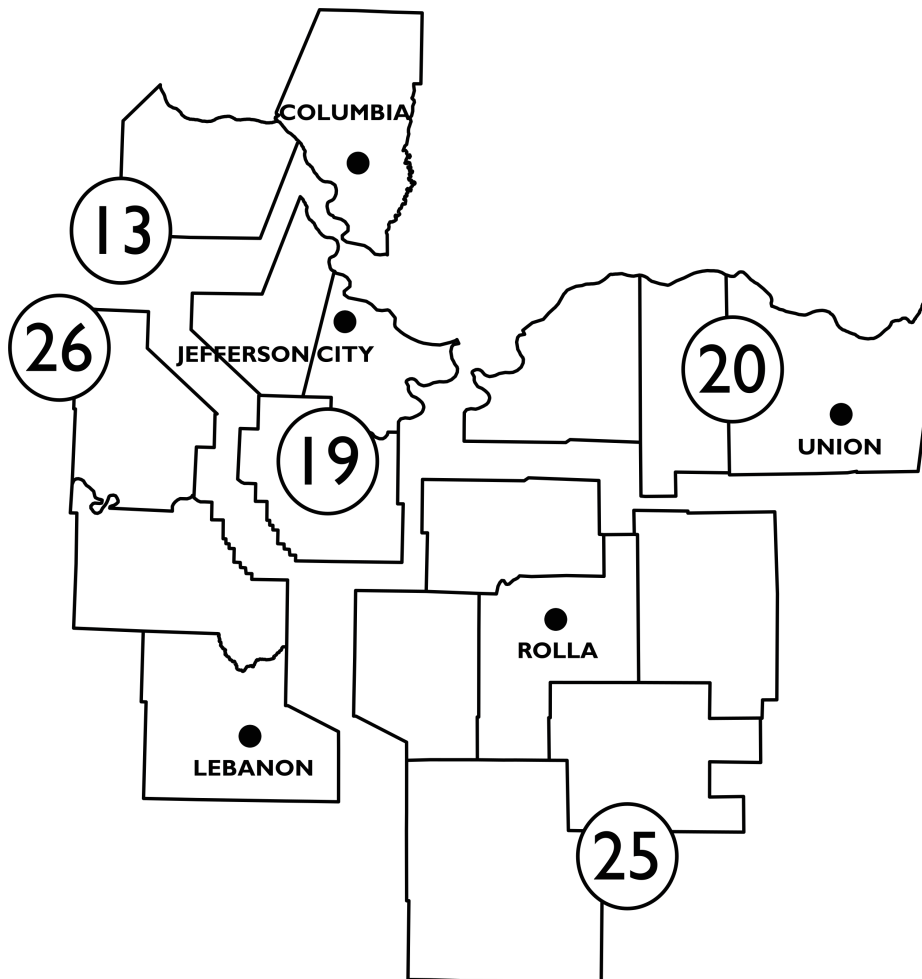
288 Harwood

Lebanon, MO 65536

**DISTRICT DEFENDER •** Stacy Patterson

**PHONE •** (417) 532-6886

**E-MAIL •** Stacy.Patterson@mspd.mo.gov





# SOUTHEAST MISSOURI

**DISTRICT 24 • FARMINGTON**  
IRON • MADISON • REYNOLDS •  
ST. FRANCOIS • STE. GENEVIEVE  
• WASHINGTON • WAYNE

1101 Weber Road, Ste. 203

Farmington, MO 63640

**DISTRICT DEFENDER** • Sarah  
Jackson

**PHONE** • (573) 218-7080

**E-MAIL** • Sarah.Jackson@mspd.  
mo.gov

**DISTRICT 32 • JACKSON**  
BOLLINGER • CAPE GIRARDEAU  
• MISSISSIPPI • PERRY • SCOTT  
STODDARD

2360 North High Street, Ste. 2

Jackson, MO 63755

**DISTRICT DEFENDER** • Leslie  
Hazel

**PHONE** • (573) 243-3949

**E-MAIL** • Leslie.Hazel@mspd.  
mo.gov

**DISTRICT 34 • PORTAGEVILLE**  
NEW MADRID • PEMISCOT

48 East State Highway 162

Portageville, MO 63873

**DISTRICT DEFENDER** • John  
Grobmyer

**PHONE** • (573) 379-9308

**E-MAIL** • John.Grobmyer@mspd.  
mo.gov

**DISTRICT 35 • KENNETT**  
DUNKLIN

1087 Commerce Drive

Kennett, MO 63857

**DISTRICT DEFENDER** • Rance  
Butler

**PHONE** • (573) 888-0604

**E-MAIL** • Rance.Butler@mspd.  
mo.gov

**DISTRICT 36 • POPLAR BLUFF**  
BUTLER • CARTER • RIPLEY

948 Lester Street

Poplar Bluff, MO 63901

**DISTRICT DEFENDER** • Katie  
New

**PHONE** • (573) 840-9775

**E-MAIL** • Katie.New@mspd.mo.gov

**DISTRICT 37 • WEST PLAINS**  
HOWELL • OREGON • SHANNON

1314 Webster Street

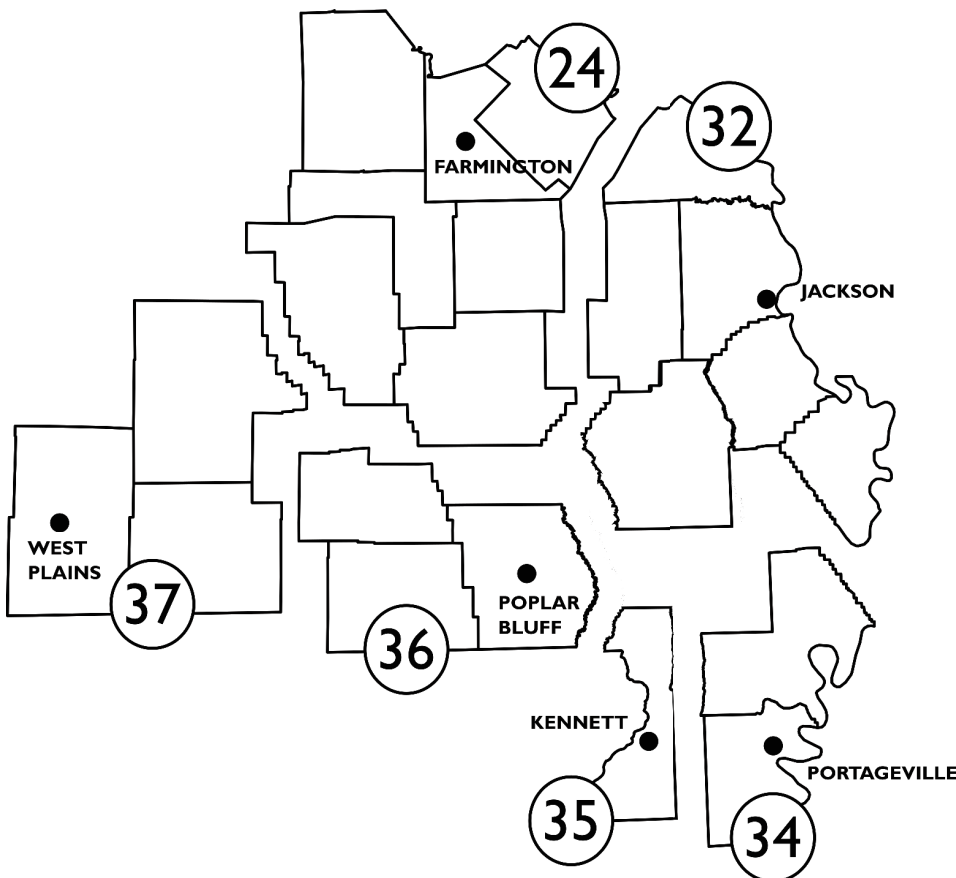
West Plains, MO 65775

**DISTRICT DEFENDER** •

Bethany Turner

**PHONE** • (417) 257-7224

**E-MAIL** • Bethany.Turner@mspd.  
mo.gov



# SOUTHWEST MISSOURI

## **DISTRICT 28 • NEVADA** BARTON • CEDAR • DADE • VERNON

329C North Barrett  
Nevada, MO 64772

**DISTRICT DEFENDER •** Renee  
GotviAgehya

**PHONE •** (417) 448-1140

**E-MAIL •** Renee.GotviAgehya@  
mspd.mo.gov

## **DISTRICT 29 • CARTHAGE** JASPER • MCDONALD • NEW- TON

115 Lincoln Street  
Carthage, MO 64836

**DISTRICT DEFENDER •**

Darren Wallace

**PHONE •** (417) 359-8489

**E-MAIL •** Darren.Wallace@mspd.  
mo.gov

## **DISTRICT 30 • BOLIVAR** BENTON • DALLAS • HICKORY • POLK • WEBSTER

1901 S. Wommack, Suite B  
Bolivar, MO 65613

**DISTRICT DEFENDER •**

Dewayne Perry

**PHONE •** (417) 777-8544

**E-MAIL •** Dewayne.Perry@mspd.  
mo.gov

## **DISTRICT 31 • SPRINGFIELD** CHRISTIAN • GREENE • TANEY

630 N. Robberson  
Springfield, MO 65806

**DISTRICT DEFENDER •**

Rodney Hackathorn

**PHONE •** (417) 895-6740

**E-MAIL •** Rod.Hackathorn@  
mspd.mo.gov

## **DISTRICT 39 • MONETT** BARRY • LAWRENCE • STONE

305 Dairy  
Monett, MO 65708-0685  
Kansas City, MO 64106-2417

**DISTRICT DEFENDER •**

Pamela Musgrave

**PHONE •** (417) 235-8828

**E-MAIL •** Pamela.Musgrave@  
mspd.mo.gov

## **DISTRICT 44 • AVA** WRIGHT • DOUGLAS • OZARK

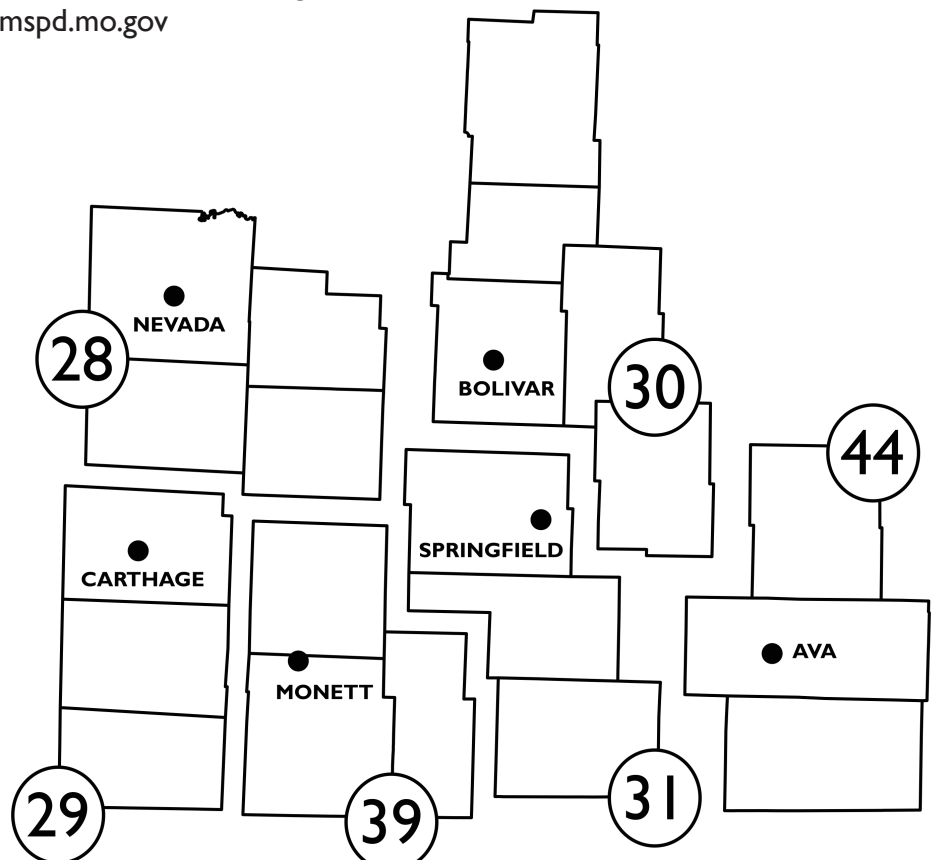
P.O. Box 951

404 E. Washington Avenue  
Ava, MO 65608

**DISTRICT DEFENDER •** Kate  
Welborn

**PHONE •** (417) 683-5418

**E-MAIL •** Kate.Welborn@mspd.  
mo.gov





## SPECIALTY PRACTICES

In addition to the Trial Division, Missouri State Public Defender also provides legal services to indigent persons through five specialty practice divisions: Appellate/Post-Conviction Relief, Capital, Children's Defense Team, Commitment Defense Unit, and the newly formed Parole Revocation Defense Team. These offices are located in Kansas City, Columbia and the City of St. Louis.

<b>Kansas City Plex</b> 920 Main Street, Suite 500 Kansas City, Missouri 64105 (816) 889-7699	<b>St. Louis Plex</b> 1010 Market Street St. Louis, Missouri 63101 (314) 340-7662	<b>Columbia Plex</b> 1000 West Nifong, Bldg 7 Columbia, MO 65203 (573) 777-9977
Tom Jacquinet District Defender Western Capital	Stephen Reynolds District Defender Eastern Capital	Amy Bartholow District Defender Central Capital
Damien de Loyola District Defender Western Appellate/Post-Conviction	Gwenda R. Robinson District Defender Eastern Appellate/Post-Conviction	Ellen Flottman District Defender Central Appellate
Rosemary Percival District Defender Western Appellate/Post-Conviction	Kristina Olson District Defender Eastern Appellate/Post-Conviction	Art Allen District Defender Central Post-Conviction
Walter Stokely District Defender Kansas City Children's Defense Team	Sarah Johnson District Defender St. Louis Children's Defense Team	
	Amy Clay District Defender Commitment Defense Unit	
	Stacey Lannert District Defender Parole Revocation Defense Team	



# APPELLATE/POST-CONVICTION RELIEF

Missouri State Public Defender provides attorneys for persons who have pled guilty, been found guilty or convicted of offenses in the Appellate and Post-Conviction Relief offices. In those six offices, two in Kansas City, two in Columbia, and two in the City of St. Louis, the attorneys represent applicants eligible for appellate or post-conviction relief.

Appellate attorneys are protectors of the Bill of Rights. In making sure their clients' trials were fair, the appellate attorneys of the Missouri State Public Defender protect all our rights. In representing clients before the Missouri Courts of Appeals and the Supreme Court of Missouri, our attorneys had successes in the last year ranging from winning a tampering case where the auto was not damaged, to a murder first case where witnesses improperly gave opinion testimony about the guilt of the accused; from a misdemeanor stealing that was charged at too high a level, to a statutory sodomy case where the wrong instructions were given to the jury; from an attempted burglary where there was no evidence that a crime was intended, to a DWI where the accused's right to remain silent was not honored. A man banned from "loitering" near a park was arrested and charged for attending his community Fourth of July parade, but the Supreme Court of Missouri agreed that there was insufficient evidence that he was too close to the park.

While our jury system is the best in the world, appellate courts exist to make sure these mistakes are corrected – that those who are found guilty are actually guilty and that the defendant's constitutional rights are upheld. The appellate attorneys of the Missouri State Public Defender help the entire criminal justice system in its quest to be fair.

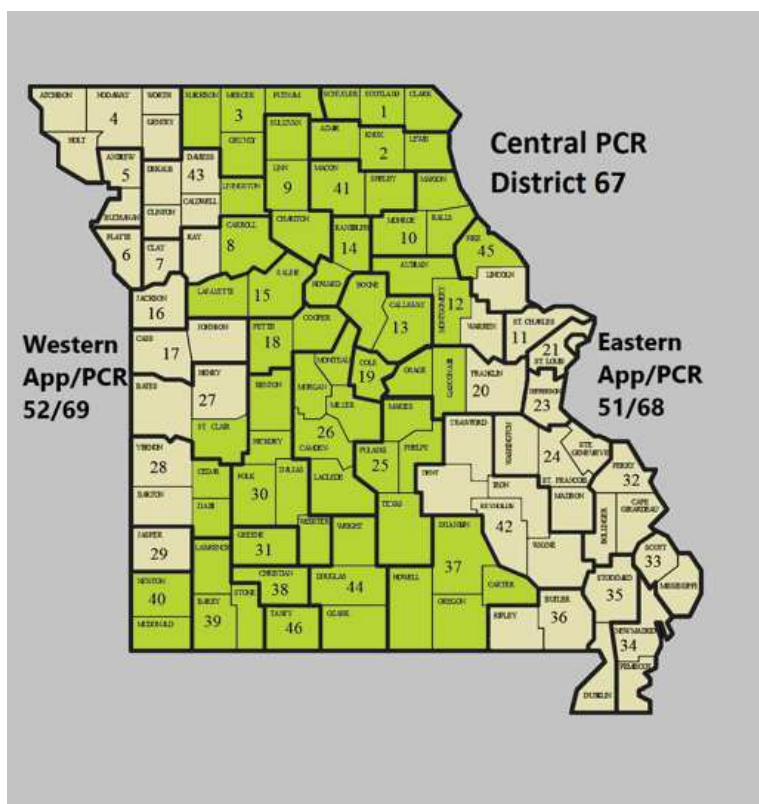
MSPD's postconviction attorneys are also working to challenge improper convictions and unlawful confinement. The right to habeas corpus allows people to challenge the lawfulness of their confinement. Historians debate about the precise origins of the right to habeas corpus, but by the time of America's colonization, the right was un-

questioned in English jurisprudence. So central was the right to the protection of liberty and justice that it was the only English common law writ given specific protection in the United States Constitution.

Just as in the United States Constitution, the right to habeas corpus has existed in Missouri from our beginning as a territory, to our state's first constitution, and through our current constitution. More recently, the federal and state governments enacted statutes and rules creating substitutes for the right of habeas corpus. In Missouri, Supreme Court Rules 24.035 and 29.15, provide

every person incarcerated for a felony in Missouri with the opportunity to challenge the lawfulness of their conviction and the right to an attorney to represent them in that challenge. The attorneys in the Post-Conviction Offices of the Missouri State Public Defender primarily represent people in these Rule 24.035 and 29.15 cases.

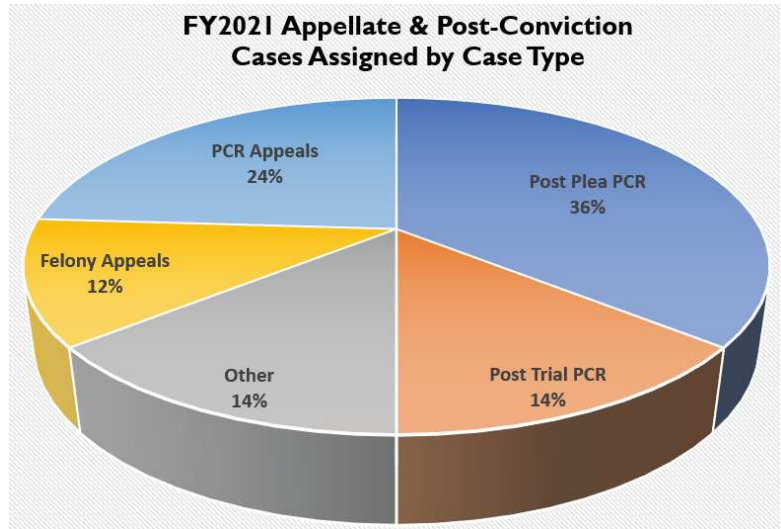
Working under short and mandatory deadlines, our postconviction attorneys review everything that occurred in the criminal cases to ensure our clients' rights are protected. This past year, our postconviction attorneys secured relief for a number of clients. Some cases were as simple as getting judgments amended to accurately reflect what occurred in court. Other cases involved mistaken understandings by judges, prosecutors, and attorneys about whether the client was subject to lifetime registration, was eligible for long-



## APPELLATE/POST-CONVICTION RELIEF - CONTINUED

term treatment, or was required by law to serve a particular percentage on the sentence. Our postconviction attorneys also identified double jeopardy violations and biased jurors. Clients received lower sentences after our attorneys presented new mitigation evidence.

In addition to assuring clients received the benefit of their bargain when they pleaded guilty, and that all of their rights are protected at trial, our postconviction attorneys ensure clients on probation are afforded all of their rights. Our postconviction attorneys obtained relief where the court failed to inquire about our client's ability to pay restitution, failed to identify proper factors when denying our client probation after they successfully completed a program, failed to revoke probation in a timely fashion, and failed to advise our client about the right to counsel at the probation revocation hearing. With the recent amendment to the law on the calculation of jail time credit, post-conviction attorneys workload will significantly increase if there is a need to litigate the failure to credit a sentenced defendant for the time the defendant spent in jail.



The Supreme Court of Missouri recently amended Rules 24.035 and 29.15 to allow for the full 120-days to file an amended motion in all cases without the need to ask for extensions of time. This amendment will guarantee our post-conviction attorneys the full 120-days to review cases and will help both the courts and our offices run more efficiently.



*Pictured above Damien de Loyola, District Defender, Appellate/PCR West B, and Tiffany Leuty, District Defender, Liberty Trial Office, providing training on "Protecting Your Clients' Rights After Conviction".*

# CAPITAL DEFENSE TEAMS

Death penalty cases present a distinctive challenge to Missouri's public defenders and its justice system more broadly. Because of the grave and irreversible nature of capital punishment, defense counsel in these cases are called upon to meet standards encoded in the "Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases," published by the American Bar Association.

In the words of an author quoted in the ABA guidelines:

*"Every task ordinarily performed in the representation of a criminal defendant is more difficult and time-consuming when the defendant is facing execution. The responsibilities thrust upon defense counsel in a capital case carry with them psychological and emotional pressures unknown elsewhere in the law. In addition, defending a capital case is an intellectually rigorous enterprise, requiring command of the rules unique to capital litigation and constant vigilance in keeping abreast of new developments in a volatile and highly nuanced area of the law."*

Under these guidelines, defense counsel in death cases are subject to special training requirements. MSPD employs 16 "death-qualified" attorneys across the three offices in its capital division.

One crucial cost-driver is the involved process of collecting and using mitigating evidence. Capital defendants are entitled to present information about their lives and backgrounds that may incline the jury and judge to mercy. Pursuing this information can mean pursuing threads that stretch across the country and well into the past, requiring unusual expense by the defense team. In addition to two death-qualified attorneys, ABA guidelines call for a minimum defense team in a capital case to include a mitigation specialist and an investigator. The capital division employs five mitigation specialists and three investigators.

Because very few people can afford the high costs associated with a death penalty defense, most death penalty cases in Missouri are handled by MSPD's capital division.

Other parts of state government, including prosecutors' offices and the court system, incur additional costs in death penalty cases. The appeals process for these cases is generally much more extensive. Empanelling "death-qualified" juries is a complicated process. Those jury pools are larger and must be sequestered, at an additional cost to the state. Missouri has not conducted an analysis comparing the cost of pursuing life imprisonment to the cost of pursuing the death penalty, but states that have done so tend to conclude that the difference can be substantial.

Some cases in which the prosecutor chooses to seek the death penalty end in a sentence less than death because of a plea agreement, not-guilty verdict, or a reluctant jury. In these cases, the higher costs associated with death penalty litigation cannot be recouped. The leverage in plea bargaining provided by the threat of the death penalty is bought at a high price.

## WHEN PROSECUTORS SEEK THE DEATH PENALTY

In the interest of justice, and given the costs associated with capital cases, the state has an interest in ensuring the penalty is not being sought on an arbitrary or illegitimate basis.

One striking example: in Missouri and nationally, prosecutors are more likely to seek the death penalty in cases involving white victims. Around 90 percent of the cases that ended with an inmate on death row in 2020

# THE DECISION TO PURSUE THE DEATH PENALTY IS A COSTLY ONE FOR MSPD AND THE CRIMINAL JUSTICE SYSTEM



## CAPITAL DEFENSE TEAMS - CONTINUED

featured a white victim, even though most homicide victims in the state are African-American. A 2015 study by a University of North Carolina professor calculated that Missouri homicides involving a white victim were seven times as likely to result in an execution as homicides involving a black victim from the reintroduction of the death penalty to 2014. The same study found substantial disparities from one part of the state to another. A person convicted of a homicide in St. Louis County in the period in question was roughly 13 times as likely to be executed as a person convicted in St. Louis City. A few relatively small counties were much more likely to sentence somebody convicted of murder to death than the state as a whole.

Taken together, the data suggests that local legal culture, or even the preferences of a few local officials, can have a substantial effect on a defendant's likelihood of being executed.

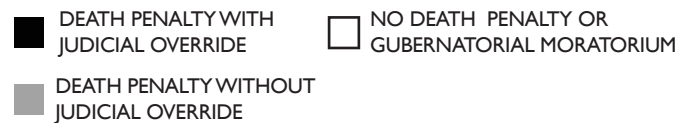
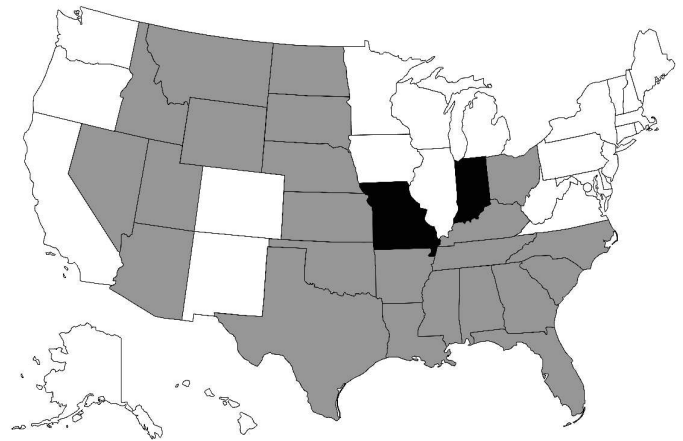
## REDUCING THE COSTS ASSOCIATED WITH THE DEATH PENALTY

Missouri's public defenders cannot skimp on the defense of their clients facing the death penalty. Professional standards, legal requirements, and MSPD's commitment to equal justice means the state will spend a substantial amount of money on the defense of every indigent person charged with the death penalty. The way to reduce the cost of these cases to the state is to reduce the number of these cases.

Much of the country has taken definitive measures to do so. As of 2021, a majority of states had either dropped the death penalty or had governors who had issued a death penalty moratorium. Only 14 states, including Missouri, have carried out an execution in the past 10 years. While a majority of Americans continue to support the death penalty, Gallup polling shows a persistent decline of support over the last quarter-century.

In Missouri, St. Louis County Prosecuting Attorney Wesley Bell was elected in 2018 on an explicit commitment not to seek the death penalty. St. Louis County had previously been a leading jurisdiction in death penalty cases; a quarter of the individuals on Missouri's death

## THE DEATH PENALTY IN 2021



row in 2020 were from St. Louis County cases.

Short of ending the death penalty, a range of policy changes could help stress the gravity of the decision to seek the death penalty and discourage the decision in borderline cases. One element of Missouri's death penalty is clearly an outlier: only Missouri and Indiana allow a judge to impose the death penalty after a jury fails to reach a unanimous verdict sentencing that person to death. No Missouri jury has returned a verdict of death since 2013. But, Missouri allows a judge to impose a death sentence when the jury does not. By increasing the likelihood of a death sentence, this unusual feature may encourage costly capital litigation.

More comprehensively, policy-makers could consider measures to bring Missouri's procedures around the death penalty into line with best practices, as outlined in the ABA's 2012 "Missouri Death Penalty Assessment Report." Among other recommendations, the report sug-



## CAPITAL DEFENSE TEAMS - CONTINUED

gested more narrowly defining the aggravating circumstances that qualify a homicide case for capital punishment. While the U.S. Supreme Court has ruled that the death penalty is only appropriate for a “narrow category” of murders, the ABA concluded that many of the 17 aggravating circumstances in Missouri law “are so broadly drafted as to qualify virtually any intentional homicide as a death penalty case.” Further constraining the cases in which the death penalty can be applied could both reduce the frequency of these expensive cases and bring Missouri’s death penalty procedures more closely into line with this precedent.

### FURTHER READING

#### State Studies on Monetary Costs

*Death Penalty Information Center*

Link: [tinyurl.com/state-costs](https://tinyurl.com/state-costs)

#### Missouri Assessment on the Death Penalty

*American Bar Association*

Link: [tinyurl.com/ABA-Missouri](https://tinyurl.com/ABA-Missouri)

#### The Impact of Race, Gender, and Geography on Missouri Executions

*University of North Carolina*

Link: [tinyurl.com/Missouri-executions](https://tinyurl.com/Missouri-executions)

#### Missouri’s Death Penalty in 2020: The Year in Review

*Missourians for Alternatives to the Death Penalty*

Link: [tinyurl.com/Missouri-Year](https://tinyurl.com/Missouri-Year)

### SELECTED COST STUDIES

#### Oklahoma (2017)

*Death Penalty Review Commission*

Death penalty cases are **3.2 times** as expensive as comparable non-death penalty cases. Defense costs are **9.8 times** as expensive

#### Oregon (2016)

*Lewis and Clark Law School*

Death penalty cases are **1.7 times** as expensive as comparable non-death penalty cases, excluding costs from prosecutors and the courts.

#### Indiana (2015)

*Legislative Services Agency*

Death penalty cases are **4.3 times** as expensive as cases seeking life without parole. When a death penalty case is resolved by a plea deal it is still **2.3 times** as expensive.

#### Washington (2015)

*Seattle University*

Death penalty cases are **1.3 times** as expensive as as comparable non-death penalty cases. The typical defense cost was **5.3 times** as expensive; the typical prosecution cost was **2 times** as expensive.

#### Nevada (2014)

*Nevada Legislative Auditor*

Death penalty cases are **1.7 times** as expensive as comparable non-death penalty cases. When the death penalty is sought but not sentenced it is still **1.6 times** as expensive.

#### Kansas (2014)

*Judicial Council*

Death penalty cases are 2-3 times as expensive as comparable non-death penalty cases.

# COMMITMENT DEFENSE UNIT

Convicted sex offenders in the state of Missouri can be held indefinitely by the state after the completion of their sentence, provided that a court can be convinced they are a “sexually violent predator” (SVP). Almost all the people committed through the Sex Offender Rehabilitation and Treatment Services (SORTS) program are represented by public defenders. These cases are unusually open-ended: the people committed to SORTS will be held until they successfully petition for their release. Each committed person’s annual review creates a new occasion for potential legal controversy -- and will continue to do so as long as they remain in the system.

These technical, highly specialized cases constitute a permanent claim on the resources of the courts and on Missouri State Public Defender. Only a handful of people committed to the custody of SORTS have ever been allowed to enter somewhat less restrictive “conditional release” since Missouri’s program began in 1999.

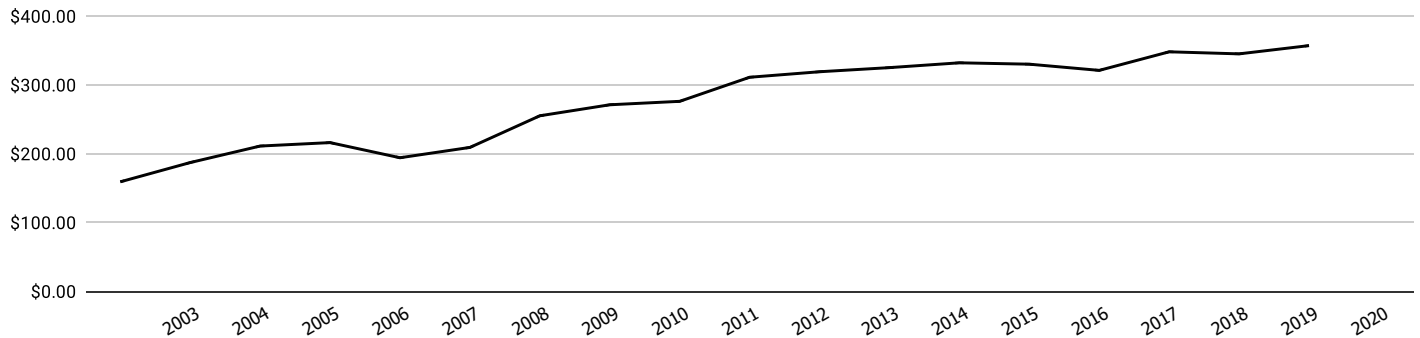
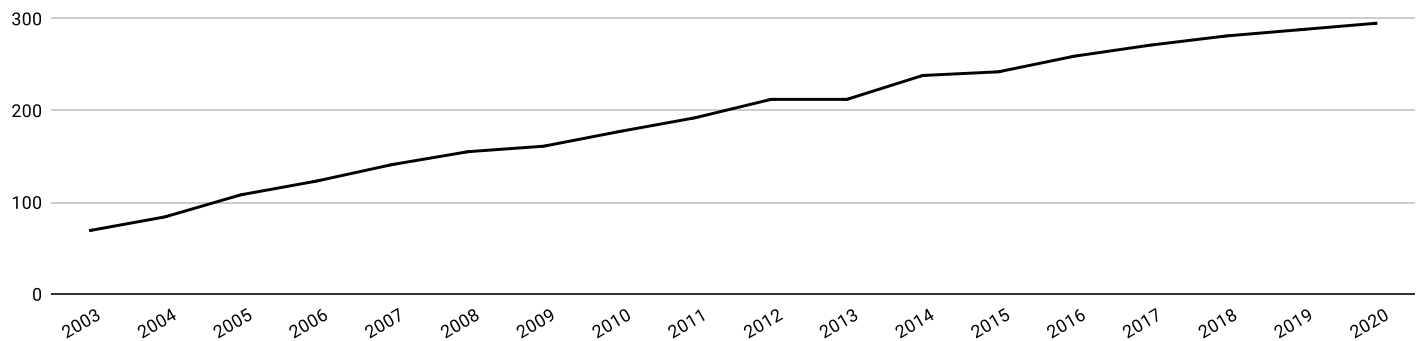
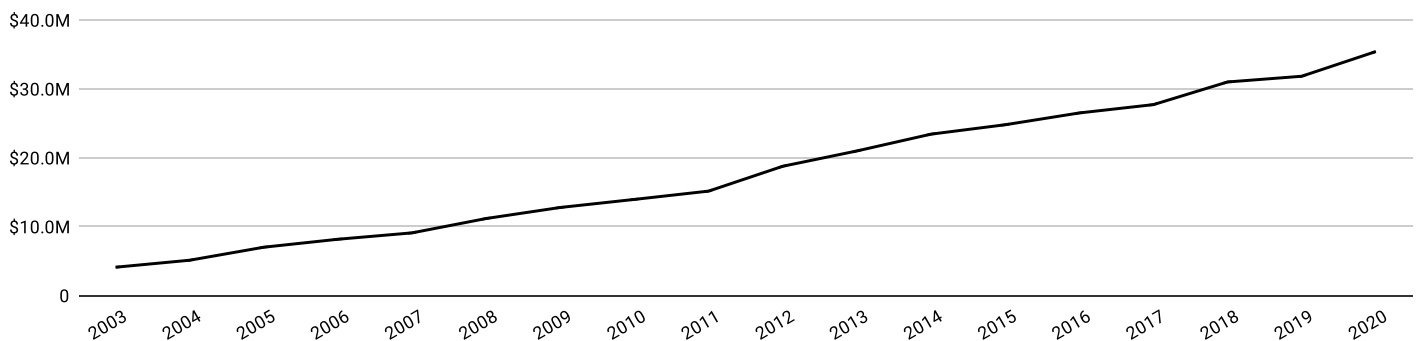
The people committed to SORTS have been found guilty of serious crimes, and policy-makers are understandably wary of even a small risk of recidivism. In a context of limited resources, however, this concern should be weighed against the good the resources currently spent on SORTS could do if spent on other programs -- including other programs designed to reduce the risk of sex crimes. That is one of the conclusions reached by a 2011 U.S. Department of Justice-funded paper examining the results of New Jersey’s SVP program:

“[E]ven among this group of elevated-risk offenders (those highly considered for SVP commitment), detected rates of sexual recidivism are still relatively low. Given the exceptionally high cost of SVP commitment and the fact that most new sexual offenses are not committed by known offenders, policymakers should reevaluate the balance between resources dedicated to estimated crime prevention associated with SVP commitment and that of primary prevention strategies.”

Changes to Missouri’s SVP law short of the elimination of civil commitment could involve raising the standard for committing an individual or extending their commitment, allowing the state to concentrate its resources on the cases where the threat of recidivism is most extreme, raising the standard of proof to beyond a reasonable doubt, and procedural changes that encourage deference to the Department of Mental Health recommendations.



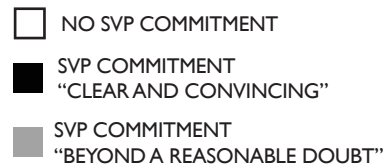
*Members of the CDU team Hannah Vellinga, APD; Amy Clay, District Defender; Sam Lawrence, SPD; and Jeff Stephens, SPD. Not pictured: Jo Krehmeyer, Support Services Coordinator.*

**COMMITMENT DEFENSE UNIT - CONTINUED****SORTS COST PER DETAINEE DAY OVER TIME****SORTS DETAINEES OVER TIME****DMH SORTS EXPENDITURE OVER TIME**

Data taken from Missouri Department of Mental Health Budget Requests; figures titled “Cost Per Client Day,” “Clients Served,” and “Program Expenditures.”

## COMMITMENT DEFENSE UNIT - CONTINUED

## STATES WITH SVP COMMITMENT AND STANDARDS OF PROOF



## FURTHER READING

## Missouri's SVP Law: Time for a Change?

*St. Louis University Law Journal*

Link: [tinyurl.com/slu-law](https://tinyurl.com/slu-law)

# Sex Offender Management, Treatment and Civil Commitment: An Evidence Based Analysis Aimed at Reducing Sexual Violence

Research Report Submitted to the National Institute of Justice

Link: [tinyurl.com/doj-nij](https://tinyurl.com/doj-nij)



# CHILDREN'S DEFENSE TEAM

The Supreme Court of the United States has recognized that children are different and that those differences must be recognized when a child comes before the Court. These differences, which can be summed up as immense changes in a child's brain development during adolescence, make a child's representation in delinquency proceedings especially important. Children are best represented by attorneys who are specialists in that representation. A juvenile defense specialist needs to be trained in and understand adolescent brain development, education law, family law, juvenile law, and care and protection law. That juvenile specialist must also be able to work with stakeholders to achieve positive outcomes for the child and limit long-lasting collateral consequences as a result of the child's involvement in the court system. In FY 2020, the Missouri Legislature recognized the need for specialization by funding two children's defense teams specialized in representing children charged in delinquency proceedings in Missouri. These two offices, named The Children's Defense Team, are located in Kansas City, and the City of St. Louis.

Missouri State Public Defender's Children's Defense Team (CDT) is a group of 16 individuals (lawyers, social workers, investigators and staff) who provide representation to children charged with delinquency offenses in juvenile court, and represent children who have been certified to stand trial as an adult. The Children's Defense Team also provides training, support and outreach to juvenile specialists representing children in MSPD offices statewide.

This year, the staff of The Children's Defense Team struggled to be able to meet and confer with children in detention centers amidst COVID outbreaks in those detention centers. Despite those limitations the staff represented children throughout Missouri in juvenile and adult court proceedings.

The Children's Defense Team also brought appellate actions to fight for the implementation of the Raise the Age legislation, which went into effect January 1, 2021. That legislation changed the upper age for children to be sent to juvenile court from 17 to 18. Litigation

on the enactment of this legislation is pending in front of the Missouri Supreme Court. Additionally, lawyers in the CDT litigated the constitutionality of virtual proceedings in juvenile trials. This issue is pending in the Missouri Supreme Court.

Finally, there was significant legislation passed by the General Assembly which recognized the need to treat children differently than adults. Raise the Age emergency implementation was passed so that the previously passed legislation would be implemented and seventeen-year-old children's cases would be sent to Juvenile Court. New legislation allows children who have been certified to stand trial as adults to remain in detention centers until they reach the age of eighteen. This change allows those children to receive mental health and education services while awaiting trial. Legislation also passed enacting safeguards for a child's right to counsel. Finally, legislation passed authorizing a parole hearing for any child who received a sentence over fifteen years.

The staff of the Children's Defense Teams and the other juvenile specialists in MSPD continue to fight for the children of Missouri.





## PAROLE REVOCATION DEFENSE TEAM

The Parole Revocation Defense Team (PRDT) was created and funded in July of 2021 as a newly funded specialty practice within MSPD. The attorneys of PRDT provide representation to indigent clients incarcerated throughout Missouri during parole revocation proceedings. Parole revocation accounts for roughly one-third of prison admissions and is a driving contributor to mass incarceration. The U.S. Supreme Court has said that jailing someone for a parole violation requires certain minimum standards of due process. Until now, Missouri has not met those minimum standards of due process.

PRDT will provide representation at parole revocation proceedings, which has two parts: 1) the preliminary hearing and 2) the parole revocation hearing. Representation is only available for current parolees – the client must have received parole and been released from incarceration for a liberty interest to attach. PRDT will not represent anyone at a standard parole hearing, only revocation proceedings.

In order to qualify for representation, the person must be screened for eligibility by Probation and Parole. For there to be a Due Process qualifier for representation eligibility, one of three factors specific to the alleged parole violation must be met. Those factors are:

1. Colorable claim of innocence; or
2. Complex mitigating circumstances; or
3. Incapable of effectively speaking for self.

Parole revocation hearings will be held at four Missouri Department of Correction Diagnostic Center locations: Bonne Terre, St. Joseph, Fulton, and Vandalia. Preliminary hearings for probable cause determinations will be held at the place of arrest throughout the state unless the client is transferred to a diagnostic center. PRDT will have four attorneys to handle an estimated 400 to 450 parole revocation cases this year.

*“parole revocation deprives an individual of conditional liberty, which is valuable and must be seen as within the protection of the Fourteenth Amendment.”*

*Gasca v. Precythe,  
Case No. 17-cv-04149-SRB,  
(W.D. Mo. Nov. 12, 2020)*

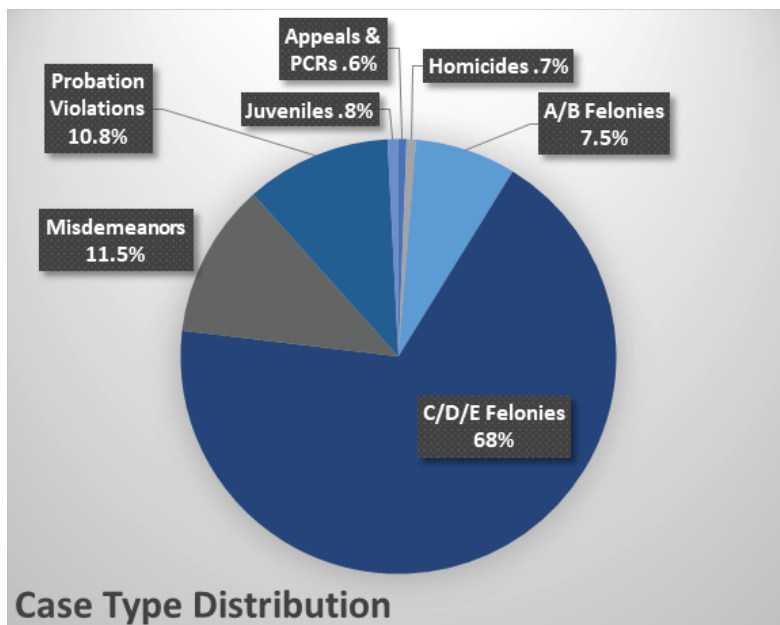
# CASE CONTRACTING

The MSPD Case Contracting office is small but mighty, consisting of a tight-knit group of three attorneys and one assistant. Manager Maggie Johnston has twenty years of juvenile, trial, and appellate experience with MSPD and oversees the contracting budget and litigation expense requests, and provides case consultation on many issues faced by solo and small firm contract attorneys. Case Contractors Danielle Corrado (half-time) and Sara Watson (a former contract attorney herself) see to the case assignments, attorney applications and resignations, fee and travel payments, client and family calls, and case status updates. An Assistant, Kim Long, manages case expense requests and payment of invoices submitted by over three hundred Special Public Defender contract counsel, about two hundred to two hundred fifty of which are active at any given time.

In Fiscal Year 2021, a record-high 12,094 cases were assigned to contract counsel at a cost of \$7,574,391 plus \$325,000 in donations to MSPD. As indicated in the chart, a vast majority of case assignments are for class C, D, and E felonies. \$25,000 was donated by Franklin County, for counsel there, and \$300,000 was donated by Jennifer Bukowsky of Boone County to reduce the number of eligible defendants waiting for counsel in Boone County. With the Circuit Court's cooperation, eight contract counsel from St. Louis and Kansas City were enlisted to assist nine local contract attorneys to provide representation to 486 Boone County clients!



*Members of the Case Contracting Team: Maggie Johnston, Case Contracting Manager; Danielle Corrado and Sara Watson, Case Contractors. Not pictured: Kim Long, Case Contracting Assistant.*



Contract counsel are giving MSPD clients their best efforts! One class C felony case resolved this year was a charge of possession of a controlled substance assigned to a contract counsel. The client admitted to possession of drugs found in a jointly-occupied vehicle's glove box, but the client was not first warned of his Miranda rights before making the admission. Despite threats from the prosecuting attorney to charge the client as a prior and persistent offender if he took the case to trial, the contract counsel took the case to a two-day jury trial and won a verdict for the client after the state's evidence demonstrated there was no evidence tying the client to the drugs but his unlawfully-obtained statement.

## CASE CONTRACTING - CONTINUED

Case Type	Contract Guideline
Murder 1st Degree	\$10,000
Sexual Predator Hearing	\$4,000
Sexual Predator Trial	\$8,000
Other Homicide	\$6,000
AB Felony Drug	\$750
AB Felony Other	\$1,500
AB Felony Sex	\$2,000
CDE Felony Drug	\$750
CDE Felony Other	\$750
CDE Felony Sex	\$1,500
Misdemeanor	\$375
Probation Violation	\$375
Juvenile Murder 1st Degree	\$2,000
Juvenile Other Homicide	\$1,500
Juvenile AB Felony Drug	\$500
Juvenile AB Felony Other	\$750
Juvenile AB Felony Sex	\$1,250
Juvenile CDE Felony Drug	\$500
Juvenile CDE Felony Other	\$500
Juvenile CDE Felony Sex	\$1,000
Juvenile Misdemeanor	\$375
Juvenile Status	\$375
Juvenile Motion to Modify Supervision Violation Only	\$375
PCR Rule 24.035 Motion	\$500
PCR Rule 24.035 Evidentiary Hearing	\$250
PCR Rule 24.035 Appeal	\$500
PCR Rule 29.15 Motion	\$1,000
PCR Rule 29.15 Evidentiary Hearing	\$500
PCR Rule 29.15 Appeal	\$1,875
Direct Appeal	\$3,750

MSPD provides support to its Special Public Defenders. With assistance from Sedalia District Defender Matthew Palmer, contract counsel from Barry County is challenging a court's multiple extensions and ultimate revocation of his client's probation. Upon contract counsel's inquiry to the Case Contracting office, he was put in touch with experienced MSPD appellate and postconviction attorneys, who consulted with him on his client's options for challenging the court's order.

Special Public Defenders are part of the MSPD family! To the extent possible, MSPD works hard to support its contract attorneys and provide them with the resources they need to successfully represent our clients. The MSPD Training Division offers Continuing Legal Education opportunities at no cost to contract counsel, saving the attorneys on our contract panel thousands of dollars a year. In turn, our Special Public Defenders come through for us when we need them, such as contract attorney Ted Liszewski, who provided coverage for all Carter County dockets and cases during a time of employee shortage in our MSPD Poplar Bluff office.

Special Public Defenders fulfill a very important role in all Missouri counties, providing skilled counsel to indigent defendants who need conflict-free representation. Additionally, contract attorneys provide relief to counties facing a high volume of cases and a shortage of MSPD counsel due to, for example, FTE vacancies and parental leave. To maintain and recruit additional skilled contract attorneys, an increase in contract fees is greatly needed. Contract fees are very low compared to private fees. In some areas of the state, it is difficult to recruit contract counsel, resulting in

contract counsel sometimes traveling ninety miles one-way to cover a docket no one else is available to cover. Experience has shown that over time, the Special Public Defenders covering multiple circuits with great travel distances "burn out" and remove themselves from our panel completely. An increase in fees per case is likely to assist recruiting more attorneys for all areas of the state and reducing travel distances in typically difficult-to-assign counties.

The Case Contracting Office provides a much-needed service of providing conflict-free counsel to the indigent of Missouri, and resources and support to the Special Public Defenders who represent them. We are honored to contribute to the overall mission of MSPD!



# TRAINING DIVISION



*MSPD's new training center debuted at this summer's career fair. Above, Director Mary Fox addresses MSPD staff and prospective attorneys gathered for the occasion in the training center.*

MSPD's training division works to ensure that all MSPD employees have access to the knowledge and skills necessary to fill their roles as integral parts of the MSPD defense team and to provide high quality representation to our clients. The division's goal is to improve the quality of representation and fight for justice.

## TRAINING DURING THE COVID-19 PANDEMIC

In the past fiscal year, MSPD continued to provide training to all its employees during the COVID-19 pandemic. The division provided 69 webinars, totaling 162.4 hours

of Continuing Legal Education. MSPD offered a variety of Ethics, including 24.8 hours addressing Cultural Competency, Diversity, Inclusion, or Implicit Bias. Tuesday Talks, a one-hour webinar series, addressed topics for our support staff.

## NEW DEFENDER WORKSHOP

New Defender Workshop focuses on basic skills for public defenders. This program combines lecture and small breakout groups where attorneys can brainstorm, discuss case problems and practice skills to better represent their clients. Among the topics addressed were client relationships,

# MAKING LONG-TERM INVESTMENTS IN MSPD'S TRAINING INFRASTRUCTURE DURING THE COVID-19 PANDEMIC



## TRAINING DIVISION - CONTINUED

mental health, discovery, investigation, depositions, motion practice, negotiations, sentencing advocacy, collateral consequences of convictions, parole revocations and violations, and post-conviction rights

After a session, a new defense attorney filed a motion to dismiss. The State agreed and the client was not prosecuted.

### TRIAL SKILLS BRING YOUR OWN CASE

In November, 2020, MSPD provided a three-day Trial Skills Workshop in which attorneys worked on one of their cases, brainstorming their facts, and possible defenses. Attorneys practiced their voir dire, cross-examination and closing argument skills. This program helped our new attorneys facing their first trial during the pandemic, but also allowed experienced trial attorneys to further develop their trial skills. Contract counsel also participated in the program and received training to help their public defender clients. The program received high evaluations.

Several faculty members shared examples of winning cases during the pandemic.

### REPRESENTING YOUTH IN COURT AND GIVING HOPE TO THEIR POTENTIAL

Under the leadership of Sarah Johnson, Director of Juvenile Defense and Policy, MSPD provided its annual training on representing children at MSPD in a 3-day virtual format. The sessions were inspiring, practical and helped attorneys practice skills necessary to provide high quality representation. The mix of national speakers and in-house MSPD speakers on juvenile defense provided a comprehensive approach to each topic.

### FORENSIC TRAINING

MSPD's training department surveyed employees to determine what forensic issues they encounter most in their cases. MSPD then directed training for the top four areas of interest – DNA, ballistics and other pattern comparisons, drug analysis and crime lab issues, and pathology. Our employees found the 3-day virtual training valuable.

Our forensics training helps attorneys better represent their



*Yazen Aswad, Missouri State Public Defender's Digital Forensics and Infrastructure Specialist, providing forensics training to new defenders.*

## TRAINING DIVISION - CONTINUED

clients and obtain justice. Public defenders and members of the defense team in our offices in Springfield, Jackson, Harrisonville, Rolla, Troy, and St. Louis City have recounted that MSPD's training and consultation with MSPD's digital forensics expert resulted in positive outcomes for the clients.

In one case, the defense production of text messages resulted in an acquittal. In another, the defense team utilized MSPD's digital expert to extract recordings and played them for the prosecutor. The client was released from jail and the prosecutor planned to file charges against the person who was actually responsible for the crime. The MSPD defender and the entire team gave this young client a chance at life.

One MSPD investigator recounted that their client was charged based on an alleged victim and witness' claims that he had sent pictures to the victim. The digital evidence showed their claims were untrue. The photos had been downloaded. Once the prosecutors reviewed the defense evidence, they dismissed the case. The public defender saved a client from years in prison for a crime he didn't commit.

## RACIAL JUSTICE AND EQUITY TRAINING

MSPD has partnered with National Legal Aid and Defender Association, National Association for Public Defense, the American Bar Association and National Association of Criminal Defense Lawyers to provide training on racial justice, diversity and inclusion, implicit bias and cultural humility. MSPD provided fifteen webinar sessions addressing these issues, including a 3-day program on Race and Leadership.

## IN-PERSON TRAINING AND CAREER FAIR

In the Spring of 2021, MSPD returned to in-person training for small groups such as our new District Defenders and new employees.

In response to the Legislature's allocation of 53 new trial attorney positions to help MSPD meet its responsibility to provide representation to those charged with crimes, MSPD held its first Career Fair at MSPD's Training Center in Columbia, Missouri. On June 10, 2021, more than 30 attendees interviewed for positions throughout the state and learned about different elements of life as a public defender. Breakout sessions covered topics including student loan for-

## SELECTED FEEDBACK ON TRAININGS

### New Defender Workshop

"You assembled an amazing faculty and combination of speakers, videos, and materials. The sessions you organized were ***incredibly helpful in working through the most difficult parts of my case.***"

### Representing Youth in Court

"I learned a lot here, that I will be able to use at work, and also with my own kids. This helped me understand a lot of things that had never even occurred to me as issues I should think about. ***Mind blown!***"

### Justice Still Rationed

"It was a good mix of history, litigating, and connecting with children of color... Things that I thought of as normal (like being encouraged to go to college) are actually things of privilege and I am lucky to have had that. ***Perhaps through our representation, a child (or adult client) will have at least one person believe in them. That could make the difference!***"

### Forensics Training

"I thought this was one of the best CLE seminars I have ever attended... ***I also thought the attorneys and experts addressed issues that were very useful updates on areas of criminal law.*** It seemed like a very fresh presentation. Thanks to all the people who mapped it out and brought in the presenters, and to the presenters themselves!"

### Racial Justice and Equity

"Great workshop! Something we want to replicate for all MSPD employees. ***I left with a clearer path for my own journey on race*** and good strategies on how to engage and respond to others about race issues."

## TRAINING DIVISION - CONTINUED



*Missouri State Public Defender attorneys Kyle Keenan, Sarah Johnson, Shayla Marshall and Robert Walden-Chastain told applicants at the MSPD Career Fair about the resource groups for women, LGBTQ+, people of color and parents and caregivers at MSPD.*

givenness, the benefits offered to public defenders, MSPD's training resources, and the experience of working in communities, large and small, across Missouri. Several defenders highlighted MSPD's Employee Resource Groups, where they receive support and resources to do their jobs.

### MAKING TRAINING ACCESSIBLE AND EFFECTIVE

Working with MSPD's IT department, our training department is set to roll out a training portal for all our employees to access our training resources. This portal allows defenders to access training materials in an efficient way from their work station or when they are working remotely at home, traveling or in a courtroom. Phase I features a global search function, which makes finding training resources easy. Employees can access videos, powerpoint presentations, handouts, and sample motions and pleadings. They will be able to click on MSPD's training calendar and register for upcoming programs.

As MSPD looks ahead to Fiscal Year 2022, we are planning a blend of virtual and in-person events designed to meet the needs of our public defenders. We keep our eye on helping each employee provide high quality representation and supporting their quest for justice.

**MELINDA PENDERGRAPH •**  
TRAINING DIVISION DIRECTOR

MELINDA.PENDERGRAPH@MSPD.MO.GOV



# AWARDS & RECOGNITION



DAVID WIEGERT

## DEFENDER OF DISTINCTION

**David Wiegert (Assistant Public Defender, District 16: Kansas City Trial).** Wiegert was nominated by an office colleague who described him as “a gentleman who works hard for his clients... adamant about investigating all of his clients’ cases.. constantly tutoring his colleagues...recognizes the hard work his team does and lets them know it....supportive in every way he can.” The Defender of Distinction honors one attorney within the system who “exemplifies the ideals of public defense by tirelessly working on behalf of clients regardless of the strengths of the case or the severity of the crime; takes pride in knowing that the clients have received the best service possible; actively seeks out training to further enhance the service to clients, treats everyone with the same dignity and respect with which all of us wish to be treated; and does all of this without seeking public recognition for services rendered.”

## EXCELLENCE AWARD

**Lisa McGee (Support Services Coordinator, Columbia).** McGee was nominated by an office colleague who described Lisa as having “dedicated her work life to MSPD for more than thirty years and is a friend and mentor to so many. Lisa is kind, patient and compassionate towards clients....Lisa is profoundly adept at analyzing all sorts of problems and finding solutions. She is incredibly level-headed and wise beyond her years...she is always able to see the big picture with positivity. There is no task that is beneath her...if she sees a need, she is the first to pitch in.” The Excellence Award recognizes a MSPD non-attorney member who demonstrates outstanding work by consistently and enthusiastically assisting colleagues, exemplifying team building and leadership, and consistently furthers the ideals of public defense.



LISA MCGEE



LEBANON TRIAL OFFICE

## OFFICE OF THE YEAR

**Lebanon Trial Office (District 26).** MSPD’s Lebanon Trial office was nominated by a former member of the office who describes the office’s “camaraderie as unique and immeasurable...They get great outcomes for their clients...they are personally invested in the Lebanon community...and the office as a whole tolerates nothing less than justice for their clients.” The Office of the Year Award is given to one MSPD office in recognition of its achievements in client representation and furtherance of MSPD culture and values. The office is responsible for Morgan, Camden and Laclede counties in central Missouri. Office staff include District Defender Stacy Patterson, Deputy District Defender Sean Randall, Senior Public Defender Alex Reiter, Assistant Public Defender Zach Riedel, Assistant Public Defender Robert O’Connor, Assistant Public Defender Connor Diaz, Assistant Public Defender Melissa Bradley, Assistant Public Defender Sam Belezos, Legal Assistant Barbara Hicks, Legal Assistant Leslie Richins, Investigator Judy Mourer, Law Clerk Lauren O’Donnell, and Administrative Assistant Elaine Roper.

DAVID J. DIXON APPELLATE ADVOCACY AWARD



**Damien de Loyola (District Defender, District 69: Kansas City Appellate/PCR).** The David J. Dixon Appellate Advocacy Award was created by The Missouri Bar Foundation to recognize outstanding achievement in appellate practice by young lawyer members of The Missouri Bar. The award is named after the late Judge Dixon, whose tenacity, professionalism and judicial skills epitomize outstanding appellate practice.

INFLUENTIAL APPELLATE ADVOCATE

**Rosemary Percival (District Defender, District 52: Kansas City Appellate/PCR).** Percival was recognized for her work in securing a Missouri Supreme Court ruling that expert testimony about the unreliability of eyewitness identifications could be presented to juries. That victory was secured in the case of State v. Kane Carpenter. Missouri Lawyers Media presents the Influential Appellate Advocates Award to “the lawyers behind the most significant appellate decisions of the year.”



LON O. HOCKER AWARD



**Brian Horneyer (Senior Public Defender, District 22: St. Louis City Trial).** “It can feel at times like a public defender’s work can go unnoticed. Receiving an award such as this reminds me how important it truly is,” Horneyer told Missouri Bar News. The award is given by the Missouri Bar Foundation to lawyers under 40 “who exemplify the qualities of a trial lawyer, including professionalism and high ethical conduct. The recipients are chosen based on their demonstrated balance between zealotness and honor; strength and courtesy, and confidence and respect.”

NEW LEADER IN ADVOCACY

**Stacey Lannert (District Defender, District 72: Parole Revocation Defense Team).** The National Legal Aid and Defender Association pointed to Stacey Lannert’s harrowing personal experience with the criminal justice system when giving this award: as a teenager, Lannert was sentenced to life without parole for killing her father, who had sexually abused her for years. After receiving clemency after almost two decades in prison, Lannert went to law school and applied herself to work on behalf of others caught in the criminal justice system as a public defender. Lannert was picked for this honor from attorneys across the country. The award “honors rising attorneys who exhibit extraordinary leadership early in their careers as civil legal aid or indigent defense advocates.”





# APPROPRIATIONS

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

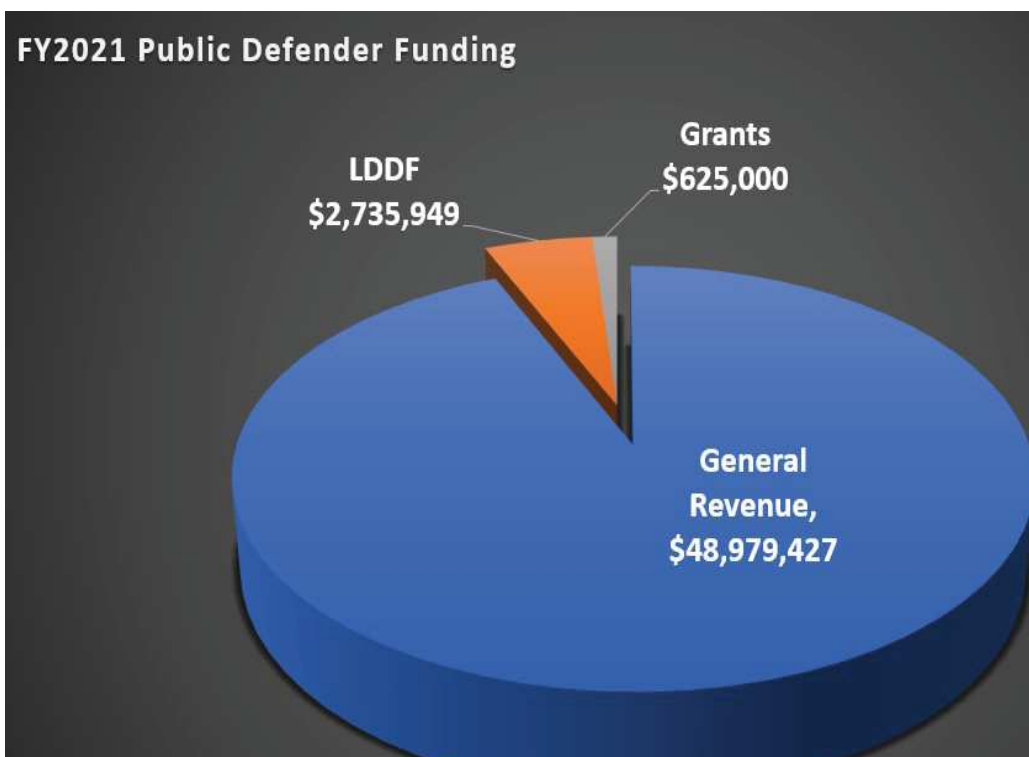
with this fund are the result of Section 600.090 RSMo., which requires public defenders to collect fees from clients receiving public defender service. Fees are deposited into the Legal Defense and Defender Fund and used to fund all public defender training as well as pay for such miscellaneous expenditures as computer lines, WestLaw, bar dues for the system's attorneys, etc. In Fiscal Year 2021, MSPD collected \$2.7 million through client payments.

The personal service component of the LDDF appropriation authorizes MSPD to pay the salaries of two employees in the system's training department out of the moneys collected rather than through the general revenue personal service appropriation.

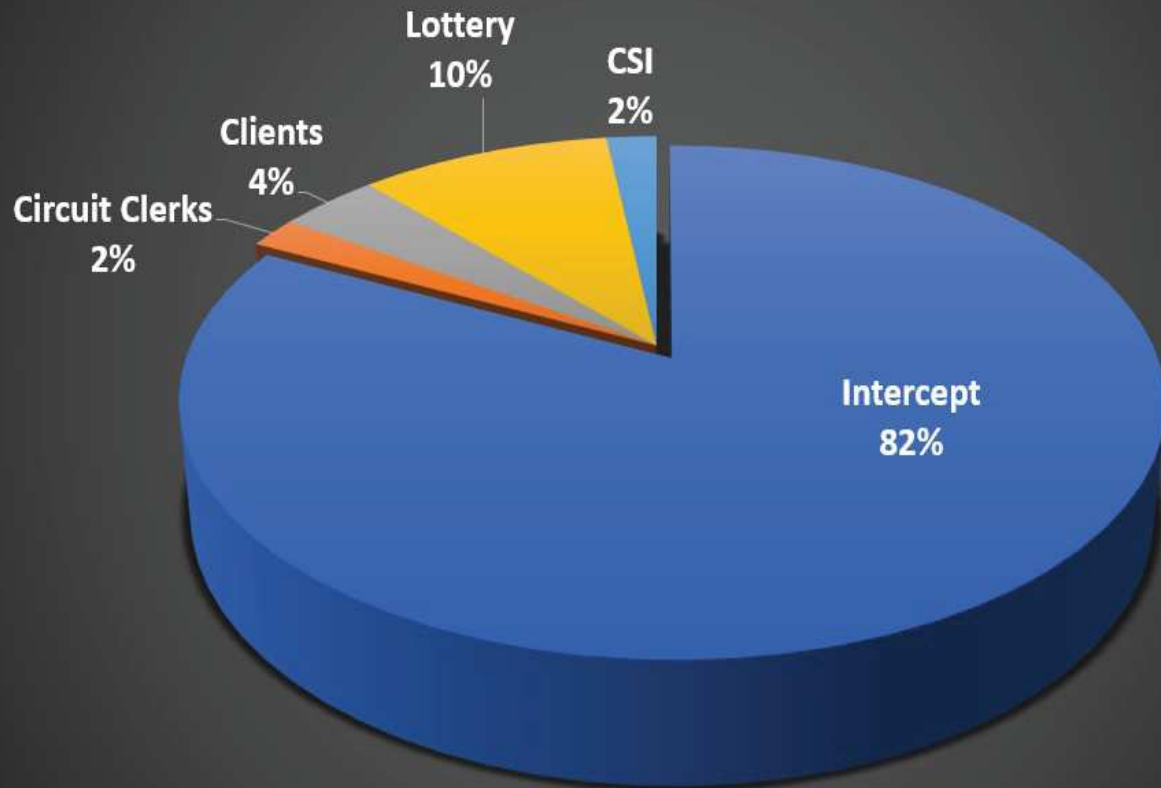
**Debt Offset Escrow Fund:** This is not an appropriation of actual money, but an authorization for MSPD to collect funds through the state's debt offset program. Under this program, taxpayers due a refund of state income tax who owe a debt to the state may have their refund intercepted and used to pay 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.

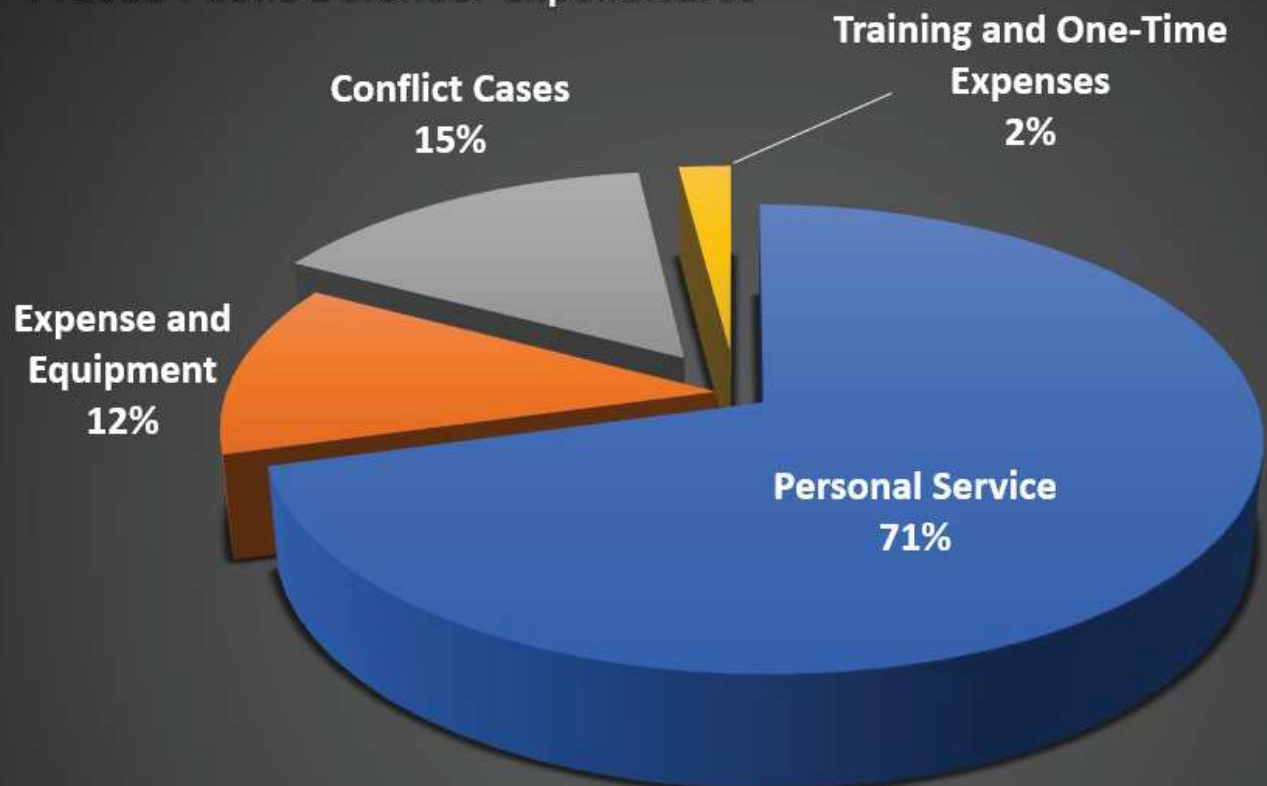
**Actual Funding:** In FY21, MSPD received a total of \$48.98 million of general revenue funds and the authority to spend up to \$2.74 million of LDDF Collections. (Actual collections were \$2,036,264.)



FY2021 Public Defender Revenue Sources



FY2021 Public Defender Expenditures



# HOUSE BILL NO 12

[TRULY AGREED TO AND FINALLY PASSED]

CCS FOR SCS FOR HCS FOR HB 12  
101ST GENERAL ASSEMBLY  
SIGNED BY GOVERNOR – NO VETOES

## FISCAL YEAR 2022 APPROPRIATION

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. . . . . \$48,708,135

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 Public  
Defender

System. . . . . 4,721,071

From General Revenue Fund (0101). . . . . 53,429,206

For expenses authorized by the Public Defender Commission as provided  
by Section 600.090, RSMo

Personal Service. . . . . 142,353

Expense and Equipment. . . . . 2,606,256

From Legal Defense and Defender Fund (0670). . . . . 2,748,609

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

From Debt Offset Escrow Fund (0753). . . . . 1,700,000

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 Office of State Public Defender - Federal Fund (0112). . . . . 625,000

Total (Not to exceed 672.13 F.T.E.) . . . . . \$58,502,815

# RECOMMENDATION FOR STATUTORY CHANGES

Section 600.042 RSMo. requests that this report include recommendations for statutory changes. Missouri State Public Defender was fortunate to receive assistance from a private donor, Jennifer Bukowsky, to reduce the waitlist that has plagued MSPD and the court system for years. The \$300,000 donation was earmarked to retain contract counsel to represent persons with cases pending on the Boone County waitlist. Pursuant to subsection (9) of Section 600.042.1 the Director is authorized to “apply for and accept on behalf of the public defender system any funds which may be offered or which may become available from government grants, private gifts, donations or bequests or from any other source.” The generous gift from Ms. Bukowsky fit into this category, but MSPD was unable to accept it because the statute further requires that any monies received through that section are to be deposited in the state general revenue fund. Instead the funds were provided to Boone County and a partnership was created to contract out waitlist cases.

MSPD recommends that a change be made to Section 600.042 to authorize the deposit of any grants or gifts into a MSPD fund. One suggested change to the statute is set out below. Another change, would simply be removing the words, “Such moneys shall be deposited in the state general revenue fund;” from Section 600.042. MSPD will work with legislators to attempt to implement this change in the upcoming legislative session.

600.042. Director’s duties and powers – cases for which representation is authorized – rules, procedures – discretionary powers of defender system – bar members appointment authorized – grant and gift fund. The director shall:

and accept on behalf of the public defender system any funds which may be offered or which may become available from government grants, private gifts, donations or bequests or from any other source. [Such moneys shall be deposited in the state general revenue fund.] Such moneys shall be credited to and deposited in the “Public Defender Grant and Gift Fund” which is hereby created.

(a) The moneys credited to and deposited in the Public Defender Grant and Gift Fund shall be used for the purposes for which the government or private grantors or persons

or other entities intended or specified in making the grant, gift, donation or bequest, and for other lawful expenses as authorized by the public defender commission.

(b) The state treasurer shall be the custodian of the Public Defender Grant and Gift Fund, moneys in the Public Defender Grant and Gift Fund shall be deposited the same as are other state funds, and any interest accruing to the Public Defender Grant and Gift Fund shall be added to the Public Defender Grant and Gift Fund. The Public Defender Grant and Gift Fund shall be subject to audit, the same as other state funds and accounts, and shall be protected by the general bond given by the state treasurer.

(c) Upon the request of the director of the office of state public defender, the commissioner of administration shall approve disbursements from the Public Defender Grant and Gift Fund.

The Public Defender Grant and Gift fund shall be funded annually by appropriation, but any unexpended remaining balance in the fund at the end of the appropriation period shall be exempt from the provisions of section 33.080, specifically as they relate to the transfer of fund balances to the general revenue, and shall be the amount of the fund at the beginning of the appropriation period next immediately following.



*Pictured above is MSPD donor and former Assistant Public Defender Jennifer Bukowsky and Mary Fox, MSPD Director, at the capitol in May, 2021.*

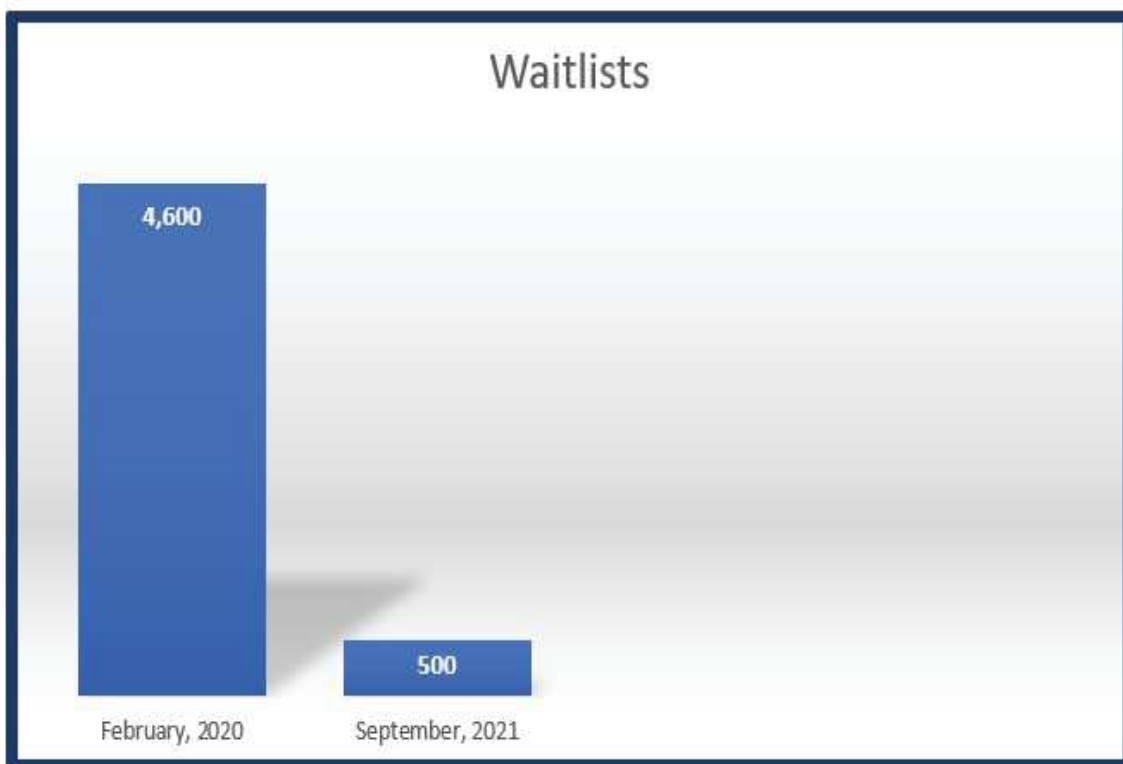
\* \* \*

(9) With the approval of the commission, apply for



# DAVID V. MISSOURI ACLU WAITLIST LITIGATION

In February of 2020 the ACLU filed a class action lawsuit against Missouri State Public Defender and the State of Missouri alleging that the placement of qualified applicants for MSPD services on waitlists was unconstitutional. The lawsuit claimed that the waitlists, created in an effort to shield public defenders from violating their ethical duties by taking on too many cases, violated indigent defendants' right to counsel, due process and equal rights guaranteed to all criminal defendants. In February 2020, there were approximately 4,600 applicants' cases for public defender services on waitlists awaiting the assignment of counsel. Today, that number has been reduced to under 500 cases. With the legislative appropriation to hire fifty-three new attorneys for the MSPD Trial Division Offices the hope is that the need for waitlists will end by January 2022. That hope, however, is dependent upon a continued reduction in cases being issued by the State of Missouri so that MSPD attorneys can fulfill their ethical duties to every client.





# DIVERSITY AND INCLUSION

At MSPD, Diversity and Inclusion means creating belonging, community and empowerment for our staff, and developing a workplace representative of the public that we serve. We value our Black, Indigenous and other people of color, women, our LGBTQ community, differently abled staff and clients, and everyone else working in our system. We believe in the power of diversity and the positive outcomes that it creates as we work toward our mission in defending the accused in Missouri every day. We have a Diversity, Equity and Inclusion Committee, several employee resource groups, and strategic recruitment plans to support diversity and inclusion within our system and we continually look for ways to grow.

## Our Diversity, Equity and Inclusion Values

*Culture:* Every person and client at MSPD is valued. We actively seek varied perspectives in our decision-making and inclusiveness in every area of our work.

*Integrity:* We act ethically and do what is right.

*Respect:* We treat others with courtesy and civility.

*Collaboration:* We trust each other and work cooperatively across divisions to create better outcomes for our clients and enhance our peoples' experience at work.

*Legal Excellence:* We consistently learn, train and educate ourselves about vulnerable communities to zealously represent our clients.

## Diversity and Inclusion Mission Statement

The Missouri State Public Defender is a dynamic state agency comprised of bright and talented team members from different backgrounds who further our mission to provide high quality, zealous advocacy for indigent people who are accused of crime in our state.

We believe that Diversity and Inclusion is a life-long process that we commit ourselves to. We continuously learn and look for ways to implement inclusion and belonging within our system through ally-ship and understanding, education, training, recruitment and retention.

As a system of hundreds of Missouri Defenders and Staff, we recognize that each one of us adds a different lived experience that helps us do this important work for the people of Missouri. We know that our diverse experiences together strengthen our representation for our clients, who come from different backgrounds, races, religions, genders and abilities.

We believe in culture, integrity, respect, collaboration and legal excellence within our system and hold each other accountable. We use these values to guide us to include diverse experiences and perspectives in our decision making. The Missouri State Public Defender continues and commits to build and educate ourselves to promote a diverse and inclusive work place in each office, for every team member, and for every client.



*Small group sessions are an important element of training. This allows team members the opportunity to build community and collaborate.*