

## **INDIGENT DEFENSE SERVICES' MAIN ACCOMPLISHMENTS SINCE JULY 2001**

(Updated November 2009)

The following list summarizes IDS' main accomplishments since assuming responsibility for North Carolina's indigent defense fund in July 2001. While the accomplishments have been grouped into four main categories—improving quality, controlling spending, enhancing data collection and reporting, and oversight of other programs—many accomplishments actually relate to more than one category.

IDS' annual reports to the General Assembly describe these initiatives and accomplishments, as well as others, in much more detail than is set forth below. The reports are posted on the IDS website ([www.ncids.org](http://www.ncids.org)) under the "Reports & Data" link.

### **Initiatives to Improve Quality and Enhance the Independence of Defense Counsel:**

- ❖ *IDS Rules:* The IDS Commission developed and published rules governing the delivery of services in non-capital and non-criminal cases at the trial level, capital cases, and non-capital and non-criminal appeals. See Rules of the Commission on Indigent Defense Services (July 1, 2001, last amended October 2009), available at [www.ncids.org](http://www.ncids.org).
- ❖ *Statewide Attorney Rosters:* The IDS Rules contain detailed qualification standards for attorneys to be included on the Capital Trial (Lead and Associate), Capital and Non-Capital Appeal, and Capital Post-Conviction Rosters. IDS Office staff, in conjunction with the Capital and Appellate Defenders, continue to review applicants' qualifications and enhance the rosters of qualified attorneys in each district across the State.
- ❖ *Appointment and Compensation of Attorneys and Experts:* In all potentially capital cases and appeals, as well as all proceedings before the Innocence Inquiry Commission, IDS has assumed direct responsibility for appointing and compensating attorneys, and approving and compensating necessary experts.
- ❖ *Public Defender Appointment Plans:* The IDS Commission and staff worked with all public defender offices to develop plans for the appointment of counsel in non-capital cases in their districts, and required that those plans provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation.
- ❖ *Model Appointment Plan for Non-Public Defender Districts:* In March 2008, the IDS Commission adopted a model indigent appointment plan for non-public defender districts. The plan is modeled after the public defender appointment plans discussed above, and includes qualification standards for the various indigent lists, provides for more oversight by a local committee appointed by the President of the District Bar, and includes some basic reporting requirements to the IDS Office. Office staff are working with non-public defender districts across the State to implement some version of the model plan at the local level.
- ❖ *Capital Defender Expansion:* The IDS Commission established a statewide Capital Defender position, expanded the capital defender office in Durham, and created new regional capital defender offices in Beaufort, Forsyth, and New Hanover counties.
- ❖ *Improved Training:* In conjunction with the School of Government, IDS has developed and offered new and innovative training programs for criminal defense attorneys, as well

as attorneys working in specialized areas of non-criminal representation. Examples of these new training programs include: a hands-on program for private appellate attorneys; new programs for attorneys who handle involuntary commitment cases; training for attorneys who represent respondent parents in abuse, neglect, dependency, and termination of parental rights proceedings (“Chapter 7B cases”); training for attorneys who represent juveniles in delinquency proceedings; and a new five-day trial advocacy program for public defenders. Materials that are used in IDS co-sponsored programs are posted on the IDS website ([www.ncids.org](http://www.ncids.org)) and are available for free to attorneys who were unable to attend the training. In addition, IDS has a contract with the North Carolina Advocates for Justice (“NCAJ”), which supplements IDS’ annual training calendar by providing all public defenders and assistant public defenders annual access to one full-day CLE sponsored by NCAJ. IDS plans to continue expanding its training calendar in the coming years.

- ❖ *Indigent Defense Manual Series:* IDS provided funding for improvements to the School of Government’s North Carolina Defender Manual, and for the development of a North Carolina Civil Commitment Manual, a North Carolina Juvenile Delinquency Manual, a North Carolina Guardianship Manual, and a North Carolina Immigration Consequences Manual, which were published jointly by IDS and the School of Government. In addition, IDS has developed an Orientation Manual for new assistant public defenders and an Innocence Inquiry Proceedings Manual. All of the manuals are available for free on the IDS website.
- ❖ *Electronic Communication:* Through electronic means, IDS has taken significant steps to increase communication with and resource-sharing among the bar.
  - ✓ IDS developed an independent website ([www.ncids.org](http://www.ncids.org)) that allows greater and more comprehensive communication with the bar, bench and public, and enhances the resources available to defense attorneys across the State. The website contains news and updates links addressing the state of indigent defense funding, timing of attorney payments, and any other recent developments or matters of interest. In addition, the following materials, among others, are posted: all approved minutes of IDS Commission meetings; IDS rules, policies, and procedures; reports and data generated by Office staff; fillable applications for the capital and appellate rosters; attorney and expert fee application forms; the public defender appointment plans; all of the North Carolina indigent defense manuals referenced above; materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; an index of capital case trial motions; and an appellate brief bank.
  - ✓ In conjunction with other groups, the IDS Office has established listservs for attorneys representing indigent persons on appeal, capital trial attorneys, capital post-conviction attorneys, involuntary commitment attorneys, public defenders and assistant public defenders, attorneys representing respondent parents in Chapter 7B cases, attorneys representing juveniles in delinquency proceedings, attorneys handling child support contempt cases, and mitigation specialists.
- ❖ *Performance Guidelines for Attorneys Handling Non-Capital Criminal Cases:* The IDS Commission has adopted “Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level.” The guidelines are based largely on the

National Legal Aid and Defender Association Performance Guidelines, but have been tailored to the nuances of practicing law in North Carolina. Proposed draft guidelines were mailed to the bar and bench for comments in August 2004. After making a number of improvements to the draft based on the comments that were received, the IDS Commission adopted final guidelines in November 2004. The guidelines are posted on the IDS website under the “IDS Rules & Procedures” link.

- ❖ *Improved Juvenile Representation and Office of the Juvenile Defender:* In conjunction with the ABA Juvenile Justice Center, the National Juvenile Defender Center, and the Southern Juvenile Defender Center, the IDS Office conducted a statewide assessment of juvenile delinquency representation in North Carolina. The ABA released its report in October 2003, which identified a number of deficiencies in the services being provided to our State’s children. In response to the ABA’s report, the IDS Commission formed a Juvenile Committee to review the ABA’s findings and prepare recommendations for reform initiatives. The Committee’s primary recommendations were to create a new statewide Juvenile Defender position so that someone would be working full time on needed reform initiatives and to develop and offer comprehensive training programs for juvenile defense attorneys. The General Assembly subsequently authorized the creation of a new statewide Juvenile Defender position, and the Commission appointed an attorney to that position in November 2004.

Some of the Juvenile Defender’s duties are to serve as a central resource and contact person for individual juvenile defenders and juvenile associations statewide; to develop ways to connect and support juvenile defense attorneys across the State; to evaluate the existing systems and practices and the current quality of representation in various areas of the State; to identify training needs and work with the School of Government and other groups to formulate a long-term training plan; and to develop and maintain a clearinghouse of materials on North Carolina juvenile law and practice. The Juvenile Defender has also developed specialized performance guidelines and model qualification standards for attorneys who represent juveniles in delinquency proceedings; the model qualification standards have been implemented in all but three of the existing public defender districts.

During calendar year 2008, the Juvenile Defender undertook a review of a sample of cases that ended in commitments to youth development centers during 2007. The goals for the project were to cure defective commitments if possible, to determine how often commitments are defective, to identify the reasons for any errors, and to improve training for juvenile defense attorneys. A report on this project is available on the IDS website under the “Reports & Data” link.

- ❖ *Performance Guidelines for Attorneys Handling Juvenile Delinquency Cases:* The IDS Commission has adopted “Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level.” Proposed draft guidelines were mailed to the bar and bench for comments in July 2007. After making a number of improvements to the draft based on the comments that were received, the IDS Commission adopted final guidelines in December 2007. The guidelines are posted on the IDS website under the “IDS Rules & Procedures” link.
- ❖ *Improved Representation of Respondent Parents and Parent Representation Coordinator:* In the Fall of 2006, the IDS Commission established a new position in the Office of the Appellate Defender called the Parent Representation Coordinator; that position was filled

in November 2006. Among other things, the Parent Representation Coordinator is responsible for coordinating appellate representation of indigent parent-respondents in abuse, neglect, dependency and termination of parental rights proceedings (“Chapter 7B cases”); appointing counsel in all indigent Chapter 7B appeals statewide; helping ensure that appellate counsel are able to comply with the expedited deadlines in Rule 3.1 of the Rules of Appellate Procedure; working with the School of Government, Court Improvement Project, and others to develop training programs for trial and appellate lawyers who handle Chapter 7B cases; evaluating appellate briefs in Chapter 7B cases for inclusion in a statewide on-line brief bank; and performing case consultations with trial and appellate attorneys who represent respondent parents.

- ❖ *Performance Guidelines for Attorneys Representing Respondent Parents:* The IDS Commission obtained grant funding from the North Carolina Court Improvement Project to develop “Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency and Termination of Parental Rights Proceedings at the Trial Level.” Starting in January 2006, the IDS Office contracted with a parent attorney to staff the project, and he then worked with a multi-disciplinary committee to develop guidelines that are tailored to North Carolina law and practice in this area. The new Parent Representation Coordinator joined that committee when she began work in November 2006. Proposed draft guidelines were mailed to the bar and bench for comments in July 2007. After making a number of improvements to the draft based on the comments that were received, the IDS Commission adopted final guidelines in December 2007. The guidelines are posted on the IDS website under the “IDS Rules & Procedures” link.
- ❖ *Qualification Standards for Mitigation Specialists:* On May 6, 2005, the IDS Commission adopted qualification standards for individuals who serve as mitigation specialists in capital cases. The standards include three different levels of mitigation specialists, which are based on educational background and experience. The IDS Office has developed a procedure for applicants to seek approval for one of the levels, and has set hourly pay rates for the various levels.
- ❖ *Systems Evaluation Project:* One of the IDS Commission’s main statutory responsibilities is to evaluate the existing methods of service delivery in North Carolina and to implement changes where they may be needed to improve quality. To accomplish this goal, the Commission is working to develop an objective tool to evaluate the quality of overall indigent defense systems at the county, district, and statewide levels. The Commission plans to involve other stakeholders in the criminal justice system in the process of developing the evaluation tool. Because there are no existing national models for this type of evaluation, the project will be a long-term undertaking. For information about this project, go to [www.ncids.org](http://www.ncids.org) and click on the “Systems Eval. Project” link.

### **Initiatives to Standardize and Control Spending:**

- ❖ *Billing Policies and Financial Audits:* The IDS Office has developed detailed billing and financial audit policies that are applied to all fee petitions where IDS sets the amount of the award, and has adopted billing policies in cases where judges are still responsible for setting the fees. (These policies are posted on the IDS website under the “IDS Rules & Procedures” link.) In December 2007, the Office also worked with the North Carolina Bar

Association and the School of Government to develop a video training program on billing in indigent cases. In addition, IDS Office staff perform random audits of appointed attorney fee applications.

- ❖ *Standard Hourly Rate:* Based on a study of fees set in district and superior court during the first quarter of fiscal year 2001-02, the IDS Commission established an uniform statewide hourly rate of \$65 in all non-capital and non-criminal cases. That rate was intended to be revenue-neutral, but had the advantages of increasing the stability and predictability of payments to private assigned counsel, and improving pay equity and fairness across the State. The IDS Commission and IDS Office worked to obtain an additional appropriation from the General Assembly to increase the standard hourly rate to \$75, effective February 1, 2008.
- ❖ *Increased Recoupment Revenues:* IDS has strived to increase the amount of revenues to the indigent defense fund by improving recoupment. IDS Office staff have worked with all public defender offices to increase the levels of recoupment in public defender districts, and have held a number of meetings with court personnel in other districts around the State. Total revenues from recoupment during fiscal year 2007-08, including the \$50 attorney appointment fee required by G.S. 7A-455.1, amounted to \$9.87 million, which represented an increase of 8.9% over the prior fiscal year.
- ❖ *Slowed the Overall Rate of Growth in Demand and Stabilized per Disposition Expenditures:* During its first seven fiscal years of existence, IDS has slowed the rate of increase in spending and obligations for indigent defense. During the seven years before IDS was created, the average annual increase in the fund was more than 11%. During IDS' first seven years of operation, the average increase in overall spending and obligations on indigent defense has been 7.1%. The overall increases in demand are primarily due to an expanding indigent caseload, not a rise in per case costs. Indeed, total indigent defense expenditures per disposition have been relatively stable since IDS was established. Per disposition expenditures during fiscal year 2007-08 were \$11.51 less than per disposition expenditures the year before IDS was established and only \$17.58 more than per disposition expenditures during IDS' first year of operations.
- ❖ *Capital Case Policies and Coordination:* The IDS Commission and Office have developed numerous policies governing potentially capital cases at the trial level, capital appeals, and capital post-conviction cases. Some examples include training and consultation requirements, and an "exceptional case policy" that places limitations on attorney and expert compensation for pre-trial services unless a case has been declared exceptional by the IDS Director. IDS staff have also worked with the Center for Death Penalty Litigation to coordinate the litigation of claims pursuant to the new Racial Justice Act.
- ❖ *New Public Defender Offices:*
  - ✓ *Forsyth County:* Based on the IDS Commission's recommendation, the 2002 Appropriations Act established a new Forsyth County Public Defender Office. After the Chief Public Defender was appointed, IDS Office staff members assisted him in establishing the new office and developing a plan for the appointment of counsel in non-capital cases. By May 2003, the new office was fully staffed and

disposing of cases on a regular basis. The office now employs 16 assistant public defenders.

- ✓ *First Judicial District:* Based on the IDS Commission's recommendation, the 2004 Appropriations Act established a new First District Public Defender Office, which is responsible for providing representation in indigent cases in Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties. The Chief Public Defender was appointed in October 2004, and IDS Office staff subsequently worked with him to develop a plan for the appointment of counsel in non-capital cases and to get the office operational. The office began accepting cases on December 1, 2004 and now employs eight assistant public defenders. Upon request by the bench in the Second Judicial District and with the permission of the General Assembly, attorneys in the First District Office also began handling indigent cases in two counties in the Second District (Tyrrell and Washington counties) during fiscal year 2006-07.
- ✓ *Wake County:* The 2004 Appropriations Act also established a new Wake County Public Defender Office, effective July 1, 2005. The Chief Public Defender was appointed in March 2005, and IDS Office staff subsequently worked with him to develop a plan for the appointment of counsel in non-capital cases and to get the office operational. The office began accepting cases on July 1, 2005 and now employs 23 assistant public defenders.
- ✓ *District 29B:* The 2007 Appropriations Act established a new District 29B Public Defender Office, which is responsible for providing representation in indigent cases in Henderson, Polk, and Transylvania counties. The Chief Public Defender was appointed in October 2007, and IDS Office staff subsequently worked with him to develop a plan for the appointment of counsel in non-capital cases and to get the office operational. The office began accepting cases on February 5, 2008 and now employs five assistant public defenders.
- ✓ *New Hanover County:* The 2007 Appropriations Act also established a new New Hanover County Public Defender Office. The Chief Public Defender was appointed in December 2007, and IDS Office staff subsequently worked with her to develop a plan for the appointment of counsel in non-capital cases and to get the office operational. The office began accepting cases on March 17, 2008 and now employs eight assistant public defenders.
- ✓ *Other Areas for Public Defender Expansion:* IDS Office staff regularly analyze cost data to determine where new public defender offices may result in substantial savings. Based on those studies, the IDS Commission periodically recommends new areas for expansion of North Carolina's public defender system.
- ❖ *Public Defender Cost-Effectiveness Studies:* The IDS Office conducts annual studies of the cost-effectiveness of all public defender offices, and has conducted a cost-benefit analysis of the Office of the Appellate Defender.
- ❖ *Contracts with Attorneys:* Since the Spring of 2003, the IDS Office has been exploring the use of contracts with attorneys as an alternative method of delivering legal services to indigent persons in various districts in North Carolina. Currently, the IDS Office has contracts with more than 40 different attorneys and organizations in 19 different counties.

The IDS contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, civil commitment, guardianship, and drug treatment court proceedings. IDS Office staff believe that carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered.

- ❖ *Grant Applications:* Increasingly, IDS staff are preparing and submitting applications for federal and state grant funding to support special projects that the Commission and Office are contemplating or undertaking. Particularly in light of the State's fiscal crisis, IDS hopes to strengthen its efforts to obtain grant funding in the coming years.
- ❖ *Consultation about Cost-Saving Measures:* Section 14.2 of the 2005 Appropriations Act directed IDS to consult with the Conference of District Attorneys, the Conference of District Court Judges, and the Conference of Superior Court Judges in formulating proposals aimed at reducing future costs and to include any proposals in its reports during the 2005-2007 fiscal biennium. Pursuant to that legislation, IDS consulted with other court system actors and made a series of recommendations in its March 2007 report to the General Assembly, including: 1) pilot testing alternative scheduling systems in district and/or superior court that would minimize attorney wait time; 2) funding a joint study by IDS and the North Carolina Sentencing and Policy Advisory Commission to identify misdemeanors that should be decriminalized; 3) expanding and regionalizing the public defender system, and creating a more effective management and supervisory relationship between IDS and the chief public defenders; 4) enhancing the ability of and incentives to clerk's offices to improve recoupment of attorney fees; and 5) eliminating felony murder as a ground for a death sentence.

Section 15.17 of the 2009 Appropriations Act again directed IDS to consult with the Administrative Office of the Courts, the Conference of District Attorneys, the Sentencing and Policy Advisory Commission, and others in formulating proposals to reduce future costs, "including the possibility of decriminalizing minor misdemeanor offenses for which jail sentences are rarely or never imposed and improving the manner in which potentially capital cases are screened and processed." Pursuant to that legislation, IDS will include any recommendations in its annual reports during the current fiscal biennium.

- ❖ *District Court Scheduling Survey and Development of Pilot Program:* The IDS Office completed a study of the costs to IDS during fiscal year 2004-05 from private assigned counsel waiting in court for their cases to be called. The study demonstrated that defense attorney wait time under the current scheduling systems adds substantial costs to indigent defense and the taxpayers. Based in part on that study, § 14.1 of Session Law 2008-107 allowed IDS to spend up to \$25,000 of its appropriated funds to support one or more pilot programs of alternative scheduling that would reduce defense attorney wait time and state expense. Section 15.13(c) of Session Law 2009-451 further directed IDS to provide a progress report on any pilot programs to the General Assembly by March 2010 and to provide a final report by March 2011. While the Session Laws allow for pilot programs in superior court, IDS intends to focus on district court scheduling because the Commission and Office believe there are more efficiencies to be gained in that court. To help IDS design one or more pilot programs that will lead to real improvements, IDS staff conducted a survey on district court criminal scheduling practices in April 2009. The survey asked members of the criminal justice system, including defense attorneys, prosecutors, judges,

and clerks, questions about current scheduling practices, any problems or inefficiencies with current systems, and any best practices or innovative systems. A report on the survey is available on the IDS website under the “Reports & Data” link. In the near future, IDS staff intend to convene working groups in one or more districts where local actors expressed an interest in designing and hosting a pilot program.

### **Initiatives to Improve Data Collection and Reporting:**

- ❖ *Data Collection for Cases Under IDS’ Direct Oversight:* The IDS Office developed a detailed internal database to track, among other things, all attorney appointments, expert authorizations, and payments in the cases under IDS’ direct oversight—namely, potentially capital cases and appeals. The database was later modified to track similar data on proceedings before the Innocence Inquiry Commission, as well as the cost of litigation pursuant to the new Racial Justice Act. The database has significantly improved the Office’s ability to collect, analyze, and report data concerning those cases.
- ❖ *Data Collection for Non-Capital Cases at the Trial Level:* IDS Office staff periodically work with the Administrative Office of the Courts’ Forms Committee to revise the fee application forms for private appointed counsel to capture increasingly nuanced data about the other types of cases under IDS’ oversight. In addition, effective July 2006, IDS assumed direct responsibility for and supervision of the accounts payable staff who process attorney fee applications. On an ongoing basis, IDS staff take steps to develop and implement more detailed and helpful data collection and reporting systems.
- ❖ *Public Defender Disposition Reporting:* The IDS Office worked with the public defender offices to develop rules for counting closed cases in their offices and for reporting dispositions. During the Summer of 2009, the Office also developed a new on-line disposition reporting system, which replaced the prior Excel reporting system and is an interactive web-based application. The system collects data by attorney and by the month of case closings, so the chief public defenders are better able to manage attorney caseloads in their offices. It also gives IDS staff instantaneous access to the data as it is entered.
- ❖ *Analyses of Budgetary Trends and Fund Demand:* Because of the increased availability of data, IDS Office staff regularly conduct analyses of budgetary trends, as well as caseload and financial demand on the indigent defense fund, which are increasingly more accurate and reliable than previous studies.
- ❖ *Studies of Average Hours Claimed by Appointed Attorneys in District and Superior Court:* In order to assist judges in evaluating fee petitions, the IDS Office has completed statewide studies of appointed attorney fee applications in district and superior court, including average hours and frequency distributions by type of charge. The district court study was mailed to all district court judges in August 2005, and the superior court study was mailed to all superior court judges in January 2006. Both reports are available on the IDS website under the “Reports & Data” link.
- ❖ *Capital Case Costs and Dispositions Study:* In December 2008, IDS staff finalized a study on IDS’ spending on private assigned counsel and experts in potentially capital cases at the trial level, as well as the dispositions of all potentially capital cases at the trial level that were initiated after G.S. 15A-2004 was revised to give prosecutors discretion to proceed non-capitally even if there is evidence of an aggravating factor. The study demonstrated

that IDS' per case spending on potentially capital cases at the trial level is not rising and that the high profile expensive cases are the exception. The study also concluded that IDS' spending on potentially capital cases is driven by prosecutorial decisions over which the defense function has no control, including the prosecutors' decisions to charge the vast majority of intentional homicides as first-degree or undesignated degree of murder and to proceed capitally and seek the death penalty. Finally, the study compiled the dispositions of all potentially capital cases that opened since IDS was established and have since closed. Over 83% of those cases ended in convictions of second-degree murder or less, and 60% of the cases that actually proceeded capitally ended in second-degree murder or less. A mere 3% of the cases that actually proceeded capitally ended in a death verdict. The IDS Commission and staff believe that these findings show there is significant room for improvement in the way potentially capital cases are charged and screened in North Carolina. The study report is available on the IDS website under the "Reports & Data" link.

### **Oversight and Evaluation of Other Programs:**

- ❖ *Sentencing Services:* In 2002, IDS assumed responsibility for the Office of Sentencing Services ("OSS"), which develops alternative sentencing plans for the courts and helps engage offenders in appropriate treatment. Under IDS' leadership and oversight, the programs have increased their efficiency and continue to operate in most counties despite significant reductions in OSS' legislative appropriation.
- ❖ *North Carolina Prisoner Legal Services:* Pursuant to a contract with the State of North Carolina, North Carolina Prisoner Legal Services, Inc. ("NCPLS") provides legal advice and assistance to prisoners in the custody of the Department of Correction. NCPLS also works toward administrative resolutions of inmate problems, and provides representation in state and federal court in criminal post-conviction proceedings, jail credit cases, and civil proceedings challenging conditions of confinement or the actions of government officials. Effective October 1, 2005, the General Assembly transferred NCPLS' contract from the Department of Correction to IDS, and directed IDS to evaluate the program and report its findings. IDS in turn enlisted the assistance of a UNC School of Government Professor who specializes in program evaluation. The evaluation consisted of documenting NCPLS' case-management process in work-flow format, recruiting 16 specialists in one or more of the areas covered by the contract to review a random sample of case files, and interviewing NCPLS staff. IDS' report on the evaluation was submitted to the General Assembly in May 2007. Since the evaluation was completed, IDS has continued to work with NCPLS to strengthen the program's services and to ensure that inmates receive quality legal services.