

N.C. Office of Indigent Defense Services

**North Carolina's Criminal Justice System
A Comparison of Prosecution and Indigent
Defense Resources**

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North Carolina’s Criminal Justice System: A Comparison of Prosecution and Indigent Defense Resources

Executive Summary

On March 30, 2011, representatives of the Conference of District Attorneys (DAs) gave a presentation to Legislators that included the following PowerPoint slide:

Budget Comparison 2009-2010	
<u>District Attorneys:</u>	<u>Indigent Defense:</u>
* 100% Criminal Cases	* 50% Criminal Cases
* Budget: \$92 million	* Budget: \$132 million

During that presentation, representatives of the Conference stated that the prosecution is “outspent and outfunded every day in court,” and urged Legislators to “compare apples to apples” when looking at the budgets for the prosecution and defense functions. Based on that comparison, the DAs urged Legislators to reduce IDS’ budget, rather than the budgets for prosecutors and the courts.

The IDS Commission and Office support adequate funding for the entire criminal justice system, including the courts themselves, the prosecution, and the defense. However, the DAs’ comparison of their budget to the IDS budget is inappropriate and misleading, and it does not compare apples to apples.

A more accurate comparison of DA and indigent defense resources is shown in the following chart:

Budget Comparison 2009-2010	
<u>District Attorneys:</u>	<u>Indigent Criminal Defense:</u>
* DA Budget for Indigent Criminal Cases: \$55M	* Appropriation for Indigent Criminal Cases: \$90.6M
* Additional SBI Resources: \$30M	* Budgeted Recoupment Receipts: \$12M
* Additional Police Resources: \$200M	
* Additional Unquantifiable Resources (e.g., local crime labs, State Highway Patrol)	
Total Resources: More than \$285 million	Total Resources: \$102.6 million

The above comparison is more accurate for a number of reasons that are outlined in this report:

1. IDS' budget is comprised of a General Fund appropriation plus budgeted recoupment receipts from clients. While all indigent defense resources and their associated costs are contained within the IDS budget, that is not true for prosecution resources and costs, which are spread among different state and local agencies and budgets. As shown in this report, a very conservative estimate of the additional prosecution resources that are available to DA offices but not contained in their office budgets is more than \$230 million. (See page 5 for a chart comparing the funding sources for various indigent defense and prosecution functions.)
2. IDS provides representation in a number of case types that are not handled by DAs. This includes direct appeals and most capital post-conviction litigation; the majority of civil cases that are funded by IDS, such as abuse, neglect, or dependency, termination of parental rights, civil commitment, competency, and child support contempt; and specialized programs like Prisoner Legal Services and the Office of Sentencing Services. In FY10, 22.3% (or approximately \$29.8 million) of IDS' budget was expended on non-DA-related cases.
3. The DAs handle all criminal prosecutions, while IDS handles only those cases where the defendant is indigent. Based on AOC data, the defendant was indigent in 50.5% of criminal cases during FY10. However, the exact percentage of cases that involve an indigent defendant varies by the type of offense, and was 71.1% in superior court criminal cases during FY10. Because more serious offenses take proportionately more DA time and resources than minor offenses, the true amount of DA resources devoted to indigent criminal cases is closer to 71.1% of the total DA budget (\$65.4 million), rather than 50.5% (\$46.46 million). For purposes of this report, IDS used a conservative estimate that \$55 million of DA Office budgets is dedicated to prosecuting indigent criminal cases.
4. The amount of time that a DA has to spend prosecuting an individual case is not comparable to the amount of time that a defense attorney has to spend defending it. A recent workload study of North Carolina DA Offices showed that DAs, on average, spend 6.5 minutes prosecuting a traffic case, 19 minutes prosecuting a misdemeanor case (other than DWI or drug offense), 43 minutes prosecuting a DWI, and 55 minutes prosecuting a drug offense other than trafficking. It simply is not possible to provide a competent defense in such a short time period, in part because defense attorneys have to conduct an independent investigation and because the DAs control the calendaring of cases.

More details are available in the Report and Appendices on the following pages.

Report

Prosecution resources and costs cannot be accurately compared to indigent defense resources and costs by simply comparing the DAs' budget to IDS' budget. An accurate comparison of prosecution and defense resources needs to compare all indigent-defense-related prosecution resources and costs to all indigent defense resources and costs.

1. Prosecution Resources Provided By Other Agencies And Not Included In DA Office Budgets:

IDS' budget is comprised of a General Fund appropriation (approximately \$120 million in FY10) plus budgeted recoupment receipts from clients (approximately \$12 million in FY10), and all resources and costs for indigent criminal defense are included in the IDS budget. In contrast, criminal prosecution resources and costs are spread over a multitude of different offices and agencies in addition to the DA offices, such as the Attorney General's (AG) Office, the State Bureau of Investigation (SBI), the State Highway Patrol, the State Medical Examiner, and local law enforcement.

With respect to investigative resources for indigent defense, they include private investigator positions within public defender offices and expenditures on private investigators. These resources are expended in criminal cases handled by DAs, as well as in cases not handled by DAs, such as civil cases and most capital post-conviction cases. Because investigators are paid a lower salary or hourly rate than attorneys and have a specialized skill set, having investigators perform investigative functions is more cost effective than having defense attorneys perform those functions.

In comparison, DA investigative resources are provided by staff investigator positions, the SBI, the State Highway Patrol, police departments, local sheriff offices, and other law enforcement agencies. To determine the scale of the investigative resources available to the DAs through other agencies, IDS looked at the budgets of the SBI and the police departments for the 10 largest cities in North Carolina, and estimated the cost of the services they provide to the prosecution in indigent criminal cases.

- *The State Bureau of Investigation (SBI)*: The SBI provides substantial support to the prosecution, both through its agents and its lab facilities. In the FY12 continuation budget, the General Fund requirements for the SBI are \$52.5 million. Since the SBI provides support for all criminal cases, not just indigent criminal cases, only a portion of their budget can be considered prosecution resources for indigent criminal cases. Based on AOC data, the defendant was indigent in 50.5% of criminal cases during FY10. However, the exact percentage of cases that involve an indigent defendant varies by the type of offense, and was 71.1% in superior court criminal cases during FY10.¹ Because indigent criminal cases fall somewhere between 50.5% and 71.1% of all criminal cases, 50.5% (\$26.5 million) to 71.1% (\$37.33 million) of the SBI's budget supports the prosecution in indigent criminal cases. However, because more serious offenses take proportionately more SBI time and resources than minor offenses, the true amount of SBI resources devoted to indigent criminal cases is closer to 71.1% (\$37.33 million). For purposes of this report, IDS used a conservative estimate of \$30 million. In addition to SBI resources, local crime labs in many counties also provide support to the prosecution.

¹ North Carolina Administrative Office of the Courts, FY10, *Analysis of Attorney Type*, Report SRS564-1.

- ***Detective Divisions within Police Departments:*** Typically, criminal investigations that support the prosecution are provided by the detective division or investigative services bureau within a police department, which provides millions of dollars worth of services to the prosecution but is not reflected in DA budgets. Indeed, the Conference of DAs recognized this in their comments to Legislators through numerous references to the “police-prosecutor team approach.” Looking at the budgets for the detective divisions in the 10 largest cities in North Carolina (based on 2005 population data), approximately \$103 million in investigative services are provided to the prosecution annually in the 10 cities that comprise 24% of North Carolina’s population. Because 71.1% of superior court cases involve an indigent defendant, and assuming that the vast majority of investigative services are dedicated to those cases, the dollar value of the additional investigative resources available to DAs from police department detective divisions for indigent cases in the 10 largest cities is approximately \$74 million. See Appendix A.

Moreover, this \$74 million represents only a fraction of the total statewide police department, sheriff, and other local law enforcement support across the state because it is based on the detective division budgets in only the 10 largest cities. If those costs are extrapolated to the remaining North Carolina cities and the corresponding 76% of the state’s population, the total investigative resources available to DAs from police department detective divisions for indigent criminal cases is closer to \$300 million. For purposes of this report, IDS used a very conservative estimate of \$200 million.

2. Indigent Cases Funded By IDS With No DA Involvement Or Expenditures:

IDS funds representation in a number of case types that are not handled by the DAs. This includes direct appeals and most capital post-conviction litigation; the majority of civil cases that are funded by IDS, such as abuse, neglect, or dependency, termination of parental rights, involuntary commitment, competency, and child support contempt; and specialized programs like Prisoner Legal Services and the Office of Sentencing Services. In FY10, 22.3% (or \$29.8 million) of IDS’ budget was expended on non-DA-related cases.² See Appendix B. Opposing counsel in these non-DA-related cases is funded by other state and local agencies, such as the AG’s Office (DOJ), the Guardian ad Litem Program (AOC), and the Department of Social Services (DSS).

In addition, the IDS Office collects significant revenues from clients who repay part or all of their attorney fees, and expends time, labor, and money on efforts to improve revenue collections. In FY10, IDS collected almost \$12 million in revenues from clients through its Set-Off Debt program and clerk collections, in addition to its General Fund appropriation. Together, non-DA-related caseload, services, and revenue equate to approximately 31.2% of IDS’ budget (or \$41.8 million in FY10).

Thus, criminal cases accounted for approximately 77.7% (or \$102.6 million) of IDS’ spending in FY10, which included approximately \$90.6 million in General Fund appropriations plus \$12 million in budgeted recoupment receipts. The table on the following page provides a summary of the various budgets that fund both indigent defense and prosecutorial functions.

² These figures are conservative because they exclude all expert witness and investigator expenditures in non-DA-related case types.

Comparison of Defense and Prosecution Function Resources

Indigent Defense Function		Prosecution Function	
Function	Budget	Function	Budget
Criminal Defense Investigation	IDS	Criminal Prosecution Investigation	Police Departments Sheriffs State Highway Patrol SBI DA Offices
Criminal Trial Defense Attorneys	IDS	Criminal Trial Prosecutors	DA Offices
Appellate Attorneys	IDS	Appellate Attorneys	AG Office (DOJ)
Capital Post-conviction Attorneys	IDS	Capital Post-conviction Attorneys	AG Office (DOJ) DA Offices
Non-Capital Post-Conviction Attorneys	IDS	Non-Capital Post-Conviction Attorneys	DA Offices AG Office (DOJ)
Abuse/Neglect/Dependency, and Termination of Parental Rights (TPR) Attorneys and GALs for Parent Respondents	IDS	Abuse/Neglect/Dependency, and Termination of Parental Rights (TPR) Attorneys and GALs	Department of Social Services (DSS) AOC's GAL program
Child Support Contempt, Competency, and Commitment Attorneys and GALs	IDS	Child Support Contempt, Competency, and Commitment Attorneys and GALs	DSS/County IVD Attorneys AG Office (DOJ)
Legal Services to Inmates (NCPLS)	IDS	Defense Against Inmate Suits	DOJ—Correction & Tort Claims
DNA, Forensic Testing, Polygraph, and Pathology (Analysis and Testimony)	IDS	DNA, Forensic Testing, Polygraph, and Pathology (Analysis and Testimony)	Medical Examiner's Office SBI Lab Local Crime Labs DA Offices
Psychological and Psychiatric Testing, Reports, and Testimony, Etc.	IDS	Psychological and Psychiatric Testing, Reports, and Testimony, Etc.	DHHS Local Forensic Examiners DA Offices
Court Transcripts	IDS	Court Transcripts	DA, DSS, GAL
IDS Attorney Training	IDS Grants	DA Training	DAs' Conference DA Offices Grants
Pre-Sentence Analysis (Sentencing Services)	IDS	Pre-Sentence Analysis (Sentencing Services)	IDS
6 Locally Funded APD Positions and 7 Legal Assistants in FY10	City Gov't	Some Number of Federally and Locally Funded ADA Positions	City Gov't Federal and Local Grants

3. More Than Half Of The DA's Budget Is Devoted To indigent Criminal Prosecutions:

The DAs handle all criminal prosecutions, while IDS handles only those cases where the defendant is indigent. In FY10, 50.5% of all criminal cases involved court appointed counsel or a public defender, although this percentage varied with the seriousness of the offense. In FY10, the percentage of criminal district court non-traffic cases in which the defendant was indigent was approximately 45.9%, while the percentage of criminal superior court cases in which the defendant was indigent was approximately 71.1%. Thus, the amount of DA office resources that were devoted to indigent criminal cases in FY10 fell somewhere between 50.5% of their office budgets (\$46.46 million) and 71.1% of their office budgets (\$65.4 million). Because more serious offenses take more time and resources than minor offenses, the true amount of DA resources devoted to indigent criminal cases was closer to 71.1% of the total DA budget. However, for purposes of this report, IDS used a conservative estimate that \$55 million of the DA Office budgets was dedicated to prosecuting indigent criminal cases in FY10.

4. The Defense Often Has To Spend More Time Per Case Than The Prosecution:

The amount of time that a DA has to spend prosecuting an individual case is not comparable to the amount of time that a defense attorney has to spend defending it. In March 2010, the National Center for State Courts published a study titled "North Carolina Assistant District Attorney/Victim Witness Legal Assistant Workload Assessment." That study showed that DAs, on average, spend 6.5 minutes prosecuting a traffic case, 19 minutes prosecuting a misdemeanor case (other than DWI or drug offense), 43 minutes prosecuting a DWI, and 55 minutes prosecuting a drug offense other than trafficking.

It is simply not possible to provide a competent defense in such a short time period, in part because the defense attorney has a constitutional obligation to conduct an independent investigation. In addition, unlike the defense (particularly if the attorney does not have access to an investigator), the average time that prosecutors spend per case does not include time devoted to investigation because the prosecutorial investigative function is performed by law enforcement or staff investigators, not the prosecutors themselves. Moreover, the DAs control the calendaring of criminal cases in North Carolina and only one ADA typically handles all cases on a day's calendar in District Court. In contrast, numerous defense attorneys have to take the time to come to court and wait until their cases are called. Finally, in cases that involve multiple defendants, IDS has to appoint and pay multiple defense attorneys while the prosecution's efforts are not fragmented as a result of conflicts of interest.

Conclusion

It is inaccurate and misleading to compare the DA budget to the IDS budget as a way to compare prosecution resources and costs to indigent defense resources and costs. Both the DA and IDS budgets would have to be adjusted by millions of dollars for outside resources provided by other state agencies, for cases handled by one but not the other, and for unique circumstances, such as IDS revenue collections.

In fulfilling the state's constitutional obligation to provide counsel to indigent criminal defendants, IDS has no control over the number of citizens who are indigent and entitled to counsel. Indeed, IDS is a reactive agency that has to respond to actions taken by the Legislature in criminalizing certain conduct

and setting the level of punishment, law enforcement in making arrests, and DAs in determining the charges. By meeting the constitutional obligation to provide counsel to indigent criminal defendants in a timely manner, IDS helps ensure that the criminal courts run smoothly and reduces county jail costs for local governments.

The North Carolina criminal court system impacts this state's citizens to an extraordinary degree. In FY09, 1.03 million individuals (or 11% of the state's population) had matters before the criminal courts. The citizens of North Carolina depend on a fair and just criminal justice system to keep our communities safe and to serve victims without violating defendants' rights or convicting the innocent. Well-functioning and appropriately funded prosecution and defense systems are both integral to maintaining a court system that will best serve all North Carolinians.

Appendix A

	A	B	C	D	E	F	G	H	I	J	
1	10 Largest NC City Police Department Criminal Investigation Costs (Approximately 25% of North Carolina's Population)										
2	Rank	City	POPULATION (2005)	FY	Total Police Dept. Budget	Detective Division (Excludes Administrative & Support Costs)	Detective Div. as % of Total Budget	Percent of Budget Indigent Defense Related*	Indigent Prosecution Work	Division/Program in Police Budget (excludes administrative and support costs)	
3	1	Charlotte	610,949	FY10	\$ 189,907,553	\$ 33,484,014	17.6%	71.1%	\$ 23,807,134.00		
4	2	Raleigh	341,530	FY11	\$ 89,261,833	\$ 17,160,038	19.2%	71.1%	\$ 12,200,787.02	Detective Division	
5	3	Greensboro	231,962	FY10	\$ 61,750,251	\$ 12,064,986	19.5%	71.1%	\$ 8,578,205.05	Investigative Bureau	
6	4	Durham	204,845	FY11	\$ 48,855,283	\$ 8,746,708	17.9%	71.1%	\$ 6,218,909.39	Investigative Services Bureau	
7	5	Winston-Salem	193,755	FY11	\$ 58,299,810	\$ 10,316,170	17.7%	71.1%	\$ 7,334,796.87	Investigative Services Program	
8	6	Fayetteville	129,928	FY11	\$ 41,918,152	\$ 7,390,901	17.6%	71.1%	\$ 5,254,930.87		
9	7	Cary	106,439	FY11	\$ 19,957,495	\$ 3,518,854	17.6%	71.1%	\$ 3,150,899.83		
10	8	Wilmington	95,476	FY10	\$ 23,185,971	\$ 3,199,118	13.8%	71.1%	\$ 2,274,572.90	Criminal Investigations Division	
11	9	High Point	95,086	FY11	\$ 22,701,450	\$ 4,002,662	17.6%	71.1%	\$ 2,845,892.40		
12	10	Asheville	72,231	FY11	\$ 20,131,654	\$ 3,549,562	17.6%	71.1%	\$ 2,523,738.40		
13	Total		2,082,201		\$ 575,969,452	\$ 103,433,013			\$ 74,189,866.72		
14	Average Detective Div. as % of Total Budget for Cities with Itemized Budget						17.6%				
15											
16	State Population:		8,683,242	% of State Population in Top 10 Cities:			24.0%				
17											
18	*In FY10, 71.1% of North Carolina CRS criminal dispositions were handled by indigent defense services.										
19											

Appendix B

	A	B	C	D	F
1	Non-DA-Related Cases, Programs, and Revenues				
2					FY2010
3		AcctID	Charge		Sum
4		Superior Court	Involuntary Commitment	\$	1,088
5			Competency	\$	2,936
6			Other Civil	\$	4,950
7					
8		District Court	Civil Contempt	\$	110,045
9			Competency	\$	1,120,964
10			Involuntary Commitment	\$	559,042
11			Abuse/Neglect/Dependency	\$	9,420,714
12			TPR	\$	853,598
13			Other Civil	\$	105,188
14			Child Support Contempt	\$	3,534,304
15					
16		Juvenile	Competency	\$	1,508
17					
18		Contracts	AN&D, Competency, Inv Commit	\$	571,497
19					
20		Appeals		\$	2,756,131
21					
22		Capital Post-Conviction (less 25% b/c cases involve approx. 25% of DA time)		\$	1,003,490
23					
24		Special Counsel at State Mental Health Hospitals		\$	1,331,872
25		Office of the Appellate Defender (less 5% b/c cases involve approx. 5% of DAs time)		\$	1,807,443
29		Share of PD Budget allocated by excluded case type		\$	1,205,207
30		Legal Services to Prisoners (NCPLS)		\$	3,057,342
31		Pre-sentencing Analysis (Sentencing Services)		\$	2,263,085
32		Set-Off Debt Collection Program		\$	95,531
33		Total IDS Non-DA-Related Caseload		\$	29,805,935
35		Percent Non-DA-Related			22.3%
36					
37					
38		Revenues from fees collected from clients			\$11,967,918
39					
40		Total Non-DA-Related Expenditures Plus Collected Revenues		\$	41,773,853
41		Percent IDS Budget Non-DA Related After Revenues			31.2%
42					