

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

Submitted to the North Carolina General Assembly  
pursuant to S.L. 2001-424, Section 22.12

March 1, 2003

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<b>COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS</b>	
<p><u>Terms expire 2006:</u></p> <p><i>Joseph Cheshire, V, Chair</i> Attorney at Law, Raleigh Appointed by Bar Association</p> <p><i>Vacant Seat</i> To Be Appointed by IDS Commission</p> <p><i>Mary Ann Tally</i> Attorney at Law, Fayetteville Appointed by Academy of Trial Lawyers</p>	<p><u>Terms expire 2005:</u></p> <p><i>Professor Grady Jessup, Vice-Chair</i> North Carolina Central Law School Appointed by Black Lawyers Association</p> <p><i>Superior Court Judge Gary Locklear</i> Robeson County, District 16B Appointed by IDS Commission</p> <p><i>Claire Rauscher</i> Attorney at Law, Charlotte Appointed by Women Lawyers Association</p>
<p><u>Terms expire 2004:</u></p> <p><i>Adam Stein</i> Attorney at Law, Chapel Hill Appointed by Speaker of House</p> <p><i>Superior Court Judge Melzer Morgan</i> Rockingham County, District 17A Appointed by Chief Justice</p> <p><i>Dr. James Clotfelter</i> UNC-Greensboro Appointed by Governor</p> <p><i>Steve Allen, Sr.</i> Attorney at Law, Greensboro Appointed by President Pro Tem. of Senate</p>	<p><u>Terms expire 2003:</u></p> <p><i>Professor Rhoda Billings</i> Wake Forest University Law School Appointed by IDS Commission</p> <p><i>Richard Roose</i> Attorney at Law, Asheboro Appointed by State Bar</p> <p><i>Sue Berry</i> Attorney at Law, Wilmington Appointed by Public Defenders Association</p>

<b>OFFICE OF INDIGENT DEFENSE SERVICES STAFF:</b>	
Executive Director:	Malcolm Ray Hunter, Jr.
Assistant Director:	Danielle Marie Carman
Chief Financial Officer:	Sharon E. Hogan
Research Analyst:	Margaret A. Gressens
Office Manager:	Beverly M. McJunkin
Administrative Assistant:	Yolanda A. Cole

## EXECUTIVE SUMMARY

In 1998, the General Assembly established the Indigent Defense Study Commission (“Study Commission”) to consider ways to improve the management of funds being expended for indigent defense services and enhance the quality of representation. After several meetings in 1999 and 2000, the Study Commission concluded that indigent defense in North Carolina suffered from a lack of planning, oversight, and management and recommended that the General Assembly establish a statewide office to oversee North Carolina’s indigent defense program.

In August 2000, the General Assembly implemented, with some modifications, the Study Commission’s recommendations and 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 is governed by a thirteen-member board, the Commission on Indigent Defense Services (“IDS Commission”). As required by S.L. 2001-424, § 22.12, this report summarizes the work of the IDS Commission and IDS Office to date and the future initiatives planned by IDS; and presents the existing fiscal year 2001-2002 data on indigent caseload and case costs across the State.

Effective July 1, 2001, the IDS Office assumed responsibility for administering the State’s indigent defense program. To ensure that appropriate procedures were in place by that date, the IDS Commission and IDS Office 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.

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 several initiatives since July 1, 2001. Among other things, the IDS Commission and IDS Office have implemented measures to slow the rate of increase in spending without compromising the quality of representation, developed more uniform rates of compensation in capital and non-capital cases, recruited and evaluated attorneys for the capital and appellate rosters, taken steps to improve data collection and analysis capabilities within the IDS Office and Administrative Office of the Courts, established a website and several listservs to enhance communication and resource-sharing with the private bar, created several new regional capital defender offices, and helped establish a new Forsyth County Public Defender Office.

The IDS Commission and IDS Office are also in the process of working on a number of other initiatives, including conducting accurate and reliable analyses of budget trends and current indigent defense spending, offering new and innovative training programs in specialized areas of indigent representation, conducting a statewide assessment of juvenile delinquency representation in conjunction with the American Bar Association, and developing model performance standards for appointed counsel. The IDS Office also will be conducting a district-by-district review to determine the most appropriate method of providing legal representation in each part of the State. Based on the information it obtains, the IDS Office intends to identify the

most appropriate method, from both a cost and quality perspective, for providing legal representation in each district.

In its first two years of operations, the IDS Commission has already taken significant steps to control increases in the cost of indigent representation. The increase in spending and obligations during fiscal year 2001-2002 was only .36% above fiscal year 2000-2001. By comparison, the average annual increase over the prior seven years was almost 10%, with no year having an increase as low as last year. *See* Appendix A. Based on historical growth data, the IDS Commission's proposed 2003-2005 biennium budget (submitted to the Governor in December 2002) predicted a 4.5% annual growth rate during fiscal year 2002-2003, as well as the next biennium. However, current projections show a more modest increase in spending and obligations this fiscal year, with actual spending appearing similar to last year. Moreover, the IDS Commission is continuing to work on initiatives to control expenditures in the coming years. Any firm projections for the future, however, depend on other changes in the criminal justice system. For example, significant changes in 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 actors in the system.

The IDS Commission has also taken significant steps toward improving the quality of indigent representation by establishing higher qualification standards for attorneys seeking appointment to capital cases and appeals, making timely appointments of qualified attorneys in those cases, expanding the Office of the Capital Defender, and helping to establish the new Forsyth County Public Defender Office. In addition, the IDS Commission has worked with the public defender offices to develop new plans for the appointment of counsel, and has required that those plans provide for more significant oversight by the public defenders over the quality and efficiency of indigent representation in public defender districts. The IDS Commission has also begun to offer several educational programs for areas of representation that traditionally have not had adequate continuing legal education, and has taken steps to improve the support and resources available to attorneys across the State through electronic and technological means.

In short, the IDS Commission has accomplished a great deal since its formation, and is preparing to accomplish even more in the future.

## REPORT

In 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (S.L. 2000-144, S.B. 1323; 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 others 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.

As required by the IDS Act, the IDS Office must report to the General Assembly by March 1, 2003 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.

S.L. 2001-424, § 22.12; S.B. 1005, § 22.12. The first section of this report (“IDS Initiatives”) addresses the second and third issues set forth above by describing the work of the IDS Commission and IDS Office since assuming responsibility on July 1, 2001, and new initiatives that are currently in progress or under consideration. The second section of this report (“District Case Volume and Cost Statistics”) addresses the first issue set forth above. The third section (“Legislative Recommendations”) addresses the fourth issue set forth above.

### I. IDS Initiatives

#### A. Initiatives Implemented to Date

This section describes the initiatives the IDS Office began work on before it assumed responsibility for administering the State’s indigent defense program on July 1, 2001, and those the Office has implemented since that date.

##### *Preliminary Organization*

Much of the early work of the IDS Commission and IDS Office necessarily focused on organizational matters. By October 2000, all thirteen members of the IDS Commission had been appointed by the various appointing authorities. A list of the current Commission members, and their appointing authorities and terms, appears at the beginning of this report.

In November 2000, the IDS Commission hired as its Executive Director Malcolm Ray Hunter, Jr., formerly the head of the State’s Office of the Appellate Defender. Hunter began work in early December. During the Spring of 2001, the IDS Office secured office space in

Durham and the remaining IDS Office staff began work.<sup>1</sup> A list of the current IDS Office staff appears at the beginning of this report.

### *Consultation and Communication*

During the Summer and Spring of 2001, the Executive Director met frequently with superior and district court judges, clerks of court, legislators and staff, Administrative Office of the Courts (“AOC”) staff, public defenders, local bar groups, and others, and obtained input on potential IDS initiatives from those involved in the delivery of indigent defense services. The Executive Director and other IDS Office staff members continue to meet with interested groups on a regular basis.

In addition, the September 2001 edition of *Trial Briefs*, the North Carolina Academy of Trial Lawyers’ monthly publication, was devoted almost exclusively to the work of the IDS Commission and IDS Office, as well as work being performed by the Office of the Capital Defender<sup>2</sup> and Office of the Appellate Defender under the IDS Office’s supervision. The January 21, 2002 issue of *Lawyers Weekly* also contained an interview with the Executive Director about a comprehensive fee survey and study conducted by IDS Office staff, and the IDS Commission’s resulting recommendation of a standard hourly rate for cases in district and superior court. See “Uniform Rates of Compensation” below. The June 2002 issue of the North Carolina Bar Association’s General Practice newsletter contained an article written by IDS staff and summarizing the IDS Office’s progress during its first full year of operations. Finally, the September 23, 2002 issue of *Lawyers Weekly* contained an article about the budgetary challenges facing the IDS Commission, as well as the additional \$4.95 million in non-recurring funds appropriated to indigent defense in this fiscal years’ supplemental budget.

During the Fall of 2002, the IDS Commission held a series of regional meetings with private attorneys across the State, with one meeting in each judicial district. During those meetings, Commission members and staff presented financial information about the indigent defense fund, distributed surveys to attorneys to collect better information about their practices and needs, discussed options for controlling spending, and solicited feedback about all proposals under consideration. Those meetings enabled the IDS Commission and staff to gather information from attorneys statewide and make decisions that better responded to the bar’s concerns.

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<sup>1</sup> There were originally five staff positions in the IDS Office – an Executive Director, Assistant Director, Chief Financial Officer, Research Analyst, and Administrative Assistant. During the Spring of 2002, the Office used existing indigent defense funds to hire a second Administrative Assistant. See “Creation of New Capital Defender and IDS Office Positions” below.

<sup>2</sup> In early 1999, the Office of the Capital Defender was established as a pilot program within the Office of the Appellate Defender. In July 2001, one of the attorneys in that office assumed responsibility as the Interim Capital Defender, and began working with the IDS Office to appoint attorneys and review expert requests in potentially capital trials. In January 2002, the General Assembly’s Governmental Operations Committee approved the IDS Office’s proposal to establish a permanent Capital Defender position in the existing Capital Defender Office. A permanent Capital Defender was hired and began work in May 2002.

### *Division of Administrative Responsibilities*

The IDS Act requires the AOC to provide general administrative support to the IDS Office. *See* G.S. 7A-498.2(c). IDS Office staff and AOC staff consult frequently to determine the most effective methods of performing the administrative functions necessary for the proper operation of the courts. In addition to assisting the IDS Office in preparing the budget each year, the AOC has continued to perform several other administrative functions related to processing fees for appointed counsel. Thus, current AOC personnel continue to administer the automated fiscal systems for indigent defense, including keying in data from fee orders entered by the courts, issuing checks for legal services, and pursuing recoupment in cases in which recoupment is required by law. As it does for all other Judicial Branch components, the AOC also continues to perform purchasing and personnel functions for the IDS Office, and provide technological and telecommunications support.

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

During the Spring of 2001, the IDS Commission and IDS Office developed rules to ensure that counsel services continue to be provided in the approximately 140,000 cases handled by private appointed counsel each year. The IDS Office recognizes that the smooth functioning of the courts depends on the timely provision of counsel to indigent persons, and that changes must be implemented over time to avoid disrupting the operation of the courts. Accordingly, in non-capital and non-criminal cases at the trial level, Part 1 of the IDS Rules continues most of the current practices and procedures while the IDS Office considers and implements changes. Because of the volume of cases, the IDS Office's small staff is simply unable to assume immediate responsibility for appointing and compensating counsel throughout the state. This approach is in accord with the IDS Act, which provides that the court appoints counsel in non-capital cases pursuant to rules adopted by the IDS Office. *See* G.S. 7A-452. Part 1 of the IDS Rules provides guidance to courts and other officials on all matters affecting the appointment and compensation of counsel in non-capital and non-criminal cases at the trial level.

Capital cases, which number in the hundreds rather than in the hundreds of thousands each year, are treated differently by the IDS Act. Although they represent a mere fraction of the cases handled by appointed counsel, they place an enormous strain on the indigent defense system in terms of both cost and quality. Cases in which a person potentially could be tried capitally account for approximately 25% of the funds expended for indigent defense each year, and demand the highest caliber of counsel. Unlike in non-capital cases, the IDS Act required the IDS Office to assume responsibility for capital representation beginning July 1, 2001, designating the IDS Office as the appointing authority in all capital cases. *See* G.S. 7A-452. Part 2 of the IDS Rules governs the provision of counsel in capital cases; an Appendix to Part 2 governs qualification standards for counsel in capital cases at the trial, appellate, and post-conviction levels.

Because of the relatively small volume of cases involving appeals to the appellate division, the IDS Office was in a position to assume responsibility for appointing and compensating

counsel in indigent non-capital and non-criminal appeals, relieving trial judges of that obligation. Part 3 of the IDS Rules governs the provision of counsel in such appeals.

After a comment period, the IDS Rules were adopted on May 18, 2001, distributed to all interested court officials and attorneys, and became effective on July 1, 2001. Since the initial rules took effect, the IDS Commission has adopted revisions to several provisions in light of experience and to address new issues as they have arisen. The current rules are available on the IDS website, and are published in North Carolina Rules of Court, State (West 2003 & Supp.) and the Annotated Rules of North Carolina (Lexis Nexis 2003).

#### *Changes to Affected AOC Forms*

To implement the new procedures that became effective July 1, 2001, IDS Office staff worked with the AOC Forms Committee to make necessary revisions to all affected AOC forms and create new AOC forms as needed. The existing capital case attorney fee application was revised to reflect the IDS Office's new compensation authority, and a new fee application was developed for all indigent appeals. New forms were devised to facilitate notice to the IDS Office whenever a court determines that a potentially capital defendant is indigent and entitled to appointed counsel, *see* G.S. 7A-498.3(b), and to assist the IDS Office in making timely appointments of counsel in all cases in which the Office is the appointing authority. IDS Office staff continue to work with the AOC Forms Committee on an ongoing basis to revise existing forms or develop new forms whenever IDS initiatives necessitate it.

#### *Internal Infrastructure for Data Collection and Reporting*

One of the IDS Office's first tasks was to develop an infrastructure to accomplish the many responsibilities assigned to it by the IDS Act. With the assistance of an outside company specializing in computer programming and software development, Office staff designed a detailed internal database to document and track all attorney appointments, expert authorizations, payments, and case information in all cases under its direct oversight – namely, potentially capital cases and appeals.

The database has significantly improved the Office's ability to collect, analyze, and report data concerning the cases under IDS' oversight. For instance, the IDS Office is collecting data on expenditures associated with the legislation prohibiting executions of mentally retarded defendants. *See* G.S. 15A-2005 and -2006; S.L. 2001-346. Petitions were filed under G.S. 15A-2006 on behalf of approximately 50 North Carolina defendants sentenced to death. Two of those defendants have now been resentenced to life without parole. Fewer than ten petitions have been denied in superior court and are awaiting further review on *certiorari* to the Supreme Court of North Carolina; the Supreme Court has denied relief in one case. Approximately 40 cases are still pending in superior courts around the State. Once more of those cases are resolved, the IDS Office should be in a better position to report about the financial costs associated with that legislation. However, despite the increased litigation concerning mental retardation, overall indigent defense spending has not increased. *See* "Analysis of Spending and Obligations" below.

### *Development of Rosters of Qualified Attorneys*

The IDS Rules discussed above contain detailed qualification standards for attorneys to be included on the Capital Trial (Lead and Associate), Capital Appeal, and Capital Post-Conviction Rosters. To implement those standards, the IDS Office developed comprehensive application forms for attorneys seeking placement on the various rosters. In conjunction with the Office of the Capital Defender and the Office of the Appellate Defender, the IDS Office evaluates all attorney applications and submissions to determine whether each applicant meets the qualifications set forth in the IDS Rules. Based on those evaluations, the IDS Office has developed rosters of qualified attorneys in each district across the State.

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

With the assistance of faculty from the Institute of Government, the IDS Office worked with each individual public defender office to develop a plan for the appointment of counsel in all non-capital cases in that district. *See* Rules of the Commission on Indigent Defense Services, Rule 1.5(b) (Adopted July 1, 2001 and Revised Nov. 16, 2001). The plans also contain qualification and performance standards for attorneys on the district indigent lists. By February 2002, the IDS Director had approved and certified appointment plans in all 11 public defender districts. These plans may be used as models for appointment plans in non-public defender districts. *See* “District-by-District Review” below.

### *Budgets for FY 2001-2002 and FY 2002-2003*

The IDS Act requires the AOC to assist the IDS Office in preparing and presenting its projected budget to the General Assembly. *See* G.S. 7A-498.2(d). Because the IDS Office did not yet have staff when the budget process began for fiscal year 2001-2002, the AOC assumed responsibility for preparing that budget. The IDS Commission reviewed the projections and recommended the budget prepared by the AOC. The IDS Office then worked with AOC and Office of State Budget staff to ensure that all funds were properly transferred and accounted for as of July 1, 2001.

With the assistance of AOC staff and IDS Office staff, the Budget Committee of the IDS Commission developed a proposed expansion budget for fiscal year 2002-2003. After the proposed budget was reviewed and approved by the full IDS Commission, it was presented to the Judicial Council, the Director of the AOC, and the General Assembly.

### *Electronic Communication*

The IDS Office has developed an independent web site ([www.ncids.org](http://www.ncids.org)) that allows greater and more comprehensive communication with the bar and bench, 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 initiatives to improve legal representation, and any other recent developments or matters of interest. In addition, the following materials, among others, are 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; IDS rules, policies, and procedures; reports and data generated by Office staff; fillable applications for the capital and appellate rosters; attorney fee application forms; continuing legal education calendars and materials; and the North Carolina Defender Manual.

In addition, the Office of the Appellate Defender has established a listserv for attorneys representing indigent persons on appeal; the Office of the Capital Defender has developed a listserv for attorneys representing indigent defendants in capital trials; and the IDS Office has established a listserv for involuntary commitment attorneys. Those listservs have been an extremely effective tool for improving communication, sharing information, and providing resources and support to attorneys practicing in these specialized areas across the State. Based on that experience, the IDS Office hopes to partner with a voluntary statewide bar group and create a listserv for attorneys handling adult criminal defense cases throughout North Carolina.

### *Appointment of Attorneys*

On July 1, 2001, the IDS Office assumed direct responsibility for appointment of counsel in all potentially capital cases at the trial level, all appeals, and all capital post-conviction proceedings. To ensure that appointments are made in an appropriate and timely fashion, the IDS Office has utilized pre-existing resources in the Office of the Capital Defender and Office of the Appellate Defender. Thus, 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 March 1, 2003, approximately 1,235 attorneys have been appointed in 920 cases at the trial level. With few exceptions, an attorney is appointed the same day or day after the IDS Office's receipt of notification and determination of indigency by the court. 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. Also since July 1, 2001, more than 1,300 attorneys have been appointed in capital and non-capital appeals; and more than 100 attorneys have been appointed in 58 different capital post-conviction proceedings.

Between July 1, 2001 and March 1, 2003, the Capital Defender has reviewed approximately 1,825 requests for expert funding at the trial level; and the IDS Office has reviewed approximately 460 requests for expert funding in capital post-conviction proceedings. 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 that are truly necessary for an effective defense.

### *Compensation for Representation*

On July 1, 2001, the IDS Office also assumed direct responsibility for compensation of 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 Office adopted uniform rates of attorney compensation for all cases under its direct oversight, and developed new detailed financial auditing procedures that it applies to every fee petition it 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 from a court (before July 1) or the IDS Office (after July 1). Memoranda about those procedures were initially mailed to every attorney and expert in the Office's database. Revised memoranda are posted on the IDS website and attached to this report in Appendix B.

Between July 1, 2001 and March 1, 2003, the IDS Office has set appropriate and uniform fee awards for approximately 3,300 attorney fee applications across the State. Also since July 1, 2001, the Office has set fee awards for approximately 1,660 experts, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts. Office staff are currently setting about 65-70 attorney and expert fee awards per week, and are forwarding those awards to the AOC for payment within 2 to 3 weeks of receiving each fee petition.

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 steps the IDS Office is taking to manage the indigent defense fund, see, e.g., "Uniform Rates of Compensation" and "Improved Revenue Collection" below.

#### *Uniform Rates of Compensation*

Based on a pilot program started by the AOC in the mid-1990's, at least four judicial districts had implemented per case fee schedules for district court cases before the IDS Office came into existence. The IDS Office initially considered expanding the use of fee schedules in district court, both to relieve judges of the burden of determining compensation and to regularize the payment of fees. During October 2001, the Office conducted a survey of judges, private attorneys, public defenders, and clerks to solicit input about an appropriate district court fee schedule. The feedback from that survey showed that attorneys overwhelmingly believed a fee schedule would be unfair and ineffective, and that there was only modest support among judges.

During November 2001, the IDS Office conducted a sampling study of 2,262 district court fee applications that were submitted in three judicial districts during the first quarter of fiscal year 2001-2002; and during February 2002, the Office conducted a study of all 6,695 superior court fee applications that were submitted throughout the State during that same quarter. The data revealed a great deal of statewide uniformity in the average number of hours claimed for similar types of cases. As a result of the survey and fee application studies, the IDS Commission decided against per case fees, and instead adopted a standard statewide rate of \$65 per hour for all non-capital cases in district and superior courts. The IDS Commission believes that this rate is essentially revenue neutral. However, a standard rate has 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 IDS Office notified the bar and bench of this new standard hourly rate during March 2002, and implemented it on April 1, 2002. Office staff subsequently worked with AOC staff to develop appropriate data collection and reporting mechanisms so that the impact of the standard rate could be monitored and analyzed, and additional enforcement steps could be taken if necessary.

In July 2002, IDS Office staff completed a study of 2,555 fee awards set by judges between April 1, 2002 and May 30, 2002 to measure compliance with the standard rate and quantify the costs of any non-compliance. That study revealed that most judges were complying with the \$65 hourly rate: 73% of district and superior court judges had set fees based on the \$65 rate in 80% of cases. However, that study also concluded that if 27% of judges continued to set fees that exceeded \$65 per hour in 20% of the cases, those excessive fees would cost the indigent defense fund an additional \$2.6 million during fiscal year 2002-2003.

IDS Office staff recently conducted a second study of fee awards set between July 1 and December 31, 2002 to determine whether judicial compliance with the standard rate has improved over time. That study revealed that compliance has, in fact, improved. During the first half of this fiscal year, district and superior court judges set fees based on the \$65 rate in 85% of cases (an increase of 5%). In addition, total expenditures on private attorneys in cases in which the judges continue to set fees were only about \$325,000 (or .6%) more than what they would have been if the \$65 rate were being applied across the board. The IDS Commission and Office will continue to monitor compliance, and may decide to take some additional steps to enforce compliance with the standard rate.

#### *Creation of New Capital Defender and IDS Office Positions*

During the Fall of 2001, the General Assembly gave the IDS Commission permission to fund six new attorney positions and five new support staff positions from existing indigent defense funds. On November 16, 2001, the IDS Commission adopted a proposal to add a permanent Capital Defender and one support staff to the Durham Office of the Capital Defender, establish several new regional capital defender offices, and add one support staff position to the IDS Office itself. In January 2002, the General Assembly's Governmental Operations Committee approved this hiring proposal.

In May 2002, the IDS Commission hired Robert Manner Hurley as the permanent Capital Defender, and Hurley subsequently hired an assistant. Two regional assistant capital defenders have been hired and are currently handling cases in New Hanover and the surrounding counties. A third regional assistant capital defender is currently handling cases in Forsyth and the surrounding counties; another Forsyth attorney has been hired and will begin work during April 2003. A fifth regional assistant capital defender has been hired to handle cases in the northeastern part of the State, and is expected to begin work in March 2003.

The IDS Office believes that these regional public employees will be able to represent capital defendants at the trial level for less than the \$85 per hour paid to private assigned counsel, and that they will raise the quality of representation by serving as a model and resource for private attorneys in the areas where they work. The IDS Office also intends to save substantial costs on

office space and infrastructure by housing the regional capital defenders based in Forsyth County in the new Forsyth County Public Defender Office once that office is in place. See “Creation of New Forsyth County Public Defender Office” below.

### *Public Defender Cost-Effectiveness Studies*

In May 2002, IDS Office staff completed a study that examined the cost-effectiveness of all 11 existing public defender offices. That study found that public defender offices comprised 19.7% of the budget for fiscal year 2001-2002, but handled 26.4% of the indigent cases statewide. While the study did not compare the relative quality of representation in public defender and private counsel systems, it concluded that the existing public defender offices together cost the State \$3.3 million less than what it would have cost to pay private attorneys to handle the same cases. Office staff conducted a more recent study of the cost-effectiveness of public defender offices during the first quarter of fiscal year 2002-2003, which indicated that the existing offices together should be as cost-effective or more cost-effective than last fiscal year. IDS staff are working with those offices to continue increasing efficiencies and cost-savings.

In June 2002, IDS Office staff analyzed the costs expended on private assigned counsel in a large number of non-public defender counties compared to the costs of potential new public defender offices in those counties. In that study, the staff built model public defender offices based on standard AOC staffing requirements, as well as position and equipment costs. Staff then compared the funds that would be expended if that model office handled the same cases that are now handled by private attorneys, to the amounts currently expended on those private attorneys. The results indicated that IDS could save money by creating new public defender offices in a number of North Carolina counties. In accordance with G.S. 7A-498.5(e), the IDS Office then solicited comments from the bench and bar in the identified counties, and ultimately recommended that the General Assembly establish new public defender offices in Forsyth, New Hanover/Pender, and Wake counties, and expand the existing Mecklenburg office. In November 2002, the General Assembly implemented the IDS recommendation in part, and established a new office in Forsyth County and expanded the Mecklenburg office.

### *Expansion of Mecklenburg County Public Defender Office*

Based on the IDS Commission’s recommendation, the 2002 Appropriations Act gave the IDS Commission authority to expand the existing Mecklenburg County Public Defender Office by adding ten new attorney positions and five new support staff positions. As of November 1, 2002, eight of the new attorney positions and four of the new support staff positions had been filled. The remaining two attorneys and one support staff should be hired by the end of this fiscal year. IDS Office staff expect those new positions to save substantial amounts this fiscal year and over \$300,000 annually in subsequent years.

### *Electronic Payment Procedures*

Previously, payment of fees was primarily a paper process. A paper fee order was sent to the AOC, which entered the information, and a paper check was sent to the attorney or expert. The IDS Office has worked with the AOC to streamline this process. Although the courts presently

do not have the appropriate technology to submit fee applications electronically, fees are now being paid electronically to approximately 215 attorneys and 60 experts statewide, which has resulted in more timely payment and some cost savings. For additional steps to streamline the fee application process through improved technology, see “Web-Based Vendor Payment Pilot Study” below.

### *Committees of the IDS Commission*

With the assistance of IDS Office staff, the IDS Commission has formed eight different committees responsible for addressing various aspects of its work. Based on work done by Office staff, the Budget Committee has prepared fiscal notes for all major IDS initiatives, analyzed non-capital case costs in district and superior court and proposed a standard hourly rate for those cases, analyzed budget trends, and prepared a proposed budget for the 2003-2005 biennium. The Capital Committee has addressed issues such as quality of capital representation, recruitment of qualified attorneys, new regional capital defender offices, compensation of defense experts, and ways to provide cost-effective consulting services to capital attorneys. 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. 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 faculty from the Institute of Government, the Personnel Committee developed personnel policies for the IDS Office and tools to evaluate the performance of the Executive Director on an annual basis. The Standards Committee plans to begin addressing model performance standards for counsel in indigent cases. The Indigency Standards Committee will be addressing revised standards for determining whether a person is indigent and entitled to counsel. An informal Training Committee intends to begin working with staff and other groups to develop new and innovative training programs for attorneys representing indigent persons.

## **B. Initiatives in Progress**

### *Budget Trends and Forecasting*

In November 2002, IDS staff conducted an historical analysis of budget trends in order to more accurately predict the likely demands on the indigent defense fund during this fiscal year and the next biennium. Staff examined data on a number of long-term trends in the six-year period between fiscal year 1996-1997 and fiscal year 2001-2002. For instance, staff found that during that time period, the average annual growth rate in the number of IDS fee applications was 6.8%; the average growth rate in the total number of North Carolina criminal dispositions was 2.7%; the average growth rate in the number of felony dispositions in superior court was 3.4%; and the average growth rate in the number of dispositions in district court was 2.9%. Based on that analysis, in December 2002, the IDS Commission projected a conservative growth rate of 4.5% this fiscal year and during the next biennium, and submitted a proposed budget to the Governor’s office that requested sufficient funding to cover the anticipated demands on the fund. See “Proposed Budget for FYs 2003-2005” below.

### *Analysis of Spending and Obligations*

The IDS Commission has already taken significant steps to control increases in the cost of indigent representation. The increase in spending and obligations during fiscal year 2001-2002 was only .36% above fiscal year 2000-2001, which is the lowest increase in at least a decade. See Appendix A.

Current projections show a similar modest increase this fiscal year. In January 2003, IDS Office staff completed an analysis of the indigent defense fund's spending and obligations between July 1, 2002 and December 31, 2002, which revealed that the private assigned counsel fund had not experienced any growth over the spending and obligations incurred between July and December 2001. As of December 31, 2002, the private counsel fund had spent approximately \$30.5 million and obligated an additional \$4.2 million, for a total of \$34.7 million (including the \$6.75 million in debt carried over from last fiscal year). Last year at the same time, the fund had spent \$27.6 million and obligations were unknown. Thus, excluding the \$6.75 million debt IDS carried into this fiscal year, spending plus obligations on private attorneys through the first half of the current fiscal year is approximately equal to spending during the first half of last fiscal year. In addition, the study showed that public defender offices are continuing to spend less than their budgeted appropriations.

Thus, the predicted increase in spending due to the United States Supreme Court's May 2002 decision in *Alabama v. Shelton* – which extended the Sixth Amendment right to counsel to indigent defendants facing a suspended sentence – may not have actualized. If there has been an increase in spending due to the *Shelton* decision, the overall level of spending on indigent defense has remained steady due to economies in other areas.

### *Proposed Budget for FYs 2003-2005*

With the assistance of AOC staff and IDS Office staff, the IDS Commission developed a proposed budget for the 2003-2005 biennium and submitted it to the Governor in December 2002. The budget proposed by IDS to the Governor was intended only to maintain, not expand, current services, and assumed a modest 4.5% annual growth in spending and obligations during this fiscal year and the next biennium. However, since proposing that budget, IDS Office staff have obtained sufficient financial information for the first two quarters of this fiscal year to project little or no growth in spending and obligations this year. Assuming current projections continue to hold, the IDS Commission will amend its budget request to the General Assembly to reflect this lower-than-expected spending during fiscal year 2002-2003.

### *Program Evaluation*

The IDS Office is currently developing methods for evaluating the cost-effectiveness and quality of services provided by public defender, contract, and assigned counsel programs. During the Fall of 2001, the IDS Office used the available data to conduct a preliminary cost-benefit analysis comparing public defender offices and private assigned counsel. However, Office staff ultimately determined that meaningful cost-benefit analysis was not possible with the existing data, in large part because no historical data existed about the number of hours public

defender staff devoted to each case. Thus, the IDS Office began working with the public defender offices to collect accurate data on, among other things, the amount of time they spend per case. See “Improved External Data Collection and Reporting” below. Comparable data is available for private assigned counsel because of the district court and superior court fee application studies conducted by the IDS Office and described in “Uniform Rates of Compensation” above.

During the Spring and Summer of 2002, IDS Office staff conducted the cost-effectiveness studies that are summarized in “Public Defender Cost-Effectiveness Studies” above, and made recommendations to the General Assembly in accordance with the study findings. Ultimately, the IDS Office intends to collect sufficient data to do a more comprehensive cost-benefit comparison than has ever been attempted in North Carolina. For instance, the IDS Office hopes to build caseload models for the public defender offices, and examine and quantify efficiencies of scale. The IDS Office also intends to quantify the true 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. Finally, the IDS Office plans to examine the quality of services provided in public defender offices, and by private assigned counsel, through more qualitative studies.

#### *Creation of New Forsyth County Public Defender Office*

Based on the IDS Commission’s recommendation, the 2002 Appropriations Act established a new Public Defender Office in Forsyth County. In October 2002, the IDS Office promulgated regulations governing the nomination of candidates for the initial public defender term; and in November 2002, the Forsyth County Bar met and nominated three candidates for the position. In late 2002, the Senior Resident Superior Court Judge in District 21 appointed attorney George R. Clary to begin a four-year term effective January 1, 2003.

Since his appointment, IDS Office staff members have met with Clary on numerous occasions to assist him in establishing the new office. Among other things, IDS Office staff have worked with Clary to address issues of staffing, equipment, office space, and case management, and compiled a detailed orientation notebook. In addition, Office staff are currently working with Clary to develop a plan for the appointment of counsel in all non-capital cases in Forsyth County. See “Development and Approval of Public Defender Plans” above.

Forsyth County has provided space for the new public defender office in a building across the street from the courthouse. An Administrative Assistant has been hired and began work in January 2003. Several assistant public defenders are expected to begin work and start handling cases during the first week in March; additional attorneys will be hired on a rolling basis as caseloads justify it. Because the office will not be operational until late in the current fiscal year, savings this year may be minimal. IDS staff expect the new office to save over \$400,000 annually in subsequent years.

### *Improved External Data Collection and Reporting*

IDS Office staff are continuing to work with AOC staff to develop better and more comprehensive data collection systems for the indigent defense program. For instance, during the Spring of 2002, the IDS Office asked the Financial Services Division of AOC to collect additional data from all non-capital fee applications that are signed by judges and submitted to AOC for payment. AOC previously collected the following data for each fee application: county, case number, defendant's name, attorney's name, judge's name, disposition date, and total fee. In addition to continuing to collect that data, the AOC has now begun collecting the total hours claimed by the attorney in each case, which will help IDS staff monitor compliance with the \$65 standard hourly rate adopted in April 2002. AOC is also collecting more detailed data concerning expenditures on experts and transcripts. In the future, IDS staff hope to work with AOC staff to collect additional data fields and break down the existing data by type of charge or proceeding.

With the assistance of the AOC's Technology Services Division ("TSD"), the data collected by AOC is now available to the IDS Office on a regular basis through improved reporting mechanisms. Since January 2003, IDS staff have had direct FTP access to the AOC's financial accounting system ("NCAS"), which allows staff to download and analyze current fiscal data on a regular basis. This access will enable the IDS Office to perform significantly more sophisticated analyses about many aspects of the indigent defense system. For instance, Office staff are working to build an historical financial database that should allow better analysis of budgetary trends and more accurate predictions about growth rates; IDS staff have already compiled historical figures back to 1999 and are hoping to compile figures as far back as the early 1990's.

In addition, Office staff have worked with the public defender offices to establish statewide uniform data collection about case loads. In conjunction with TSD and the Court Services Division ("CSD") of AOC, the IDS Office is working to pilot new data collection software in all public defender offices. Two public defender offices have tested the program and indicated that it communicates with the existing Case Management Software public defenders use to interface with court databases, and results in significant time savings. IDS Office staff will soon begin designing uniform reporting mechanisms, and then distribute the software and required reports to public defender offices statewide. Once these procedures are established, the IDS Office will have access to information about cases that are directly handled by a public defender office or by assigned counsel within a public defender district. As a result, the IDS Office will be able to evaluate and compare case loads and performance in each public defender office, and make more informed decisions about resource allocation. In addition, the Office will be in a better position to evaluate the cost effectiveness of public defender offices in comparison with private assigned counsel programs.

### *Improved Revenue Collection*

Based on data collected in the district and superior court fee application studies described in "Uniform Rates of Compensation" above, the IDS Office completed a study of the percentages of recoupment-eligible cases in which recoupment was actually ordered during the first quarter

of fiscal year 2001-2002. For purposes of this study, the Office excluded all cases resulting in a dismissal, acquittal, or unknown disposition, and all cases in which the defendant failed to appear. The results showed that civil judgments were being entered in a very low percentage of cases. In the district court sample, civil judgments were entered in only 23.6% of recoupment-eligible cases; and in superior court, civil judgments were entered in only 56.4% of recoupment-eligible cases. Even in cases in which recoupment was mandated by statute, civil judgments were not being entered on a regular basis.

IDS Office staff have also worked with AOC staff to gather data on the amount each county collected in recoupment (probationary collections and civil judgments) during fiscal year 2001-2002. Staff then analyzed that data to determine the amount recouped by each county as a percentage of that county's total expenditures on indigent defense. The results indicated that there is wide variability in recoupment among counties, ranging from a high of 48% to a low of 1.9%, with an average of 10.9%.

Based on these findings, the IDS Office has undertaken a number of initiatives to improve the recoupment process and hopes to increase revenues to the indigent defense fund as a result. For instance, IDS Office staff have been working closely with the public defender offices to ensure that they are submitting fee applications for entry of judgments in all recoupment-eligible cases, and holding 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. So far, these efforts appear to be improving collections. As of the end of December 2002, the indigent defense fund had collected almost \$150,000 more in recoupment than it had at the end of December 2001 (an increase of 7.36%). During this legislative session, the IDS Commission intends to recommend to the General Assembly revisions to the General Statutes that should improve collections even further. *See* "III. Legislative Recommendations, A. Recoupment" below.

Finally, effective December 1, 2002, the General Assembly enacted G.S. 7A-455.1, which established a new \$50 attorney appointment fee for indigent criminal defendants who are appointed counsel at State expense. Under the statute, a \$50 fee shall be assessed against a criminal defendant at the time counsel is appointed, unless that fee was previously assessed in a pending case. While up-front payments are encouraged, counsel cannot be denied if the defendant is unable to pay all or a portion of the fee.

Based on experience with similar fees in other states, the IDS Office predicted annual collection of approximately \$1 million in appointment fees, with \$525,000 in revenue during this first partial fiscal year. Implementing the new attorney appointment fee has proven to be much more complicated and problematic than was expected, and has caused a great deal of confusion among judges, clerks, and attorneys. While initial collections have not been nearly what was projected, \$9,440 was collected during December 2002, more than \$15,300 was collected during January 2003, and current projections indicate that approximately \$30,000 will be collected in February 2003. The amounts collected will likely continue to increase after the initial transition period.

### *Improved Training*

The IDS Office continues to provide funding for public defender training programs, and has begun to offer new training programs in areas of representation that traditionally have not had adequate continuing legal education. The IDS Office worked with the Office of the Appellate Defender and faculty from the Institute of Government to develop a new hands-on training program for private appellate attorneys who accept appointments in indigent cases. That training was held in July 2002; the program was extremely successful and will be offered on an annual basis. With the assistance of AOC and Institute of Government staff, the IDS Office planned a new training program for private counsel who work on involuntary commitment cases, and for full-time State employees who serve as Special Counsel. That training, which was held during February 2003, was the first of its kind in North Carolina. Also with the assistance of AOC and Institute of Government staff, the IDS Office is planning a training program for attorneys who represent parents in DSS cases, including abuse, neglect, and dependency, and termination of parental rights proceedings. That program is scheduled to be held in May 2003, and will also be the first of its kind in North Carolina.

In addition, the IDS Office has provided funding for improvements to the Institute of Government's North Carolina Defender Manual, and has made that manual available to more attorneys by posting it on the IDS website. Attorneys around the State can now access or download the manual for free. In addition, the IDS Office has begun posting on its website materials that were used in IDS co-sponsored training programs, so that private attorneys around the State can benefit from programs they were not able to attend in person.

The IDS Office is considering more ways in which additional improved training can be provided to public defenders and private attorneys, both to assist them in meeting any new performance or qualification standards, and to enhance the quality and efficiency of the services they provide.

### *Statewide Assessment of Juvenile Delinquency Representation*

With the assistance of the American Bar Association Juvenile Justice Center ("ABA") and the Southern Juvenile Defender Center at Emory University School of Law, the IDS Office is currently conducting a comprehensive statewide assessment of North Carolina's juvenile defense programs. The goal of this project is to provide a thorough, objective assessment of the existing legal services available for North Carolina's youth, both in terms of the accessibility of defense counsel and the quality of representation, and to develop recommendations for improving those services where needed. As part of its mission to provide services to states working to improve their systems for delivering legal services to juveniles, the ABA has conducted state-based assessments in a number of other states, including Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Montana, Ohio, Texas, and Virginia.

During February and March of 2003, teams of in-state and national experts will be visiting a representative sample of 12 North Carolina counties to observe juvenile delinquency court and interview judges, defense attorneys, prosecutors, juvenile clerks, court counselors, and youth in detention and treatment facilities. To gather information about the remaining 88 North Carolina

counties, as well as additional perspectives in the counties visited, IDS staff are mailing surveys to key actors in the juvenile justice system statewide. During the Spring of 2003, the ABA will be generating a report that will identify the strengths and weaknesses of the existing North Carolina juvenile defense systems and any recommendations for improvements.

### *Parent Representation*

IDS Office staff have also met with representatives of the Court Improvement Project, which is an organization dedicated to improving the quality of North Carolina's family courts, and discussed ways to enhance the quality of parent representation. As shown in "Improved Training" above, the IDS Office has worked with other actors to develop a new training program for attorneys representing parents, and hopes to devote more attention to parent representation in the future.

### *Sentencing Services Program*

In the 2002 Appropriations Act (S.L. 2002-126, S.B. 1115), the General Assembly reduced the overall budget for the Office of Sentencing Services ("OSS") by almost 40%, and transferred that program to IDS with directions to reconfigure the program as necessary to implement the budget reduction. IDS assumed responsibility for OSS on September 20, 2002, when the 2002 Appropriations Act was enacted. At that time, the IDS Executive Director hired Institute of Government Professor John Rubin as Interim Administrator of OSS. OSS has now been substantially reorganized, and is continuing to provide quality and accountable services despite the funding reductions. *See Report on Reorganization of Sentencing Services Program* (Submitted to the General Assembly on January 9, 2003).

### *Special Counsel Program*

The IDS Office is in the process of evaluating possible changes that would make the existing special counsel programs around the State more cost-effective. For example, previously, two salaried attorneys in the Special Counsel Office at Dorothea Dix handled a caseload of approximately 4,000 involuntary commitment cases in Wake County. A third private assigned attorney handled an additional 2,000 cases from private hospitals in Wake County at an approximate cost of \$50,000 per year. In conjunction with AOC staff, the IDS Office has taken steps to improve the efficiency of the two existing special counsel positions. Those two salaried attorneys will now be handling all of the cases from Wake County private hospitals, as well as those from Dorothea Dix, for a total annual case load of 6,000. As a result, the IDS Office expects to save approximately \$50,000 in private assigned counsel costs annually.

The IDS Office is also working with AOC staff to evaluate case loads at Broughton Hospital in Morganton, and hopes to increase efficiencies there as well. As with Dorothea Dix, the IDS Office believes there may be cases originating in private hospitals in Burke County that are currently handled by appointed counsel, but could be handled by special counsel at Broughton. As above, such an arrangement should decrease the funds being paid to private attorneys in this area. Finally, IDS Office staff are working with the Orange-Chatham Public Defender Office to

evaluate representation by appointed counsel in involuntary commitment cases and possibly develop a new arrangement to increase efficiencies and generate additional cost-savings.

### *Web-Based Vendor Payment Pilot Study*

In January 2003, IDS Office staff submitted an application to the Governor's Crime Commission, which requests grant funding for a pilot web-based attorney payment system. The grant application proposes developing a web-based system that would allow the IDS Office to receive and process attorney fee applications electronically via the Internet. The system would also enable attorneys to review their case assignments and the status of their fee applications on-line.

The initial grant proposal is to pilot-test this system in all capital and appellate cases statewide. If successful, IDS staff hope the system could then be expanded to allow receipt and processing of attorney fee applications in all indigent cases throughout North Carolina – approximately 140,000 cases annually. Such a system would ultimately result in significant savings by reducing the labor costs associated with the current paper-based system and automating routine tasks, and would greatly enhance the ability of IDS staff to collect and analyze data.

### **C. Future Initiatives Under Consideration**

The IDS Commission and IDS Office are considering and have begun preliminary work on the following initiatives to improve the efficiency, cost-effectiveness, and quality of indigent defense programs in the State.

#### *District-by-District Review*

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

This flexibility will allow the IDS Office to tailor indigent defense services to the needs in different parts of the State and in different types of cases. Contracts with attorneys may be appropriate in some situations, but not in others. Caseload, population, and other factors may make a public defender office appropriate in some locations, but not in others. In other words, one size does not fit all.

This flexibility also gives the IDS Office the ability to strike an appropriate balance in representation provided by private attorneys and public defenders. In its standards for administering indigent defense services, the ABA 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.

The IDS Office has conducted a study of the cost-effectiveness of new public defender offices in some counties, solicited comments from the bar and bench in those counties, and made recommendations to the General Assembly based on the study and comments received. *See* “Public Defender Cost-Effectiveness Studies” above. In addition, IDS staff intend to conduct cost-benefit analyses in the future to compare the relative costs and quality of public defender and private assigned counsel systems. *See* “Program Evaluation” above. However, Office staff have not yet engaged in any systematic review of the methods of service delivery in each North Carolina district. Before changing 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; the IDS Office also must obtain legislative approval before establishing or abolishing a public defender office. IDS Office staff intend to begin this process of county-based evaluations during the coming year.

Recognizing that each district has its own needs and that a single statewide plan for providing counsel is not workable, the IDS Office plans to obtain input from all of the State’s 39 judicial districts. Based on the information it obtains, the IDS Office intends to identify the most appropriate method, from both a cost and quality perspective, for providing legal representation in each district. This process will be a gradual one, with the IDS Office working closely with attorneys and court officials to implement changes in one district, while it is in the process of gathering input from and information about other districts.

#### *Expanded Use of Contracts*

As an alternative to appointing and compensating counsel on a case-by-case basis, as is currently done in most parts of the State that do not have public defender offices, the IDS Office is considering expanding the use of contracts. Under such contracts, specific attorneys would agree to handle a certain number of cases for a certain fee. Currently, contracts cover some non-criminal cases in some districts, such as juvenile and involuntary commitment matters. Carefully planned and tailored contracts can offer a cost-effective and efficient alternative means of representation.

#### *Model Performance and Qualification Standards*

With the assistance of IDS Office staff and faculty from the Institute of Government, the Standards Committee of the IDS Commission intends to develop model performance and qualification standards for attorneys representing indigent persons in North Carolina. Among others, the performance standards will cover areas such as client contact, trial preparation, and professionalism. Qualification standards would apply to counsel in non-capital and non-criminal cases at the trial level. Currently, the qualification standards in non-public defender districts are in local bar plans, which primarily address criminal cases and usually contain general experience requirements only. The committee will be considering standards with differentiated qualification requirements (i.e., different requirements for different types of cases); specific experience requirements (i.e., requirements beyond a certain number of years in practice); and ongoing training requirements. The standards could serve as a model for individual districts developing indigent defense plans and as a basis for new training programs.

### *Revised Indigency Standards and Procedures*

The IDS Commission has appointed a committee, assisted by IDS Office staff, to examine the standards and procedures for determining indigency. The IDS Act continues to require judicial officials in most instances to make an initial determination of indigency as a condition of appointment of counsel. The current statute (G.S. 7A-450(a)) provides only modest guidance, however, on the meaning of indigency. The committee plans to examine standards and procedures used in other states and develop a method for determining indigency appropriate to North Carolina.

#### *Pre-Case Budgets*

Using the federal court system as a model, the IDS Office has taken preliminary steps to investigate a pilot program in capital post-conviction cases that would require attorneys to develop pre-case budgets. Under such a program, the attorneys of record would meet with IDS Office staff and present a proposed case budget after they are appointed to a case, but before they undertake a significant amount of work. The attorneys would be expected to present a budget for all anticipated case-related expenditures, including attorney time, experts, and other support services. After discussion with the attorneys, the IDS Office would then approve an appropriate case budget. While attorneys would be able to exceed the approved case budget based on exceptional circumstances, the process should encourage attorneys to think through the financial consequences of their representation and focus on the resources that are truly necessary to effective representation. In addition, it will enable the IDS Office to maintain closer contact with the attorneys and better respond to attorney expectations and needs.

#### *Quarterly Newsletter*

As discussed in “Electronic Communication” above, the IDS Office has taken a number of steps to use available technology as a means of communicating regularly with the private bar. In addition, the IDS Office hopes to develop a quarterly newsletter that would, among other things, update the bar on recent developments and IDS initiatives, and alert attorneys across the State to training programs and other resources as they become available.

## **II. District Case Volume and Cost Statistics**

The existing data on the volume and cost of cases handled in each district by assigned counsel or public defenders during fiscal year 2001-2002 is attached to this report in Appendix C. While the available data is limited in scope, the IDS Office is working with AOC to improve data collection procedures and data reporting capabilities. Once those mechanisms are in place, the IDS Office intends to complete more detailed and helpful analyses for inclusion in future annual reports.

### **III. Legislative Recommendations**

#### **A. Recoupment**

The IDS Office believes that the management of funds expended for indigent defense services would be improved by increased collection of revenue from the clients being served. Currently, there is confusion among judges and other court personnel concerning when recoupment is mandated or appropriate. The IDS Office recommends that legislation be adopted clarifying the circumstances in which recoupment is required and the procedures governing recoupment. IDS staff are currently drafting revised legislation, and intend to submit a proposal to the General Assembly during this legislative session. *See* “Improved Revenue Collection” above.

#### **B. Additional Staff for Existing Public Defender Offices**

The IDS Office may again request from the General Assembly the authority to add assistant public defenders and support staff to existing public defender offices where IDS determines that the additions will be cost-effective and enhance the quality of representation in a district.

#### **C. New Public Defender Offices**

The IDS Office has conducted a study of the relative cost-effectiveness of public defender offices versus private assigned counsel in a number of counties around the State, and hopes to conduct a study comparing the quality of those services in the future. *See* “Program Evaluation” above. If, based on its studies, the IDS Office determines there should be changes in the method of service delivery in some districts, IDS may request authority to create new public defender offices.

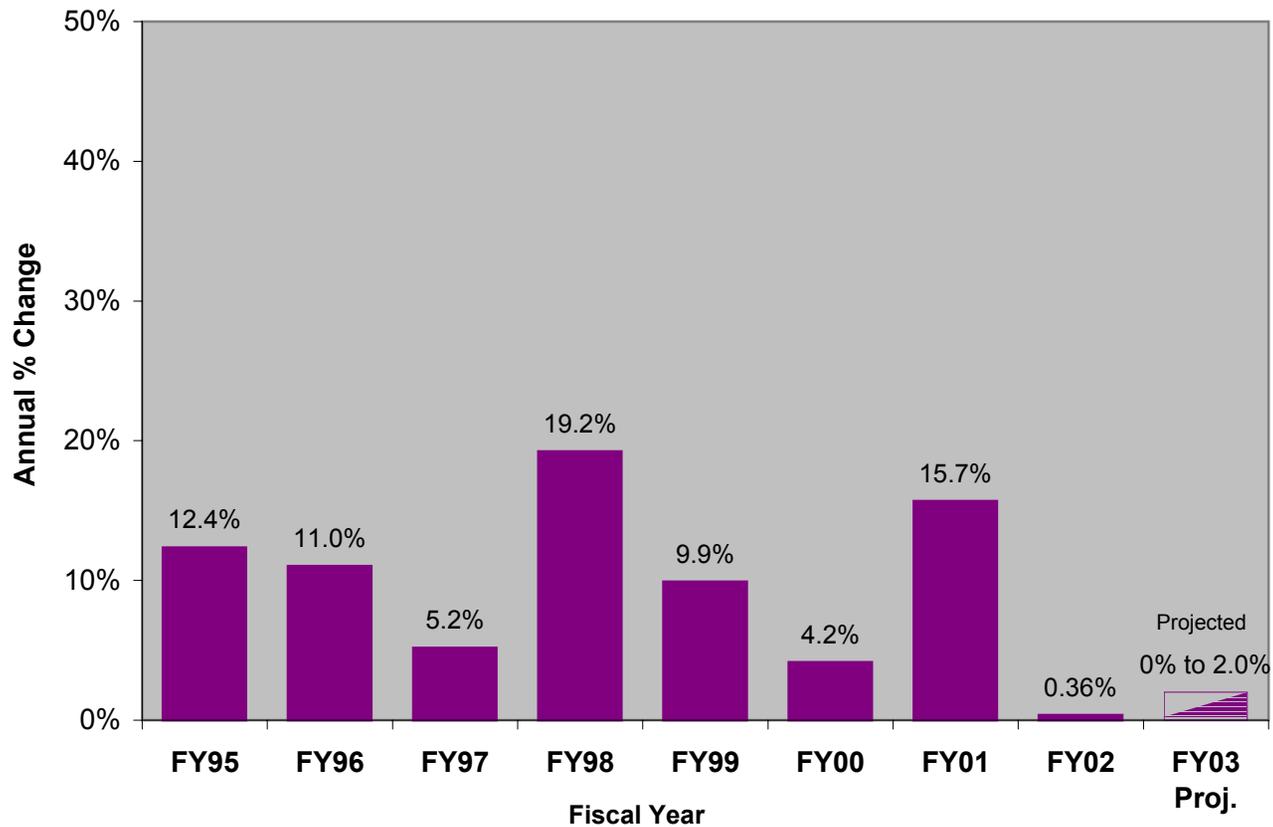
In addition, the IDS Commission believes that quality improvements and projected cost-savings from any new public defender offices, as well as continuing efficiency and accountability in the existing public defender offices, can best be assured if the General Assembly enacts legislation giving the Commission authority to select and appoint the heads of all public defender offices.

### **IV. 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, 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.

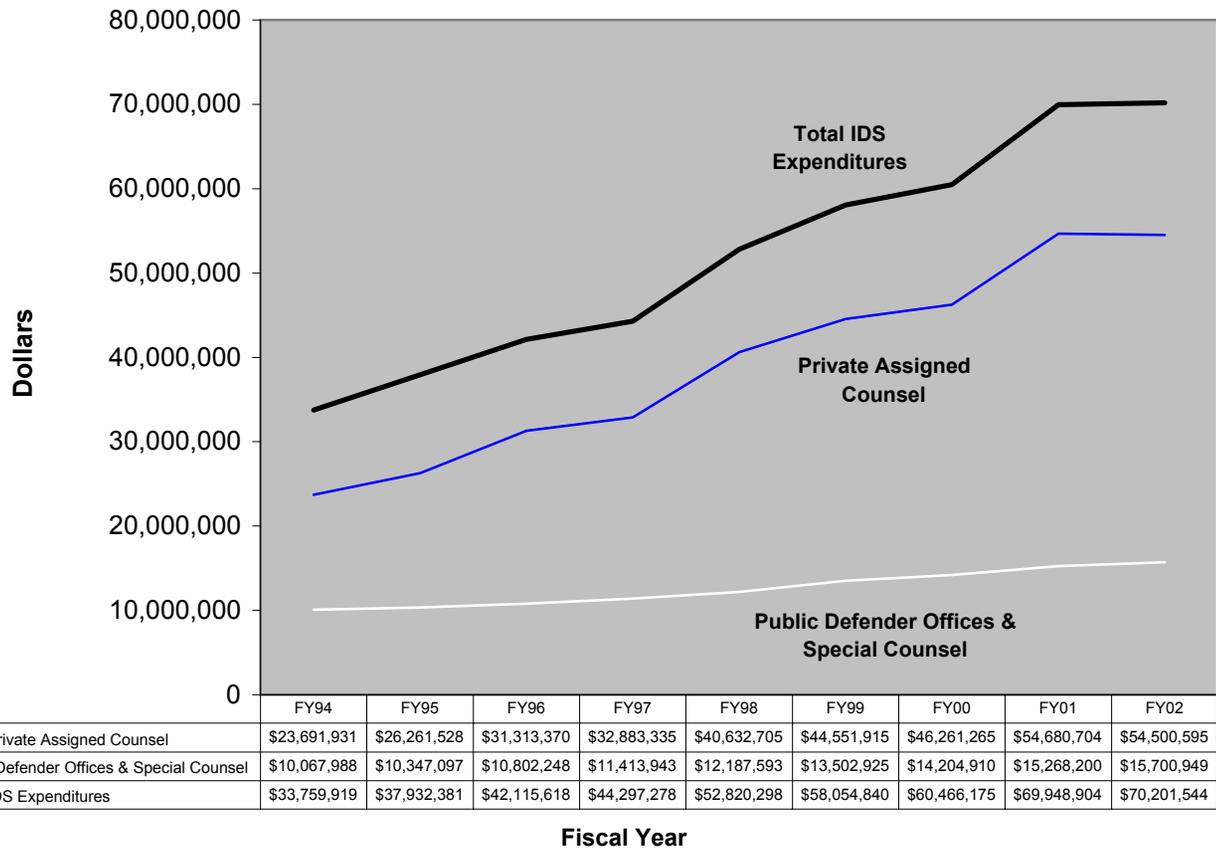
## **APPENDIX A**

### Annual Percent Change in Actual Total Indigent Defense Expenditures (excludes prior year obligations)



## Indigent Defense Expenditure History

### Actual Spending FY94 to FY02



*Sources: Administrative Office of the Courts, Annual Reports 1988-99 through 2000-01 and IDS Office Chief Financial Officer.*

**Indigent Defense Expenditure History  
FY89 to FY02**

Type of Expenditure	FY89	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02
<i>Private Assigned Counsel (PAC)</i>										
Capital	2,095,675	5,189,722	4,605,960	6,950,613	6,453,782	9,589,186	9,176,899	10,079,534	11,272,810	10,900,245
Adult	11,724,097	16,309,410	18,597,507	19,932,141	22,322,081	25,540,251	27,428,944	29,283,471	35,536,744	32,197,535
Juvenile	1,045,401	1,712,647	2,268,305	2,314,826	2,560,702	2,787,998	2,966,086	3,138,127	3,828,369	3,006,075
GAL	102,770	71,827	71,630	77,089	115,313	123,838	159,776	208,031	298,241	278,687
Support Services	\$ 629,266	\$ 1,245,241	\$ 1,565,817	\$ 1,886,392	\$ 2,431,457	\$ 2,591,432	\$ 2,970,751	\$ 3,218,862	\$ 3,475,239	\$ 3,932,832
Obligated at Year-End	2,532,297	1,695,381	847,691	1,000,000	-	-	1,849,459	2,182,699	2,452,000	6,637,221
<b>Total PAC</b>	<b>\$ 17,500,240</b>	<b>\$ 26,224,228</b>	<b>\$ 27,956,909</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>\$ 56,952,595</b>
Total PAC with prior year obligations removed		\$ 23,691,931	\$ 26,261,528	\$ 31,313,370	\$ 32,883,335	\$ 40,632,705	\$ 44,551,915	\$ 46,261,265	\$ 54,680,704	\$ 54,500,595
Annual % Growth with proper allocations of obligations			0.1%	12.0%	2.2%	19.9%	9.6%	3.8%	13.7%	-4.16%
Obligation as % of PAC Total	16.9%	6.9%	3.1%	3.2%	0.0%	0.0%	4.3%	4.8%	4.5%	13.2%
<i>Public Defender Offices &amp; Special Counsel</i>										
IDS Office									\$ 179,459	\$ 472,471
Public Defender	\$ 4,717,451	\$ 8,877,852	\$ 9,026,180	\$ 9,364,670	\$ 9,895,547	\$ 10,708,729	\$ 11,708,864	\$ 12,260,820	\$ 12,877,539	\$ 13,024,014
Appellate Defender	\$ 575,534	\$ 811,277	\$ 832,381	\$ 930,474	\$ 977,043	\$ 919,279	\$ 1,025,609	\$ 1,068,893	\$ 1,091,839	\$ 972,713
Capital Defender							\$ 183,896	\$ 278,065	\$ 352,240	\$ 392,940
Set-Off Debt			\$ 91,109	\$ 91,109	\$ 86,152	\$ 83,085	\$ 82,489	\$ 84,414	\$ 92,402	\$ 65,519
Special Counsel	\$ 264,601	\$ 378,859	\$ 397,427	\$ 415,995	\$ 455,201	\$ 476,500	\$ 502,067	\$ 512,718	\$ 674,721	\$ 773,292
<b>Total Public Defender Offices</b>	<b>\$ 5,557,586</b>	<b>\$ 10,067,988</b>	<b>\$ 10,347,097</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>
Annual Percent Change			2.8%	4.4%	5.7%	6.8%	10.8%	5.2%	7.5%	2.8%
<b>Total IDS Expenditures</b>	<b>\$ 23,057,826</b>	<b>\$ 36,292,216</b>	<b>\$ 39,627,762</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>\$ 72,653,544</b>
Total IDS Expenditures with prior year obligations removed	\$ -	\$ 33,759,919	\$ 37,932,381	\$ 42,115,618	\$ 44,297,278	\$ 52,820,298	\$ 58,054,840	\$ 60,466,175	\$ 69,948,904	\$ 70,201,544
Obligation as % of IDS Total			12.4%	11.0%	5.2%	19.2%	9.9%	4.2%	15.7%	0.36%
Sources: Administrative Office of the Courts, Annual Reports 1988-99 through 2000-02 and IDS Office Chief Financial Officer.										
Following financial information not included for comparison reasons:										
Programs no longer in operation - Death Penalty Resource Center, Indigency Screening Program										
Programs no longer under Indigent Defense Services - Guardian ad Litem Program										
Pass through grants - NC State Bar Grant, Center for Death Penalty Litigation Grant										

## **APPENDIX B**

## Memorandum

To: Indigent Defense Attorneys  
Re: Attorney Fee and Expense Applications  
From: Office of Indigent Defense Services  
Date: Updated February 2003

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This is an update to the IDS Office's previous attorney fee and expense application memos. The changes include a new policy with respect to work performed by students and a clarification of IDS policy concerning final fee applications in non-capital appeals. There is also a new mileage reimbursement rate effective February 17, 2003.

### **I. The Attorney Fee and Expense Application:**

An attorney fee application that is directed to the IDS Office should be comprised of three parts: 1) one copy of the appropriate AOC-CR application form; 2) two copies of the itemized time sheets; and 3) any required receipts.

#### **A. The Application Forms:**

There are 2 forms available for use by private attorneys requesting compensation from the IDS Office for attorney fees and expenses in indigent cases.<sup>3</sup> Both forms are available at [www.ncids.org](http://www.ncids.org):

- AOC-CR-425 (Capital Case Fee Application, Rev. 12/02): An applicant must complete this form for payment in homicide cases (other than second-degree murder) at the trial level, as well as capital appeals and post-conviction, and submit it to the IDS Office.
- AOC-CR-426 (Non-Capital Criminal or Non-Criminal Appeals Fee Application, Rev. 9/02): An applicant must complete this form for payment in non-capital criminal or non-criminal appeals, and submit it to the IDS Office.

#### **B. The Itemized Time Sheets:**

- An applicant must attach to his or her fee application an itemized billing record which provides sufficient detail regarding counsel's services in the case to demonstrate that the claim for compensation is reasonable. At a minimum, the itemized billing record must reflect attorney time broken down according to date, description of services, and amount of time in hours and tenths of an hour.
- Time sheets must be computer generated. Handwritten time sheets will not be accepted.

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<sup>3</sup> An applicant seeking compensation for non-capital criminal cases at the trial level should complete AOC-CR-225 (Rev. 12/02), and submit it to the presiding district or superior court judge. An applicant seeking compensation for non-criminal cases at the trial level should complete AOC-G-200 (New 12/02), and submit it to the presiding district or superior court judge.

- C. **The Attached Receipts:**
- See section IV. below.

## **II. Standard Hourly Attorney Fees:**

A. **Capital Cases:**

The standard hourly attorney fee for provisional counsel in capital cases is \$75 per hour. The standard hourly attorney fee for in-court and out-of-court time in capital cases at the trial, appellate, and post-conviction levels is \$85 per hour.

- For fee purposes, a trial-level case is considered “capital” if it began as a “first-degree murder charge or charge of murder where the degree is undesignated.” *See* Rules of the Commission on Indigent Defense Services, Part 2, Rule 2A.1(a) (2001). Thus, for example, a case in which the defendant is initially charged with first-degree murder will be compensated at the \$85 per hour “capital” rate throughout the trial stage, even if the defendant subsequently enters a plea to second-degree murder.
- An appellate case is considered “capital” only if it is the direct appeal of an actual sentence of death.
- A post-conviction case is considered “capital” only if the defendant is under an actual sentence of death.

B. **Non-Capital Criminal and Non-Criminal Appeals:**

- The standard hourly attorney fee for any non-capital or non-criminal direct appeal is \$65 per hour.

C. **Deviations from the Standard Rate:**

In a few cases that began prior to July 1, 2001, judges agreed in advance to pay attorneys more than the standard rate for a particularly difficult or unusual case. The IDS Office will honor those agreements.

## **III. Attorney Interim and Final Fees:**

A. **Interim Fees:**

Assuming the following conditions have been met, an attorney may submit an application for interim fees, which the IDS Director may grant in his discretion. However, attorneys are encouraged not to file for interim fees as a regular billing practice; instead, interim fee applications should be filed only in cases involving a genuine hardship to the applicant.

1. **Capital Cases:**

Absent exceptional circumstances, the IDS Office will only process interim attorney fee requests in capital cases when one of the following two conditions has been met: 1) the interim fee application covers a time period of 3 or more months; or 2) the interim fee application involves a payment amount of \$3,000.00 or more.

2. Non-Capital Appeals:  
Absent exceptional circumstances, the IDS Office will only process interim attorney fee requests in non-capital appeals when one of the following two conditions has been met: 1) the transcript is 1,500 or more pages and the settled record on appeal has been filed; or 2) the appellant's brief has been filed.

**B. Final Fees:**

1. Capital Cases:  
When submitting an application for final fees and expenses, please provide a statement of all experts used in the case, and the amount those experts have been authorized and paid. (See Section V. below). The IDS Office may request a conference with the attorney prior to final payment of attorney fees and expenses. If such a conference is held, counsel will be compensated for his or her time spent in that review.
2. Non-Capital Appeals:  
The final fee application in a non-capital appeal should be submitted after the Court of Appeals issues a decision, or the Supreme Court denies discretionary review or dismisses the notice of appeal, whichever occurs later. (If the Supreme Court allows review, the attorney may submit an interim fee application at that time and again after the new brief is filed in the Supreme Court.)

**IV. Reimbursable Expenses:**

**A. Prior Approval Not Required:**

The following necessary expenses are reimbursable without prior approval from the IDS Office. If exceptional circumstances warrant the expenditure of higher amounts, the applicant should seek pre-approval from the IDS Office before incurring the expense.

1. **In-State Travel:**<sup>4</sup>
  - a. Mileage on Privately-Owned Vehicles: Mileage is reimbursed at the current state rate for out-of-county travel only. For fee applications received before February 17, 2003, the mileage rate is \$0.26 per mile. For fee applications received on or after February 17, 2003, the mileage rate is \$0.30 per mile. In-county travel is not reimbursable.
  - b. Rental Vehicles: If you choose to rent a vehicle for case-related travel, you will be reimbursed for the lesser of the following: 1) the cost of the rental vehicle plus gasoline; or 2) the mileage reimbursement you would have received if you had driven your personal vehicle. You must attach a receipt to be reimbursed for rental car expenses.

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<sup>4</sup> Reimbursement rates for travel-related expenses are based on the current travel allowances for State employees. See G.S. 138-6 (Supp. 2000).

- c. Meals: Meals will only be reimbursed if there is an overnight stay; meals will then be reimbursed according to the current state authorized per diem, with one per diem per overnight stay. As of June 2002, the following in-state per diem applies, and receipts are not required:

Breakfast	\$6.50
Lunch	\$8.50
Dinner	\$14.50

- d. Lodging: The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate (\$55.50 as of June 2002). In addition, actual taxes incurred are reimbursable. A valid hotel receipt is required, and credit card receipts will not be accepted.
- e. Other: Any other travel-related expenses (e.g., parking) must be supported by receipts.

**2. Long-Distance Telephone Calls**

The actual costs of case-related long-distance telephone calls will be reimbursed. If total long-distance costs exceed \$20.00, the applicant must submit supporting phone bills.

**3. Photo-Copying:**

a. Black and White Copies:

In-house copying costs are reimbursable at a rate not to exceed \$0.10 per page. The applicant must indicate the price charged per page. The actual cost of out-of-house copies are reimbursable with a receipt or documentation on the amount paid per page, at a rate not to exceed \$0.10 per page.

b. Color Copies:

In-house color copying costs are reimbursable at a rate not to exceed \$1.00 per page. The applicant must indicate the price charged per page. The actual cost of out-of-house color copies are reimbursable with a receipt or documentation on the amount paid per page, at a rate not to exceed \$1.00 per page.

**4. Computerized Legal Research:**

- The actual case-related costs of computerized legal research (e.g., Lexis-Nexis and Westlaw) will be reimbursed only if receipts are provided.
- Courtsearch, NC 123, DMV and DOC searches, etc.: The actual costs of any such computerized searches will be reimbursed only if receipts are provided. If actual costs are not incurred, you will be compensated for your time according to your hourly rate, but will not be compensated any amount per search.

**5. Capital College:**  
IDS will reimburse an attorney who attends the Capital College for the following items only: 1) actual travel hours; 2) 10 hours for time spent at the college working on his or her case; and 3) mileage to and from the college at the current state authorized rate.

**6. Paralegal Time:**  
IDS will compensate an attorney as a reimbursable expense for his or her paralegal's time, at a rate of \$25.00 per hour. The attorney's fee application must be accompanied by an itemized billing record setting forth the paralegal's time.

**7. Student Time:**  
In capital cases at the trial or post-conviction level, IDS will compensate an attorney as a reimbursable expense for amounts actually expended on assistance from students (at a college level or higher), at a rate up to \$10 per hour not to exceed a total of 50 hours (or \$500) in a case without prior authorization. The attorney's fee application must be accompanied by an itemized billing record setting forth the student's time, as well as a statement of the hourly rate actually paid to the student. Work performed by students will not be reimbursed in appellate cases.

**8. Other Expenses:**

- a. Miscellaneous:**  
For all "other expenses" that cumulatively exceed \$20.00 (e.g., postage, film (purchased by the roll or in bulk), etc.), an applicant must submit receipts.
- b. Overhead:**  
Normal overhead expenses, such as case notebooks, paper, push pins, etc., will not be reimbursed.

**B. Prior Approval Required:**

**1. Out-Of-State Travel:**  
Necessary expenses associated with out-of-state travel are reimbursable only with prior approval from the IDS Office.

- a. Travel Costs:** Reasonable and pre-approved travel costs will be reimbursed with receipts.
- b. Meals:** Meals will only be reimbursed if there is an overnight stay; meals will then be reimbursed according to the current state authorized per diem, with one per diem per overnight stay. As of June 2002, the following out-of-state per diem applies, and receipts are not required:

Breakfast	\$6.50
Lunch	\$8.50
Dinner	\$16.50

- c. Lodging: The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate (\$66.00 as of June 2002). In addition, actual taxes incurred are reimbursable. A valid hotel receipt is required, and credit card receipts will not be accepted.

**2. Transcript Production:**

- IDS can not order a court reporter to produce a transcript or to expedite production of a transcript; only a Judge can enter such an Order. *See, e.g.*, G.S. 15A-1444(e); N.C. R. App. P. 7. However, IDS can authorize funding for transcript production in capital cases and appeals.
- If IDS authorizes funding for normal transcript production (on form IDS-015), the court reporter will be paid at the approved indigent rates published in the Court Reporter Handbook – \$1.75 per page for an original or \$.60 per page for a copy, effective July 1, 1999. To get paid, the court reporter should complete AOC-A-42, and forward that form and the IDS authorization to AOC Administrative Services Division.
- If an attorney needs an expedited transcript in an exceptional case, or to pay a court reporter an appearance fee in a hearing that would not normally be transcribed, the attorney has 2 options:
  - 1) Obtain a Court Order directing the court reporter to produce the transcript in a specified period of time, or to appear at the hearing; or
  - 2) Apply to the IDS Office for prior authorization to compensate the court reporter at a higher expedited rate, or to allow funding for an appearance fee. Funding at a higher rate per page or for an appearance fee must be specifically authorized by the IDS Office before the expense is incurred.

**V. Expert Services:**

**A. Prior Authorization Required:**

- Prior authorization is required for the use of any expert services in any case under the direct oversight of the IDS Office – i.e., first-degree murder or undesignated degree of murder cases at the trial level, all capital and non-capital appeals, and capital post-conviction proceedings. Attorneys and experts are expected to monitor any expert spending, and absent exceptional circumstances, the IDS Office will not compensate experts for amounts in excess of the prior authorization.
- To obtain prior authorization, the attorney of record should mail or fax a written request for funds to the IDS Office, or designated consultant.
- The IDS Office will honor any Court authorizations for expert funding that were obtained before July 1, 2001, or those that result from any appeal to a

Judge from a denial by the IDS Office. *See* Rules of the Commission on Indigent Defense Services, Rule 2D.4 (2001).

**B. The Expert Fee and Expense Application:**

- All expert bills in all cases under the direct oversight of the IDS Office should be submitted directly to the IDS Office, and not to the Administrative Office of the Courts or the State Controller's Office.
- Applications will be accepted directly from the expert, or from the attorney of record on behalf of the expert.
- The application must include: 1) a copy of the funding authorization from the IDS Office or a Court; 2) the expert's itemized billing records.; and 3) any required receipts.

**C. Lay Witness Fees:**

- The IDS Office cannot compensate lay witnesses for their time or expenses because G.S. 7A-314(a)-(c) & (e) (1999 & 2000) were not modified by the IDS Act. Those provisions set statutory allowances for the time, mileage, lodging, and meals for lay witnesses, and leave statutory authority for lay witness reimbursement with the Clerk or Judge.
- If you are seeking compensation for a lay witness in any category of case, please complete AOC-CR-235 ("Witness Attendance Certificate"), and submit it to the Clerk or Judge as required by G.S. 7A-314.

**D. Foreign Language Interpreters:**

- G.S. 7A-314(f) (1999 & 2000) also was not modified by the IDS Act. It provides that "[i]n a criminal case when a person who does not speak or understand the English language is an indigent defendant[ or] a witness for an indigent defendant, . . . and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter's services, as set by the court, are payable from funds appropriated to the Administrative Office of the Courts."
- If an attorney needs the services of a foreign language interpreter in any category of case, he or she should obtain prior authorization from the Court using AOC-G-107 ("Motion, Appointment and Order Authorizing Payment of Interpreter"). The interpreter can then seek payment from the Clerk using that same form.

**E. Interpreters for Deaf Persons:**

- G.S. 8B-2, 8B-6, and 8B-8 (1999) govern the appointment and compensation of interpreters for deaf persons. Authority for appointment and compensation still lies with the Courts.
- An attorney requiring the services of a sign language interpreter should obtain prior authorization from the Court using AOC-G-107 ("Motion, Appointment and Order Authorizing Payment of Interpreter"). The interpreter can then seek payment from the Clerk using that same form.

## Memorandum

To: Indigent Defense Experts  
Re: Expert Fee and Expense Applications  
From: Office of Indigent Defense Services  
Date: Updated January 2003

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This is an update to the IDS Office's previous expert fee and expense application memos. The change includes a new mileage reimbursement rate for all fee applications received on or after February 17, 2003.

Please note that prior funding authorization from the IDS Office is required for expert services. Please get a copy of this authorization from the attorney you are working with before commencing work on a case. Absent truly exceptional circumstances, the IDS Office will not compensate experts for amounts in excess of the prior authorization.

### **I. Expert Services:**

#### **A. Prior Authorization Required:**

- Prior authorization is required for the use of any expert services in any case under the direct oversight of the IDS Office – i.e., first-degree murder or undesignated degree of murder cases at the trial level, all capital and non-capital appeals, and capital post-conviction proceedings. Attorneys and experts are expected to monitor any expert spending, and absent exceptional circumstances, the IDS Office will not compensate experts for amounts in excess of the prior authorization.
- Unless otherwise indicated on the IDS Expert Authorization form, the maximum amount authorized includes both fees and necessary expenses.
- To obtain prior authorization, the attorney of record should mail or fax a written request for funds to the IDS Office, or designated consultant.
- The IDS Office will honor any Court authorizations for expert funding that were obtained before July 1, or those that result from any appeal to a Judge from a denial by the IDS Office. *See* Rules of the Commission on Indigent Defense Services, Rule 2D.4 (2001).

#### **B. Interim and Final Fees:**

- All expert fee applications should indicate whether the request is for interim or final payment.
- The IDS Office will only process interim expert fee requests when one of the following two conditions has been met: 1) the interim fee application covers a time period of 2 or more months; or 2) the interim fee application involves a payment amount of \$1,000.00 or more. Assuming those conditions have been met, an expert may submit an application for interim fees, which the IDS Director may grant in his discretion.

**C. The Expert Fee and Expense Application:**

- All expert bills in all cases under the direct oversight of the IDS Office should be submitted directly to the IDS Office, and not to the Administrative Office of the Courts or the State Controller's Office.
- Applications will be accepted directly from the expert, or from the attorney of record on behalf of the expert.
- An expert fee application that is directed to the IDS Office should be comprised of three parts: 1) one copy of the funding authorization from the IDS Office or a Court; 2) two copies of the itemized time sheets; and 3) any required receipts.
- The expert's itemized time sheets must provide sufficient detail regarding the expert's services in the case to demonstrate that the claim for compensation is reasonable. At a minimum, the time sheets must reflect the expert's time broken down according to date, description of services, and amount of time in hours or parts thereof.
- Time sheets must be computer generated. Handwritten time sheets will not be accepted.

**II. Reimbursable Expenses:**

**A. Prior Approval Not Required:**

The following necessary expenses are reimbursable without prior approval from the IDS Office. If exceptional circumstances warrant the expenditure of higher amounts, the applicant must seek pre-approval from the IDS Office before incurring the expense.

**1. In-State Travel:<sup>5</sup>**

- a. Mileage on Privately Owned Vehicles:** Mileage is reimbursed at the current state rate for out-of-county travel only. For fee applications received before February 17, 2003, the mileage rate is \$0.26 per mile. For fee applications received on or after February 17, 2003, the mileage rate is \$0.30 per mile. In-county travel is not reimbursable.
- b. Rental Vehicles:** Absent special circumstances, if you choose to rent a vehicle for case-related travel, you will be reimbursed for the lesser of the following: 1) the cost of the rental vehicle plus gasoline; or 2) the mileage reimbursement you would have received if you had driven your personal vehicle. You must attach a receipt to be reimbursed for rental car expenses.
- c. Meals:** Meals will only be reimbursed if there is an overnight stay; meals will then be reimbursed according to the current state authorized per diem, with one per diem per overnight stay. As of June 2002, the following in-state per diem applies, and receipts are not required:

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<sup>5</sup> Reimbursement rates for travel-related expenses are based on the current travel allowances for State employees. See G.S. 138-6 (Supp. 2000).

Breakfast	\$6.50
Lunch	\$8.50
Dinner	\$14.50

- d. Lodging: The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate (\$55.50 as of June 2002). In addition, actual taxes incurred are reimbursable. A valid hotel receipt is required, and credit card receipts are not accepted.
  - e. Other: Any other travel-related expenses (e.g., parking) must be supported by receipts.
2. **Long-Distance Telephone Calls**  
The actual costs of case-related long-distance telephone calls will be reimbursed in full. If total long-distance costs exceed \$20.00, the applicant must submit supporting phone bills.
3. **Photo-Copying:**
- a. Black and White Copies:  
In-house copying costs are reimbursable at a rate not to exceed \$0.10 per page. The applicant must indicate the price charged per page. The actual cost of out-of-house copies are reimbursable with a receipt or documentation on the amount paid per page, at a rate not to exceed \$0.10 per page.
  - b. Color Copies:  
In-house color copying costs are reimbursable at a rate not to exceed \$1.00 per page. The applicant must indicate the price charged per page. The actual cost of out-of-house color copies are reimbursable with a receipt or documentation on the amount paid per page, at a rate not to exceed \$1.00 per page.
4. **Computerized Research:**
- The actual case-related costs of computerized legal research (e.g., Lexis-Nexis and Westlaw) will be reimbursed only if receipts are provided.
  - Courtsearch, NC 123, DMV and DOC searches, etc.: The actual costs of any such computerized searches will be reimbursed only if receipts are provided. If actual costs are not incurred, you will be compensated for your time according to your hourly rate, but will not be compensated any amount per search.

**5. Other Expenses:**

**a. Miscellaneous:**

For all “other expenses” that cumulatively exceed \$20.00 (e.g., postage, film (purchased by the roll or in bulk), etc.), an applicant must submit receipts.

**b. Overhead:**

Normal overhead expenses, such as case notebooks, paper, push pins, etc., will not be reimbursed.

**B. Prior Approval Required:**

Necessary expenses associated with out-of-state travel are reimbursable only with prior approval from the IDS Office.

**a. Travel Costs:** Reasonable and pre-approved travel costs will be reimbursed with receipts.

**b. Meals:** Meals will only be reimbursed if there is an overnight stay; meals will then be reimbursed according to the current state authorized per diem, with one per diem per overnight stay. As of June 2002, the following out-of-state per diem applies, and receipts are not required:

Breakfast	\$6.50
Lunch	\$8.50
Dinner	\$16.50

**c. Lodging:** The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate (\$66.00 as of June 2002). In addition, actual taxes incurred are reimbursable. A valid hotel receipt is required, and credit card receipts are not accepted.

## **APPENDIX C**

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

**July 1, 2001 – June 30, 2002**

	<b>Number of Cases*</b>	<b>Total Cost</b>	<b>Average Per Case</b>
<b>Assigned Private Counsel</b>			
Capital offense cases	1,191	\$10,900,245	\$9,152
Adult cases (other than capital)	108,016	32,197,535	298
Juvenile cases	13,992	3,006,075	215
Guardian ad Litem for juveniles	959	278,687	291
<b>Totals</b>	<b>124,158</b>	<b>46,382,542</b>	<b>374</b>
<b>Guardian ad Litem Services Program</b>		<b>7,211,049</b>	
<b>Public Defender Offices</b>			
District 3A	1,992	777,238	390
District 3B (Carteret County)	540	279,181	517
District 12	2,911	1,354,642	465
District 14	8,617	1,422,868	165
District 15B	2,235	748,473	335
District 16A	1,718	557,944	325
District 16B	3,348	940,763	281
District 18	7,768	1,999,354	257
District 26	11,934	2,843,449	238
District 27A	6,307	1,112,867	176
District 28	3,948	987,234	250
<b>Totals</b>	<b>51,318</b>	<b>13,024,013</b>	<b>254</b>
<b>Appellate Defender Office</b>		<b>972,713</b>	
<b>Special Counsel at State Mental Health Hospitals</b>		<b>773,292</b>	
<b>Support Services</b>			
Transcripts, records, and briefs		770,397	
Professional examinations		1,196	
Expert witness fees		2,189,167	
Investigator fees		972,072	
<b>Total</b>		<b>3,932,832</b>	
<b>Set-Off Debt Collection</b>		<b>65,518</b>	
<b>Indigent Defense Services</b>		<b>472,471</b>	
<b>Deferred Obligations</b>		<b>631,985</b>	
<b>Capital Case Program</b>		<b>392,940</b>	
<b>GRAND TOTAL</b>		<b>\$73,859,355</b>	

\* The number of "cases" shown for private assigned counsel is the number of fee orders entered by judges and paid by the Administrative Office of the Courts for appointed attorneys. For public defender offices, the number of "cases" is the number of indigents whose cases were disposed of by public defenders during the 2001-02 fiscal year.

**NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT  
ASSIGNED PRIVATE COUNSEL  
Cases and Expenditures  
JULY 1, 2001 - JUNE 30, 2002**

<b>DISTRICT</b>	<b>TOTAL</b>	
	<b>Number of Cases</b>	<b>Expenditures</b>
<b>DISTRICT 1</b>		
Camden	45	\$ 24,153
Chowan	173	49,128
Currituck	142	49,810
Dare	413	167,388
Gates	77	57,290
Pasquotank	556	142,334
Perquimans	86	21,864
<b>District Total</b>	<b>1,492</b>	<b>\$ 511,967</b>
<b>DISTRICT 2</b>		
Beaufort	786	\$ 268,798
Hyde	68	32,903
Martin	398	127,666
Tyrrell	67	14,864
Washington	158	100,598
<b>District Total</b>	<b>1,477</b>	<b>\$ 544,829</b>
<b>DISTRICT 3A</b>		
Pitt	2,239	\$ 807,649
<b>District Total</b>	<b>2,239</b>	<b>\$ 807,649</b>
<b>DISTRICT 3B</b>		
Carteret	196	\$ 84,986
Craven	1,050	317,822
Pamlico	127	36,461
<b>District Total</b>	<b>1,373</b>	<b>\$ 439,270</b>
<b>DISTRICT 4A</b>		
Duplin	638	\$ 202,621
Jones	130	28,290
Sampson	878	394,049
<b>District Total</b>	<b>1,646</b>	<b>\$ 624,959</b>
<b>DISTRICT 4B</b>		
Onslow	2,392	\$ 1,000,269
<b>District Total</b>	<b>2,392</b>	<b>\$ 1,000,269</b>
<b>DISTRICT 5</b>		
New Hanover	4,787	\$ 1,674,259
Pender	579	308,759
<b>District Total</b>	<b>5,366</b>	<b>\$ 1,983,018</b>

**NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT  
ASSIGNED PRIVATE COUNSEL  
Cases and Expenditures  
JULY 1, 2001 - JUNE 30, 2002**

**DISTRICT 6A**

Halifax	1,377	\$ 491,533
<b>District Total</b>	<b>1,377</b>	<b>\$ 491,533</b>

**DISTRICT 6B**

Bertie	220	\$ 131,538
Hertford	548	244,719
Northampton	280	186,219
<b>District Total</b>	<b>1,048</b>	<b>\$ 562,476</b>

**DISTRICT 7A**

Nash	1,095	\$ 467,067
<b>District Total</b>	<b>1,095</b>	<b>\$ 467,067</b>

**DISTRICT 7B/C**

Edgecombe	893	\$ 358,409
Wilson	940	466,984
<b>District Total</b>	<b>1,833</b>	<b>\$ 825,393</b>

**DISTRICT 8A**

Greene	261	\$ 80,786
Lenoir	1,284	432,740
<b>District Total</b>	<b>1,545</b>	<b>\$ 513,526</b>

**DISTRICT 8B**

Wayne	1,828	\$ 529,829
<b>District Total</b>	<b>1,828</b>	<b>\$ 529,829</b>

**DISTRICT 9**

Franklin	487	\$ 155,440
Granville	586	188,526
Vance	722	372,705
Warren	233	66,594
<b>District Total</b>	<b>2,028</b>	<b>\$ 783,264</b>

**DISTRICT 9A**

Caswell	323	\$ 130,177
Person	891	384,847
<b>District Total</b>	<b>1,214</b>	<b>\$ 515,024</b>

**DISTRICT 10**

Wake	12,356	\$ 3,341,031
<b>District Total</b>	<b>12,356</b>	<b>\$ 3,341,031</b>

**DISTRICT 11A**

Harnett	1,953	\$ 810,065
Lee	877	248,578
<b>District Total</b>	<b>2,830</b>	<b>\$ 1,058,643</b>

**NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT  
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<b>DISTRICT 11B</b>		
Johnston	2,094	\$ 825,906
<b>District Total</b>	<b><u>2,094</u></b>	<b><u>\$ 825,906</u></b>
<b>DISTRICT 12</b>		
Cumberland	2,902	\$ 1,808,239
<b>District Total</b>	<b><u>2,902</u></b>	<b><u>\$ 1,808,239</u></b>
<b>DISTRICT 13</b>		
Bladen	767	\$ 298,459
Brunswick	1,225	618,830
Columbus	935	512,086
<b>District Total</b>	<b><u>2,927</u></b>	<b><u>\$ 1,429,375</u></b>
<b>DISTRICT 14</b>		
Durham	1,605	\$ 811,029
<b>District Total</b>	<b><u>1,605</u></b>	<b><u>\$ 811,029</u></b>
<b>DISTRICT 15A</b>		
Alamance	2,575	\$ 850,807
<b>District Total</b>	<b><u>2,575</u></b>	<b><u>\$ 850,807</u></b>
<b>DISTRICT 15B</b>		
Chatham	717	\$ 150,096
Orange	1,443	\$ 284,192
<b>District Total</b>	<b><u>2,160</u></b>	<b><u>\$ 434,288</u></b>
<b>DISTRICT 16A</b>		
Hoke	137	\$ 70,159
Scotland	400	\$ 182,914
<b>District Total</b>	<b><u>537</u></b>	<b><u>\$ 253,073</u></b>
<b>DISTRICT 16B</b>		
Robeson	1,514	\$ 1,173,411
<b>District Total</b>	<b><u>1,514</u></b>	<b><u>\$ 1,173,411</u></b>
<b>DISTRICT 17A</b>		
Rockingham	1,852	\$ 851,746
<b>District Total</b>	<b><u>1,852</u></b>	<b><u>\$ 851,746</u></b>
<b>DISTRICT 17B</b>		
Stokes	523	\$ 217,791
Surry	1,238	\$ 481,005
<b>District Total</b>	<b><u>1,761</u></b>	<b><u>\$ 698,796</u></b>
<b>DISTRICT 18</b>		
Guilford	2,910	\$ 1,299,867
<b>District Total</b>	<b><u>2,910</u></b>	<b><u>\$ 1,299,867</u></b>

**NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT  
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**DISTRICT 19A**

Cabarrus	2,086	\$ 675,351
<b>District Total</b>	<b>2,086</b>	<b>\$ 675,351</b>

**DISTRICT 19B**

Montgomery	468	\$ 129,943
Moore	1,598	\$ 419,206
Randolph	1,851	\$ 716,037
<b>District Total</b>	<b>3,917</b>	<b>\$ 1,265,186</b>

**DISTRICT 19C**

Rowan	2,444	\$ 760,522
<b>District Total</b>	<b>2,444</b>	<b>\$ 760,522</b>

**DISTRICT 20A**

Anson	902	\$ 287,540
Richmond	2,691	\$ 993,558
<b>District Total</b>	<b>3,593</b>	<b>\$ 1,281,098</b>

**DISTRICT 20B**

Stanley	821	\$ 331,483
Union	2,516	\$ 1,087,008
<b>District Total</b>	<b>3,337</b>	<b>\$ 1,418,490</b>

**DISTRICT 21**

Forsyth	5,282	\$ 2,326,725
<b>District Total</b>	<b>5,282</b>	<b>\$ 2,326,725</b>

**DISTRICT 22**

Alexander	712	\$ 246,590
Davidson	3,257	\$ 1,205,479
Davie	492	\$ 141,742
Iredell	2,017	\$ 820,009
<b>District Total</b>	<b>6,478</b>	<b>\$ 2,413,819</b>

**DISTRICT 23**

Alleghany	167	\$ 40,124
Ashe	362	\$ 102,507
Wilkes	1,089	\$ 314,085
Yadkin	499	\$ 107,701
<b>District Total</b>	<b>2,117</b>	<b>\$ 564,418</b>

**DISTRICT 24**

Avery	309	\$ 79,042
Madison	167	\$ 71,409
Mitchell	164	\$ 56,466
Watauga	456	\$ 221,276
Yancey	204	\$ 112,801
<b>District Total</b>	<b>1,300</b>	<b>\$ 540,994</b>

**NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT  
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<b>DISTRICT 25A</b>		
Burke	1,287	\$ 347,875
Caldwell	1,885	\$ 440,107
<b>District Total</b>	<u>3,172</u>	<u>\$ 787,982</u>
 <b>DISTRICT 25B</b>		
Catawba	2,629	\$ 963,319
<b>District Total</b>	<u>2,629</u>	<u>\$ 963,319</u>
 <b>DISTRICT 26</b>		
Mecklenburg	10,126	\$ 3,610,507
<b>District Total</b>	<u>10,126</u>	<u>\$ 3,610,507</u>
 <b>DISTRICT 27A</b>		
Gaston	826	\$ 702,552
<b>District Total</b>	<u>826</u>	<u>\$ 702,552</u>
 <b>DISTRICT 27B</b>		
Cleveland	1,895	\$ 529,902
Lincoln	534	\$ 193,930
<b>District Total</b>	<u>2,429</u>	<u>\$ 723,832</u>
 <b>DISTRICT 28</b>		
Buncombe	0	\$ -
<b>District Total</b>	<u>1,352</u>	<u>\$ 474,606</u>
 <b>DISTRICT 29</b>		
Henderson	1,695	\$ 552,235
Mcdowell	658	\$ 300,309
Polk	289	\$ 65,244
Rutherford	1,419	\$ 429,586
Transylvania	435	\$ 170,115
<b>District Total</b>	<u>4,496</u>	<u>\$ 1,517,489</u>
 <b>DISTRICT 30A</b>		
Cherokee	402	\$ 124,930
Clay	71	\$ 33,374
Graham	150	\$ 54,518
Macon	347	\$ 108,256
Swain	194	\$ 88,407
<b>District Total</b>	<u>1,164</u>	<u>\$ 409,485</u>
 <b>DISTRICT 30B</b>		
Haywood	1,029	\$ 343,667
Jackson	405	\$ 166,215
<b>District Total</b>	<u>1,434</u>	<u>\$ 509,882</u>
 <b>STATE TOTAL</b>		
	<u>124,158</u>	<u>\$ 46,382,542</u>