

## **Report of the Commission on Indigent Defense Services**

Submitted to the North Carolina General Assembly  
Pursuant to Session Law 2009-451 §§ 15.13 and 15.17

March 1, 2010

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## EXECUTIVE SUMMARY

In August 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (“IDS Act”), creating the Office of Indigent Defense Services (“IDS Office”) and charging it with the responsibility of overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. The IDS Office is housed in the Judicial Department and governed by a 13-member board, the Commission on Indigent Defense Services (“IDS Commission”). Effective July 1, 2001, the IDS Commission and IDS Office assumed responsibility for administering the State’s indigent defense program.

As required by Session Law 2009-451, § 15.13(a), this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2008-09, as well as new and ongoing initiatives in progress. The report also contains a number of legislative recommendations for the 2010 session, as well as last fiscal year’s data on indigent caseloads and case costs across the State.

The IDS Commission has accomplished a great deal since its formation and is preparing to accomplish even more in the years to come. To improve the efficiency, cost-effectiveness, and quality of the State’s indigent defense program in the long run, the IDS Commission and IDS Office have implemented a number of initiatives. Among other things, the Commission and Office have implemented measures to slow the rate of increase in spending without compromising the quality of representation; adopted and applied more uniform rates of compensation and detailed billing policies in capital and non-capital cases; improved the collection of revenues from recoupment; established higher qualification standards for attorneys seeking appointment to capital cases and appeals; expanded the Office of the Capital Defender and created several new regional capital defender offices; helped establish new public defender offices in Forsyth County, the First Judicial District, Wake County, New Hanover County, and Judicial District 29B; expanded a number of existing public defender offices; worked with the public defender offices to develop plans for the appointment of counsel that provide for more significant oversight of the quality and efficiency of local indigent representation; expanded the use of contracts as an alternative method of delivering legal services; adopted a model indigent appointment plan for non-public defender districts; provided district and superior court judges with studies on the average amount of time and frequency distributions of times claimed by private attorneys by type of case; conducted a study on the cost of attorney time spent waiting in court under North Carolina’s current court scheduling systems; conducted a study of the cost and dispositions of all potentially capital cases that have opened since July 1, 2001; and studied trends in overall court dispositions and indigent dispositions.

In addition, the IDS Commission and IDS Office have taken significant steps to improve data collection and analysis capabilities; established a website and a number of specialized listservs to enhance communication and resource-sharing with public defenders and private defense attorneys; worked with the School of Government and other groups to develop and offer a number of new and innovative training programs, as well as a series of specialized indigent defense manuals; created a new statewide Office of the Juvenile Defender as recommended by the American Bar Association Juvenile Justice Center in its 2003 report on access to and quality of legal representation in North Carolina delinquency proceedings; taken significant steps to

improve and support representation of indigent parent respondents and persons facing commitment proceedings; and adopted performance guidelines for indigent representation in non-capital criminal cases, juvenile delinquency cases, and abuse, neglect, dependency, and termination of parental rights cases at the trial level.

The IDS Commission and IDS Office are also in the process of working on a number of other initiatives, including conducting analyses of budget trends and current indigent defense spending; developing additional specialized training programs and resources for attorneys representing indigent persons; working with North Carolina Prisoner Legal Services to continue improving legal services for inmates; working with the Center for Death Penalty Litigation to coordinate litigation of claims pursuant to the North Carolina Racial Justice Act and to minimize the associated costs; planning one or more pilot programs of alternative scheduling in criminal district court; conducting a study of misdemeanors that might be appropriate for reclassification as infractions; and developing a pilot system for the electronic submission of fee applications. The Commission and Office are also working to develop an objective tool to measure the quality and efficiency of indigent defense systems at the county, regional, and statewide levels.

In its first eight years of operations, the IDS Commission has already taken significant steps to control increases in the cost of indigent representation. The increase in new demand (spending and current-year obligations) during fiscal year 2001-02 was 1.36%, the increase in new demand during fiscal year 2002-03 was 4.63%, the increase in new demand during fiscal year 2003-04 was 7.64%, and the increase in new demand during fiscal year 2004-05 was 7.06%, all of which were significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. While the increase in new demand during fiscal year 2005-06 was 11.53%, the higher growth rate during that fiscal year was due in part to a new deadline for the submission of older fee applications. Indeed, the increase in new demand during fiscal year 2006-07 was a more modest 4.32%. The increase in new demand during fiscal year 2007-08 was 13.12%, with approximately 3.5% of that growth attributable to the increase in the standard hourly rates paid to private assigned counsel, and the increase in new demand during fiscal year 2008-09 was 9.82%. Current projections suggest that the increase in new demand this fiscal year will be very modest (approximately 2.8%). *See* "Indigent Defense Fund Demand and Budget Needs," below.

Indigent defense per disposition expenditures (for both public defender offices and private assigned counsel combined) declined significantly over the first four years that IDS was in existence, with increases in per disposition costs over the next three fiscal years, which demonstrates that the overall increases in demand on the fund are due to an expanding indigent caseload, not a rise in per case costs. Indeed, indigent defense per disposition expenditures in fiscal year 2007-08 were only \$2.47 higher than per disposition expenditures in fiscal year 2000-01, the year before IDS was established. *See* Appendix A. While public defender and total indigent defense per disposition expenditures during fiscal year 2008-09 have not yet been calculated due to complications in matching IDS' raw case data to the charge-based data in the Automated Criminal Infraction System, private assigned counsel per disposition expenditures during fiscal year 2008-09 were only \$19.67 more than private assigned counsel per disposition expenditures the year before IDS was established, and only \$14.09 more than private assigned counsel per disposition expenditures during IDS' first year of operations.

Despite the comparatively lower increases in new demand on the fund during the past eight fiscal years and the modest increases in per disposition expenditures since IDS was established, indigent defense has been historically under-funded. However, due to the General Assembly's support of quality indigent defense services, the indigent defense fund ended fiscal years 2005-06 through 2007-08 with modest amounts of debt. Unfortunately, due to the State's budget crisis and a required reversion, IDS ended fiscal year 2008-09 with approximately \$6.9 million of debt that had to be paid out of IDS' appropriation for the current fiscal year. Because the General Assembly appropriated sufficient non-recurring funding to pay off that debt this fiscal year and because of the slowed growth in demand during the current year, Office staff are projecting that IDS will not end the current fiscal year with any debt. As a result, the Commission and Office are requesting a modest \$5.1 million increase in recurring funds during fiscal year 2010-11 to maintain the current level of services and to cover the projected demand on the fund next year. See "Indigent Defense Fund Demand and Budget Needs" and "Legislative Recommendations," below.

The IDS Commission is continuing to work on initiatives to control expenditures in the coming years. Any projections for the future, however, will be affected by other changes in the criminal justice system. For example, significant changes in sentencing, criminal law or procedure, or in the conduct of district attorney offices, might increase or decrease the funds needed for indigent defense. Similarly, some changes that could control costs for indigent defense will necessarily be systemic and involve not just defense counsel, but prosecutors, judges, clerks, and other system actors.



## REPORT

In 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (Session Law 2000-144; G.S. 7A-498 *et seq.*) (“IDS Act”), creating a new statewide Office of Indigent Defense Services (“IDS Office”), housed in the Judicial Department and governed by the Commission on Indigent Defense Services (“IDS Commission”). The IDS Act charges the IDS Office with the responsibility of overseeing the provision of legal representation to indigent defendants and respondents who are entitled to counsel under North Carolina law. In accordance with that Act, the IDS Office assumed responsibility for overseeing indigent defense services on July 1, 2001.<sup>1</sup>

As required by Session Law 2009-451, § 15.13(a), the IDS Office must report to the General Assembly by March 1, 2010 about the following matters:

- (1) The volume and cost of cases handled in each district by assigned counsel or public defenders;
- (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
- (3) Plans for changes in rules, standards, or regulations in the upcoming year; and
- (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.

In addition, § 15.13(b) of Session Law 2009-451 directs IDS to include in this report a progress update on the pilot programs for alternative scheduling that were authorized by § 14.1 of Session Law 2008-107, and to include a final report in IDS’ March 2011 report. Section 15.13(c) of Session Law 2009-451 further directs IDS to include a progress update on the feasibility study directed by § 14.7 of Session Law 2008-107 on developing a statewide system for obtaining indigent case information when counsel is first appointed, and to include a final report in IDS’ March 2011 report. Finally, § 15.17 of Session Law 2009-451 directs the IDS Office to consult with the Administrative Office of the Courts (“AOC”), the Conference of District Attorneys, the North Carolina Sentencing and Policy Advisory Commission, and other court system actors in formulating proposals aimed at reducing future costs, including the possibility of reclassifying as infractions some 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. Any such proposals shall be included in IDS’ reports during the 2009-2011 fiscal biennium.

The first section of this report (“IDS Initiatives”) addresses the second and third issues set forth above, as well as the requirements in §§ 15.13(b) and (c) and § 15.17 of Session Law 2009-451, by describing the work of the IDS Commission and IDS Office to date and new and ongoing initiatives that are currently in progress. The second section of this report (“District Case Volume and Cost Statistics”) addresses the first issue set forth above. The third section

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<sup>1</sup> Lists of the current IDS Commission members and their appointing authorities, as well as the current IDS Office staff, appear at the beginning of this report.

(“Contracts with Local Governments for Assistant Public Defenders”) is included in this report pursuant to G.S. 7A-346.2(a), which directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions. The fourth section of this report (“Legislative Recommendations”) addresses the fourth issue set forth above.

## I. IDS INITIATIVES

### A. Major Initiatives Implemented to Date:

This section describes the main initiatives that the IDS Commission and IDS Office have implemented since July 1, 2001, with a particular emphasis on fiscal year 2008-09.

#### *Rules for the Continued Delivery of Counsel Services in Non-Capital Cases, Capital Cases, and Non-Capital and Non-Criminal Appeals*

To ensure that appropriate procedures were in place by July 1, 2001, the IDS Commission developed rules to govern the continued delivery of services in cases under its oversight. The rules deal with non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); and non-capital and non-criminal appeals. The original IDS Rules became effective on July 1, 2001. Since the initial rules took effect, the IDS Commission has adopted a number of revisions in light of experience and to address new issues as they have arisen; the most recent revisions became effective in February 2010. The current rules are available on the IDS website ([www.ncids.org](http://www.ncids.org)), and are published in North Carolina Rules of Court, State (Thomson-West 2010) and the Annotated Rules of North Carolina (LexisNexis 2010).

#### *Development and Approval of Public Defender Plans*

With the assistance of faculty from the School of Government (“SOG”), the IDS Office worked with all of the public defender offices to develop plans for the appointment of counsel in all non-capital cases in their districts. *See* Rules of the Commission on Indigent Defense Services, Rule 1.5(b). The plans provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation, and also contain qualification and performance standards for attorneys on the district indigent lists. The IDS Director continues to review any proposed amendments to the public defender plans and to approve them if they are appropriate. These plans were also used as templates for a model appointment plan for non-public defender districts, which was developed by the Indigent Appointment Plan Committee of the Commission and approved by the full Commission in March 2008. *See* “Committees of the IDS Commission” and “Model Appointment Plan for Non-Public Defender Districts,” below.

#### *Electronic Communication and Resource-Sharing*

The IDS Office has 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 update links addressing the state of indigent defense funding, timing of attorney payments, IDS' main accomplishments since July 2001, and any other recent developments or matters of interest. The following materials, among others, are also posted on the website: contact information for the members of the IDS Commission, IDS staff, and all state defender offices; a list of IDS Commission committees and their participants; all approved minutes of IDS Commission meetings; a calendar of upcoming events; IDS rules, policies, and procedures; reports and data generated by Office staff; applications for the capital and appellate attorney rosters; attorney and expert fee application forms; the public defender appointment plans; a model appointment plan for non-public defender districts; performance guidelines for non-capital criminal cases at the trial level, juvenile delinquency cases at the trial level, and abuse, neglect, dependency and termination of parental rights cases at the trial level; materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; legal resources and reference materials; all of the North Carolina indigent defense manuals; a North Carolina appellate brief bank; a capital trial motions index; juvenile delinquency forms, motions, and case notes; abuse/neglect/dependency motions, case notes, and legislative updates; civil commitment and guardianship resources and training materials; information about IDS' Systems Evaluation Project; and links to related sites. Since its creation in May 2002, there have been more than 270,000 visits to the IDS website.

Moreover, with assistance from other groups, the IDS Office has established listservs for attorneys representing indigent capital defendants at the trial level, attorneys representing indigent criminal defendants on appeal, capital post-conviction attorneys, attorneys representing juveniles in delinquency proceedings, attorneys representing indigent parent respondents in Chapter 7B cases, involuntary commitment attorneys, public defenders and assistant public defenders, investigators and support staff in public defender offices, and mitigation specialists. Those listservs have been extremely effective tools for improving communication, sharing information, and providing resources and support to attorneys and others who work in these specialized areas across the State.

### *Appointment of Attorneys in Capital Cases and Appeals*

On July 1, 2001, the IDS Office assumed direct responsibility for the appointment of counsel from statewide rosters in all potentially capital cases at the trial level, all appeals, and all capital post-conviction proceedings. Trial level appointments are the responsibility of the Capital Defender and appellate appointments are the responsibility of the Appellate Defender; the IDS Director makes appointments in capital post-conviction proceedings.

Between July 1, 2001 and January 5, 2010, the Capital Defender made 6,316 attorney appointments in 5,161 potentially capital cases at the trial level:<sup>2</sup>

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10 YTD
# attorneys appointed	735	855	741	750	760	754	711	692	318
# potentially capital cases at the trial level	570	656	599	604	629	620	603	585	290

If there is a delay in a defendant's first appearance or the determination of indigency, the IDS Office has standby attorneys in every county in the State (called "provisional counsel") to ensure that a defendant's rights are protected in the interim.

Between July 1, 2001 and January 5, 2010, the Appellate Defender made 8,489 attorney appointments in capital, non-capital, and non-criminal appeals:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10 YTD
# attorneys appointed in appeals	819	829	1,097	1,047	1,020	1,017	1,006	1,120	534

Finally, between July 1, 2001 and January 5, 2010, the IDS Director made 345 attorney appointments in 193 capital post-conviction cases:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10 YTD <sup>3</sup>
# attorneys appointed	61	60	37	23	37	39	36	23	29
# capital post-conviction cases	35	34	21	17	22	23	23	17	21

The IDS Commission and IDS Office believe the statewide roster system that IDS developed has significantly increased the quality of indigent representation in these areas of practice.

### *Compensation for Representation in Capital Cases and Appeals*

On July 1, 2001, the IDS Office also assumed direct responsibility for compensating attorneys and experts in all potentially capital cases at the trial level, all appeals, and all capital post-conviction proceedings. The IDS Office is committed to reducing the rate of increase in expenditures in those cases without causing any decline in the quality of representation. To that end, the IDS Commission and Office adopted uniform rates of attorney compensation for all cases under its direct oversight, and developed detailed financial auditing procedures that Office

<sup>2</sup> The number of potentially capital cases at the trial level represents the number of cases in which attorney appointments were made that fiscal year. Because attorneys sometimes withdraw and new attorneys have to be appointed, and because the first attorney in a case that is proceeding capitally may be appointed in a different fiscal year than the second attorney, these numbers are higher than the number of new potentially capital cases that are opened each year.

<sup>3</sup> Thirteen of the capital post-conviction attorney appointments in fiscal year 2009-10 year-to-date were appointments in older cases pending in federal court that needed new state court appointments to investigate and potentially litigate claims under the North Carolina Racial Justice Act.

staff apply to every fee petition IDS receives. For instance, Office staff ensure that time sheets correctly support the total amount claimed; that receipts or detailed documentation support all major expenditures; and that attorneys properly obtained prior authorization for expert services and major miscellaneous expenses. IDS' billing policies for capital cases and appeals are posted on the IDS website. Office staff also conduct periodic intensive audits of attorneys who regularly handle potentially capital cases, which involve compiling and comparing all billing by an attorney during a specified time period to ensure there are no errors or duplication across cases.

In addition, in December 2008, the Commission approved a new "exceptional case" policy that applies to all potentially capital cases at the trial level with a warrant date on or after January 1, 2009. That policy is designed to help the IDS Office better monitor and control spending in the most difficult and expensive potentially capital cases. The policy sets limits on the amount of compensation that an attorney can receive for services rendered pre-trial, unless a case has been declared "exceptional" by the IDS Director based on the presence of certain enumerated criteria, such as the defendant has an extensive history of psychological, mental, or emotional problems, the existence of multiple victims, or the defendant does not speak English. The policy also sets limits on the amount of pre-trial funding that can be authorized for investigator and mitigation specialist services absent an "exceptional" designation. Finally, the policy sets forth specific additional requirements for cases that have been declared "exceptional," such as quarterly billing by the attorneys and mandatory consultations with the Trial Assistance Unit of the Center for Death Penalty Litigation.

Between July 1, 2001 and January 5, 2010, IDS Office staff set appropriate and uniform fee awards for 21,167 attorney fee applications in capital cases and appeals, including interim and final fees:<sup>4</sup>

	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10 YTD</b>
# attorney fee awards	1,860	2,281	2,362	2,337	2,568	2,709	2,850	2,798	1,402

Also between July 1, 2001 and January 5, 2010, the Office set fee awards for 17,790 expert bills, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts, again including interim and final fees:

	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10 YTD</b>
# expert fee awards	960	1,421	1,975	2,184	2,044	2,349	2,663	2,771	1,423

The Office is currently setting approximately 109 attorney and expert fee awards per week, and generally forwards those awards to Financial Services for payment within one to two weeks of receiving each fee petition. In potentially capital cases that have been resolved by plea or trial, the IDS Director routinely asks the presiding judge for his or her opinion about the attorney's fee application before awarding final fees.

<sup>4</sup> See "Capital Case Costs and Dispositions Study," below, for a discussion of the growing number of pending potentially capital cases each year.

In addition to setting appropriate compensation awards in all capital cases and appeals, the IDS Office has taken steps to control expenditures in the cases in which judges are still responsible for setting fees. For other steps the IDS Office is taking to manage the indigent defense fund, see, e.g., “Uniform Rates of Compensation,” “Non-Capital and Non-Criminal Billing Policies and Education,” and “Improved Revenue Collection,” below.

***Expert Funding and Miscellaneous Expense Authorizations***

Between July 1, 2001 and January 5, 2010, the Capital Defender reviewed and acted on 15,305 requests for expert funding and miscellaneous expenses at the trial level:

	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10 YTD</b>
# trial level expert and misc. expense requests	482	1,347	1,783	1,947	1,914	2,086	2,282	2,304	1,160

During that same time period, the IDS Office reviewed and acted on 2,055 requests for expert funding and miscellaneous expenses in capital post-conviction proceedings:

	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10 YTD</b>
# post-conviction expert and misc. expense requests	284	250	184	230	215	298	188	245	161

The IDS Office has established procedures to approve or deny those requests, often with the assistance of a case consultant, and to assist attorneys in focusing on the experts and support services that are necessary for an effective defense.

***Uniform Rates of Compensation***

In June 1993, a subcommittee of the Bar Association’s All-Bar Death Penalty Representation Conference recommended that the General Assembly establish a \$95 hourly rate in capital cases. In 1994, in response to that recommendation, the General Assembly appropriated sufficient funding to establish a capital hourly rate of \$85. When IDS assumed direct responsibility for compensating attorneys in capital cases on July 1, 2001, the IDS Commission continued the pre-existing standard rate of \$85 per hour in those cases. From an additional legislative appropriation for fiscal year 2006-07, the Commission was able to raise the rate in capital cases to \$95 per hour for work performed on or after August 1, 2006.

After conducting a statewide survey, as well as studies of district and superior court fee awards during fiscal year 2001-02, the IDS Commission also adopted a standard statewide rate of \$65 per hour for all non-capital and non-criminal cases, effective April 1, 2002. The IDS Commission intended the \$65 non-capital rate to be essentially revenue neutral, but it was slightly below the prevailing average in a number of North Carolina counties at the time it was established. From an additional legislative appropriation during fiscal year 2007-08, the Commission was able to raise the non-capital rate to \$75 per hour, effective for fees approved on

or after February 1, 2008. The IDS Commission and IDS Office are grateful to the General Assembly for the additional appropriation it granted to IDS for this purpose.

The IDS Commission and staff believe that standard rates have the advantages of increasing the stability and predictability of payments to private assigned counsel, improving pay equity and fairness across the State, and enhancing the independence of defense counsel. The standard rates have also helped IDS control increases in indigent defense expenditures and make more accurate projections about future demands on the fund.

Both of the standard rates continue to be significantly below what attorneys can earn in retained cases, as well as in appointed cases in federal court, and will need to be increased over time to keep pace with increases in the costs of living and operating a law practice. According to the North Carolina Bar Association's ("NCBA") most recent Economic Survey, which was released in 1998, the total annual operating expenses of one to four person law firms in North Carolina during 1997 averaged more than \$43 per hour per lawyer (based on a 48-week work year at 40 hours per week). Between December 1997 and December 2009, the Consumer Price Index for all Urban Consumers rose by 33.9% (from 161.3 to 215.95). Based on that measure and the 1998 Economic Survey, the total annual operating expenses of one to four person law firms in North Carolina currently average more than \$57 per hour. Thus, even after the non-capital increase to \$75 per hour, appointed attorneys in North Carolina are actually netting an average of \$18 per hour for their work in non-capital cases.

The attorneys who represent indigent persons in North Carolina provide those professional services at a very low cost compared to the "market" cost of private legal services. While IDS' \$75 hourly rate is less than half the average hourly rate an attorney would charge in most areas of North Carolina, most private defense attorneys charge a flat fee depending on the nature of the case. For a typical DWI case, private lawyers in North Carolina charge between \$1,000 and \$3,000. By comparison, based on the \$75 rate, IDS pays an average of \$280 for representation in an indigent DWI case. *See* "District and Superior Court Average Hours Studies," below. The IDS Commission and staff are not aware of any other professional service offered by private practitioners to the State at such a steep discount.

### ***Non-Capital and Non-Criminal Billing Policies and Education***

The IDS Office has adopted a number of policies and procedures to govern fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level. Those policies address general billing principles, reimbursable expenses, recoupment of attorney fees, and expert and support services, and contain detailed instructions on completing the various fee application forms. In July 2006, the policies were circulated to attorneys, judges, and other system actors, and posted on the IDS website. The policies have been updated since that time to reflect additional issues; the most recent version is dated December 2009 and is available at [www.ncids.org](http://www.ncids.org).

With the assistance of SOG faculty, IDS Office staff also developed a video training program for appointed attorneys in non-capital and non-criminal cases at the trial level entitled "Ethics and Practice: Billing in Appointed Indigent Cases." The North Carolina Bar Association

(“NCBA”) co-sponsored the program, and it was filmed at their headquarters in Cary in December 2007. The video contains substantive segments on the journey of a fee application, IDS’ billing policies, the various fee application forms, getting paid, and record keeping. Since May 2008, the video has been posted on the SOG’s and IDS’ websites, where attorneys can access it for free. Since December 2008, it has also been available on the NCBA website for one hour of continuing legal education ethics credit.

### ***Creation of New Public Defender Offices***

Since IDS was established in 2001, the General Assembly has created five new public defender offices—in Forsyth County, Judicial District 1 (Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties), Wake County, New Hanover County, and Judicial District 29B (Henderson, Polk, and Transylvania counties). For each new office, after consultation with the local bar and bench, the IDS Director adopted rules to govern the balloting and nomination process for the chief public defenders pursuant to G.S. 7A-498.7(b). After the chief public defenders were appointed by the local senior resident superior court judges, IDS Office staff members met with them on numerous occasions to assist them in establishing the new offices and developing plans for the appointment of counsel in all non-capital cases in their districts. *See* “Development and Approval of Public Defender Plans,” above. (For details about the new public defender offices that have been created since IDS was established, see IDS’ March 2009 annual report.)

The IDS Commission and Office will continue to investigate the potential cost savings from and advisability of creating new public defender offices in other districts or regions, and will report any recommendations to the General Assembly. *See also* “Potential Future Initiative: Regionalization of the Public Defender System and/or Regional Resource Counsel,” below.

### ***Private Attorney Fee Application Deadlines***

On May 6, 2005, the IDS Commission adopted revisions to the IDS Rules that established new deadlines for the submission of fee applications by private appointed counsel. For all cases finally disposed at the applicable case phase (*i.e.*, trial, appeal, or post-conviction) before July 1, 2005, the revised rules required final attorney fee applications to be signed by the appointed attorney and submitted to the judge or IDS Director by January 1, 2006. For all cases finally disposed at the applicable case phase on or after July 1, 2005, the revised rules require final attorney fee applications to be signed by the appointed attorney and submitted to the judge or IDS Director within no more than one year after the date on which the case was disposed at that phase. On August 13, 2007, based on the hardship that the deadlines had created for some appointed attorneys around the State, the IDS Commission adopted revisions to the IDS Rules and an accompanying policy that allowed attorneys an additional three months to apply to the IDS Director for a reduced fee based on a showing of good cause for failing to submit a timely fee application.

The January 1, 2006 deadline for submission of older fee applications caused a significant one-time increase in spending during fiscal year 2005-06, and the one-year deadline for all other cases appears to be causing a quickening of submissions for same-year dispositions. *See*



“Indigent Defense Fund Demand and Budget Needs,” below. However, the deadlines have enabled IDS staff to obtain more accurate data about the current demand on the indigent defense fund. For example, IDS Office staff are now able to analyze demand on the fund by case disposition dates, rather than the date a fee application was received. Office staff can also now analyze how much a given year of work has cost IDS, and can use past year spending trends to predict how much more remains to be paid of a given fiscal year’s dispositions. Thus, the deadlines have given Office staff a new way to make long-term predictions about future annual growth rates in the private counsel fund based on dispositions each fiscal year, which have historically averaged 5.4% (based on rolling averages).

### ***Mitigation Specialist Rosters and Standard Hourly Rates***

On May 6, 2005, the IDS Commission adopted qualification standards for individuals who serve as mitigation specialists in capital cases. *See Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003) (holding that the capital defense team has a constitutional obligation to investigate and discover all reasonably available mitigating evidence). The standards, which are available on the IDS website under the “IDS Rules & Procedures” link, provide for three different levels of mitigation specialists based on educational background and experience, with corresponding pay rates of \$35, \$45, and \$60 per hour. Effective April 17, 2006, only individuals who have been approved for one of the rosters are eligible to work as mitigation specialists on capital cases. As of January 25, 2010, 63 individuals had been approved for one of the mitigation specialist rosters.

### ***Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level***

One of the IDS Commission’s primary goals is to ensure that indigent criminal defendants in North Carolina are afforded high quality legal representation. *See G.S. 7A-498.1(2)*. To further that goal, the IDS Act directed the Commission to establish “[s]tandards for the performance of public defenders and appointed counsel.” *G.S. 7A-498.5(c)(4)*. With the assistance of IDS Office staff and SOG faculty, a committee of the IDS Commission developed a draft of proposed performance guidelines for attorneys representing indigent defendants in non-capital criminal cases at the trial level. After a comment period with the bar and bench, as well as a series of regional meetings around the State, the full IDS Commission adopted final performance guidelines in November 2004; the IDS staff officially released the guidelines in February 2005. LexisNexis has published them as an appendix to the IDS Rules in the Annotated Rules of North Carolina; Thomson West has similarly published them in North Carolina Rules of Court, State. The guidelines were also distributed by mail to the bar and bench and are available on the IDS website under the “IDS Rules & Procedures” link. (For details about the process of developing the guidelines, see IDS’ March 2009 annual report.)

The performance guidelines address areas such as the role and general duties of defense counsel, client contact and interviewing, case review and investigation, plea negotiations, trial preparation and representation, and sentencing. They are intended to serve as a guide for attorney performance in the covered cases, and contain a set of considerations and recommendations to assist counsel in providing quality representation for indigent criminal

defendants. The guidelines have also proven to be useful as a training tool and resource for new and experienced defense attorneys, and the Commission hopes they will serve as a tool for potential systemic reform in some areas. Because the goals embodied in the guidelines will not be attainable without sufficient funding and resources for indigent defense, the IDS Commission is relying on the General Assembly to continue its support of quality indigent defense services.

***Performance Guidelines for Appointed Attorneys Representing Juveniles in Delinquency Proceedings at the Trial Level***

In April 2006, the statewide Juvenile Defender began working with a committee composed of delinquency attorneys, a law school clinic professor, a district court judge, and the Vice-Chair of the IDS Commission to develop specialized performance guidelines for attorneys who represent juveniles in delinquency proceedings. See “Improved Juvenile Delinquency Representation,” below. The committee completed a final draft of proposed guidelines in May 2007, which was presented to the IDS Commission in June 2007 for approval to start a comment period with the bar, bench, and other system actors. After the comment period was complete, the committee made a number of improvements to the draft. Final guidelines were then approved by the IDS Commission in December 2007, and are available on the IDS website. (For details about the process of developing the guidelines, see IDS’ March 2009 annual report.)

As with the non-capital criminal guidelines, the delinquency representation guidelines are intended to serve as a guide for attorney performance in the covered cases, to contain a set of considerations and recommendations to assist counsel in providing quality representation, and to be a training tool and resource.

***Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency and Termination of Parental Rights Proceedings at the Trial Level***

In May 2005, the IDS Office submitted a grant application to the North Carolina Court Improvement Project for Children and Families (“NC-CIP”), which is an organization that is dedicated to improving the quality of North Carolina’s family courts and is funded by a grant from the United States Department of Health and Human Services’ Administration for Children and Families. The grant application requested funding over a two-year period to cover staff time and expenses associated with developing specialized performance guidelines for attorneys who represent indigent parent respondents at the trial level. In September 2005, the AOC Director notified the IDS Office that the grant proposal had been approved.

In January 2006, the IDS Director selected an attorney to serve as the Performance Guidelines Project Coordinator. In March 2006, that attorney began working with a committee composed of IDS Office staff, parent attorneys, SOG faculty, a Chief District Court Judge, a DSS Attorney, and a Guardian ad Litem Attorney Advocate. The committee completed a final draft of proposed guidelines in May 2007, which was presented to the IDS Commission in June 2007 for approval to start a comment period with the bar, bench, and other system actors. After the comment period was complete, the committee made a number of improvements to the draft. Final guidelines were then approved by the IDS Commission in December 2007, and are

available on the IDS website. (For details about the process of developing the guidelines, see IDS' March 2009 annual report.)

As with the other performance guidelines discussed above, the parent representation guidelines are intended to serve as a guide for attorney performance in the covered cases, to contain a set of considerations and recommendations to assist counsel in providing quality representation, and to be a training tool and resource. In the coming years, the IDS Commission hopes to develop performance guidelines for additional specialized areas of representation.

### ***District and Superior Court Average Hours Studies***

In order to assist judges in evaluating fee petitions that are submitted by private appointed attorneys, the IDS Office has completed statewide studies of the hours claimed by attorneys in district and superior court. In the district court hours study, IDS Office staff analyzed all district court fee applications that were paid between July 1, 2004 and April 12, 2005. The study found that private appointed counsel reported an average of 3.2 hours to handle a district court case and that 98.9% of all district court cases were resolved in 10 hours or less. The study report then provided the average hours and highest number of hours claimed by private counsel for seven different district court charge types—felony, felony probation violation, DWI, misdemeanor non-traffic, misdemeanor traffic, misdemeanor probation violation, and child support contempt—as well as frequency distributions of reported hours by those charge types. The district court study report was mailed to all district court judges in August 2005 and is posted on the IDS website under the “Reports & Data” link.

In the non-capital superior court hours study, IDS Office staff analyzed two different data sets. For the ten felony classes, the staff analyzed a three-month sample of felony fee applications that were paid between August 1, 2004 and October 31, 2004. For the remaining superior court charge types—felony probation violation, DWI, misdemeanor non-traffic, misdemeanor traffic, and misdemeanor probation violation—the staff analyzed all superior court fee applications that were received by Financial Services during fiscal year 2004-05. The study found that, while private appointed counsel reported an average of 8.2 hours to handle a superior court case, individual cases varied widely in the number of hours claimed. The study further found that 90% of all non-capital superior court cases were resolved in 15 hours or less and that 90% of all non-capital superior court felony cases were resolved in less than 18 hours. The study then provided the average hours claimed by private counsel and frequency distributions by charge type. For the ten felony classes, the study also provided frequency distributions that identified cases resolved by trial and non-trial, the average number of hours claimed for non-trial cases, and the range of hours claimed for cases resolved by trials. The superior court study report was mailed to all superior court judges in January 2006 and is posted on the IDS website under the “Reports & Data” link. IDS Office staff hope to update both studies in the near future.

### ***Private Appointed Counsel Waiting-in-Court Study***

In August 2005, IDS Office staff completed a study of the costs associated with paying private appointed counsel to wait in court for their cases to be called. The staff analyzed the time claimed for waiting in court on 40,792 non-capital private attorney fee applications that were

paid between August 1, 2004 and October 31, 2004. The study found that 68.9% of attorney fee applications reported some waiting-in-court time and that, on average, private attorneys reported spending 4.55 hours per case and 57 minutes (or 21%) of that time waiting in court. Annualized for fiscal year 2004-05, the reported wait time cost the State \$9.8 million. In addition, the study found that district court criminal cases were the most costly in terms of wait time (\$5.25 million in fiscal year 2004-05). Because it is unlikely that over 30% of all fee applications actually involved no waiting-in-court time, the IDS staff believes that attorney wait time may be significantly under-reported on fee applications and that the true cost of private attorney waiting-in-court time during fiscal year 2004-05 may have been as high as \$14.2 million. The study also attempted to quantify the additional costs to the State associated with public defender waiting-in-court time, which the IDS staff estimates amounted to between \$3.7 and \$5.1 million in fiscal year 2004-05. The private appointed counsel waiting-in-court study report is posted on the IDS website under the “Reports & Data” link.

The study demonstrates that defense attorney wait time attributable to the current scheduling systems in North Carolina adds significant costs to indigent defense. The IDS Commission and staff hope to continue working with other actors in the court system to identify ways to reduce those costs in future years. See “Consultation with Other Actors and Recommended Cost-Saving Measures” and “District Court Alternative Scheduling Survey and Pilots,” below.

### *Capital Case Costs and Dispositions Study*

In December 2008, IDS Office 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 effective July 1, 2001; those revisions gave prosecutors discretion to proceed non-capitally even if there is evidence of an aggravating factor.

The study generated four primary findings. First, the study demonstrated that IDS’ per case spending on potentially capital cases at the trial level is not rising. While there has been some fluctuation in the average cost of cases from year to year, IDS’ total annual expenditures on potentially capital cases have grown because the number of pending cases has grown each year. Indeed, the number of open cases in which IDS paid attorney or expert fees grew 49%, from 746 cases in fiscal year 2001-02 to 1,112 cases in fiscal year 2007-08.

Second, the study showed that the high profile expensive cases are the exception. Fifty percent of all potentially capital cases had total case costs less than \$14,400 and 90% had total case costs less than \$64,500. Twenty five percent of all potentially capital cases had no expert spending and 60% had total expert spending less than \$5,000.

Third, the study 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. Based on data provided by the AOC, 86% to 88% of all intentional homicides in North Carolina are charged as first-degree or undesignated degree of murder, as opposed to second-degree murder

or voluntary manslaughter. Between fiscal years 2001-02 and 2005-06, the average cost of a case charged as first-degree or undesignated degree of murder was \$27,834, compared to an average cost of \$1,931 for a second-degree murder case (a B2 felony) and \$1,385 for a voluntary manslaughter case (a D felony). In addition, potentially capital cases that actually proceed capitally cost IDS at least three times more than similar cases that do not proceed capitally.

Finally, the study compiled the dispositions of all potentially capital cases that opened after IDS was established and were disposed by April 22, 2008. Over 83% of those cases ended in convictions of second-degree murder or less, and 45% ended in convictions of less than second-degree murder. More than 12% ended in dismissals without leave to refile, no true bills, or no probable cause.<sup>5</sup> For cases that actually proceeded capitally, 60% ended in second-degree murder or less and 22% ended in less than second-degree murder. 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 capital case study report has been distributed to the elected district attorneys, all of the superior court judges, and a number of legislators. It is also available on the IDS website under the “Reports & Data” link.

## **B. New and Ongoing Major Initiatives:**

### *Ongoing Division of Administrative and Budgetary Responsibilities*

The IDS Act requires the AOC to provide general administrative support to the IDS Office. *See G.S. 7A-498.2(c)*. The relationship between the two agencies continues to evolve over time, and IDS and AOC staff consult frequently to determine the most effective methods of performing the administrative functions necessary for the proper operation of the courts. As it does for the rest of the Judicial Branch, the AOC continues to perform purchasing and personnel functions for the IDS Office, and to provide technological and telecommunications support.

Effective July 1, 2006, AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including a number of accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and a full-time employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. Since assuming responsibility for the financial services staff, IDS has taken a number of steps to improve the training, support, and supervision of the accounts payable staff. For instance, Office staff reviewed and reformulated procedures for the processing staff to minimize keying errors. IDS’ in-house auditor has also developed a draft of a written policy and procedures manual to govern the processing of attorney fee applications. Office management also began reviewing any invoices that raise concerns for the processing staff, as well as reviewing batches of invoices after they are keyed and before

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<sup>5</sup> These percentages exclude cases resolved by voluntary dismissals with leave, not guilty by reason of insanity, and not competent to proceed, as well as cases in which the defendant died of natural causes before the case was resolved.

checks are issued. IDS Financial Services staff have also been given access to AOC's Automated Criminal Infraction System ("ACIS") to verify the case numbers and disposition dates that attorneys report on fee applications. While this is not being done in all cases because of the additional staff and resources that such a routine system would require, it is being done whenever there are questions about a fee application and in spot audits.

In addition, two employees in IDS' central office have assumed responsibility for establishing new attorney and expert vendors in the accounting system, and IDS Financial Services staff have assumed responsibility for processing non-attorney payments that are confined to IDS' budget. AOC personnel continue to print checks for legal services and to manage the imaging system that is used to store electronic copies of fee petitions; IDS currently pays a portion of the maintenance costs for the imaging system.

In August 2006, AOC and IDS entered into a memorandum of agreement concerning the allocation of foreign language interpreter costs for cases where the State bears the cost of representation. The memorandum provided that IDS would bear the cost of out-of-court interpretation that was performed solely for the defense function. Pursuant to that memorandum, during fiscal years 2006-07, 2007-08, and 2008-09, AOC retroactively transferred to IDS money from its interpreter fund to reimburse IDS for payments made for out-of-court defense interpretation. Beginning July 1, 2009, IDS assumed responsibility for funding out-of-court defense interpreters from its appropriation.

### *Committees of the IDS Commission*

The IDS Commission has formed a number of different committees responsible for addressing various aspects of its work. Based on work done by IDS Office staff, the Budget Committee has prepared fiscal notes for some major IDS initiatives, analyzed non-capital case costs in district and superior court and developed standard hourly rates for those cases, analyzed budgetary trends, discussed initiatives to enhance IDS' oversight of spending in non-capital cases, and prepared proposed budgets for the Governor and General Assembly. The Capital Committee has addressed issues such as the quality of capital representation, recruitment of qualified attorneys and experts, regional capital defender offices, compensation of capital defense attorneys and experts, ways to provide cost-effective consulting services to capital attorneys, and qualification standards for mitigation specialists. *See, e.g.*, "Compensation for Representation in Capital Cases and Appeals" and "Mitigation Specialist Rosters and Standard Hourly Rates," above.

The Public Defender Committee worked with the public defenders to develop plans to govern the appointment and qualifications of counsel in each public defender district, and was then reformed to discuss IDS staff site visits to the public defender offices and ways to improve IDS' communication with the public defenders. The Review Committee developed procedures to govern review of the IDS Director's fee and roster decisions, and addresses all such requests for review. With the assistance of SOG faculty, the Personnel Committee developed personnel policies for the IDS Office and tools to evaluate the performance of the Executive Director, Appellate Defender, Capital Defender, and Juvenile Defender.

The Performance Guidelines Committee developed the performance guidelines for indigent defense representation in non-capital criminal cases that are discussed above, which the full Commission subsequently refined and adopted. *See* “Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level,” above. The Systems Evaluation Committee is working with staff and outside participants to develop an objective tool to measure the quality and performance of indigent defense systems at the county, regional, and statewide levels. *See* “Systems Evaluation Project,” below.

The Juvenile Committee worked with a group of outside juvenile experts to evaluate the findings and recommendations in the American Bar Association’s 2003 report—“North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings”—and to develop recommendations for reform initiatives. *See* “Improved Juvenile Delinquency Representation,” below. In late 2007, a new Juvenile Committee composed of members of the IDS Commission was reformed to guide and assist the statewide Juvenile Defender’s work. The Indigent Appointment Plan Committee developed a model indigent appointment plan for non-public defender districts, which was approved by the full Commission in March 2008. Since that time, Office staff have been working with various non-public defender districts around the State to implement some version of the model plan. *See* “Model Appointment Plan for Non-Public Defender Districts,” below. Pursuant to G.S. 7A-498.5(c)(8), an Indigency Standards Committee was formed in December 2007 to begin the process of developing standards to guide judges in making indigency determinations. *See* “Development of Indigency Standards,” below.

In Session Law 2005-276, § 14.9(b), the General Assembly transferred North Carolina Prisoner Legal Services’ (“NCPLS”) contract from the Department of Correction (“DOC”) to the IDS Office, and directed IDS to contract with NCPLS to provide legal services and access to the courts for inmates for a period of two years, to evaluate the program during that time period, and to report back to the General Assembly. In response, the IDS Commission formed a Prisoner Access to the Courts Committee to design a plan for conducting the legislatively mandated evaluation and to develop contracts for the provision of legal services to inmates. *See* “Evaluation and Oversight of North Carolina Prisoner Legal Services,” below.

Finally, in December 2007, the Commission formed a Long-Term Planning Committee to address a number of transition issues that faced the Commission and staff during fiscal year 2008-09, including the term expirations of three founding Commissioners in September 2008 and the retirement of the founding IDS Director in December 2008. That committee met a number of times to address the recruitment of potential new Commissioners, to formulate a plan for advertising for a new Executive Director, and to screen the applications that were received and identify finalists for the Director position. Effective September 2008, three new Commissioners were appointed by the Governor, the House of Representatives, and the Chief Justice of the Supreme Court of North Carolina. At the September 2008 Commission meeting, the Commission interviewed five finalists for the Executive Director position and then appointed attorney Thomas K. Maher to serve a four-year term, effective January 1, 2009. In December 2009, the Long-Term Planning Committee was reformed to address the term expirations of four additional founding Commissioners in September 2010 and September 2011.

### ***Improved Data Collection and Reporting***

IDS Office staff have continued to work with AOC and IDS Financial Services staff to develop better and more comprehensive data collection systems for the indigent defense program. In addition to continuing to collect the data that AOC previously collected for non-capital fee applications that are signed by judges and submitted for payment, Financial Services now collects total hours claimed by counsel, as well as much more detailed information about cases by account code and type of charge or proceeding. Since fiscal year 2004-05, Financial Services staff have been entering data broken down into adult superior court and adult district court. In turn, the adult superior and district court data is broken down into the following case types: felony, felony probation violation, misdemeanor non-traffic, misdemeanor probation violation, driving while impaired, other traffic, criminal contempt, child support contempt, and other.

In addition, effective July 1, 2007, IDS Financial Services began collecting data on the case dispositions that are reported on all non-capital criminal case fee applications. Financial Services also recently began collecting disposition data for juvenile cases, as well as judgment and sentencing data for all non-capital criminal case fee applications. This new data will enable IDS staff to conduct analyses of case dispositions, to analyze and report costs per case for the various case types broken down into cases that were resolved by trial and cases that were resolved without a trial, and to further refine the annual public defender cost-effectiveness studies. Finally, during fiscal year 2009-10, IDS Office staff worked out an agreement with AOC to receive quarterly exports of ACIS data upon request, which should help IDS identify the number and type of pending indigent criminal cases on a periodic basis. *See* "System for Obtaining Indigent Case Information when Counsel is Appointed," below. Office staff are currently working to design an interface that will make the data from ACIS more accessible for data mining.

The IDS Office has also worked with the Appellate Defender and an outside contractor to design case-reporting and time-keeping software in Microsoft Access. The Office of the Appellate Defender began using the new database on July 1, 2007, and is in a position to provide complete case reporting and time data for fiscal year 2007-08 and beyond. The Appellate Defender also regularly uses the database to assess caseloads and for other management purposes. The information in the database will be critical to any cost-effectiveness study of the office that IDS may conduct in the future. In the coming years, IDS staff may make some version of the database available to the Office of the Capital Defender and the public defender offices.

### ***Public Defender Disposition Reporting and Cost-Effectiveness Studies***

IDS Office staff conduct annual studies of the cost-effectiveness of all public defender offices in the State. In those studies, Office staff build caseload models for the public defender offices, and examine and quantify efficiencies of scale. The studies also quantify the system costs involved with using private counsel by including in the analysis the administrative time involved with making appointments, setting fee awards, and processing and issuing fee payments. While the fiscal year 2008-09 study is not yet complete, the fiscal year 2007-08 study



found that the 16 public defender offices handled 31.5% of the cases assigned to public defenders and private counsel combined, and accounted for 24.6% of IDS' combined expenditures on counsel. The fiscal year 2007-08 study further concluded that all of the public defender offices together cost the State approximately \$103,000 less than what it would have cost to pay private attorneys to handle the same cases. Excluding the two new offices that began accepting cases during the spring of 2008, the public defender offices together cost the State approximately \$405,000 less than what it would have cost to pay private attorneys to handle the same cases. While the annual studies do not currently compare the relative quality of representation in public defender and private counsel systems, IDS staff has developed a list of value-added activities that are performed by public defender offices and private counsel, and hope to incorporate them into future analyses. *See also* "Systems Evaluation Project," below.

During the second half of fiscal year 2004-05, IDS Office staff worked with a committee of public defenders and SOG faculty to design a much more detailed disposition reporting system for the public defender offices. The reporting system went into effect on July 1, 2005, and gives IDS Office staff access to the same expanded data that is now available with private appointed counsel fee applications, *see* "Improved Data Collection and Reporting," above, as well as data on public defender felony dispositions by felony class. Under the system, public defender offices report dispositions by case type, including felony class, and provide IDS with additional workload measures for the offices, such as the number of trials and review hearings for certain types of cases. Moreover, IDS Office staff audits public defender disposition reports to ensure their accuracy.

During fiscal year 2009-10, IDS staff designed a new on-line disposition reporting system that allows the public defender offices to report their case closings over the Internet. For cases closed on or after July 1, 2009, staff in each of the public defender offices enter that information into the on-line system, rather than the previous Excel reporting system. The new system saves labor and time, and allows the offices and IDS to analyze data on case closings by office, by attorney, and by selected time periods. Currently, IDS Office staff are designing additional reporting functions that will allow the offices to project the private assigned counsel cost equivalent of the work being done by the office or a certain attorney, and to determine weighted misdemeanor units per attorney. Those functions should help the chief public defenders provide better supervision and case management throughout each fiscal year, because they will no longer have to wait until the annual cost-effectiveness study is complete to gauge their office's performance.

During early 2008, IDS Office staff also conducted an analysis of the impact on district-wide indigent defense costs from the creation of new public defender offices. First, the study examined why the statewide percentage of cases being handled by public defender offices has remained fairly stable (about 31%) since fiscal year 2003-04, despite the continuing expansion of the public defender system. The study showed that, since fiscal year 2003-04, statewide private assigned counsel dispositions have increased more than public defender dispositions, despite the fact that public defender dispositions grew by 25% during that time period. In other words, the total number of indigent dispositions has been increasing at a faster rate than the public defender expansion. Second, the study looked at average costs per disposition in three of the new public defender districts—Forsyth County, the First District, and Wake County—both before and after

the offices were created. While there was some variation across those districts, the study concluded that per case costs did not appear to be negatively impacted by public defender expansion. Third, the study attempted to determine whether the mere existence of a public defender office causes judges to appoint counsel more often. While the study looked at a series of different measures in an attempt to answer that question, Office staff were unable to identify any definitive patterns. The IDS Office will continue to monitor these trends in new public defender districts in the years to come.

### *Expansion of Existing Public Defender Offices*

In the 2008 Appropriations Act, the General Assembly authorized the IDS Office to create up to 20 new attorney positions and 10 new support staff positions within existing IDS defender programs. The head of each defender office was then given the opportunity to submit a request and justification for additional staff to the IDS Director. IDS Office staff subsequently reviewed those requests to determine whether adding new personnel would help expand the work each office was doing and/or relieve overburdened offices. However, because of the State's fiscal crisis, the IDS Director decided not to create new positions last fiscal year unless it appeared that they would generate immediate savings.

Thus, during fiscal year 2008-09, the IDS Director only allotted 6 of the 20 new attorney positions as follows: 1) one new assistant public defender in the Mecklenburg County Public Defender Office; 2) one new assistant public defender in the Guilford County Public Defender Office; 3) one new assistant public defender in the Forsyth County Public Defender Office to handle juvenile delinquency cases; 4) one new assistant public defender in the First District Public Defender Office to handle abuse, neglect, dependency, and termination of parental rights cases; and 5) one new assistant public defender in the Durham County Public Defender Office to continue a position that had previously been funded by the county. In addition, one temporary attorney position in the IDS Office was converted to a permanent position. During fiscal year 2008-09, the IDS Director did not create any of the 10 new support staff positions.

In the 2009 Appropriations Act, the General Assembly again gave the IDS Office authority to create up to 20 new attorney positions and 10 new support staff positions within existing IDS defender programs during fiscal year 2009-10. IDS' March 2011 report to the General Assembly will include details on those placements.

### *Study of Indigent Dispositions Compared to Total Court Dispositions*

In January 2010, IDS Office staff updated a prior study comparing the total number of indigent case dispositions in district and superior court to the total number of court dispositions in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support.<sup>6</sup> The updated study revealed that there has been relatively little growth (2.4%) in the number of

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<sup>6</sup> The updated study was based on total criminal non-traffic and indigent case disposition numbers provided by AOC in its annual report for fiscal year 2008-09, which counts every closed CR or CRS file number as a disposition. In other studies, IDS staff calculate dispositions differently, counting all file numbers disposed on the same day before the same presiding judge as one disposition.

total criminal non-traffic court dispositions between fiscal years 2001-02 and 2008-09. However, during that same time period, there has been significant growth (41.9%) in the number of criminal non-traffic public defender and private appointed counsel dispositions that are funded through IDS:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09
Total Criminal Non-Traffic Court Dispositions	774,795	761,665	767,483	786,134	798,622	784,298	795,323	793,053
Total IDS Criminal Non-Traffic Dispositions	270,295	280,636	294,054	317,854	337,578	342,329	361,000	383,592
IDS Dispositions as % of Total Criminal Non-Traffic Court Dispositions	34.9%	36.8%	38.3%	40.4%	42.3%	43.6%	45.4%	48.4%

The greatest increase in indigent case dispositions has been in criminal district court, where IDS dispositions as a percentage of total court dispositions have increased 41.2% between fiscal years 2001-02 and 2008-09. During the first half of fiscal year 2009-10, IDS' share of total criminal non-traffic court dispositions grew again to 49.6%.

Based on this study, the IDS Office believes that the increases in demand on the indigent defense fund over the past eight years are largely attributable to more people being found indigent and entitled to court-appointed counsel. The IDS Commission and staff will continue to monitor this trend and to report any findings to the General Assembly.

### *Indigent Defense Fund Demand and Budget Needs*

The IDS Commission and Office have taken significant steps to control increases in the cost of indigent representation and to analyze the factors driving growth in the fund. The increase in new demand (spending and current-year obligations) during fiscal year 2001-02 was only 1.36% above the prior fiscal year, which was the lowest increase in at least a decade. The increase in new demand during fiscal year 2002-03 was 4.63%, the increase in new demand during fiscal year 2003-04 was 7.64%, and the increase in new demand during fiscal year 2004-05 was 7.06%, all of which were significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation.

While the increase in new demand during fiscal year 2005-06 was 11.53%, 2.3% of that increase appeared to be attributable to the January 2006 deadline for submission of older fee applications. See "Private Attorney Fee Application Deadlines," above. The increase in new demand during fiscal year 2006-07 was a more modest 4.32%. The increase in new demand during fiscal year 2007-08 was 13.12%, with approximately 3.5% of that growth attributable to the increase in the standard hourly rates. Finally, the increase in new demand during fiscal year 2008-09 was 9.82%.

The overall increases in demand on the fund are largely attributable to an expanding indigent caseload rather than a rise in per case costs. As shown in the chart in Appendix A labeled

“Indigent Defense Expenditure History per Disposition,”<sup>7</sup> indigent defense expenditures per disposition (for both public defender offices and private assigned counsel combined) declined over the first four years after IDS was established—between fiscal years 2001-02 and 2004-05—with an increase in per disposition costs between fiscal years 2004-05 and 2007-08. Because the IDS Office has not yet finished auditing the reported number of public defender dispositions last fiscal year due to difficulties in matching the raw case numbers provided by the offices to the charge-based data in ACIS, total indigent defense expenditures per disposition during fiscal year 2008-09 have not yet been calculated. However, during fiscal year 2008-09, there was another increase in per disposition expenditures for private assigned counsel. Overall, indigent defense expenditures per disposition during fiscal year 2007-08 were only \$2.47 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01). Private assigned counsel per disposition expenditures during fiscal year 2008-09 were only \$19.67 more than private assigned counsel per disposition expenditures the year before IDS was established, and only \$14.09 more than private assigned counsel per disposition expenditures during IDS’ first year of operations.

Despite the comparatively lower increases in new demand during the past eight fiscal years (7.4% on average), as well as the modest increases in per disposition expenditures since IDS was established, indigent defense has been historically under-funded. IDS staff analyses suggest that IDS’ historical cycle of debt was largely due to insufficient available funds to meet new demand. Indeed, as a result of prior year encumbrances, reversions, and revenue shortfalls, IDS had fewer funds available for new demand in fiscal years 2001-02, 2002-03, and 2003-04 than the actual new demand on the fund in fiscal year 2000-01, the year before IDS was established. However, as can be seen from IDS’ comparatively lower debt for fiscal years 2005-06 (\$4.1 million), 2006-07 (slightly more than \$600,000), and 2007-08 (again slightly more than \$600,000), the General Assembly’s increased appropriations to indigent defense since fiscal year 2005-06 have enabled IDS to begin combating its historical cycle of debt. Unfortunately, due to the State’s budget crisis and a reversion required by the Office of State Budget and Management (“OSBM”), IDS ended fiscal year 2008-09 with approximately \$6.9 million of debt, which had to be paid out of IDS’ appropriation for the current fiscal year. The Commission and Office are grateful that the General Assembly appropriated non-recurring funds in fiscal year 2009-10 to pay off that debt and that the General Assembly has continued its support of quality indigent defense programs.

Current projections suggest that there will be a very modest increase (approximately 2.8%) in new demand this fiscal year and that IDS will not end the year with any debt. The slowed growth in demand this fiscal year appears to be based on several factors. First, total criminal non-traffic court filings and dispositions were lower in fiscal year 2008-09 than in fiscal year 2007-08, and are on track to be even lower in fiscal year 2009-10. Thus, IDS’ spending has grown at a slower rate even though IDS’ share of total criminal non-traffic court dispositions continues to grow. See “Study of Indigent Dispositions Compared to Total Court Dispositions,” above. Second, IDS’ caseload during the current fiscal year appears to have shifted toward less expensive district court cases, as the proportion of serious felonies has fallen. Third, increased resources in public defender offices have diverted significant numbers of cases from assigned

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<sup>7</sup> The per disposition expenditures for fiscal years 2006-07 and 2007-08 that are shown in Appendix A are different than the per disposition expenditures that were reported in IDS’ past two annual reports because of a change in methodology for counting drug treatment court dispositions by public defender offices.

counsel, particularly in the counties where new offices were established in March 2008 (New Hanover, Henderson, Polk, and Transylvania counties).

Fourth, the cost-saving measures that IDS implemented during fiscal year 2008-09 have continued to slow growth this fiscal year. For example, mileage reimbursement for IDS employees and private assigned counsel was reduced from \$.50 to \$.35 per mile, the IDS Rule requiring a minimum \$75 payment for partial hour fee applications was repealed, contracts are being utilized more frequently for juvenile delinquency and abuse/neglect/dependency cases in certain districts, and AOC reassumed responsibility for paying fees in Guardian ad Litem program conflict cases. Finally, it appears that many appointed attorneys billed more quickly in late fiscal year 2008-09 because they were aware of impending budget shortfalls. That conduct has lowered IDS' fiscal year 2009-10 spending because there have been fewer prior year fee applications to pay with current funds.

Many of the factors identified above had a one-time impact on growth and will not necessarily permanently mitigate increasing costs, especially in light of the continued increase in indigency rates. However, it does appear that the feared impact of the poor economy on indigent defense costs has not materialized so far this fiscal year. IDS Office staff suspect that, even with increased rates of indigency and poverty-related crimes, limitations on total court resources result in a given year's indigent demand being less sensitive to the economy than originally anticipated. Based on this fiscal year's experience, IDS expects next year's growth rate to be lower than prior years but greater than the current year.

The IDS Commission and Office understand that the State is facing a severe fiscal crisis and are committed to doing everything we can to reduce spending and increase revenues. However, the United States Constitution requires States to provide and pay for competent legal representation for indigent defendants who are accused of a crime and facing a possible deprivation of liberty. Various North Carolina General Statutes also require IDS to provide legal representation to indigent persons in a number of additional proceedings. Thus, the Commission and Office request additional recurring funding during fiscal year 2010-11 in an amount sufficient to maintain the current level of services and to cover the projected demand on the fund next year. See "Legislative Recommendations," below.

### ***Improved Revenue Collection***

IDS Office staff have worked with AOC staff to gather data on the amount each county collected in recoupment (through probationary collections and civil judgments) during each fiscal year since 2001-02. Staff then analyze that data annually to determine the amount recouped by each county as a percentage of that county's expenditures on indigent defense. Total revenues from recoupment during fiscal year 2008-09, including the \$50 attorney appointment fee required by G.S. 7A-455.1, amounted to \$11.3 million, which represented an increase of 14.6% over the prior fiscal year. In fiscal year 2008-09, 79 of North Carolina's 100 counties collected more recoupment revenues than they had in fiscal year 2007-08. Payments collected through clerks' offices at the time of conviction or while the defendant was under probationary supervision accounted for 64.3% of the total collected last fiscal year, with an

additional 35.7% collected through the interception of state income tax refunds. Collections from the appointment fee have grown 78% since fiscal year 2005-06.

During fiscal year 2008-09, there continued to be wide variability in recoupment among counties. Recoupment as a percentage of non-capital spending on private attorneys and public defender offices ranged from a low of 1.86% to a high of 78.49%, with an overall statewide rate of 11.45%. In addition, there appears to be a strong negative correlation between the size of the indigent caseload in a county and recoupment as a percentage of spending. For example, during fiscal year 2008-09, recoupment in the 20 counties with the highest amount of spending averaged 10.4%, while recoupment in the remaining 80 counties averaged 19.1%. IDS has also made substantial progress in improving collections of the \$50 attorney appointment fee. During fiscal year 2008-09, only four counties reported collections of \$500 or less and 83 counties increased their gross collections over prior years. For a county-by-county comparison of recoupment rates, see Appendix B.

The IDS Office has continued to undertake a number of initiatives to improve the recoupment process and to increase revenues to the indigent defense fund. For instance, IDS Office staff continue to work with the public defender offices to ensure that they submit fee applications for entry of judgment in all recoupment-eligible cases, and have held meetings around the State with public defenders, judges, and clerks to discuss ways to increase revenues. In addition, IDS Office staff worked with the AOC Forms Committee to revise the fee applications and facilitate easier entry of judgments for attorney fees. Finally, AOC and IDS are now required to submit to the General Assembly quarterly reports on current collection rates and efforts to improve them.

### ***Model Appointment Plan for Non-Public Defender Districts***

In the vast majority of non-public defender counties, the local indigent appointment plans were approved by the North Carolina State Bar before IDS was created. When IDS assumed responsibility for indigent defense in 2001, the IDS Commission grand-fathered in the existing plans and adopted a rule requiring future plan modifications to be approved by the Commission. In March 2008, the IDS Commission approved a model indigent appointment plan for non-public defender districts. The plan is modeled after the public defender appointment plans discussed above, *see* “Development and Approval of Public Defender Plans,” 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. The model plan, as well as a model application form for the indigent appointment lists, is available on the IDS website.

After the model plan was approved by the IDS Commission, Office staff began working with a number of local districts across the State to implement some version of the plan at the local level. In July 2008, the staff mailed packets of materials—including the new model plan, the district’s current approved plan, and the model application form—to the local Bar Presidents in a number of counties and districts. An IDS staff member subsequently attended bar meetings in two different districts to discuss the new model plan and answer any questions that arose. At the

request of local actors in District 29A, IDS Office staff also developed a list of resources for new attorneys accepting indigent cases.

The Office is currently in discussions with the various Bar Presidents in a number of counties and districts, as well as the Chairs of any local indigent committees that were already in existence or have been reformed to address this issue. While the implementation process is taking longer than the staff anticipated and, as of February 2010, only one county (Lee) had officially adopted and implemented a version of the model plan, local actors in several districts are in various stages of preparing new plans for IDS' review. As part of this process, IDS hopes to establish or strengthen mechanisms for responding to client complaints about their appointed attorneys. In the long run, however, the IDS Commission and staff believe these tasks may be better undertaken by the appropriate regional defender or resource counsel with IDS' assistance and oversight. *See* "Potential Future Initiative: Regionalization of the Public Defender System and/or Regional Resource Counsel," below.

### *Development of Indigency Standards*

G.S. 7A-498.5(c)(8) directs the IDS Commission to develop standards governing the provision of services under the IDS Act, including "[s]tandards for determining indigency." Office staff have conducted extensive research on indigency standards in other jurisdictions, as well as model standards promulgated by other state and national organizations. As discussed in "Committees of the IDS Commission," above, and "Consultation with Other Actors and Recommended Cost-Saving Measures," below, the IDS Commission has also formed a committee to begin developing standards to guide North Carolina judicial actors in making indigency determinations and to consider other methods of improving indigency screening in the State.

The Indigency Standards Committee held its first meeting in August 2008, at which committee members discussed the staff's initial research and brainstormed ways to improve indigency screening in North Carolina. Also during August 2008, the staff discussed potential indigency standards and improvements to the current systems for indigency screening with the chief public defenders and a group of district court judges. Because of the complexity of the task and competing demands on IDS Commission and staff time, the work of the Indigency Standards Committee has not progressed as quickly as expected. The Committee plans to resume meetings in 2010, and the IDS Office hopes to be in a position to address this area further in its March 2011 report to the General Assembly.

### *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 38 different attorneys in Alexander, Avery, Brunswick, Buncombe, Catawba, Currituck, Dare, Davie, Durham, Forsyth, Guilford, Iredell, Madison, Martin, Mitchell, Stanly, Watauga, Yadkin, and Yancey counties, with the Center for Children's Defense and the Neighborhood Advocacy Center in Charlotte, and with the Elder Law Clinic of the Wake Forest School of Law in Winston-Salem. 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. The half-time IDS Contracts Administrator continues to monitor the existing contracts, to evaluate reports regularly submitted by the contract attorneys, to work with other IDS Office staff to improve data collection and better assess the cost-effectiveness of the contracts, to conduct on-site evaluations of the services being delivered by contract counsel, and to explore other areas of the State in which new attorney contracts might save money and increase quality.

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. Excluding the current Buncombe County misdemeanor contract and the contracts in Brunswick, Durham, and Forsyth Counties for youth and drug treatment courts, which are reported under a different system, all of the IDS contracts combined saved over \$450,000 during fiscal year 2008-09 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments. Office staff will continue to evaluate the existing contracts from both a cost and quality perspective, and hope to expand IDS' use of contracts in the years to come.

### ***Improved Training and Resources***

The IDS Office continues to provide funding for defender training, and has sponsored a number of new training programs, many of which cover areas of representation that traditionally have not had adequate continuing legal education. In addition to the annual public defender conferences and the annual new misdemeanor and felony training programs, IDS Office staff have worked with SOG and other groups to develop a hands-on training program for private appellate attorneys who accept appointments in indigent cases; a five-day trial advocacy program for public defenders, which is an intensive program in which participants develop trial skills by working on their own cases; programs for private counsel, assistant public defenders, and full-time State employees who serve as Special Counsel for persons committed to mental health facilities; programs for appointed counsel in Chapter 35A guardianship proceedings; programs for attorneys who represent parent respondents in Chapter 7B cases, including abuse, neglect, dependency, and termination of parental rights proceedings; programs for attorneys representing children in juvenile delinquency proceedings; programs for public defender staff investigators and private investigators who do a significant amount of appointed work; and management training for the chief public defenders and their administrative assistants. The IDS Office posts on its website materials that are used in IDS co-sponsored training programs, as well as a comprehensive training materials index, so that attorneys around the State can benefit from programs they were unable to attend in person. (For details about training programs that were conducted before fiscal year 2008-09, see IDS' March 2009 annual report.)

During fiscal year 2008-09, IDS and SOG co-sponsored the following programs: 1) an August 2008 conference for parent attorneys that focused on representing chemically dependent clients; 2) an August 2008 juvenile defender conference that focused on probable cause and transfer in delinquency proceedings; 3) the annual new misdemeanor defender training in September 2008; 4) a November 2008 public defender seminar on prosecutorial misconduct; 5) a



January 2009 civil commitment conference; 6) the annual new felony defender training in February 2009; 7) a March 2009 program for new parent attorneys; and 8) a May 2009 program for attorneys representing respondents in child support contempt cases. Due to budget constraints, the May 2009 public defender conference was converted into a webinar that was held in Chapel Hill and attended by local attorneys who did not seek any travel reimbursement, and simultaneously webcast to the remaining offices around the State. As a cost-saving measure and a way of reaching more attorneys across the State, IDS and SOG are increasingly exploring new on-line training programs, including self-paced virtual continuing legal education (“CLE”) programs. Those programs can be accessed for free or purchased for CLE credit. A list of the current on-line offerings is available on the SOG website ([www.sog.unc.edu](http://www.sog.unc.edu)).

In addition, the IDS Office has provided funding for improvements to the SOG’s North Carolina Defender Manual, as well as a number of new specialized indigent defense manuals, including a North Carolina Civil Commitment Manual, a North Carolina Guardianship Manual, a North Carolina Juvenile Defender Manual, and an Immigration Consequences Manual. IDS has also developed an on-line manual for attorneys in Innocence Inquiry Commission Proceedings, and IDS and SOG have developed on-line orientation manuals for assistant public defenders and parent attorneys. All of the manuals are posted on the IDS website and can be accessed or downloaded by attorneys around the State for free.

The IDS Office is continually considering more ways in which additional improved training and resources can be provided to public defenders and private attorneys, both to enhance the quality and efficiency of the services they provide and to assist them in meeting the specialized performance guidelines discussed above.

### ***Grant Applications***

During the latter part of fiscal year 2008-09, IDS Office staff began actively pursuing grant funding to support special projects that the Commission and Office are contemplating or undertaking. During fiscal year 2008-09 and fiscal year 2009-10 to date, IDS has submitted a number of grant applications, often in conjunction with other groups, to organizations such as the Z. Smith Reynolds Foundation, the federal Bureau of Justice Assistance, and the Governor’s Crime Commission. Funding was sought to support a variety of projects, including the Systems Evaluation Project, *see* “Systems Evaluation Project,” below, capital case training initiatives, and the development of a Collateral Consequences Assessment Tool (“C-CAT”).

In early December 2009, Z. Smith Reynolds notified IDS and SOG that its joint application to fund the development of C-CAT had been approved, at the level of \$65,000 for calendar year 2010 and \$30,000 for calendar year 2011 (with a \$30,000 match). C-CAT will be an electronic database that will compile all of the civil consequences of criminal convictions in North Carolina. Ultimately, the database will be a resource for indigent defense attorneys, judges, prosecutors, social service agencies, legal aid attorneys, and others. There are only three other jurisdictions in the country that have a resource similar to C-CAT. Particularly in light of the State’s fiscal crisis, IDS hopes to strengthen its efforts in the coming years to obtain grant funding for special projects.

### *Electronic Case Reporting and Fee Filing*

For many years, IDS Office staff have been interested in developing a web-based system that would allow the Office to receive and process attorney fee applications electronically via the Internet. Such a system could also enable attorneys to review their case assignments and the status of their fee applications on-line. In fiscal year 2007-08, the General Assembly appropriated \$175,000 in non-recurring funds for IDS to create a pilot web-based system for electronic submission of fee applications, and directed IDS to consult with AOC and develop a proposal for statewide implementation. *See* Session Law 2007-323, § 14.17(a).

During fiscal year 2007-08, Office staff researched electronic fee application systems that were in place in four other states—Colorado, Massachusetts, Ohio, and South Carolina—and compiled information about the primary components of those systems. Office staff also held meetings with a technology consultant and with AOC Technology Services Division to begin identifying equipment and software protocols and technical specifications. In addition, IDS contracted with a programmer to restructure the existing Access database that IDS uses to process capital and appellate fee applications in a way that would facilitate on-line fee processing.

Because the existing IDS Office staff did not have the technical expertise to proceed further with designing a pilot project or developing a proposal for statewide implementation, and because of competing demands on IDS staff time, the Office was unable to utilize the full \$175,000 in non-recurring funds during fiscal year 2007-08. However, effective October 2008, IDS hired Joseph Meskey as its new Information Technology Director, so that the Office would be better equipped to manage the project with appropriate in-house expertise. At the IDS Office's request, OSBM allowed IDS to transfer the balance of fiscal year 2007-08's non-recurring appropriation to its budget for fiscal year 2008-09 so that Meskey could continue the process of designing and implementing the pilot program, as well as planning for statewide implementation.

After reviewing IDS' fee application processing systems, Meskey decided that it would be best to proceed with a pilot program for electronic submission of non-capital criminal fee applications in selected counties around the State. Meskey further determined that, after a pilot period, IDS should be in a position to identify and remedy any problems with the system and then proceed with statewide implementation. In October 2008, Meskey used a small portion of the non-recurring funds to pay for the services of a local information technology and web consultant, who provided advice on general system design and technical issues relating to electronic data interchange with other agencies. He subsequently contacted several providers of software products designed for the legal community to investigate whether any of their products (or components thereof) could be used in the construction of a website for fee application submission. Meskey's research confirmed that there are no commercial off-the-shelf components that could be used in this project and that it will require a specialized application based on custom programming and database development.

Meskey subsequently created a general draft design for the system, which would incorporate features such as the web-based submission of case and billing information by private attorneys,

automated generation of bar-coded fee approval forms, and improved review capabilities for IDS Financial Services staff. The system would also enable IDS to obtain more timely information about indigent caseload, to complete faster review and approval of payments to private counsel, and to access more complete case information for use in research and program evaluation projects. Originally, Meskey intended that the system would involve a daily electronic data interchange (“EDI”) of financial information with the North Carolina Accounting System (“NCAS”), and importation of court data about defendants and charges from ACIS. Because of the EDI requirements, in December 2008, IDS staff initiated discussions with representatives of AOC and the State Controller’s Office to identify the technical and logistical issues associated with these data transfers. From those discussions, IDS was able to confirm that the types of electronic data transfers that were inherent in the planned design of the pilot fee application system are technologically feasible.

During the spring of 2009, IDS developed a Request for Proposals (“RFP”), with the goal of employing the services of a software development firm to create a pilot web application system. However, the RFP was never posted because of the spending freeze that was necessitated by the State’s financial crisis during the latter part of fiscal year 2008-09, and the non-recurring funding for this project is no longer available. The IDS Office is currently planning to use a modest amount of lapsed salary and other funding for fiscal year 2009-10 to pay for one or two temporary positions to do the necessary programming for a less sophisticated version of the electronic fee application system, which will not initially involve any interface with ACIS. Meskey has created a mock version of the modified system, and the IDS Office is currently advertising the temporary positions. The staff hopes to have the major components of the modified system, including a portal for attorneys to log in and maintain their vendor information, complete by the summer of 2010. After the modified system is tested internally, Office staff hope to be in a position to roll it out in select pilot counties by late 2010.

While additional funds will be necessary later to complete the planned interface with ACIS and to expand the system to case types other than non-capital criminal, the IDS Commission and staff believe the long-term efficiency savings to the State from reduced labor and automation of routine tasks would significantly outweigh the costs for development and implementation. It would also greatly improve the ability of IDS staff to collect and analyze data that is currently inaccessible, thereby enhancing the IDS Commission’s ability to make informed decisions about resource allocation. Finally, because IDS’ ability to improve and automate the processing of fee applications statewide is dependent on the technology available to other court system actors, the IDS Commission and staff believe that AOC must continue to be an active partner in this endeavor.

### ***System for Obtaining Indigent Case Information when Counsel is Appointed***

Section 14.7 of Session Law 2008-107 directed IDS, in consultation with AOC, to explore the feasibility of obtaining information about indigent cases when counsel is first appointed and to develop a proposal for statewide implementation of such a system. Section 15.13(c) of Session Law 2009-451 further directed IDS to provide a progress report on that feasibility study in this annual report.

The IDS Commission and staff agree that there should be a system for IDS to obtain information about pending indigent cases before a fee application is received, and Office staff have been consulting regularly with AOC staff about this matter since November 2008. However, there continue to be technological and resource barriers to implementing this recommendation for the more than 200,000 private appointed counsel cases that IDS oversees annually. While all criminal cases in North Carolina are entered into ACIS, that system is not capable of directly communicating with NCAS. AOC has been phasing in a statewide automated case information system for juvenile cases (“J-Wise”), including abuse/neglect/dependency, termination of parental rights, and delinquency cases. However, IDS staff believe that, like ACIS, J-Wise is not capable of directly communicating with NCAS. In addition, the central IDS Office does not yet have access to J-Wise and, because juvenile cases are highly sensitive and confidential, AOC has informed IDS that it will need to develop new security modules before IDS staff will be allowed to access J-Wise. Chapter 35A competency cases and child support contempt cases are entered into a statewide civil information system (“VCAP”). However, VCAP also is not capable of directly communicating with NCAS. Finally, there are some confidential civil cases under IDS’ oversight, such as commitment proceedings, that are not currently entered into any statewide automated information system and for which all records are kept manually. Thus, with the State’s current systems, obtaining all indigent case information in advance would be difficult and cumbersome at best.

However, as noted in “Improved Data Collection and Reporting,” above, during fiscal year 2009-10, IDS Office staff worked out an agreement with AOC to begin receiving quarterly exports of ACIS data upon request, which should enable IDS to identify the number and type of pending indigent criminal cases on a periodic basis. In addition to the problems associated with ACIS being a charge-based system, rather than a case-based system, the primary potential barrier to obtaining meaningful data from ACIS appears to be that there may not be any statewide standard for when the various clerks’ offices enter into ACIS whether the defendant is represented by a retained attorney, appointed attorney, or public defender, or whether he or she has waived his or her right to counsel. The ACIS manual does not contain any direction about the timing of completing those data fields in ACIS, and IDS staff members suspect that at least some clerks’ offices do not enter that data until the time of disposition, rather than the time of appointment. If that is true, a data export from ACIS prior to case disposition would not convey complete and accurate data on the number of pending criminal cases involving an indigent defendant. At IDS’ request, AOC staff ran an “events history” report from ACIS that will help IDS staff determine how quickly certain data fields are initially completed and how frequently they are updated. Once IDS has explored the ACIS data exports further and has designed an interface that will make the data more accessible for data mining, the staff will be in a better position to assess the timeliness of data entry and, thus, the accuracy of the data exports about new and pending indigent criminal cases.

If IDS determines that the ACIS data exports will be accurate for these purposes, based on fiscal year 2008-09 data on the number of fee applications received, those exports will give IDS timely data about almost 70% of the fee applications that IDS receives annually (*i.e.*, all of the fee applications in non-capital criminal cases at the trial level). Since IDS already knows about pending potentially capital cases, appeals, and capital post-conviction proceedings (2.7% of IDS’

total demand in terms of the number of fee applications received), this system would leave an additional 27.7% of IDS' total pending caseload unknown.

### *District Court Alternative Scheduling Survey and Pilots*

In its March 2007 annual report, IDS recommended that the General Assembly appropriate a modest amount of money to staff one or more pilot tests of alternative scheduling systems in district and/or superior court that would minimize attorney wait time. As discussed in "Private Appointed Counsel Waiting-in-Court Study," above, IDS Office staff completed a study demonstrating that defense attorney wait time attributable to the current scheduling systems in North Carolina adds significant costs to indigent defense, particularly in criminal district court, and the IDS Commission and staff believe a modernized approach to scheduling cases would generate substantial savings in taxpayer money. As a result of that study, the IDS Commission recommended that, as a first step toward minimizing some of those unnecessary costs, IDS should work with one or more districts on a voluntary basis to pilot test alternative systems. *See* "Consultation with Other Actors and Recommended Cost-Saving Measures," below.

While this recommendation was not implemented in 2007, during the 2008 session, the General Assembly enacted §14.1 of Session Law 2008-107, which provides: "Of the funds appropriated to [IDS] in this act, [IDS] may spend up to the sum of twenty-five thousand dollars (\$25,000) to support one or more pilot programs of alternative scheduling in district or superior court that would reduce defense attorney wait time and State expense. The establishment of any pilot program under this section would require the prior agreement of the district attorney, chief district court judge, and senior resident superior court judge for the district." The IDS Commission and staff believe that any pilot tests under § 14.1 should focus on district court, because the current scheduling systems in that court lead to greater inefficiencies than in superior court.

Before proceeding with any specific pilots in district court, however, Office staff have taken steps to ensure that any changes will lead to meaningful results and real improvements. First, during April 2009, Office staff conducted an on-line survey with criminal defense attorneys, district attorneys, judges, and clerks that sought information about the current district court scheduling practices in their districts, as well as their suggestions about systemic changes that would improve efficiency. IDS received 481 responses to the scheduling survey, which reflected a wide range of diverse opinions and suggestions. Overall, the responses made clear that the time of all court system actors, as well as defendants, witnesses, and victims, is currently being wasted on district court cases that do not move forward because one or more parties are not ready to proceed. Despite the lack of readiness to move forward, cases are still placed on the calendar and everyone is still required to be present in court, which takes time away from cases that are ready to move forward and further clogs the dockets. A report on the survey responses was published in October 2009 and is available on the IDS website under the "Reports & Data" link.

Second, the IDS Commission and staff are now beginning the process of working with local actors in one or more counties to develop, implement, and evaluate some type of pilot scheduling program. Because of the significant variations in local needs and practices, IDS understands that there probably is no "one size fits all" approach to district court scheduling that would be

workable and appropriate. However, the survey respondents raised a number of new ideas and approaches that IDS believes are worth exploring on a pilot basis. In exploring potential pilot systems with local actors, IDS hopes to develop programs that take into account the major themes identified in the survey responses. Some examples of pilot programs that are currently under consideration include: 1) creating an on-line system that would facilitate and enhance pre-court communication between opposing counsel, such as a simple web-based notification system that would allow appointed defense counsel to notify the prosecutor in advance of a court date whether a case will be pled or tried, or whether a continuance will be sought, which should in turn help prosecutors schedule cases more efficiently; 2) developing systems that encourage both district attorneys and defense counsel to set aside time to discuss cases and negotiate pleas before a court date; 3) creating systems that provide for early discovery or other information exchange; 4) exploring alternatives to the traditional system of appointing counsel on a case-by-case rotation, such as assigning appointed counsel to specific days of the week or month or appointing a given attorney to cases involving a certain officer or officers; and 5) exploring alternatives to the traditional system of full-day calendar calls for multiple case types, such as setting specific dates and times by type of case or proceeding or by attorney, as well as additional specialized courts and dockets.

In addition, to the extent that some types of cases can be removed from the court dockets, that would alleviate some of the burden on the system. Potential strategies for removing certain case types from the docket include reclassifying as infractions certain lower-level misdemeanors where that change would not cause any harm to public safety, *see* “Consultation and Study on Reclassification of Certain Misdemeanors,” below, encouraging even more screening of cases for alternative resolution prior to a court date, and/or creating additional web-based systems that would allow minor cases to be resolved with the payment of a fine without a court appearance. Because one main goal of a pilot test would be to increase efficiency and, thus, save costs, IDS plans to identify ways to compare data on local costs per case by case type before a pilot test is implemented to local costs per case by case type after a pilot test is implemented.

While Office staff hope to implement a pilot project before the end of the current fiscal year, it is possible that preliminary steps will not be complete in time to do so. In addition, the IDS Commission and IDS Office believe that any pilot programs will need to last at least one full year before IDS will be in a position to make more wide-ranging recommendations about scheduling. Thus, IDS requests that the 2010 Appropriations Act again allow IDS to spend up to \$25,000 of its appropriated funds to continue supporting one or more pilot programs of alternative scheduling. *See* “Legislative Recommendations,” below.

### ***Racial Justice Act Coordination***

The North Carolina Racial Justice Act (“RJA”), Session Law 2009-464, provides that no person shall be subject to a death sentence or executed pursuant to a judgment that was sought or obtained on the basis of race. The RJA creates a right to raise a claim that race was a significant factor in the decision to seek or impose a death sentence in the county, district, or division at the time the death sentence was sought or imposed. The claim can be raised in a pre-trial motion, on appeal in capital cases, or in capital post-conviction. For claims raised in post-conviction, they must be filed within one year of the effective date of the act (or by August 11, 2010). Evidence

that may support such a claim includes, but is not limited to, statistical evidence and the testimony of criminal justice system actors.

Two Assistant Professors of Law at the Michigan State University College of Law are currently conducting a statewide statistical study in North Carolina on race and the death penalty, the full cost of which should be covered by non-State grant funds. The researchers are soliciting information from both the prosecution and defense, and full cooperation with the study by both sides would save the State significant costs and avoid unnecessary litigation of individual claims brought pursuant to the RJA. The study is expected to be complete before the post-conviction filing deadline of August 11, 2010.

For fiscal year 2009-10, IDS has entered into a contract with the Center for Death Penalty Litigation (“CDPL”) to coordinate the investigation and litigation by trial, appellate, and post-conviction counsel of issues arising under the RJA, and to provide training and educational materials to appointed counsel. IDS believes that the contract with CDPL will ultimately reduce defense spending on the RJA by avoiding duplication of efforts and the associated unnecessary costs, while ensuring that defense attorneys have the training and resources they need to pursue this new claim in appropriate cases.

After being directed by the Legislative Fiscal Research Division to submit quarterly reports on the number of motions filed pursuant to the RJA and the detailed costs incurred as a result of the act, IDS staff also took a number of steps to design and implement systems for tracking and reporting this data. With respect to motions filed, IDS staff designed a new form, which defense attorneys have been directed to complete and submit within 10 days of filing any motion(s) pursuant to the RJA. With respect to costs incurred, IDS staff designed a new fee application addendum, which defense attorneys have been directed to attach to any fee application that includes time associated with the RJA. In addition, IDS has modified its existing in-house Access database to track all of that financial data. Effective October 30, 2009, IDS also adopted and published formal policies governing RJA litigation at the trial, appellate, and post-conviction levels.<sup>8</sup>

### ***Evaluation and Oversight of North Carolina Prisoner Legal Services***

Pursuant to *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491 (1977), and 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 DOC. 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 DOC to IDS, and directed IDS to evaluate the program and report its findings. Pursuant to § 14.9(b) of Session Law 2005-276, the IDS Office reported to the General Assembly on the findings of that

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<sup>8</sup> For details about the contract with CDPL, as well as the motions filed pursuant to the RJA and the costs incurred, see IDS’ quarterly RJA reports to the General Assembly.

evaluation in April 2007. (For details about the evaluation, see IDS' March 2009 annual report.) After the evaluation was complete, IDS Office staff and the Prisoner Access to the Courts Committee of the IDS Commission began working with NCPLS' Board and staff to make improvements to their existing services.

In May 2008, IDS entered into a new 13-month contract with NCPLS for the provision of legal services to inmates, effective June 1, 2008 through June 30, 2009. That contract required a substantial reorganization of the NCPLS Board, with new bylaws to be adopted by June 1, 2008 and new appointments to be accomplished by June 30, 2008 or as soon thereafter as possible. The Board was subsequently reorganized and, in December 2008, the new Board hired attorney Mary S. Pollard as NCPLS' new Executive Director, effective January 5, 2009. Effective July 1, 2009, IDS entered into another two-year contract with NCPLS. IDS Office staff will continue to work closely with Pollard to ensure that the organization is delivering high quality and cost-effective services.

### *Innocence Inquiry Commission Proceedings*

In Session Law 2006-184, the General Assembly passed the North Carolina Innocence Inquiry Commission Act ("Innocence Inquiry Act"), which created the Innocence Inquiry Commission and Office and charged them with the responsibility of investigating and reviewing claims of factual innocence by persons who have been convicted of felonies in North Carolina. The basic phases of the Innocence Inquiry Commission proceedings are: 1) waiver of the convicted person's procedural safeguards and privileges; 2) formal inquiry and investigation by the Innocence Inquiry staff; 3) non-adversarial presentation of the case to the Innocence Inquiry Commission; and 4) if the Commission finds sufficient evidence of innocence to merit judicial review, an evidentiary hearing before a special panel of superior court judges appointed by the Chief Justice.

The Innocence Inquiry Act, G.S. 15A-1460 *et seq.*, establishes a right to appointed counsel during three phases of the proceedings: 1) prior to and at the execution of an agreement waiving the convicted person's procedural safeguards and privileges, G.S. 15A-1467(b); 2) throughout any formal inquiry that is conducted by the Commission and its staff, G.S. 15A-1467(b); and 3) in any proceedings before a three-judge panel, G.S. 15A-1469(d) and (e). While the Act does not provide a specific mechanism for appointment of counsel or identify the agency that is responsible for appointing or compensating counsel, the Innocence Commission asked the IDS Office to fulfill that function and IDS agreed that it should bear that responsibility. The Innocence Inquiry Commission's rules and procedures currently contemplate two separate appointments of counsel by IDS—at the execution of the rights waiver and in proceedings before a three-judge panel—after an indigency determination by the Innocence Commission's Chair or the senior judge on the panel.

For the initial rights waiver and formal inquiry, IDS is relying on the public defender offices to supply counsel. All of the chief public defenders agreed to handle these cases at the initial stages, and IDS assigned every prison facility in North Carolina to the nearest public defender office. Because the Innocence Commission and IDS Office expect there to be relatively few cases that reach a three-judge panel each year, IDS plans to recruit qualified counsel for that



stage of the proceedings on a case-by-case basis. IDS Office staff have developed a specialized form for public defenders to report their time associated with these cases and for private attorneys to seek compensation at the standard rates of \$75 per hour in non-capital cases and \$95 per hour in capital cases. IDS has also prepared a short on-line reference manual for the attorneys who will be handling these cases, which is available at [www.ncids.org](http://www.ncids.org).

During fiscal year 2008-09, IDS appointed one private attorney in one Forsyth County case before the Innocence Inquiry Commission, because the attorney had a prior relationship with the client and the case. During fiscal year 2008-09, IDS spent \$3,762 for attorney services in one Warren County case pending before the Commission, as well as a total of \$57,473 for attorney and expert services in a Pitt County case that was referred by the Commission to a special three-judge panel.

### ***Improved Juvenile Delinquency Representation***

In conjunction with the American Bar Association (“ABA”) Juvenile Justice Center, the National Juvenile Defender Center, and the Southern Juvenile Defender Center, the IDS Office conducted a statewide assessment of the quality of juvenile delinquency representation in North Carolina. In October 2003, the ABA released its report on North Carolina’s juvenile defense programs. The report contained a number of negative findings about access to and quality of representation in delinquency proceedings in this State, as well as a number of ABA recommendations for improvement. (For details about the assessment and the ABA’s findings and recommendations, see IDS’ March 2009 annual report.)

After the ABA’s report was released, the IDS Commission formed a Juvenile Committee to review the ABA’s findings and prepare recommendations for reform initiatives. That Committee in turn sought the assistance of 13 outside juvenile experts, including delinquency attorneys, special education and mental health advocates, and academics and law school clinical faculty. The Juvenile Committee delivered a formal report on its findings and recommendations to the General Assembly in May 2004. 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 IDS Commission appointed attorney Eric J. Zogry for a four-year term in November 2004. Zogry began work in January 2005, and was reappointed by the Commission for a second four-year term in November 2008.

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 field questions from practitioners and perform case consultations as needed; 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 SOG 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 IDS Commission and staff believe the creation of this position has been a significant step toward elevating the quality of legal services provided to North Carolina's children. Since January 2005, the Juvenile Defender has identified the attorneys who are handling appointed juvenile delinquency cases throughout North Carolina, and created a listserv for those attorneys that currently has 242 members. With the assistance of an advisory board, the Juvenile Defender developed a statement on the role of defense counsel in juvenile delinquency proceedings, which was adopted by the IDS Commission in November 2005. The Juvenile Defender also developed model qualification standards for attorneys who represent juveniles. As of the date of this report, 14 public defender districts have incorporated some version of the model standards into their local appointment plans; IDS Office staff expect the remaining two public defender districts (Carteret and New Hanover counties) to adopt some version of the model standards in the future. The Juvenile Defender has also developed a special page on the IDS website that is dedicated to juvenile delinquency representation and includes, among other things, an index of juvenile defender trial motions and forms, summaries of newly enacted legislation impacting juveniles, notes about juvenile delinquency case law since the current Juvenile Code went into effect in 1999, information about and materials from juvenile defender training programs, and links to related sites.

The IDS Office also provided funding for the development of a new juvenile delinquency manual, and the Juvenile Defender served as the managing editor. The manual contains information about the law and procedure in juvenile delinquency court, practice tips and strategy, and copies of relevant motions and forms. The manual was published in August 2008, and is posted on the IDS website where attorneys can access it for free. The Juvenile Defender is also actively working with SOG faculty to provide training programs for juvenile delinquency attorneys. *See* "Improved Training and Resources," above. In addition, the Juvenile Defender served as staff to the committee that developed the performance guidelines for juvenile defense counsel discussed above. *See* "Performance Guidelines for Appointed Attorneys Representing Juveniles in Delinquency Proceedings at the Trial Level," above. In the future, the Juvenile Defender hopes to develop caseload standards for juvenile defense attorneys.

During calendar year 2008, the Juvenile Defender also undertook a project reviewing a sample of 147 cases from 11 counties that ended in commitments to youth development centers during 2007. The project involved reviewing the commitments for potential errors and, if errors were found and the juvenile wanted to pursue relief, filing a motion for review or asking the attorney who was appointed in district court to file such a motion. The Juvenile Defender's goals for this 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. The study found that at least 16.4% of the files reviewed contained one or more "actionable errors," which were defined as errors that, if corrected, would have resulted in the release of the juvenile or a reduction in the juvenile's maximum term of commitment. Because it was unclear from the face of the files in many cases whether an identified error was actionable, and based on additional investigation of a sample of the files that were reviewed, the study estimated that the true "actionable error" rate could have been as high as 43.8%. A report on the study's findings was published in February 2009 and is posted on the IDS website.

### ***Improved Representation of Parent Respondents***

The IDS Office has taken significant steps to assess and improve the representation of parent respondents in abuse, neglect, or dependency and termination of parental rights cases. IDS Office staff created a listserv for attorneys representing parent respondents in Chapter 7B cases across the State, which currently has 336 members. The IDS Office has also added attorney positions in the Durham County Public Defender Office, Hoke/Scotland Public Defender Office, and the First District Public Defender Office to represent parent respondents in these proceedings. In the fall of 2006, the IDS Commission also established a new position in the Office of the Appellate Defender called the Parent Representation Coordinator. Attorney Wendy Sotolongo was hired to fill that position in November 2006, and has since served as a parent attorney representative on the Advisory Committee to the North Carolina Court Improvement Project for Children and Families (“NC-CIP”), which is an organization dedicated to improving the quality of North Carolina’s family courts.

Among other things, the Parent Representation Coordinator is responsible for coordinating appellate representation of indigent parent respondents in 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; evaluating appellate briefs in Chapter 7B cases for inclusion in a statewide on-line brief bank; performing case consultations with trial and appellate attorneys who represent parent respondents; and maintaining the listserv described above. Sotolongo also worked with IDS Office staff to develop a special page on the IDS website that is dedicated to representation of parent respondents. That webpage includes, among other things, a specialized appellate brief bank, trial and appellate forms, case summaries, legislative updates, and training and reference materials for abuse, neglect, dependency, and termination of parental rights cases.

In addition, Sotolongo has been working with SOG faculty, NC-CIP, and other system actors to develop new training programs for trial and appellate attorneys who represent parent respondents, and will be overseeing the development of a practice manual for parent attorneys sometime in the future. *See* “Improved Training and Resources,” above. Finally, the Parent Representation Coordinator served as a primary staff member to the committee that developed the performance guidelines for parent attorneys discussed above. *See* “Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency and Termination of Parent Rights Proceedings at the Trial Level,” above. With Sotolongo’s leadership and guidance, the IDS Commission and staff intend to devote more attention to improving parent representation in the future.

### ***Study of Appeals in Abuse/Neglect/Dependency and Termination of Parental Rights Cases***

In January 2010, the Parent Representation Coordinator completed a study of the number and percentage of appeals to the Court of Appeals from district court orders in abuse, neglect, dependency, and termination of parental rights cases, as well as the results of those appeals. G.S. 7B-1001 generally limits direct appeals in these types of proceedings to adjudication and disposition orders, orders changing custody, and orders terminating parental rights. The numbers

and rates of appeal from adjudication and disposition orders and from orders terminating parental rights during each of the past three fiscal years are shown in the following chart:

<b>Orders and Appeals<sup>9</sup></b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
# Adj/Disp District Court Orders	3,400	3,134	2,856
# Adj/Disp Orders Appealed	44	23	39
% Adj/Disp Orders Appealed	1.29%	0.73%	1.36%
# TPR District Court Orders	954	879	928
# TPR Orders Appealed	97	126	143
% TPR Orders Appealed	10.16%	14.33%	15.4%
# Other Appeals	49	33	29
<b>Total # Appeals</b>	<b>190</b>	<b>182</b>	<b>211</b>

The following chart shows the total number of appellate decisions during each of the past three fiscal years, the breakdown of appellate decisions by type of order appealed, and the results of those appeals:

<b>Appellate Decisions</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
# Adj/Disp Appellate Decisions	38	34	27
% Adj/Disp Appellate Decisions	14.9%	20.4%	17.4%
# TPR Appellate Decisions	176	118	108
% TPR Appellate Decisions	69%	70.7%	69.7%
# Other A/N/D or TPR Appellate Decisions	41	15	20
% Other A/N/D or TPR Appellate Decisions	16.1%	9%	12.9%
# Decisions Affirming/No Error <sup>10</sup>	189	117	107
% Decisions Affirming/No Error	74.1%	70.1%	69%
# Decisions Dismissing Appeal <sup>11</sup>	13	3	3
% Decisions Dismissing Appeal	5.1%	1.8%	1.9%
# Decisions Granting Relief <sup>12</sup>	53	47	45
% Decisions Granting Relief	20.8%	28.1%	29%
<b>Total # Appellate Decisions</b>	<b>255</b>	<b>167</b>	<b>155</b>

This data demonstrates that the rate of appeal in abuse, neglect, dependency, and termination of parental rights proceedings is quite modest when compared to the number of appealable orders. In addition, because the Court of Appeals has granted relief in 20.8% to 29% of these appeals

<sup>9</sup> The data on the statewide number of adjudication/disposition and termination of parental rights orders in district court was obtained from AOC's Guardian ad Litem program. The data on the number of appeals was obtained from the Office of the Parent Representation Coordinator. It is based on the number of attorney assignments per family unit; if both parents appealed the same order, the chart counts that as one appeal. The Court of Appeals uses the same method for counting appeals.

<sup>10</sup> "Decisions Affirming/No Error" represent decisions in which the Court of Appeals affirmed a trial court's order that was adverse to one or both parents.

<sup>11</sup> "Decisions Dismissing Appeal" represent appeals that the Court of Appeals dismissed, thereby leaving intact a decision by a trial court that was adverse to one or both parents.

<sup>12</sup> "Decisions Granting Relief" represent decisions in which one or both parents received some relief from the Court of Appeals. Remands for clerical corrections are not included.

over the past three fiscal years, the data suggests that there are a significant number of errors occurring at the trial level.

There may be some decrease in the number of substantive direct appeals in abuse, neglect, dependency, and termination of parental rights cases in future years. Previously, counsel appointed to handle an appeal taken pursuant to G.S. 7B-1001 did not have the option of filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) (holding that if counsel finds an appeal to be wholly frivolous after conscientious examination, he or she should request permission to withdraw and submit a brief referring to anything in the record that might arguably support the appeal). However, effective July 2, 2009, the Supreme Court of North Carolina amended the North Carolina Rules of Appellate Procedure to allow counsel in an appeal taken pursuant to G.S. 7B-1001 to file a “no-merit brief” if, after a conscientious review of the record on appeal, counsel concludes that the record does not contain any potentially meritorious issues on which to base an argument for relief and that the appeal would be frivolous. *See* N.C. R. App. P. 3.1(d) (July 2, 2009).

### *Special Counsel Program*

During fiscal year 2008-09, the IDS Office continued to work with the Special Counsel Supervising Attorney, Dolly Whiteside, to enhance the quality of service delivery and cost effectiveness of the regional special counsel programs, which represent indigent respondents in civil commitment proceedings. Currently, there are special counsel offices at Cherry Hospital in Wayne County, Broughton Hospital in Burke County, and both the Raleigh and Butner campuses of Central Regional Hospital (“CRH”). In fiscal year 2007-08, the four Offices of Special Counsel disposed of a total of 20,916 cases at a cost savings of \$1.68 million compared to the cost of representation if those cases had been handled by private appointed counsel. Cost savings for fiscal year 2008-09 have not yet been calculated.

In addition to providing management, oversight, and ongoing evaluation of the statewide program, which employs nine attorneys and eight support staff in the four regional offices, some of the other duties of the Special Counsel Supervising Attorney include: serving as a central resource and contact person for assistant public defenders and appointed counsel handling commitment cases statewide; providing individual case consultations upon request; responding to inquiries from court officials about the governing statutes and court administration of commitment matters; monitoring and assessing the cost and effectiveness of the delivery of legal services in civil commitment and guardianship cases by appointed and contractual counsel; and planning civil commitment and guardianship educational materials and training events with SOG. Whiteside also continues to maintain a listserv for attorneys practicing in the civil commitment area, which currently has 149 members and, in late January 2009, she launched a civil commitment and guardianship page on the IDS website, which contains resources and training materials for those two substantive areas.

The Supervising Attorney has also continued to monitor the implementation of the State Mental Health Reform Plan and to make necessary adjustments to the delivery of services by the regional offices as the plan moves forward. The Special Counsel Office at CRH-Butner continues to serve clients at both the CRH-Butner facility and the old John Umstead Hospital.

The Special Counsel Office at the old Dix campus continues to serve clients at the CRH-Raleigh facility and Holly Hill Hospital, and plans to absorb the caseload at other new Wake County units. The Special Counsel program has also provided regional administrative support and training, including assisting court officials with setting up commitment court procedures for new inpatient beds at a Roanoke Rapids hospital and at Wayne Memorial Hospital during the summer of 2009. The Special Counsel Office at Cherry Hospital will absorb the new caseload at Wayne Memorial. IDS and Whiteside will continue to track all of the changes resulting from the implementation of the Mental Health Reform Plan and to work with the Department of Health and Human Services, court officials, and the Attorney General's Office to make adjustments to Special Counsel Office staffing, to assist with training of attorneys statewide, and to ensure continuing cost-effective and quality representation of indigent clients involved in the civil commitment process.

In 2006, IDS and SOG published the North Carolina Civil Commitment Manual for attorneys who represent respondents in commitment matters. The manual is accessible for free on the IDS website, and has also been circulated to other court officials involved in the commitment process, including judges, clerks, and magistrates. The manual provides guidance for special counsel, assistant public defenders, and appointed counsel for respondents facing involuntary inpatient commitment, outpatient commitment, substance abuse commitment, and voluntary admission procedures for minors or incompetent adults. In January 2009, the manual was used as a primary tool in a civil commitment training program for appointed attorneys, assistant public defenders, and special counsel, which was jointly sponsored by IDS and SOG. Whiteside and SOG plan to update the manual during 2010. During February 2010, the program also provided local civil commitment training for attorneys in Hoke County.

In January 2008, IDS and SOG published the North Carolina Guardianship Manual for appointed counsel in Chapter 35A guardianship cases. That manual is also available for free on the IDS website. In February 2008, IDS and SOG held a jointly sponsored training program for appointed attorneys and assistant public defenders, at which the new Guardianship Manual was used as a primary training tool. Planning has also begun for a two-day educational event in January 2011, which will offer training in both civil commitment and guardianship representation for assistant public defenders, private appointed counsel, and special counsel.

### ***Sentencing Services Program***

In the 2002 Appropriations Act, the General Assembly reduced the overall budget for the Office of Sentencing Services ("OSS") by almost 40% and transferred the program to IDS, with directions to reconfigure the program as necessary to implement the budget reduction. IDS assumed responsibility for OSS in September 2002 and, in November 2003, the IDS Director hired a permanent half-time Administrator of OSS. In the 2005 Appropriations Act, the General Assembly further reduced OSS' budget by an additional 30% and directed IDS to close low-performing programs. OSS was substantially reorganized pursuant to those two budget reductions, including the elimination in 2005 of 10 programs after consultation with the senior resident superior court judges in those districts. During 2005, OSS also eliminated other state positions and reduced the non-profit programs' grants to meet the new budget amount. In the 2009 Appropriations Act, the General Assembly again reduced OSS' budget by 15%, resulting in

the closure of four more programs, further reductions to non-profit budgets, and a cut in state employee hours and salaries. The 2009 Appropriations Act also subjected the program to a continuation review.

After the first funding reduction in 2002, the programs significantly decreased their services of screening defendants, opening cases, and presenting sentencing plans. During fiscal years 2003-04 and 2004-05, the programs became more efficient with their time and steadily increased the number of plans they presented. After the second funding reduction in 2005, fewer programs were in place to provide services and the funding for the remaining programs was lower. However, the programs expanded their services in fiscal year 2006-07 by screening 6,119 offenders (an increase of 4% from the prior fiscal year), opening 2,070 cases (an increase of 13% from the prior fiscal year), and presenting 1,610 plans (an increase of 11% from the prior fiscal year).

Programs experienced slight decreases in their case-opening and plan productivity in fiscal year 2007-08, screening 6,248 offenders (a 2% increase from the prior fiscal year), opening 1,886 cases (a 9% decrease from the prior fiscal year), and presenting 1,490 plans (a 7% decrease from the prior fiscal year). These decreases were due partly to the reorganizations of certain programs and to a preponderance in one district of court reports (information provided at a court's request that is similar to a sentencing plan but that does not contain one or more of the statutory elements of a plan). In fiscal year 2008-09, productivity and efficiency again rose, with 5,510 screened defendants (a 12% decrease from the prior fiscal year) leading to 2,023 opened cases (a 7% increase from the prior fiscal year) and 1,652 presented plans (a 10% increase from the prior fiscal year). The programs continue to report that the majority of cases are attributable to referrals from attorneys and judges.

### *Systems Evaluation Project*

The IDS Office has developed ways to measure and compare the cost of various service delivery mechanisms in the State. *See, e.g.*, "Public Defender Disposition Reporting and Cost-Effectiveness Studies" and "Contracts with Attorneys," above. In addition, in January 2004, the IDS Commission formed a Systems Evaluation Committee that has been working with Office staff and others to develop an objective tool to evaluate the quality and performance of indigent defense systems on an ongoing basis at the county, district, and statewide levels. Such a tool could utilize data assessment, surveys, interviewing, on-site observations, and other methods of collecting information. It also should enable the IDS Commission and Office to identify systemic barriers to the efficient administration of justice, and then work with other system actors to remedy those barriers. Because there are no existing models for this type of systemic assessment of indigent defense or other legal systems, IDS expects this project to be a long-term undertaking and believes the tool that is developed will serve as a model for other jurisdictions around the country.

The planned major phases of the Systems Evaluation Project include: 1) clearly defining what successful indigent defense systems should accomplish; 2) developing a draft evaluation tool that will measure, in objective terms, how well North Carolina's indigent defense systems achieve that definition of success; 3) seeking comments and feedback about the draft evaluation tool from key in-state and national reviewers; 4) conducting a series of regional meetings around

the State to introduce the evaluation tool and seek additional feedback; and 5) developing the data infrastructure and performance measures themselves.

The Systems Evaluation Committee and staff have completed the first major phase of the project, and are currently working on the second and third phases. With the assistance of the IDS Systems Evaluation Project Coordinator, IDS has undertaken a number of steps to define the mission and goals of indigent defense in North Carolina and to articulate what an evaluation tool should measure. First, IDS hosted a one-day conference in 2005 for organizations that focus on criminal justice issues, innovative indigent defense programs around the country, and indigent defense service organizations from other states. IDS' out-of-pocket expenses for this conference were reimbursed by the Z. Smith Reynolds Foundation. The conference created, for the first time, a national forum where practitioners and criminal justice social scientists gathered to discuss approaches and strategies for evaluating indigent defense. A report on the March 2005 conference is available on the IDS website.

Second, between March and October 2006, IDS Office staff conducted 10 focus groups around the State to interview representatives of groups or populations with different perspectives in the criminal justice system and community, including defense attorneys, judges, prosecutors, clerks, clients, law enforcement, investigators, corrections, advocacy groups, and government and business representatives. A summary report on those focus groups is also available on the IDS website.

Third, in June 2009, Office staff published a research report that examines what a model indigent defense system should look like. The report summarizes new developments in criminal justice research and what those developments mean for the practice of indigent criminal defense. It also describes innovative strategies used by indigent defense agencies across the country to better serve their clients and communities while increasing efficiency and saving taxpayer money. The research report is also available on the IDS website.

Fourth, the Committee and staff have developed a draft blueprint for how IDS can measure the quality of indigent defense services through statistical indicators. The draft evaluation plan defines the goals and objectives of a high quality indigent defense program and identifies the indicators that will measure performance for each objective. The Office has identified a number of key in-state and national reviewers, including defense attorneys, indigent defense agencies and criminal justice researchers across the country, and other system actors, such as judges and prosecutors. Once Office staff have obtained their feedback, the draft evaluation tool will be revised. Simultaneously, the Office plans to begin identifying some key performance measures from the tool and developing a work plan to create the necessary data collection infrastructure. Finally, Office staff are actively attempting to obtain grant funding to support certain aspects of the Systems Evaluation Project, particularly the necessary data collection infrastructure. *See* "Grant Applications," above.

After an evaluation tool has been developed and implemented, IDS intends to begin assessing the performance of existing systems in various North Carolina counties and districts, identifying best practices, and making recommendations for change where needed. However, before making any significant changes to the method of delivering services in a particular district, the IDS Act



requires the IDS Office to consult with the bar and bench in the district or districts under consideration. In addition, the IDS Office must obtain legislative approval before establishing or abolishing a district or regional public defender office. (Additional materials about the Systems Evaluation Project are available at [www.ncids.org](http://www.ncids.org) under the “Systems Eval. Project” link.)

### **C. Consultation with Other Actors and Recommended Cost-Saving Measures:**

Session Law 2005-276, § 14.12 directed the IDS Office to consult with the Conference of District Attorneys, the Conference of District Court Judges, and the Conference of Superior Court Judges to formulate proposals aimed at reducing future costs, such as reclassifying minor traffic offenses as infractions, changing the way criminal district court is scheduled, and reevaluating the handling of capital cases. After consulting with the identified actors, in its March 2007 annual report, the IDS Commission made the following recommendations to the General Assembly:

- 1) Appropriate a modest amount of money to staff one or more pilot tests of alternative scheduling systems in district and/or superior court that would minimize defense attorney wait time;
- 2) Fund a joint study by IDS and the North Carolina Sentencing and Policy Advisory Commission to identify misdemeanors that would be most appropriate for reclassification as infractions because they never result in jail sentences;
- 3) Expand and regionalize the public defender system, and improve IDS’ ability to supervise the chief public defenders;
- 4) Improve the procedures for recouping attorney fees from clients who have been ordered to repay the State; and
- 5) Amend G.S. 14-17 to eliminate felony murder as a possible basis for a death sentence.

In addition, the Commission identified improved indigency screening as an area of concern and formed a committee to develop indigency standards pursuant to G.S. 7A-498.5(c)(8). *See* “Committees of the IDS Commission” and “Development of Indigency Standards,” above. The IDS Commission and Office continue to support these legislative recommendations.

Session Law 2009-451, § 15.17 again directed IDS to consult with the Administrative Office of the Courts, the Conference of District Attorneys, the North Carolina Sentencing and Policy Advisory Commission, and other court system actors in formulating proposals aimed at reducing future costs, including the possibility of reclassifying as infractions some 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. The Session Law also directs IDS to include any proposals in its reports during the 2009-2011 fiscal biennium.

#### ***Consultation and Study on Reclassification of Certain Misdemeanors***

IDS spends a significant amount of money on appointed attorneys in lower-level traffic and other offenses in district court that carry the theoretical possibility of imprisonment, and the IDS Commission and staff believe that reclassifying some of those offenses as infractions could save a significant amount of money. *See also* Without Favor, Denial or Delay: A Court System for

the 21st Century 53-54 (Commission for the Future of Justice and the Courts in North Carolina, Dec. 1996). During the 2007 and 2008 legislative sessions, the IDS Commission recommended that the General Assembly appropriate a modest amount of money to fund a study by IDS, the North Carolina Sentencing and Policy Advisory Commission, or some other group to identify misdemeanors that would be most appropriate for reclassification because they rarely or never result in jail sentences. If the identified offenses are later reclassified as infractions, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel.

While the General Assembly did not appropriate funding for a study, the IDS Commission and staff believe it is important to examine this issue in light of the State's budget crisis. During February 2009, Office staff conducted a preliminary study of the potential cost savings that would be associated with reclassifying a number of different misdemeanor offenses as infractions. However, the study was complicated by limitations inherent in the data available through ACIS, which represents unique file numbers per defendant and may encompass one or more actual charges. In contrast, most IDS studies define one indigent case as all charges disposed on behalf of the same defendant on the same day before the same judge. In addition, because it is difficult to identify individual cases in ACIS by highest charge, there appeared to be duplication in the case counts used in the study. After further review of the data available in ACIS, IDS staff have concluded that the rough cost savings that were included in IDS' March 2009 annual report are significantly overstated.

As discussed in "System for Obtaining Indigent Case Information when Counsel is Appointed," above, the IDS Office now has access to regular exports of ACIS data and is building an interface to facilitate mining of that data. Once the staff has learned the intricacies of the data, IDS plans to conduct another study on the savings that would be generated from reclassifying 17 different offenses as infractions: allowing an unlicensed person to drive (G.S. 20-34); driving a motor vehicle with no registration (G.S. 20-111(1)); driving while license revoked ("DWLR") based on a failure to appear or comply (excluding DWLRs based on a prior driving while impaired conviction) (G.S. 20-28(a)); expired registration card or tag (G.S. 20-111(2)); failing to comply with license restrictions (G.S. 20-7(e)); failing to return rental property (G.S. 14-168.4); failing to notify the Division of Motor Vehicles of an address change (G.S. 20-7.1); failing to sign registration card (G.S. 20-57(c)); fictitious, canceled, or revoked registration card or tag (G.S. 20-111(2)); fishing without a license (G.S. 113-270.1B(a)); license not in possession (G.S. 20-7(a)); no operators license (G.S. 20-7(a)); no registration card (G.S. 20-57(c)); operating a vehicle with no insurance (G.S. 20-313(a)); simple worthless checks (G.S. 14-107(d)); driving more than 15 miles per hour over the speed limit or over 80 miles per hour (G.S. 20-141(j1)); and window tinting violation (G.S. 20-127(d)). These offenses were identified for study because there is a high volume of cases, a high percentage of dismissals or other resolution without conviction, and a lower likelihood of objection to reclassification because, for example, the offense is a victimless crime or reclassification should not have a negative impact on public safety.

The planned study will analyze all charges associated with cases disposed in fiscal year 2008-09 that included at least one of the selected statutes and will analyze the data by defendant, file number, statute, additional charges against the defendant, and case outcome. The study will

also provide an estimate of the potential indigent defense savings if attorneys are no longer appointed in these cases. On January 5, 2010, pursuant to § 15.17 of Session Law 2009-451, IDS staff circulated a draft of the study design to the AOC Director, the President of the Association of Chief District Court Judges, the President of the Association of District Court Judges, the President of the Conference of District Attorneys, the Director of the Conference of District Attorneys, the Director of the Sentencing and Policy Advisory Commission, the President of the Association of Public Defenders, and the President of the Conference of Clerks of Superior Court, with a request that they provide feedback on the planned study.

On February 12, 2010, IDS Office staff also met with representatives of the Conference of District Attorneys to obtain their feedback. Based on the discussion at that meeting, IDS Office staff believe that prosecutors would support reclassification of some minor offenses because it would help relieve overburdened dockets in criminal district court. Some of the prosecutors at the meeting suggested that IDS include in the planned reclassification study some additional offenses, such as wildlife misdemeanors, and that the study also examine the number of cases by statute that are resolved in superior court. In addition, in response to the Office's January 5, 2010 letter about the planned study, a District Court Judge suggested that IDS also examine the benefits and savings associated with eliminating private warrants, which allow private citizens to charge a person with a misdemeanor by swearing to a magistrate that such an offense has occurred with no screening by law enforcement.

The IDS Commission and staff hope that the study will be complete in time to generate some recommendations for the General Assembly during the 2010 short session.

### ***Consultation on Improving the Manner in Which Capital Cases are Screened and Processed***

During January 2009, before § 15.17 of Session Law 2009-451 was enacted, representatives of the IDS Commission, IDS Office, and the North Carolina Association of Public Defenders met with representatives of the Executive Committee of the Conference of District Attorneys to discuss possible improvements in the way that potentially capital cases are charged, screened, and processed. The group had a candid discussion about the difficulties and complications inherent in streamlining those processes, and was unable to generate any recommendations for improvements. The IDS Commission and IDS Office will continue to consult with other system actors about this issue and will bring any recommendations that are developed to the attention of the General Assembly.

### **D. Potential Future Initiative: Regionalization of the Public Defender System and/or Regional Resource Counsel:**

One of the IDS Office's key functions is to determine the most appropriate method of providing legal representation in each judicial district, from both a cost and quality perspective. The IDS Act authorizes the IDS Office to use appointed counsel on a case-by-case basis, to enter into contracts with attorneys to handle a number of cases over a specified period of time, to employ full-time or part-time public defenders to represent indigent defendants in a particular district or region with legislative approval, or to use any combination of these or other methods.

This flexibility allows IDS to tailor indigent defense services to the needs in different parts of the State and in different types of cases.

The IDS Commission and staff believe that the current systems in many areas of North Carolina do not lend themselves to extensive management and oversight by IDS. Indeed, IDS' efforts to oversee the delivery of legal services to indigent defendants and respondents are frustrated by its reliance on public defenders who are not accountable to IDS and on local bar committees that are composed of volunteers. The IDS Commission and staff believe that an expansion and regionalization of the existing public defender system would vastly improve IDS' ability to fulfill its statutory mission. However, the Commission and staff also strongly believe that a regional system must be coupled with a more appropriate and effective management and oversight relationship between IDS and the chief public defenders, which can best be accomplished if IDS has hiring authority, as it does with the Appellate, Capital, and Juvenile Defenders. *See* "Consultation with Other Actors and Recommended Cost-Saving Measures," above, and "Legislative Recommendations," below.

In addition to IDS' support of a properly managed public defender system, the IDS Commission and staff also value the contributions and talent of the private appointed bar and are committed to maintaining private bar participation in North Carolina's indigent defense programs. In its standards for administering indigent defense services, the American Bar Association recommends that indigent defense programs utilize a mix of private counsel and public defender services, concluding that substantial private bar involvement is crucial to an effective program. Moreover, because the population and caseload in many rural areas of North Carolina would be insufficient to support a traditional public defender office, IDS believes a regionalized public defender system could be best suited to this State.

Under one model of a regionalized system, a regional public defender could oversee an office in one or more counties and also oversee appointed lists, contracts, and/or part-time state employed defenders in the more rural areas within the region. The regional public defender office could be responsible for managing the regional rosters, appointing private attorneys in non-conflict cases, documenting the reasons for any deviations from the systematic rotation, reviewing attorney fee applications in non-conflict cases, resolving client complaints within the region, and providing local training. In other words, the regional office could perform administrative and support functions at a more local level, which IDS currently does not have the resources or infrastructure to perform. The central IDS staff could then assume more direct responsibility for appointments and compensation in cases in which the regional office has a conflict of interest. Such conflict cases typically amount to 15% of the indigent caseload in a public defender district. While the added administrative responsibilities of regional offices would necessitate some additional administrative staff in those offices, regionalization could also generate savings, particularly if some of the existing defender offices are consolidated. This model of a defender office with full-time assistant defenders and oversight responsibility for appointed attorneys in other counties is similar to the model IDS has already successfully established in the statewide Offices of the Appellate Defender and Capital Defender. In addition, regionalized public defender systems are successfully used in other states, such as Minnesota.

The IDS Commission has also discussed a different model of regionalization, which would involve creating a new regional resource counsel position in a region. The position could be part- or full-time, either as a State employee or through a contract with a private attorney in the region. The position's responsibilities could include visiting each county within the region and observing court proceedings, identifying training and resource needs in the region and developing and providing regional training programs, consulting with the attorneys in the district about case-related issues and litigation strategy upon request, developing contracts with local attorneys for some types of cases, developing and implementing a plan for addressing client complaints within the region, and working with IDS staff to implement some version of the Commission's model appointment plan in each district in the region. *See* "Model Appointment Plan for Non-Public Defender Districts," above. In addition, as a pilot project, the regional resource counsel could assume responsibility for handling expert requests in some types of non-capital cases within the region.

The Commission has discussed the possibility of creating such a position in the Sixth Judicial Division, which encompasses District 19A (Cabarrus County), District 19C (Rowan County), District 20A (Anson, Richmond, and Stanly counties), District 20B (Union County), and District 22 (Alexander, Davidson, Davie, and Iredell counties). The Sixth Division is the only division in North Carolina with no public defender offices, and the IDS Commission and Office believe it would be helpful to have someone closer to the districts serving as a support and resource for the local bars, and helping IDS to identify any best practices and/or developing initiatives to improve the quality and cost-effectiveness of representation if necessary. Before moving forward with such a position, the Commission and Office will consult with the bar and bench in the region about their needs. At this time, the Office has not proceeded with those consultations because of the State's current budget crisis. The Commission and staff will continue to discuss and analyze the possibility of regional defender offices and regional resource counsel positions, and hope to develop more specific proposals in the future.

## **II. DISTRICT CASE VOLUME AND COST STATISTICS**

The existing data on the volume and cost of cases handled in each district by private assigned counsel and public defenders during fiscal year 2008-09 is attached to this report as Appendix C. (Appendix C also contains the same data for fiscal year 2007-08, because the numbers of cases disposed by public defender offices that fiscal year were omitted from IDS' March 2009 annual report.) While the reported data continues to be limited in scope, the IDS Office is continually working with the IDS Financial Services division to improve data collection procedures and data reporting capabilities for cases handled by private appointed attorneys, *see* "Improved Data Collection and Reporting," above, and has worked with the public defenders to improve disposition reporting from the public defender offices, *see* "Public Defender Disposition Reporting and Cost-Effectiveness Studies," above. The IDS Office hopes to continue improving the quality of the data that is reported in future annual reports.

### III. CONTRACTS WITH LOCAL GOVERNMENTS FOR ASSISTANT PUBLIC DEFENDERS

G.S. 7A-346.2(a) directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions, including the number of such contracts, the number of attorney positions, and the dollar amount of each contract. During fiscal year 2008-09, Mecklenburg County continued to fund positions throughout the local court system under the terms of the Court Set and State Justice Services Personnel Agreements. For IDS, that included two assistant public defender positions and four legal assistant positions under the Court Set Agreement, for a total budget of \$365,084, plus two additional legal assistant positions under the State Justice Services Personnel Agreement, for a total budget of \$95,487.16. Mecklenburg County also expanded the scope of their support during fiscal year 2008-09, phasing in additional projects throughout the year. The expansion projects that included IDS were the Criminal Case Management Plan, Early Intervention in Custody for Misdemeanants, and Expedited Handling of Class H and I Felonies. For IDS, those projects included an additional four assistant public defender positions and one additional legal assistant position, for an additional budget of \$226,217 during fiscal year 2008-09.

Mecklenburg County Area Mental Health also contracted with the Mecklenburg County Public Defender Office to support a full-time social worker position to screen clients for appropriate treatments in an effort to prevent recidivism. The contract amount for this Recovery Solutions project was \$56,695. Work on the project began on July 28, 2009, and actual expenditures for fiscal year 2008-09 were \$39,140. In addition, Mecklenburg County reimburses 25% of the personnel expenses for two assistant public defenders under a long-standing arrangement to expedite drug related cases. Expenses are reimbursed on a biannual basis; \$28,077.74 in expenses were reimbursed by Mecklenburg County under this arrangement during fiscal year 2008-09.

Finally, during fiscal year 2008-09, Durham County funded one assistant public defender position to handle first appearances. That contract was budgeted at \$55,825 for fiscal year 2008-09; actual expenditures were \$53,575. Durham County's support of that position ended effective June 30, 2009.

In sum, during fiscal year 2008-09, IDS received county funding for the following positions:

County	Program	Attorney Positions	Support Positions
Mecklenburg	Court Set	2	4 Legal Assistants
Mecklenburg	State Justice Services	0	2 Legal Assistants
Mecklenburg	Expanded Contract	4	1 Legal Assistant
Mecklenburg	Area Mental Health	0	1 Social Worker
Mecklenburg	25% Reimbursement	2 (0.5 fte)	0
Durham	First Appearances	1	0

## IV. LEGISLATIVE RECOMMENDATIONS

### A. Increase Funding for the Private Assigned Counsel Fund:

Based on the 2009 Appropriations Act, IDS' current appropriation for private assigned counsel next fiscal year (2010-11) is \$13.8 million lower than the appropriation for this fiscal year (2009-10). \$6.9 million of IDS' fiscal year 2009-10 funding represented a one-time need to pay carry-over debt from fiscal year 2008-09. However, that still leaves a \$6.9 million decrease in recurring funding for next fiscal year despite the fact that IDS' spending on private assigned counsel dispositions has historically grown by an average of 5.4% each year (based on rolling averages). Based on current assumptions and after annualizing the fiscal year 2009-10 budget revisions, Office staff are currently projecting a shortfall of \$5.35 million in IDS' fiscal year 2010-11 appropriation for private assigned counsel, which would mean that IDS' funding for payments to private attorneys would be depleted in early June 2011.

The IDS Commission and Office request that the General Assembly appropriate an additional \$5.1 million in recurring funds during fiscal year 2010-11 to maintain the current level of services and to cover the projected demand on the fund next year. The IDS Commission and Office also propose that the General Assembly increase the attorney appointment fee that G.S. 7A-455.1 requires in criminal cases from \$50 to \$60, which Office staff project will generate an additional \$250,000 in revenues during fiscal year 2010-11. *See* "Increase Amount of the Attorney Appointment Fee," below. This funding request assumes that the Office will be permitted to use all recoupment receipts and available lapsed salary from the public defender fund.

### B. Increase Funding for North Carolina Prisoner Legal Services:

As discussed in "Evaluation and Oversight of North Carolina Prisoner Legal Services," above, pursuant to *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491 (1977), and a contract with IDS, NCPLS provides legal advice and assistance to prisoners in the custody of the DOC. While the inmate population has increased 25% since 1998, NCPLS has been unable to increase staffing to meet the increased demand because of budget limitations. In addition, the 2009 Appropriations Act reduced NCPLS' funding during the current fiscal biennium by \$62,204 compared to fiscal year 2008-09. The budget reduction this fiscal year has required NCPLS to maintain one vacant attorney position and defer adding another new attorney position; moreover, an attorney who has been working at NCPLS with funding from a private law firm will be leaving the office in August 2010.

The IDS Commission and Office believe that an additional recurring appropriation of \$114,092 during fiscal year 2010-11 would enable NCPLS to fill their vacant attorney position, add one new attorney position, and maintain an acceptable level of inmate services. The requested increase would bring the annual contract amount for NCPLS' services to \$2,954,717.

### **C. Restore Funding for Sentencing Services:**

Section 6.6E(b) of Session Law 2009-451 subjects the Office of Sentencing Services (“OSS”) to a continuation review to assist the General Assembly in determining whether to continue, reduce, or eliminate funding for the program. Thus, there is no funding for the program in the current fiscal year 2010-11 budget. The IDS Commission and Office request that the General Assembly restore OSS’ funding during fiscal year 2010-11 at a level that will support the existing state and non-profit programs—\$2,649,387.

The IDS Commission and staff understand that the State is continuing to face a serious fiscal crisis and may need to reduce or eliminate some programs. However, the judges who sentence defendants who have been convicted of or pled guilty to crimes that allow imposition of an intermediate or active sentence must determine which type of sentence will best serve the defendant and the community, and OSS greatly assists judges in making appropriate decisions by conducting detailed assessments of the defendants and the available treatment and intervention options. Those assessments in turn assist in the diversion of appropriate offenders from prison beds, with significant associated cost savings, and in improving the success rate of offenders on probation. In conducting the continuation review of Sentencing Services, IDS recommends that the General Assembly consider the long-term savings in prison costs and reduced recidivism that the program generates.

### **D. Correct and Maintain Funding for the Center for Death Penalty Litigation:**

Section 15.3 of Session Law 2009-451 authorizes the IDS Office to contract with CDPL “to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants.” That contract enables CDPL to provide a wide range of consultation, training, and other services that support attorneys who have been appointed to represent indigent capital defendants at the trial and post-conviction levels throughout the State; indeed, many of the services provided by CDPL are mandated by IDS Office policies.

While § 15.3 provides that the contractual amount of funding for this purpose may be up to \$376,125 for fiscal years 2009-10 and 2010-11 (a reduction of \$125,375 from the prior fiscal year), the 2009 Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets only reduced CDPL’s funding by 5% (\$25,075). IDS Office staff were told that the intended cut was the amount set forth in the money report and that the figure in the 2009 Appropriations Act was an error. The IDS Commission and Office request that the General Assembly correct this error in the 2010 Appropriations Act and that funding for CDPL’s services be maintained at the intended level of \$476,425.

### **E. Increase Amount of the Attorney Appointment Fee:**

G.S. 7A-455.1 (“Appointment Fee in Criminal Cases”) currently provides that, in every criminal case at the trial level in which counsel is appointed and the defendant is convicted, the court shall order the defendant to pay a mandatory \$50 attorney appointment fee. The statute further provides that the fee shall be assessed only once for each attorney appointment, regardless of the number of charges to which an attorney is assigned. Currently, the first \$5 of



each fee is credited to the Court Information Technology Fund and the remaining \$45 is credited to IDS. Effective for cases in which counsel is appointed on or after July 1, 2010, the IDS Commission and Office propose that the General Assembly increase the amount of the mandatory fee to \$60, with \$5 credited to the Court Information Technology Fund and \$55 credited to IDS. As discussed above, IDS Office staff project that the \$10 increase will generate an additional \$250,000 in revenues during fiscal year 2010-11.

#### **F. Additional Staff for Existing Defender Offices:**

During the 2010 legislative session, the IDS Office will again ask the General Assembly for authority to add attorney and support staff positions to existing defender offices where IDS determines that the additions will be cost-effective and/or enhance the quality of representation in a district. *See* “Expansion of Existing Public Defender Offices,” above. IDS also may seek permission to add a small number of positions to the central IDS Office.

#### **G. Continue Funding for One or More District Court Alternative Scheduling Pilots:**

As discussed in “District Court Alternative Scheduling Survey and Pilots,” above, IDS is in the process of developing a district court alternative scheduling pilot and hopes to have one or more pilot programs in place before the end of the current fiscal year. However, the IDS Commission and Office believe that any pilot programs will need to last at least one full year before IDS will be in a position to make more wide-ranging recommendations about scheduling. Thus, the IDS Office requests that the 2010 Appropriations Act again allow IDS to spend up to \$25,000 of its appropriated funds to continue supporting one or more pilot programs of alternative scheduling.

#### **H. Consider Reclassifying as Infractions Some Misdemeanors that Rarely or Never Result in an Active Sentence:**

Particularly in light of the State’s current fiscal crisis, the IDS Commission recommends that the General Assembly consider reclassifying certain lower-level traffic or other misdemeanors that rarely or never result in jail sentences when reclassification would not undermine public safety or compromise a defendant’s ability to resolve underlying issues, such as a revoked license. If some such offenses are reclassified, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. The IDS Commission and staff believe that reclassification of a fairly small number of offenses could generate significant savings for IDS and, thus, the State of North Carolina. *See* “Study on Reclassification of Certain Misdemeanors,” above.

#### **I. Expand and Regionalize the Public Defender System and Improve IDS’ Ability to Oversee the Chief Public Defenders:**

The IDS Commission believes that expansion and regionalization of the public defender system would generate savings and improve IDS’ ability to fulfill its statutory mission. *See* “Possible Future Initiative: Regionalization of the Public Defender System and/or Regional Resource Counsel,” above. However, for the reasons described below, the IDS Commission also

strongly believes that a regional public defender system must be coupled with a more effective management and oversight relationship between IDS and the chief public defenders.

First, the IDS Commission believes that a more appropriate management and oversight relationship between IDS and the chief public defenders would lead to enhanced efficiency and accountability. The Commission also believes that such a relationship can best be accomplished if IDS has hiring authority, as it does with the Appellate, Capital, and Juvenile Defenders. The IDS Commission and Office currently have responsibility for funding public defender offices, but have very limited ability to affect the efficiency or quality of the offices. While the Commission has no desire to micro-manage the daily operations of public defender offices, all chief public defenders need some level of support, oversight, and management, which the Commission believes IDS is in the best position to provide.

Second, the current system of appointment by senior resident superior court judges is not conducive to active supervision of the chief public defenders. The judges who currently appoint the chief public defenders do not have the time or information to exercise coordinated management of the public defender offices. Even if the judges had such time and information, it would not be appropriate for judicial officials to manage and supervise the public defender offices when the attorneys in those offices appear before them in court. The pending lawsuit against IDS and AOC for former Durham County Public Defender's alleged sexual harassment of female employees illustrates the need for a more effective system of supervising the public defenders and for providing a clear line of recourse for their employees in the event of improper conduct.

Third, the IDS Commission believes that appointment by judges has the potential to compromise the independence of the public defenders, which conflicts with national standards. Standard 5-1.3 of the American Bar Association Standards for Criminal Justice Providing Defense Services provides as follows: "The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." Standard 5-4.1 goes further to provide that "[s]election of the chief defender and staff by judges should be prohibited."

Fourth, appointment by the IDS Commission was one of the original recommendations of the North Carolina Indigent Defense Study Commission, which was composed of one Senator, one Representative, one Senior Resident Superior Court Judge, three private defense attorneys, and one *ex officio* District Court Judge. The Study Commission's May 2000 report, which was submitted to the General Assembly pursuant to Session Law 1998-212, § 16.5, as amended by Session Law 1999-237, § 17.11, recommended the following: "Public defenders should be appointed by the Commission for four-year terms, with present incumbents serving to the end of their terms. The local bar would submit nominees to the Commission, as under present law, but in exceptional circumstances, the Commission should be allowed to appoint from outside the bar's list of nominees. Public defenders should be subject to removal for cause by two-thirds of the full Commission, with a right to hearing before the Commission, and judicial review of the Commission's decision on the record (not *de novo*)." While the General Assembly enacted into

law almost all of the Study Commission's recommendations, it did not adopt the recommendation that the IDS Commission be given authority to appoint the chief public defenders.

Fifth, the North Carolina Office of the State Auditor has also concluded that judicial appointment of public defenders "compromise[s] the independence of attorneys" in violation of national standards and that "public defenders cannot be considered independent from the judges that appoint them to office." In its 2007 report on IDS' performance audit, the Office of the State Auditor recommended that "public defenders should be appointed by the independent agency tasked with providing oversight for the State's indigent defense delivery system" and that the IDS Office "should propose legislation to gain appointment authority for public defenders or propose some other authority that would ensure the independence of the public defenders." See Performance Audit: Office of Indigent Defense Services (Feb. 2007), available at [www.ncauditor.net](http://www.ncauditor.net).

Sixth, because the population and caseload in many rural areas of North Carolina would be insufficient to support a traditional public defender office, the IDS Commission believes that a regionalized public defender system and/or creation of regional resource counsel positions would be most suited to this State. If IDS' vision of regionalized public defender offices is implemented, most public defender regions would encompass more than one superior court district, which would also necessitate changes to the current system of appointment by the local senior resident superior court judge.

#### **J. Repeal Prohibition on Paying Public Defenders for Travel Within County of Residence:**

Section 15.17B(c) of Session Law 2009-451 amended G.S. 7A-498.7 by adding the following new subsection (emphasis added): "When traveling on official business outside his or her county of *residence*, each public defender and assistant public defender is entitled to reimbursement for travel expenses to the same extent as State employees generally. For purposes of this subsection, the term 'official business' does not include regular, daily commuting between a person's home and the public defender's office." The Session Law contained a similar provision for district attorneys and assistant district attorneys.

The IDS Commission and staff agree that attorneys should not receive reimbursement for regular commuting between their home and duty station. However, these provisions create the incongruous result that, if a state-employed attorney lives and works in County A, he or she is entitled to reimbursement for travel in County B. However, if an attorney lives in County B and has a primary duty station in County A, he or she is not entitled to reimbursement for travel in County B. For purposes of consistency, AOC has adopted the position that prosecutors may not receive reimbursement for travel within the county of their primary duty station or the county of their residence. Some state-employed attorneys have to engage in significant in-county travel between their offices and jails and courthouses, and many offices do not have state cars. IDS believes those expenses should be reimbursable and recommends that the General Assembly repeal the prohibition in G.S. 7A-498.7.

## **K. Additional Legislative Recommendations:**

During the 2010 short session, the IDS Commission and Office may recommend additional changes in law or funding that would assist the Office in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

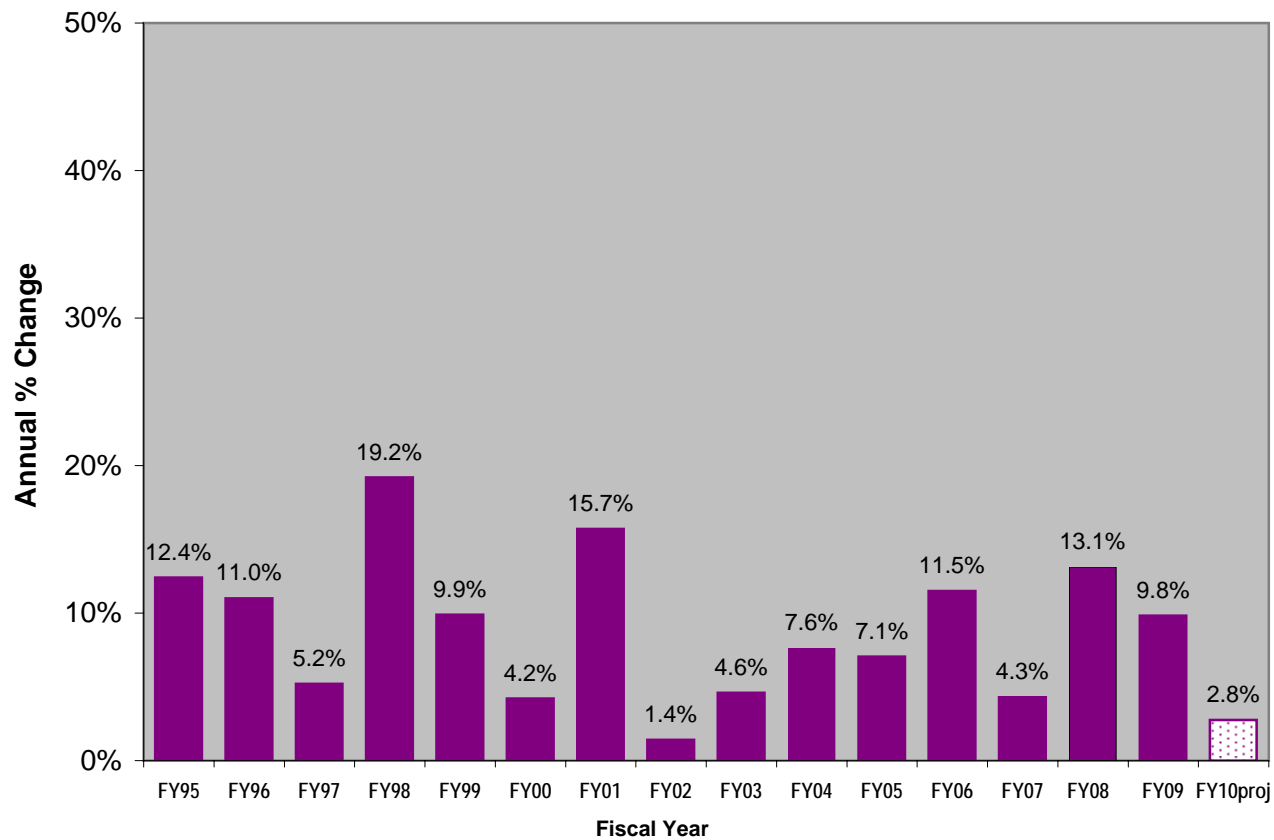
## **V. CONCLUSION**

The General Assembly's creation of the IDS Commission and IDS Office makes North Carolina a national leader in the development of quality, cost-effective, and accountable indigent defense programs. Several states, including Alabama, Georgia, South Carolina, Virginia, Tennessee, and Texas, have looked to the IDS Act and IDS Office for guidance in improving their own indigent defense programs. In the coming years, the IDS Commission should continue to realize the goals of improving the quality of North Carolina's indigent defense program in a cost-effective manner.

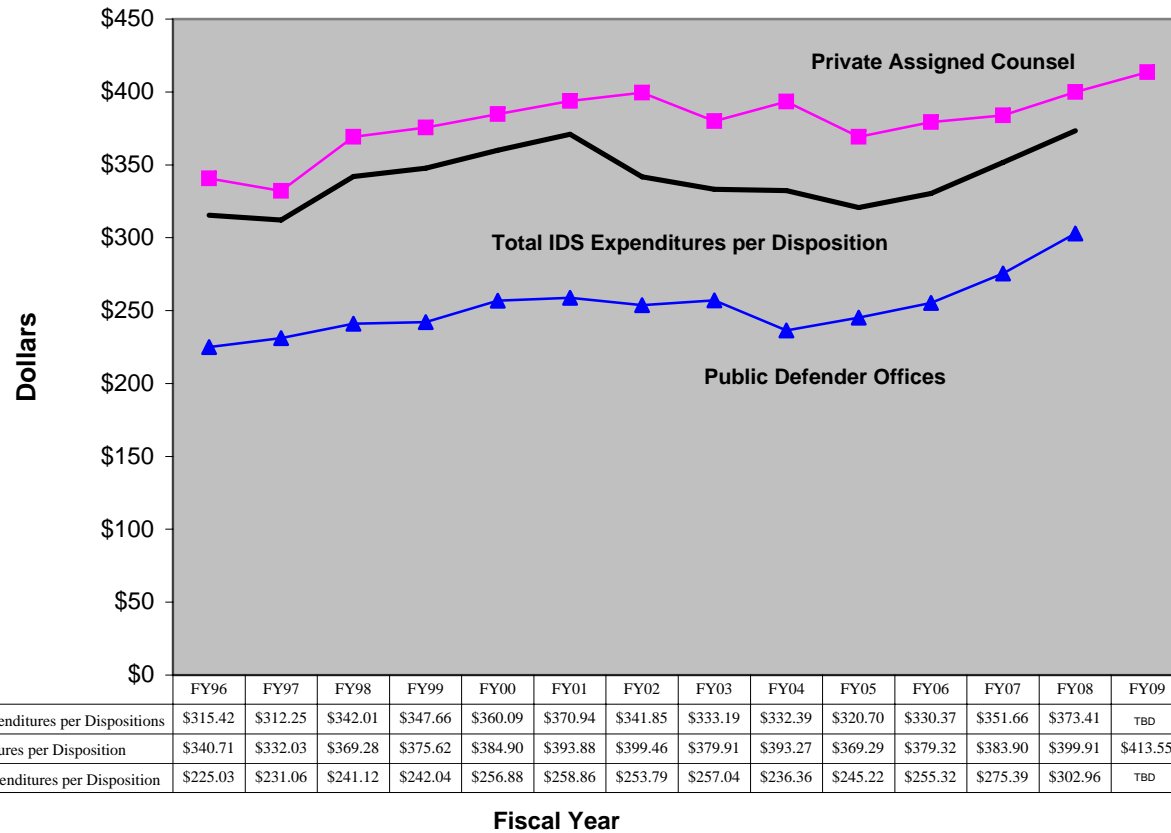
## **APPENDIX A**

### Annual Percent Change in Actual Total Indigent Defense Expenditures (Demand)

(excludes prior year obligations and includes current obligations)



## Indigent Defense Expenditure History per Disposition (Prior Year Obligations Removed FY96 to FY09)



*Sources: Administrative Office of the Courts, Annual Reports 1996 through 2004 and IDS Office Chief Financial Officer. Based on caseload demand.*

**Indigent Defense Expenditure History  
FY96 to FY09**

Type of Expenditure	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09
<i>Private Assigned Counsel (PAC) (including contracts)</i>														
Capital	6,950,613	6,453,782	5,989,186	9,176,899	10,079,534	11,272,810	10,876,856	10,005,808	10,714,595	10,993,138	12,258,524	12,413,506	12,866,708	11,333,325
Adult	19,932,141	22,322,081	25,540,251	27,428,944	29,283,471	35,536,744	32,226,789	37,847,981	37,879,960	45,380,760	52,028,772	50,596,736	54,200,075	58,250,826
Juvenile	2,314,826	2,560,702	2,787,998	2,966,086	3,138,127	3,828,369	2,932,196	3,195,779	2,927,609	3,763,905	3,899,309	3,348,486	3,774,949	3,332,087
GAL	77,089	115,313	123,838	159,776	208,031	298,241	278,687	180,819	188,468	554,855	637,750	1,282,133	1,507,538	1,231,443
Support Services	\$ 1,886,392	\$ 2,431,457	\$ 2,591,432	\$ 2,970,751	\$ 3,218,862	\$ 3,475,239	\$ 3,932,832	\$ 4,566,156	\$ 4,568,911	\$ 5,735,608	\$ 6,733,847	\$ 6,639,085	\$ 7,819,519	\$ 7,713,657
Obligated at Year-End	1,000,000	-	-	1,849,459	2,182,699	2,452,000	7,406,919	8,703,686	11,730,204	8,971,970	4,036,967	827,447	637,939	6,438,559
<b>Total PAC</b>	<b>\$ 32,161,061</b>	<b>\$ 33,883,335</b>	<b>\$ 40,632,705</b>	<b>\$ 44,551,915</b>	<b>\$ 48,110,724</b>	<b>\$ 56,863,403</b>	<b>\$ 57,654,279</b>	<b>\$ 64,500,229</b>	<b>\$ 68,909,747</b>	<b>\$ 75,400,236</b>	<b>\$ 79,595,169</b>	<b>\$ 75,107,393</b>	<b>\$ 80,806,728</b>	<b>\$ 88,299,897</b>
<b>Total PAC with prior year obligations removed</b>	<b>\$ 31,313,370</b>	<b>\$ 32,883,335</b>	<b>\$ 40,632,705</b>	<b>\$ 44,551,915</b>	<b>\$ 46,261,265</b>	<b>\$ 54,680,704</b>	<b>\$ 55,202,279</b>	<b>\$ 57,093,310</b>	<b>\$ 60,206,061</b>	<b>\$ 63,670,032</b>	<b>\$ 70,623,199</b>	<b>\$ 71,070,426</b>	<b>\$ 79,979,261</b>	<b>\$ 87,661,956</b>
Annual % Change excluding prior year oblig. Including current oblig.	19.24%	5.01%	23.57%	9.65%	3.84%	18.20%	0.95%	3.43%	5.45%	5.75%	10.92%	0.63%	12.54%	9.61%
<i>Public Defender Offices &amp; Special Counsel</i>														
IDS Office						\$ 179,459	\$ 472,471	\$ 499,977	\$ 580,360	\$ 663,219	\$ 749,008	1,066,697	1,355,032	1,448,560
Public Defender	\$ 9,364,670	\$ 9,895,547	\$ 10,708,729	\$ 11,708,864	\$ 12,260,820	\$ 12,877,539	\$ 13,024,014	\$ 13,917,622	\$ 15,987,985	\$ 17,225,616	\$ 19,980,044	22,536,032	25,976,578	28,986,509
Appellate Defender	\$ 930,474	\$ 977,043	\$ 919,279	\$ 1,025,609	\$ 1,068,893	\$ 1,091,839	\$ 972,713	\$ 1,021,943	\$ 1,048,528	\$ 1,109,151	\$ 1,228,353	1,436,188	1,657,699	1,772,960
Capital Defender				\$ 183,896	\$ 278,065	\$ 352,240	\$ 392,940	\$ 777,491	\$ 1,115,204	\$ 1,796,881	\$ 1,540,186	1,929,257	1,976,974	2,058,075
Juvenile Defender										\$ 79,776	\$ 154,617	88,542	192,209	246,205
Set-Off Debt	\$ 91,109	\$ 86,152	\$ 83,085	\$ 82,489	\$ 84,414	\$ 92,402	\$ 65,519	\$ 71,373	\$ 68,900	\$ 72,913	\$ 79,930	163,719	92,084	105,482
Special Counsel	\$ 415,995	\$ 455,201	\$ 476,500	\$ 502,067	\$ 512,718	\$ 674,721	\$ 773,292	\$ 802,022	\$ 845,239	\$ 871,096	\$ 993,071	1,176,841	1,284,282	1,283,310
<b>Total State Offices</b>	<b>\$ 10,802,248</b>	<b>\$ 11,413,943</b>	<b>\$ 12,187,593</b>	<b>\$ 13,502,925</b>	<b>\$ 14,204,910</b>	<b>\$ 15,268,200</b>	<b>\$ 15,700,949</b>	<b>\$ 17,090,428</b>	<b>\$ 19,646,216</b>	<b>\$ 21,818,652</b>	<b>\$ 24,725,209</b>	<b>\$ 28,397,276</b>	<b>\$ 32,534,858</b>	<b>\$ 35,901,101</b>
Annual Percent Change	4.4%	5.7%	6.8%	10.8%	5.2%	7.5%	2.8%	8.8%	15.0%	11.1%	13.3%	14.9%	14.6%	10.3%
<b>Total IDS Expenditures</b>	<b>\$ 42,963,309</b>	<b>\$ 45,297,278</b>	<b>\$ 52,820,298</b>	<b>\$ 58,054,840</b>	<b>\$ 62,315,634</b>	<b>\$ 72,131,603</b>	<b>\$ 73,355,228</b>	<b>\$ 81,590,657</b>	<b>\$ 88,555,963</b>	<b>\$ 97,218,888</b>	<b>\$ 104,320,378</b>	<b>\$ 103,504,669</b>	<b>\$ 113,341,586</b>	<b>\$ 124,200,998</b>
Annual Percent Change	8.4%	5.4%	16.6%	9.9%	7.3%	15.8%	1.7%	11.2%	8.5%	9.8%	7.3%	-0.8%	9.5%	9.6%
<b>Total IDS Expenditures with prior year obligations removed</b>	<b>\$ 42,115,618</b>	<b>\$ 44,297,278</b>	<b>\$ 52,820,298</b>	<b>\$ 58,054,840</b>	<b>\$ 60,466,175</b>	<b>\$ 69,948,904</b>	<b>\$ 70,903,228</b>	<b>\$ 74,183,738</b>	<b>\$ 79,852,277</b>	<b>\$ 85,488,684</b>	<b>\$ 95,348,408</b>	<b>\$ 99,467,702</b>	<b>\$ 112,514,139</b>	<b>\$ 123,563,059</b>
Percent Change in Total Expenditures (exclude prior yr oblig.)	11.0%	5.2%	19.2%	9.9%	4.2%	15.7%	1.36%	4.63%	7.64%	7.06%	11.53%	4.32%	13.12%	9.82%
<i>Sources: Administrative Office of the Courts, Annual Reports 1996 through 2004 and IDS Office Chief Financial Officer.</i>														
<i>Following financial information not included for comparison reasons:</i>														
<i>Programs no longer in operation - Death Penalty Resource Center, Indigency Screening Program</i>														
<i>Programs not under Indigent Defense Services - Guardian ad Litem Program</i>														
<i>Pass through grants - NC State Bar Grant, Center for Death Penalty Litigation Grant</i>														
<i>Sentencing Services, Prisoner Access to Courts</i>														



## **APPENDIX B**

## Recoupment by County

Compared to Combined Non-Capital PAC and Public Defender Expenditures

County	FY 2009 Attorney Fee Recoupment	FY 2009 Appointment Fee Recoupment	FY 2009 Total Recoupment	FY 2009 Total Spending	% of FY 2009 Spending Recouped
Alamance	\$ 250,947.96	\$ 21,198.76	\$ 272,146.72	\$ 1,209,222.72	22.51%
Alexander	\$ 51,732.83	\$ 5,907.63	\$ 57,640.46	\$ 302,261.23	19.07%
Alleghany	\$ 24,462.02	\$ 3,976.20	\$ 28,438.22	\$ 148,609.29	19.14%
Anson	\$ 68,458.59	\$ 6,201.07	\$ 74,659.66	\$ 362,691.62	20.58%
Ashe	\$ 40,305.76	\$ 7,635.97	\$ 47,941.73	\$ 165,672.05	28.94%
Avery	\$ 49,617.09	\$ 1,267.71	\$ 50,884.80	\$ 225,868.34	22.53%
Beaufort	\$ 108,699.94	\$ 10,246.50	\$ 118,946.44	\$ 507,775.27	23.43%
Bertie	\$ 27,631.94	\$ 2,977.09	\$ 30,609.03	\$ 179,495.26	17.05%
Bladen	\$ 60,808.24	\$ 3,187.55	\$ 63,995.79	\$ 491,953.75	13.01%
Brunswick	\$ 142,486.25	\$ 13,362.80	\$ 155,849.05	\$ 1,219,297.39	12.78%
Buncombe	\$ 168,082.48	\$ 644.55	\$ 168,727.03	\$ 2,667,914.17	6.32%
Burke	\$ 143,353.84	\$ 14,430.45	\$ 157,784.29	\$ 855,370.15	18.45%
Cabarrus	\$ 299,113.26	\$ 38,438.08	\$ 337,551.34	\$ 1,268,416.98	26.61%
Caldwell	\$ 147,437.93	\$ 17,390.18	\$ 164,828.11	\$ 748,374.74	22.02%
Camden	\$ 4,507.84	\$ 818.80	\$ 5,326.64	\$ 6,786.28	78.49%
Carteret	\$ 38,442.76	\$ 8,354.00	\$ 46,796.76	\$ 531,210.72	8.81%
Caswell	\$ 46,311.04	\$ 5,079.47	\$ 51,390.51	\$ 256,459.24	20.04%
Catawba	\$ 219,562.70	\$ 14,799.08	\$ 234,361.78	\$ 1,458,505.86	16.07%
Chatham	\$ 20,697.12	\$ 2,290.00	\$ 22,987.12	\$ 750,651.45	3.06%
Cherokee	\$ 64,992.31	\$ 7,209.05	\$ 72,201.36	\$ 373,003.99	19.36%
Chowan	\$ 20,365.88	\$ 2,359.62	\$ 22,725.50	\$ 227,615.04	9.98%
Clay	\$ 11,475.98	\$ 1,481.20	\$ 12,957.18	\$ 150,973.00	8.58%
Cleveland	\$ 165,468.44	\$ 29,963.35	\$ 195,431.79	\$ 907,678.21	21.53%
Columbus	\$ 86,102.14	\$ 8,652.05	\$ 94,754.19	\$ 572,342.89	16.56%
Craven	\$ 97,899.77	\$ 12,269.57	\$ 110,169.34	\$ 593,083.43	18.58%
Cumberland	\$ 101,226.67	\$ 9,096.90	\$ 110,323.57	\$ 3,513,908.73	3.14%
Currituck	\$ 29,145.43	\$ 2,657.83	\$ 31,803.26	\$ 357,971.85	8.88%
Dare	\$ 55,239.03	\$ 3,049.97	\$ 58,289.00	\$ 432,482.15	13.48%
Davidson	\$ 267,252.60	\$ 35,450.00	\$ 302,702.60	\$ 1,729,903.62	17.50%
Davie	\$ 54,871.80	\$ 6,327.40	\$ 61,199.20	\$ 332,335.25	18.41%
Duplin	\$ 91,415.34	\$ 4,691.83	\$ 96,107.17	\$ 508,836.51	18.89%
Durham	\$ 184,110.55	\$ 63.72	\$ 184,174.27	\$ 4,902,122.06	3.76%
Edgecombe	\$ 80,456.41	\$ 5,889.16	\$ 86,345.57	\$ 636,668.88	13.56%
Forsyth	\$ 296,949.95	\$ 47,866.41	\$ 344,816.36	\$ 3,519,842.23	9.80%
Franklin	\$ 79,231.92	\$ 10,267.71	\$ 89,499.63	\$ 484,431.18	18.48%
Gaston	\$ 45,142.37	\$ 1,530.07	\$ 46,672.44	\$ 2,504,303.67	1.86%
Gates	\$ 9,053.43	\$ 1,041.75	\$ 10,095.18	\$ 46,081.22	21.91%
Graham	\$ 24,714.47	\$ 2,300.72	\$ 27,015.19	\$ 129,989.79	20.78%
Granville	\$ 81,580.94	\$ 8,304.73	\$ 89,885.67	\$ 433,135.52	20.75%
Greene	\$ 26,657.08	\$ 2,625.18	\$ 29,282.26	\$ 141,406.05	20.71%
Guilford	\$ 240,193.92	\$ 35,901.39	\$ 276,095.31	\$ 5,032,076.21	5.49%
Halifax	\$ 123,023.98	\$ 10,553.64	\$ 133,577.62	\$ 889,740.22	15.01%
Harnett	\$ 108,310.32	\$ 12,159.68	\$ 120,470.00	\$ 1,039,599.52	11.59%
Haywood	\$ 125,772.51	\$ 13,749.49	\$ 139,522.00	\$ 869,116.34	16.05%
Henderson	\$ 157,087.01	\$ 29,681.11	\$ 186,768.12	\$ 855,217.45	21.84%
Hertford	\$ 44,227.64	\$ 100.00	\$ 44,327.64	\$ 271,075.23	16.35%
Hoke	\$ 37,995.05	\$ 1,102.37	\$ 39,097.42	\$ 529,998.30	7.38%
Hyde	\$ 13,538.85	\$ 1,558.47	\$ 15,097.32	\$ 31,925.58	47.29%
Iredell	\$ 233,552.34	\$ 26,610.35	\$ 260,162.69	\$ 1,673,691.88	15.54%
Jackson	\$ 61,097.16	\$ 7,054.12	\$ 68,151.28	\$ 340,584.79	20.01%
Johnston	\$ 125,101.86	\$ 19,156.00	\$ 144,257.86	\$ 1,147,073.52	12.58%
Jones	\$ 14,898.05	\$ 2,319.47	\$ 17,217.52	\$ 75,133.05	22.92%
Lee	\$ 78,034.42	\$ 11,848.16	\$ 89,882.58	\$ 487,738.82	18.43%
Lenoir	\$ 137,438.69	\$ 15,449.45	\$ 152,888.14	\$ 628,693.92	24.32%
Lincoln	\$ 83,624.19	\$ 14,470.02	\$ 98,094.21	\$ 541,882.37	18.10%



## **APPENDIX C**

**COST AND CASE DATA ON REPRESENTATION OF INDIGENTS**

July 1, 2007 – June 30, 2008

	<b>Number of Cases*</b>	<b>Total Cost**</b>
<b>Assigned Private Counsel</b>		
Capital cases	2,117	\$12,866,708
Adult cases (other than capital)	169,758	\$53,781,631
Juvenile cases	12,291	\$3,046,514
Guardian ad Litem assigned to IDS	4,412	\$1,507,538
<b>Total</b>	<b>188,578</b>	<b>\$71,202,391</b>
<b>Private Counsel Contracts</b>	7,677	\$1,130,392
<b>Legal Services to Inmates</b>		\$2,187,132
<b>Public Defender Offices</b>		
District 1	1,799	\$1,083,915
District 3A	2,978	\$1,094,998
District 3B (Carteret County)	1,269	\$296,622
District 5 (New Hanover)	376	\$376,577
District 10	7,291	\$2,553,436
District 12	4,462	\$1,548,019
District 14	7,908	\$2,073,414
District 15B	2,656	\$1,209,176
District 16A	2,228	\$840,038
District 16B	3,285	\$1,301,371
District 18	9,939	\$3,021,867
District 21	6,801	\$1,881,728
District 26	19,416	\$5,291,403
District 27A	7,717	\$1,839,191
District 28	6,846	\$1,307,177
District 29B	771	\$257,645
<b>Totals</b>	<b>85,742</b>	<b>\$25,976,578</b>
<b>Office of the Appellate Defender</b>		\$1,657,699
<b>Special Counsel at State Mental Health Hospitals</b>		\$1,284,282
<b>Support Services</b>		
Transcripts, records, and briefs		\$813,450
Expert witness fees		\$2,639,225
Investigator fees		\$4,234,947
Interpreters (pac & pd)		\$131,898
<b>Total</b>		<b>\$7,819,519</b>
<b>Set-Off Debt Collection</b>		\$92,084
<b>Indigent Defense Services</b>		\$1,355,032
<b>Office of the Capital Defender</b>		\$1,976,974
<b>Office of the Juvenile Defender</b>		\$192,209
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$114,874,292</b>
<b>Sentencing Services Program</b>		\$2,816,942
<b>GRAND TOTAL</b>		<b>\$117,691,234</b>

\* The number of "cases" shown for private assigned counsel is the number of payments (fee apps) made by IDS for appointed attorneys. For public defender offices, the number of "cases" is the number of indigent person whose cases were disposed by public defenders during fiscal year 2007-08.

\*\* Cost figures are net of receipts from other agencies and transfer to subsequent year.

**COST AND CASE DATA ON REPRESENTATION OF INDIGENTS**

July 1, 2008-June 30, 2009

	Number of Cases*	Total Cost***
<b>Assigned Private Counsel</b>		
Capital cases	1,521	\$11,333,325
Adult cases (other than capital)	166,579	\$57,394,072
Juvenile cases	10,623	\$2,763,856
Guardian ad Litem assigned to IDS	3,401	\$1,231,443
<b>Total</b>	<b>182,124</b>	<b>\$72,722,696</b>
<b>Private Counsel Contracts</b>	<b>8,343</b>	<b>\$1,424,985</b>
<b>Legal Services to Inmates</b>		<b>\$2,902,829</b>
<b>Public Defender Offices</b>		
District 1	**	\$1,110,158
District 3A	**	\$1,179,801
District 3B (Carteret County)	**	\$335,870
District 5 (New Hanover)	**	\$1,245,173
District 10	**	\$2,689,755
District 12	**	\$1,593,665
District 14	**	\$2,191,290
District 15B	**	\$1,218,988
District 16A	**	\$801,123
District 16B	**	\$1,411,101
District 18	**	\$3,181,063
District 21	**	\$2,073,729
District 26	**	\$5,812,145
District 27A	**	\$1,911,976
District 28	**	\$1,514,559
District 29B	**	\$716,113
<b>Total</b>		<b>\$28,986,509</b>
<b>Office of the Appellate Defender</b>		<b>\$1,772,960</b>
<b>Special Counsel at State Mental Health Hospitals</b>		<b>\$1,283,310</b>
<b>Support Services</b>		
Transcripts, records, and briefs		\$874,443
Expert witness fees		\$2,551,551
Investigator fees		\$4,210,402
Interpreters (PAC only)		\$77,261
<b>Total</b>		<b>\$7,713,657</b>
<b>Set-Off Debt Collection</b>		<b>\$105,482</b>
<b>Indigent Defense Services</b>		<b>\$1,448,560</b>
<b>Office of the Capital Defender</b>		<b>\$2,058,075</b>
<b>Office of the Juvenile Defender</b>		<b>\$246,205</b>
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$120,665,268</b>
<b>Sentencing Services Program</b>		<b>\$2,784,422</b>
<b>GRAND TOTAL</b>		<b>\$123,449,690</b>

\* The number of "cases" shown for private assigned counsel is the number of payments (fee apps) made by IDS to appointed attorneys.

\*\* The number of cases disposed by public defender offices for fiscal year 2008-09 is not yet reportable. IDS has received the raw disposition numbers from the offices, but they have not yet been fully audited due to the difficulties of matching public defender case dispositions to charges in ACIS. Once the data has been audited, IDS will submit it to the General Assembly. For public defender offices, the number of "cases" will be the number of indigent persons whose cases were disposed by public defenders during fiscal year 2008-09.

\*\*\* Cost figures are cash, not demand, to match NCAS, and are net of receipts from other agencies.

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand  
All Accounts  
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<u>District 1</u>	<u>Number of Payments</u>	<u>Demand</u>
Camden	25	\$13,535.91
Chowan	114	\$153,297.28
Currituck	165	\$115,684.72
Dare	290	\$131,164.01
Gates	27	\$38,588.42
Pasquotank	259	\$276,366.04
Perquimans	43	\$44,803.30
District Total	923	\$773,439.68
<b><u>District 2</u></b>		
Beaufort	1,683	\$560,102.21
Hyde	98	\$31,550.58
Martin	685	\$227,873.06
Tyrrell	92	\$25,452.57
Washington	265	\$87,693.16
District Total	2,823	\$932,671.58
<b><u>District 3A</u></b>		
Pitt	3,256	\$1,522,702.16
District Total	3,256	\$1,522,702.16
<b><u>District 3B</u></b>		
Carteret	347	\$296,035.33
Craven	1,761	\$804,726.91
Pamlico	256	\$87,465.70
District Total	2,364	\$1,188,227.94
<b><u>District 4A</u></b>		
Duplin	1,509	\$548,525.23
Jones	254	\$104,265.82
Sampson	2,052	\$1,175,752.04
District Total	3,815	\$1,828,543.09
<b><u>District 4B</u></b>		
Onslow	4,210	\$1,580,979.66
District Total	4,210	\$1,580,979.66
<b><u>District 5</u></b>		
New Hanover	5,435	\$2,288,794.16
Pender	1,108	\$406,682.96
District total	6,543	\$2,695,477.12
<b><u>District 6A</u></b>		
Halifax	2,612	\$1,064,794.12
District Total	2,612	\$1,064,794.12

**Assigned and Contracted Private Counsel and Experts  
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	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 6B</u></b>		
Bertie	474	\$182,591.91
Hertford	1,011	\$567,962.45
Northampton	552	\$242,062.41
District Total	2,037	\$992,616.77
<b><u>District 7A</u></b>		
Nash	2,059	\$1,193,612.95
District Total	2,059	\$1,193,612.95
<b><u>District 7B/C</u></b>		
Edgecombe	1,770	\$906,604.58
Wilson	1,765	\$826,739.70
District Total	3,535	\$1,733,344
<b><u>District 8A</u></b>		
Greene	400	\$175,122.88
Lenoir	2,484	\$865,178.42
District Total	2,884	\$1,040,301.30
<b><u>District 8B</u></b>		
Wayne	2,992	\$1,239,286.87
District Total	2,992	\$1,239,286.87
<b><u>District 9</u></b>		
Franklin	1,271	\$551,424.01
Granville	1,124	\$451,408.07
Vance	1,452	\$655,434.64
Warren	532	\$272,227.59
District Total	4,379	\$1,930,494.31
<b><u>District 9A</u></b>		
Caswell	557	\$311,181.96
Person	1,602	\$708,290.93
District Total	2,159	\$1,019,472.89
<b><u>District 10</u></b>		
Wake	11,887	\$5,430,312.17
District Total	11,887	\$5,430,312.17
<b><u>District 11A</u></b>		
Harnett	2,865	\$1,277,652.79
Lee	1,770	\$612,330.31
District Total	4,635	\$1,889,983.10



**Assigned and Contracted Private Counsel and Experts  
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	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 11B</u></b>		
Johnston	3,881	\$1,717,077.38
District Total	3,881	\$1,717,077.38
<b><u>District 12</u></b>		
Cumberland	3,857	\$2,730,841.62
District Total	3,857	\$2,730,841.62
<b><u>District 13A</u></b>		
Bladen	1,393	\$656,329.55
Columbus	1,498	\$715,910.92
District Total	2,891	\$1,372,240.47
<b><u>District 13B</u></b>		
Brunswick	3,723	\$1,353,124.68
District Total	3,723	\$1,353,124.68
<b><u>District 14</u></b>		
Durham	6,157	\$3,463,559.76
District Total	6,157	\$3,463,559.76
<b><u>District 15A</u></b>		
Alamance	4,003	\$1,491,174.86
District Total	4,003	\$1,491,174.86
<b><u>District 15B</u></b>		
Chatham	754	\$419,754.95
Orange	1,360	\$793,355.81
District Total	2,114	\$1,213,110.76
<b><u>District 16A</u></b>		
Hoke	323	\$317,907.99
Scotland	462	\$427,499.36
District Total	785	\$745,407.35
<b><u>District 16B</u></b>		
Robeson	3,737	\$2,034,435.75
District Total	3,737	\$2,034,435.75
<b><u>District 17A</u></b>		
Rockingham	3,609	\$1,300,794.10
District Total	3,609	\$1,300,794.10
<b><u>District 17B</u></b>		
Stokes	1,384	\$458,462.12
Surry	2,336	\$678,761.42
District Total	3,720	\$1,137,223.54

**Assigned and Contracted Private Counsel and Experts  
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	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 18</u></b>		
Guilford	5,261	\$2,393,808.21
District Total	5,261	\$2,393,808.21
<b><u>District 19A</u></b>		
Cabarrus	4,127	\$1,426,544.13
District Total	4,127	\$1,426,544.13
<b><u>District 19B</u></b>		
Montgomery	864	\$231,930.71
Randolph	4,114	\$1,762,763.12
District Total	4,978	\$1,994,693.83
<b><u>District 19C</u></b>		
Rowan	5,162	\$2,016,527.05
District Total	5,162	\$2,016,527.05
<b><u>District 19D</u></b>		
Moore	2,847	\$1,061,916.62
District Total	2,847	\$1,061,916.62
<b><u>District 20A</u></b>		
Anson	1,386	\$472,492.86
Richmond	3,932	\$1,291,983.93
Stanly	1,618	\$786,611.43
District Total	6,936	\$2,551,088.22
<b><u>District 20B</u></b>		
Union	4,642	\$1,750,382.77
District Total	4,642	\$1,750,382.77
<b><u>District 21</u></b>		
Forsyth	6,667	\$1,983,318.58
District Total	6,667	\$1,983,318.58
<b><u>District 22A</u></b>		
Alexander	1,154	\$345,382.24
Iredell	4,925	\$1,898,800.27
District Total	6,079	\$2,244,182.51
<b><u>District 22B</u></b>		
Davidson	6,231	\$1,829,862.19
Davie	1,073	\$355,114.38
District Total	7,304	\$2,184,977

**Assigned and Contracted Private Counsel and Experts  
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	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 23</u></b>		
Alleghany	375	\$171,474.14
Ashe	719	\$313,103.44
Wilkes	2,363	\$630,197.74
Yadkin	999	\$310,033.98
District Total	4,456	\$1,424,809.30
<b><u>District 24</u></b>		
Avery	554	\$226,437.09
Madison	613	\$173,655.10
Mitchell	364	\$171,891.80
Watauga	953	\$416,190.80
Yancey	651	\$186,968.04
District Total	3,135	\$1,175,142.83
<b><u>District 25A</u></b>		
Burke	2,461	\$1,078,569.47
Caldwell	2,862	\$832,163.59
District Total	5,323	\$1,910,733.06
<b><u>District 25B</u></b>		
Catawba	5,444	\$1,947,938.03
District Total	5,444	\$1,947,938.03
<b><u>District 26</u></b>		
Mecklenburg	13,948	\$6,042,602.96
District Total	13,948	\$6,042,602.96
<b><u>District 27A</u></b>		
Gaston	1,555	\$883,877.03
District Total	1,555	\$883,877.03
<b><u>District 27B</u></b>		
Cleveland	3,985	\$1,025,353.25
Lincoln	1,798	\$795,484.88
District Total	5,783	\$1,820,838.13
<b><u>District 28</u></b>		
Buncombe	4,054	\$1,309,341.30
District Total	4,054	\$1,309,341.30
<b><u>District 29A</u></b>		
McDowell	1,339	\$489,331.74
Rutherford	3,110	\$863,358.37
District Total	4,449	\$1,352,690.11

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	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 29B</u></b>		
Henderson	1,188	\$514,899.01
Polk	273	\$106,118.93
Transylvania	476	\$235,619.35
District Total	1,937	\$856,637.29
<b><u>District 30A</u></b>		
Cherokee	903	\$404,163.84
Clay	291	\$151,323.00
Graham	295	\$130,448.54
Macon	819	\$360,570.62
Swain	405	\$242,633.65
District Total	2,713	\$1,289,139.65
<b><u>District 30B</u></b>		
Haywood	1,971	\$933,181.02
Jackson	887	\$343,060.19
District Total	2,858	\$1,276,241.21

*Notes: Reports through FY07 included only payments to attorneys; FY08 and FY09 data includes payments to experts and investigators as well. Count of payments is not identical to number of cases but is a count of number of fee applications paid plus number of cases closed as reported by contractors. Interpreters not included. This data includes the \$6.9 million in fee applications received during FY09 but not paid until FY10 because of budget restrictions.*