

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

Submitted to the North Carolina General Assembly
Pursuant to S.L. 2005-276, § 14.12

March 15, 2007

CONTENTS

| | |
|---|----|
| COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS AND OFFICE OF INDIGENT DEFENSE SERVICES STAFF | i |
| EXECUTIVE SUMMARY | 1 |
| REPORT | 3 |
| I. IDS INITIATIVES | 4 |
| A. Initiatives Implemented to Date | 4 |
| <i>Rules for the Continued Delivery of Counsel Services in Non-Capital Cases, Capital Cases, and Non-Capital and Non-Criminal Appeals</i> | 4 |
| <i>Internal Infrastructure for Data Collection and Reporting</i> | 4 |
| <i>Expansion of Rosters of Qualified Attorneys</i> | 4 |
| <i>Development and Approval of Public Defender Plans</i> | 5 |
| <i>Electronic Communication and Resource-Sharing</i> | 5 |
| <i>Appointment of Attorneys in Capital Cases and Appeals</i> | 6 |
| <i>Expert Funding and Miscellaneous Expense Authorizations</i> | 6 |
| <i>Compensation for Representation in Capital Cases and Appeals</i> | 7 |
| <i>Uniform Rates of Compensation</i> | 8 |
| <i>Creation of Forsyth County Public Defender Office</i> | 9 |
| <i>Creation of First District Public Defender Office</i> | 10 |
| <i>Creation of Wake County Public Defender Office</i> | 10 |
| <i>District and Superior Court Average Hours Studies</i> | 11 |
| <i>Private Appointed Counsel Waiting-in-Court Study</i> | 12 |
| <i>Capital Case Disposition Study</i> | 12 |
| <i>Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level</i> | 13 |
| <i>Private Attorney Fee Application Deadlines</i> | 14 |
| <i>Mitigation Specialist Rosters and Standard Hourly Rates</i> | 14 |
| <i>Sentencing Services Program</i> | 15 |
| B. New and Ongoing Initiatives | 15 |
| <i>Ongoing Division of Administrative and Budgetary Responsibilities</i> | 15 |
| <i>Committees of the IDS Commission</i> | 16 |
| <i>Improved Data Collection and Reporting</i> | 17 |
| <i>Expansion of Existing Public Defender Offices</i> | 18 |
| <i>Public Defender Cost-Effectiveness Studies</i> | 19 |
| <i>Study of Indigent Dispositions Compared to Total Court Dispositions</i> | 20 |
| <i>Indigent Defense Fund Demand and Budget Needs: Historical and Future</i> | 21 |
| <i>Improvements in Response to Performance Audit by the Office of the State Auditor</i> | 24 |
| <i>Regionalization of the Public Defender System</i> | 25 |
| <i>Model Appointment Plans for Non-Public Defender Districts</i> | 26 |
| <i>Electronic Case Reporting and Fee Filing</i> | 27 |

| | |
|--|----|
| System for Identifying Potential Duplicate Payments Before they Issue | 27 |
| Other Initiatives and Recommendations | 28 |
| <i>Improved Revenue Collection</i> | 28 |
| <i>Contracts with Attorneys</i> | 29 |
| <i>Mecklenburg County Attorney Fee Coordinator Position and Time Sheets</i> | 30 |
| <i>New IDS Auditor Position</i> | 31 |
| <i>Improved Training and Resources</i> | 31 |
| <i>Improved Juvenile Delinquency Representation</i> | 33 |
| <i>Improved Representation of Parent Respondents</i> | 35 |
| <i>Special Counsel Program</i> | 36 |
| <i>Evaluation of North Carolina Prisoner Legal Services</i> | 37 |
| <i>Systems Evaluation Project</i> | 38 |
| II. DISTRICT CASE VOLUME AND COST STATISTICS | 39 |
| III. CONTRACTS WITH LOCAL GOVERNMENTS FOR ASSISTANT PUBLIC DEFENDERS | 39 |
| IV. CONSULTATION WITH OTHER ACTORS AND RECOMMENDED COST-SAVING MEASURES .. | 40 |
| A. Recommendations for Non-Capital Cases | 40 |
| <i>Fund Pilot Tests of More Efficient Scheduling Practices</i> | 40 |
| <i>Fund a Study to Identify Misdemeanors that Should be Decriminalized</i> | 41 |
| <i>Increase the Use of Public Defenders and Improve IDS' Ability to Supervise the</i> <i>Chief Public Defenders</i> | 41 |
| <i>Improved Recoupment of Attorney Fees</i> | 43 |
| <i>Improved Indigency Screening</i> | 43 |
| B. Recommendations for Capital Cases | 44 |
| <i>Eliminate Felony Murder as a Ground for a Death Sentence</i> | 44 |
| <i>Other Systemic Changes</i> | 44 |
| V. OTHER LEGISLATIVE RECOMMENDATIONS | 44 |
| A. Increased Funding for the Private Appointed Counsel Fund | 44 |
| B. Increased Funding for Public Defender Office Equipment and Salaries | 44 |
| C. Funding to Develop a Pilot System for Electronic Fee Filing | 45 |
| D. Possible Increased Appropriation for Transcript Production | 45 |
| E. Additional Staff for Existing Public Defender Offices | 45 |
| F. New Public Defender Offices in District 5 and District 22 | 46 |
| G. Authorization to Pay Attorneys for Filing <i>Certiorari</i> Petitions and Oppositions in the United States Supreme Court in Capital Cases and when Important Federal Issues Arise in Non-Capital Cases | 46 |
| H. Allow the Division of Motor Vehicles to Disclose Social Security Numbers to the Office of Indigent Defense Services | 47 |

| | |
|--|-----------|
| I. Direct AOC and IDS to Conduct a Feasibility Study of Providing IDS with Indigent Case Information when Cases are Initiated | 48 |
| J. Transfer the Chief Public Defenders, IDS Director, Appellate Defender, and Capital Defender to the Judicial Retirement System..... | 49 |
| VI. CONCLUSION..... | 49 |

APPENDICES

| | |
|--|------------|
| Indigent Defense Budget Charts | Appendix A |
| Private Appointed Counsel Waiting-in-Court Study | Appendix B |
| Capital Case Disposition Study..... | Appendix C |
| County-by-County Recoupment Data..... | Appendix D |
| 2005-2006 District Case Volume and Cost Statistics | Appendix E |

COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS

Joseph Cheshire, V, Chair
Attorney at Law, Raleigh
Appointed by NC Bar Association

Retired Professor Rhoda Billings, Vice-Chair
Wake Forest University Law School, Winston-Salem
Appointed by IDS Commission

Dr. James Clotfelter
UNC-Greensboro
Appointed by Governor

Sean P. Devereux
Attorney at Law, Asheville
Appointed by President Pro Tempore of the Senate

Grady Jessup
Attorney at Law, Charlotte
Appointed by NC Association of Black Lawyers

Professor Irving L. Joyner
NC Central School of Law, Durham
Appointed by NC Association of Public Defenders

Carol Huffman Kendrick
Attorney at Law, Charlotte
Appointed by NC Association of Women Lawyers

District Court Judge Bradley B. Letts
District 30
Appointed by IDS Commission

Retired Superior Court Judge Melzer A. Morgan
District 17A, Reidsville
Appointed by Chief Justice of NC Supreme Court

Richard G. Roose
Attorney at Law, Asheboro
Appointed by NC State Bar

Adam Stein
Attorney at Law, Chapel Hill
Appointed by Speaker of the House

Mary Ann Tally
Attorney at Law, Fayetteville
Appointed by NC Academy of Trial Lawyers

Normand Travis
Pless, Pless & Stephens, Durham
Appointed by IDS Commission

OFFICE OF INDIGENT DEFENSE SERVICES STAFF

123 W. Main St., Suite 400, Durham, NC 27701

Phone: (919) 560-3380

www.ncids.org

Malcolm Ray Hunter, Jr.
Executive Director
Malcolm.R.Hunter@nccourts.org

Danielle M. Carman
Assistant Director
Danielle.M.Carman@nccourts.org

Elisa Wolper
Chief Financial Officer
Elisa.Wolper@nccourts.org

Margaret A. Gressens
Research Director
Margaret.A.Gressens@nccourts.org

Emily Martin
Research Associate
Emily.Martin@nccourts.org

Susan E. Brooks
Sentencing Services/Contracts Administrator
Susan.E.Brooks@nccourts.org

Virginia L. Hebert
Legal Associate
Virginia.L.Hebert@nccourts.org

Beverly M. McJunkin
Office Manager
Beverly.M.McJunkin@nccourts.org

Donna C. Quay
Administrative Assistant
Donna.C.Quay@nccourts.org

Anna Levinsohn
Systems Evaluation Project Coordinator
Anna.Levinsohn@nccourts.org

EXECUTIVE SUMMARY

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

As required by S.L. 2005-276, § 14.12, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2005-06, as well as new and ongoing initiatives in progress. This report also presents last fiscal year’s data on indigent caseloads and case costs across the State. As also required by § 14.12, this report summarizes the IDS Commission’s proposals pursuant to the General Assembly’s directive that IDS consult with other system actors and formulate proposals aimed at reducing future costs. The report also contains a number of other legislative recommendations for the 2007 session.

To improve the efficiency, cost-effectiveness, and quality of the State’s indigent defense program in the long run, the IDS Commission and IDS Office have implemented a number of initiatives. Among other things, the Commission and Office have implemented measures to slow the rate of increase in spending without compromising the quality of representation; adopted and applied more uniform rates of compensation in capital and non-capital cases; improved the collection of revenues from recoupment; established higher qualification standards for attorneys seeking appointment to capital cases and appeals; expanded the Office of the Capital Defender and created several new regional capital defender offices; helped establish new public defender offices in Forsyth County, the First Judicial District, and Wake County; expanded a number of existing public defender offices; worked with the public defender offices to develop plans for the appointment of counsel that provide for more significant oversight of the quality and efficiency of local indigent representation; provided district and superior court judges with studies on the average amount of time and frequency distributions of times claimed by private attorneys by type of case; conducted a study on the cost of attorney time spent waiting in court under North Carolina’s current court scheduling systems; and conducted a study of the dispositions of more than 1,000 potentially capital cases.

In addition, the IDS Commission and IDS Office have taken steps to improve data collection and analysis capabilities within the IDS Office and Administrative Office of the Courts; established a website and a number of specialized listservs to enhance communication and resource-sharing with public defenders and private defense attorneys; worked with the School of Government (“SOG”) and other groups to develop and offer a number of new and innovative training programs; adopted performance guidelines for indigent representation in non-capital criminal cases at the trial level; and created a new statewide office of the Juvenile Defender as recommended by the American Bar Association Juvenile Justice Center in its 2003 report on access to and quality of legal representation in North Carolina delinquency proceedings.

The IDS Commission and IDS Office are also in the process of working on a number of other initiatives, including conducting analyses of budget trends and current indigent defense spending; developing additional specialized training programs and resources for attorneys representing indigent persons; developing performance guidelines for juvenile delinquency and parent respondent representation; conducting the evaluation of North Carolina Prisoner Legal Services that the General Assembly mandated in S.L. 2005-276, § 14.9(b); and making a series of improvements in response to the recent performance audit by the Office of the State Auditor. The Commission and Office are also working to develop an objective tool to measure the quality and efficiency of indigent defense systems at the county, regional, and statewide levels.

In its first five years of operations, the IDS Commission has already taken significant steps to control increases in the cost of indigent representation. The increase in new demand (spending and current-year obligations) during fiscal year 2001-02 was 1.36% above fiscal year 2000-01; the increase in new demand during fiscal year 2002-03 was 4.63% above fiscal year 2001-02; the increase in new demand during fiscal year 2003-04 was 7.6% above fiscal year 2002-03; and the increase in new demand during fiscal year 2004-05 was 7.1% above fiscal year 2003-04, all of which were still significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. While the increase in new demand during fiscal year 2005-06 was 11.5% above fiscal year 2004-05, the IDS Commission and staff believe the higher growth rate last fiscal year was an anomaly due in part to a new deadline for the submission of older fee applications. *See* "Indigent Defense Fund Demand and Budget Needs: Historical and Future" below. Current projections suggest the increase during fiscal year 2006-07 will be much lower (4.3%).

Moreover, indigent defense expenditures per disposition declined over the first four years that IDS was in existence, with a slight increase in per disposition costs last fiscal year, which demonstrates that the overall increases in demand on the fund are due to an expanding indigent caseload, not a rise in per case costs. *See* Appendix A. Despite the comparatively lower increases in demand on the fund and the trend of declining per disposition expenditures, indigent defense has remained under-funded. However, due to the General Assembly's support of quality indigent defense services, the indigent defense fund is currently projected to end fiscal year 2006-07 with virtually no debt for the first time since IDS was established. *See* "Indigent Defense Fund Demand and Budget Needs: Historical and Future" below.

The IDS Commission is continuing to work on initiatives to control expenditures in the coming years, such as the creation of new public defender offices in some additional districts and/or regionalization of the public defender system in North Carolina. Any projections for the future, however, will be affected by other changes in the criminal justice system. For example, significant changes in sentencing, criminal law or procedure, or in the conduct of district attorney offices, might increase or decrease the funds needed for indigent defense. Similarly, some changes that could control costs for indigent defense will necessarily be systemic and involve not just defense counsel, but prosecutors, judges, clerks, and other actors in the system. As directed by S.L. 2005-276, § 14.12, the IDS Commission has consulted with other court actors and is prepared to recommend some changes that should save money and/or improve the efficiency and quality of justice in our courts. *See* "Consultation with Other Actors and Recommended Cost-Saving Measures" below.

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

REPORT

In 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (S.L. 2000-144; G.S. 7A-498 *et seq.*) (“IDS Act”), creating a new statewide Office of Indigent Defense Services (“IDS Office”), housed in the Judicial Department and governed by the Commission on Indigent Defense Services (“IDS Commission”). The IDS Act charges the IDS Office with the responsibility of overseeing the provision of legal representation to indigent defendants and 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 S.L. 2005-276, § 14.12, the IDS Office must report to the General Assembly by March 1, 2007 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.

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 to date, as well as new and ongoing initiatives that are currently in progress. The second section of this report (“District Case Volume and Cost Statistics”) addresses the first issue set forth above. The third section (“Contracts with Local Governments for Assistant Public Defenders”) is included in this report pursuant to G.S. 7A-346.2(a), which directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions.

The fourth section of this report (“Consultation with Other Actors and Recommended Cost-Saving Measures”) is included in this report pursuant to S.L. 2005-276, § 14.12, which directs the IDS Office to consult with the Conference of District Attorneys, the Conference of District Court Judges, and the Conference of Superior Court Judges concerning proposals aimed at reducing future costs including, but not limited to, decriminalizing minor traffic offenses, changing the way criminal district court is scheduled, and reevaluating the handling of capital cases. Section 14.12 further directs the IDS Office to include any proposals in this annual report. The fifth section of this report (“Other Legislative Recommendations”) addresses the fourth issue set forth above.

I. IDS INITIATIVES

A. Initiatives Implemented to Date:

This section describes the main initiatives the IDS Commission and IDS Office have implemented since July 1, 2001, with a particular emphasis on fiscal year 2005-06.¹

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

To ensure that appropriate procedures were in place by July 1, 2001, the IDS Commission developed rules to govern the continued delivery of services in cases under its oversight. The rules deal with non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); and non-capital and non-criminal appeals. The original IDS Rules were adopted on May 18, 2001 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 most recent revisions were adopted in February 2007. The current rules are available on the IDS website (www.ncids.org), and are published in North Carolina Rules of Court, State (Thomson-West 2007) and the Annotated Rules of North Carolina (LexisNexis 2007).

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 attorney appointments, expert authorizations, attorney and expert 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' direct oversight. *See, e.g.*, "Capital Case Disposition Study" below.

Expansion 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 and Non-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 is continuing to expand the rosters of qualified attorneys across the State.

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

Development and Approval of Public Defender Plans

With the assistance of faculty from the School of Government (“SOG”), 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) (Rev. 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 in existence at that time. In March 2003, the IDS Director approved and certified a public defender appointment plan in Forsyth County. *See* “Creation of Forsyth County Public Defender Office” below. In December 2004, the IDS Director approved and certified a public defender appointment plan in the First Judicial District. *See* “Creation of First District Public Defender Office” below. And, in July 2005, the IDS Director approved and certified a public defender appointment plan in Wake County. *See* “Creation of Wake County Public Defender Office” below. The IDS Director continues to review any proposed amendments to the public defender plans and to approve them if they are appropriate. Ultimately, these plans may be used as models for new appointment plans in non-public defender districts. *See* “Improvements in Response to Performance Audit by the Office of the State Auditor, Model Appointment Plans for Non-Public Defender Districts” below.

Electronic Communication and Resource-Sharing

The IDS Office has developed an independent website (www.ncids.org) that allows greater and more comprehensive communication with the bar, bench and public, and enhances the resources available to defense attorneys across the State. The website contains news and update links addressing the state of indigent defense funding, timing of attorney payments, IDS’ main accomplishments since July 2001, and any other recent developments or matters of interest. The following materials, among others, are also posted on the website: contact information for the members of the IDS Commission, IDS staff, and all state defender offices; a list of IDS Commission committees and their participants; all approved minutes of IDS Commission meetings; IDS rules, policies, and procedures; reports and data generated by Office staff; applications for the capital and appellate attorney rosters; attorney fee application forms; the public defender appointment plans; performance guidelines for non-capital criminal cases at the trial level; all materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; legal resources and reference materials; the North Carolina Defender Manual; the North Carolina Civil Commitment Manual; a North Carolina appellate brief bank; a capital trial motions index; juvenile delinquency motions, forms, and case notes; information about IDS’ Systems Evaluation Project; and links to related sites. Since its creation in May 2002, there have been more than 136,000 visits to the IDS website.

Moreover, 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 capital defendants at the trial level; and the Juvenile Defender has developed a listserv for attorneys representing juveniles in delinquency proceedings. *See* “Improved Juvenile Delinquency Representation” below. In addition, the IDS

Office has established listservs for capital post-conviction attorneys, involuntary commitment attorneys, public defenders and assistant public defenders, attorneys representing parent respondents in Chapter 7B cases, investigators and support staff in public defender offices, and mitigation specialists. Those listservs have been extremely effective tools for improving communication, sharing information, and providing resources and support to attorneys and others who work in these specialized areas across the State.

Appointment of Attorneys in Capital Cases and Appeals

On July 1, 2001, the IDS Office assumed direct responsibility for the appointment of counsel 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 utilizes 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 February 15, 2007, the Capital Defender appointed 4,259 attorneys in 3,422 potentially capital cases at the trial level, including 742 attorneys in 573 cases during fiscal year 2001-02, 866 attorneys in 659 cases during fiscal year 2002-03, 743 attorneys in 599 cases during fiscal year 2003-04, 732 attorneys in 593 cases during fiscal year 2004-05, 731 attorneys in 606 cases during fiscal year 2005-06, and 445 attorneys in 392 cases so far this fiscal year. If there is a delay in a defendant's first appearance or the determination of indigency, the IDS Office has standby attorneys in every county in the State (called "provisional counsel") to ensure that a defendant's rights are protected in the interim.

Between July 1, 2001 and February 15, 2007, the Appellate Defender appointed 5,394 attorneys to handle capital, non-capital, and non-criminal appeals, including 819 attorneys during fiscal year 2001-02, 829 attorneys during fiscal year 2002-03, 1,097 attorneys during fiscal year 2003-04, 1,047 attorneys during fiscal year 2004-05, 1,020 attorneys during fiscal year 2005-06, and 582 attorneys so far this fiscal year. Finally, between July 1, 2001 and February 15, 2007, the IDS Director appointed 253 attorneys in 111 different capital post-conviction proceedings, including 61 attorneys in 35 cases during fiscal year 2001-02, 60 attorneys in 34 cases during fiscal year 2002-03, 37 attorneys in 21 cases during fiscal year 2003-04, 23 attorneys in 17 cases during fiscal year 2004-05, 37 attorneys in 22 cases during fiscal year 2005-06, and 25 attorneys in 15 cases so far this fiscal year.

The IDS Commission and IDS Office believe the statewide roster system that IDS developed has significantly increased the quality of indigent representation in these areas of practice. *See* "Expansion of Rosters of Qualified Attorneys" above.

Expert Funding and Miscellaneous Expense Authorizations

Between July 1, 2001 and February 15, 2007, the Capital Defender reviewed 8,280 requests for expert funding and miscellaneous expenses at the trial level, including 460 requests during fiscal year 2001-02, 1,292 requests during fiscal year 2002-03, 1,685 requests during fiscal year

2003-04, 1,854 requests during fiscal year 2004-05, 1,833 requests during fiscal year 2005-06, and 1,156 requests so far this fiscal year. During that same time period, the IDS Office reviewed 1,291 requests for expert funding and miscellaneous expenses in capital post-conviction proceedings, including 288 requests during fiscal year 2001-02, 243 requests during fiscal year 2002-03, 176 requests during fiscal year 2003-04, 210 requests during fiscal year 2004-05, 199 requests during fiscal year 2005-06, and 175 requests so far this fiscal year. 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 necessary for an effective defense.

Compensation for Representation in Capital Cases and Appeals

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

Between July 1, 2001 and February 15, 2007, IDS Office staff set appropriate and uniform fee awards for 13,092 attorney fee applications in capital cases and appeals, including 1,871 attorney fee applications during fiscal year 2001-02, 2,332 attorney fee applications during fiscal year 2002-03, 2,381 attorney fee applications during fiscal year 2003-04, 2,346 attorney fee applications during fiscal year 2004-05, 2,560 attorney fee applications during fiscal year 2005-06, and 1,602 attorney fee applications so far this fiscal year. Also between July 1, 2001 and February 15, 2007, the Office set fee awards for 10,048 expert bills, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts. 964 of those awards were set during fiscal year 2001-02, 1,440 were set during fiscal year 2002-03, 1,991 were set during fiscal year 2003-04, 2,267 were set during fiscal year 2004-05, 2,045 were set during fiscal year 2005-06, and 1,341 have been set so far this fiscal year. The Office is currently setting almost 90 attorney and expert fee awards per week, and forwarding those awards to Financial Services for payment within one to two weeks of receiving each fee petition. In capital cases that have been resolved by plea or trial, the IDS Director routinely asks the presiding judge for his or her opinion on the attorney's fee application before awarding final fees.

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

Uniform Rates of Compensation

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

After conducting a statewide survey, as well as studies of district and superior court fee awards during fiscal year 2001-02, the IDS Commission also adopted a standard statewide rate of \$65 per hour for all non-capital cases, effective April 1, 2002. The IDS Commission and staff believe that standard rates have the advantages of increasing the stability and predictability of payments to private assigned counsel, improving pay equity and fairness across the State, and enhancing the independence of defense counsel.

In September 2005, the North Carolina Office of the State Auditor released a fiscal control audit report on the AOC, which contained an audit finding that some appointed attorneys' fees in indigent cases had been paid pursuant to judges' orders at rates other than the \$65 rate established by the IDS Commission, without prior IDS approval. In response to that audit finding, Financial Services staff began identifying any fees set at rates other than \$65 per hour, or another rate pre-approved by the IDS Director, and forwarding them to the IDS Office without payment. In turn, IDS Office staff return non-complying fee awards to the judge who set the fee with a request that he or she amend the award to reflect the approved rate. While cumbersome, this procedure has resulted in significantly improved compliance with the standard \$65 hourly rate.

The standard rates have helped IDS control increases in indigent defense expenditures. However, while the IDS Commission intended the \$65 non-capital rate to be essentially revenue neutral, it was slightly below the prevailing average in a number of North Carolina counties at the time it was established. Moreover, State employee salaries have increased by 10.2% since IDS was established, including 7.5% in the last two years alone, but the non-capital hourly rate paid to private attorneys has remained flat.

Even with the recent increase in the capital rate, both of the standard rates are significantly below what attorneys can earn in retained cases, as well as in appointed cases in federal court, and will need to be increased over time to keep pace with increases in the costs of living and operating a law practice. According to the North Carolina Bar Association's most recent Economic Survey, the total annual operating expenses of one to four person law firms in North Carolina during 1997 averaged more than \$43 per hour per lawyer (based on a 48-week work year at 40 hours per week). Between December 1997 and December 2006, the Consumer Price Index for all Urban Consumers rose by 20% (from 161.3 to 201.8). Based on that measure and the 1998 Economic Survey, the total annual operating expenses of one to four person law firms

in North Carolina currently average more than \$51 per hour. Thus, on average, appointed attorneys in North Carolina are actually netting less than \$14 per hour for their work in non-capital cases.

The attorneys who represent indigent persons in North Carolina provide those professional services at a very low cost compared to the “market” cost of private legal services. While IDS’ current \$65 hourly rate is less than half the average hourly rate an attorney would charge in most areas of North Carolina, most private defense attorneys charge a flat fee depending on the nature of the case. For a typical DWI case, private lawyers in North Carolina charge between \$1,000 and \$3,000. By comparison, IDS pays an average of \$240 for representation in an indigent DWI case. If indigent defense receives sufficient additional funds for the IDS Commission to raise the non-capital rate to \$75 per hour, IDS would pay roughly \$280 for DWI representation, which is still far below the prevailing market rate. The IDS Commission and staff are not aware of any other professional service offered by private practitioners to the State at such a steep discount.

Finally, the current standard rates are often cited as an impediment to attracting qualified attorneys to the appointed lists, and retaining them as they gain experience. For example, in the First Judicial District, the bar requested that a new public defender office be established because an insufficient number of attorneys were willing to accept appointment. Private attorneys cited the non-capital \$65 hourly rate as one of the principal reasons IDS could not attract enough qualified lawyers to continue the private appointed system. *See* “Creation of First District Public Defender Office” below. During the 2007 legislative session, the IDS Commission has asked the General Assembly for an increased appropriation in order to raise the non-capital rate by \$10 per hour. *See* “Other Legislative Recommendations” below.

Creation of 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 late 2002, the Senior Resident Superior Court Judge in District 21 appointed attorney George R. Clary to begin a four-year term as the Chief Public Defender effective January 1, 2003; Clary was reappointed to a second four-year term effective January 1, 2007. After his initial appointment, IDS Office staff members met with Clary on numerous occasions to assist him in establishing the new office and developing a plan for the appointment of counsel in all non-capital cases in Forsyth County. That plan was approved and certified by the IDS Director in March 2003. *See* “Development and Approval of Public Defender Plans” above.

Forsyth County provided space for the new public defender office in a building across the street from the courthouse. The office was fully staffed and disposing of cases on a regular basis by May 2003, and now employs 13 assistant public defenders. Because the office was not fully operational until late in fiscal year 2002-03 and there was insufficient time to absorb start-up costs, the new office generated \$228,000 in losses during its first partial fiscal year. However, annual studies conducted by IDS staff indicate that the Forsyth office saved the State \$252,004 during fiscal year 2003-04, and another \$336,129 during fiscal year 2004-05 compared to what it would have cost to pay private attorneys to handle the same cases. While the Forsyth office’s savings dropped to \$147,236 during fiscal year 2005-06, IDS Office staff believe those lower

savings were attributable to a number of factors, including extended leave for two attorneys due to maternity and illness, and a change in the district attorney's plea policies. IDS expects the Forsyth office to generate annual savings of about \$200,000 in future years.

Creation of First District Public Defender Office

Based on the IDS Commission's recommendation, the 2004 Appropriations Act established a new First District Public Defender Office, which is responsible for providing representation in indigent cases in Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties. The Senior Resident Superior Court Judge in District 1 appointed attorney R. Andrew Womble to begin a four-year term as the Chief Public Defender effective October 11, 2004. After his appointment, IDS Office staff worked with Womble to get the office operational and to develop a plan for the appointment of counsel in all non-capital cases in District 1. That plan was approved and certified by the IDS Director in December 2004. *See* "Development and Approval of Public Defender Plans" above. Pasquotank County provided space for the main public defender office in Elizabeth City, and Dare County provided space for a satellite office in Manteo. The office began accepting cases on December 1, 2004, and now employs eight assistant public defenders.

The IDS Commission believes that the First District office has improved the quality of representation in that district. Previously, an insufficient number of attorneys were willing to handle appointed indigent cases in the district, and the judiciary was forced to mandate service on the appointed lists. As a result, the bar and bench in the First District asked IDS and the General Assembly to create a new public defender office, and were extremely helpful and cooperative in the process of establishing that office. During its first partial year of operations (fiscal year 2004-05), the office generated \$137,064 in losses compared to what it would have cost to pay private attorneys to handle the same cases. During its second year of operations (fiscal year 2005-06), the office generated \$228,524 in losses. Because the losses during the first two start-up years were lower than the IDS staff had projected (approximately \$600,000 and \$380,000, respectively), IDS is hopeful that losses in subsequent years of operation will also be lower than projected. However, the current staffing level in the office may need to be increased because of travel time in the First District and the complexity of court schedules in the various counties within the district.

Creation of Wake County Public Defender Office

The 2004 Appropriations Act also established a new Wake County Public Defender Office effective July 1, 2005. IDS Office staff subsequently worked with the bar and bench in Wake County to develop procedures for selecting the Chief Public Defender. On October 1, 2004, the IDS Director issued regulations for the nomination of candidates for the public defender position. In response to requests from the bar and bench in Wake County, those regulations directed the Senior Resident Superior Court Judge to appoint a committee of attorneys to evaluate and rank the qualifications of all applicants. The Senior Resident Judge appointed 13 local attorneys to that committee on October 4, 2004. While the bar was originally supposed to meet and nominate three final candidates in December 2004, the committee needed more time to perform its evaluation of the applicants. At the request of the committee and the Senior Resident Judge, the

IDS Director issued amended regulations on October 25, 2004. In accordance with those regulations, the bar met on February 24, 2005, and nominated three candidates.

On March 17, 2005, the Senior Resident Superior Court Judge in Wake County appointed attorney G. Bryan Collins to begin a four-year term as the Chief Public Defender effective July 1, 2005. The IDS Office subsequently entered into a contract with Collins to begin preparations for the office prior to the start of his term on July 1, 2005. IDS Office staff then worked with Collins to get the office operational and to develop a plan for the appointment of counsel in all non-capital cases in Wake County. That plan was approved and certified by the IDS Director on July 1, 2005, the same day the office began accepting cases. *See* “Development and Approval of Public Defender Plans” above. While the office had to use temporary quarters for its first seven months of operations, Wake County has now provided permanent office space in downtown Raleigh. The office currently employs 18 assistant public defenders.

During its first year of operations (fiscal year 2005-06), the office generated \$35,291 in savings compared to what it would have cost to pay private attorneys to handle the same cases, which is consistent with IDS’ initial projections of \$30,000 in savings during the office’s first start-up year. IDS Office staff project that the Wake County office will generate \$390,000 in savings during its second year of operations, and then generate approximately \$490,000 in annual savings thereafter.

District and Superior Court Average Hours Studies

In order to assist judges in evaluating fee petitions that are submitted by private appointed attorneys, the IDS Office has completed statewide studies of the hours claimed by attorneys in district and superior court. In the district court hours study, IDS Office staff analyzed all 71,666 district court fee applications that were paid between July 1, 2004 and April 12, 2005. The study found that private appointed counsel reported an average of 3.2 hours to handle a district court case and that 98.9% of all district court cases were resolved in 10 hours or less. The study report then provided the average hours and highest number of hours claimed by private counsel for seven different district court charge types—felony, felony probation violation, DWI, misdemeanor non-traffic, misdemeanor traffic, misdemeanor probation violation, and child support contempt—as well as frequency distributions of reported hours by those charge types. The district court study report was mailed to all district court judges in August 2005 and was attached as Appendix B. to IDS’ March 2006 annual report. The report is also posted on the IDS website under the “Reports & Data” link.

In the non-capital superior court hours study, IDS Office staff analyzed two different data sets. For the ten felony classes, the staff analyzed a three-month sample of 4,994 felony fee applications that were paid between August 1, 2004 and October 31, 2004. For the remaining superior court charge types—felony probation violation, DWI, misdemeanor non-traffic, misdemeanor traffic, and misdemeanor probation violation—the staff analyzed all 28,829 superior court fee applications that were received at AOC Financial Services during fiscal year 2004-05. The study found that, while private appointed counsel reported an average of 8.2 hours to handle a superior court case, individual cases varied widely in the number of hours claimed. The study further found that 90% of all non-capital superior court cases were resolved in 15

hours or less, and that 90% of all non-capital superior court felony cases were resolved in less than 18 hours. The study then provided the average hours claimed by private counsel and frequency distributions by charge type. For the ten felony classes, the study also provided frequency distributions that identified cases resolved by trial and non-trial, the average number of hours claimed for non-trial cases, and the range of hours claimed for cases resolved by trials. The superior court study report was mailed to all superior court judges in January 2006 and was attached as Appendix C. to IDS' March 2006 annual report. The report is also posted on the IDS website under the "Reports & Data" link.

Private Appointed Counsel Waiting-in-Court Study

In August 2005, IDS Office staff completed a study of the costs associated with paying private appointed counsel to wait in court for their cases to be called. The staff analyzed the time claimed for waiting in court on 40,792 non-capital private attorney fee applications that were paid between August 1, 2004 and October 31, 2004. The study found that 68.9% of attorney fee applications reported some waiting-in-court time and that, on average, private attorneys reported spending 4.55 hours per case and 57 minutes (or 21%) of that time waiting in court. Annualized for fiscal year 2004-05, the reported wait time cost the State \$9.8 million. In addition, the study found that district court criminal cases were the most costly in terms of wait time (\$5.25 million in fiscal year 2004-05). Because it is unlikely that over 30% of all fee applications actually involved no waiting-in-court time, the IDS staff believe that attorney wait time may be significantly under-reported on fee applications, and that the true cost of private attorney waiting-in-court time during fiscal year 2004-05 may have been as high as \$14.2 million. The study also attempted to quantify the additional costs to the State associated with public defender waiting-in-court time, which the IDS staff estimate amounted to between \$3.7 and \$5.1 million in fiscal year 2004-05. The study demonstrates that defense attorney wait time attributable to the current scheduling system in North Carolina adds significant costs to indigent defense. The private appointed counsel waiting-in-court study report is attached to this report as Appendix B. The IDS Commission and IDS staff hope to continue working with other actors in the court system to identify ways to reduce those costs in future years. See "Consultation with Other Actors and Recommended Cost-Saving Measures" below.

Capital Case Disposition Study

In August 2005, IDS Office staff completed a study of the dispositions of all potentially capital cases at the trial level that were initiated after G.S. 15A-2004 was revised effective July 1, 2001; those revisions gave prosecutors discretion to proceed non-capitally even if there is evidence of an aggravating factor. The study showed that, of all potentially capital cases that had closed as of July 20, 2005, 80.8% ended in a plea to second-degree murder or less, not guilty, or dismissal, and that 14.4% ended in a dismissal. For cases that actually proceeded capitally, 60.4% ended in a plea to second-degree murder or less, not guilty, or dismissal, and 8% ended in dismissal.² This data shows that fewer than 20% of all cases that were originally identified as potentially capital were actually resolved with first-degree murder convictions. The results of the capital case disposition study are attached to this report as Appendix C.

² These percentages exclude dismissals with leave, mistrials, and "other" dispositions.

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

One of the IDS Commission's primary goals is to ensure that indigent criminal defendants in North Carolina are afforded high quality legal representation. *See* G.S. 7A-498.1(2). To further that goal, the IDS Act directed the Commission to establish "[s]tandards for the performance of public defenders and appointed counsel." G.S. 7A-498.5(c)(4). With the assistance of IDS Office staff and SOG faculty, a committee of the IDS Commission developed a draft of proposed performance guidelines for attorneys representing indigent defendants in non-capital criminal cases at the trial level. The initial draft guidelines were based on the "Performance Guidelines for Criminal Defense Representation" that have been promulgated by the National Legal Aid and Defender Association, as well as a review of standards and guidelines in several other jurisdictions, including Connecticut, Kansas, Massachusetts, New Mexico, New York City, Oregon, and Washington. Between October 2003 and January 2004, the committee met six times to review and refine the initial draft and to tailor it to fit the nuances of North Carolina law and practice.

Initial proposed guidelines were sent to 70 public and private defense attorneys representing every district around the State, with a request that they provide comments. Based on the responses, the committee made a number of changes to the initial draft. In August 2004, the revised guidelines were mailed to all public defenders and assistant public defenders, more than 2,000 private defense attorneys, all active district and superior court judges, and all elected district attorneys for comments. In September 2004, the Commission also held four regional meetings around the State to discuss the proposed guidelines with interested persons. Based on the written and oral comments that were received, the committee made a number of improvements to the proposed guidelines.

The full IDS Commission then reviewed and adopted final performance guidelines on November 12, 2004, and the IDS staff officially released the guidelines in February 2005. LexisNexis has published them as an appendix to the IDS Rules in the Annotated Rules of North Carolina; Thomson West has similarly published them in North Carolina Rules of Court, State. The guidelines were also distributed by mail to the bar and bench, were attached as an Appendix to IDS' March 2005 report to the General Assembly, and are available at www.ncids.org under the "IDS Rules & Procedures" link.

The performance guidelines address areas such as the role and general duties of defense counsel, client contact and interviewing, case review and investigation, plea negotiations, trial preparation and representation, and sentencing. They are intended to serve as a guide for attorney performance in the covered cases, and contain a set of considerations and recommendations to assist counsel in providing quality representation for indigent criminal defendants. The guidelines have also proven to be useful as a training tool and resource for new and experienced defense attorneys, and the Commission hopes they will serve as a tool for potential systemic reform in some areas. Because the goals embodied in the guidelines will not be attainable without sufficient funding and resources for indigent defense, the IDS Commission is relying on the General Assembly to continue its support of quality indigent defense services.

The Commission is currently in the process of developing performance guidelines for juvenile delinquency and parent respondent representation. See “Improved Juvenile Delinquency Representation” and “Improved Representation of Parent Respondents” below. In the coming years, the IDS Commission also hopes to develop performance guidelines for additional specialized areas of representation, such as capital and appellate representation.

Private Attorney Fee Application Deadlines

On May 6, 2005, the IDS Commission adopted revisions to the IDS Rules that established new deadlines for the submission of fee applications by private appointed counsel. For all cases finally disposed at the applicable case phase (*i.e.*, trial, appeal, or post-conviction) before July 1, 2005, the revised rules required final attorney fee applications to be signed by the appointed attorney and submitted to the judge or IDS Director by January 1, 2006. For all cases finally disposed at the applicable case phase (*i.e.*, trial, appeal, or post-conviction) on or after July 1, 2005, the revised rules require final attorney fee applications to be signed by the appointed attorney and submitted to the judge or IDS Director within no more than one year after the date on which the case was disposed at that phase.

The January 1, 2006 deadline for submission of older fee applications caused a significant one-time increase in spending during fiscal year 2005-06, and the one-year deadline for all other cases appears to be causing a quickening of submissions for same-year dispositions. See “Indigent Defense Fund Demand and Budget Needs: Historical and Future” below. However, the deadlines have enabled IDS staff to obtain more accurate data about the current demand on the indigent defense fund. For example, IDS Office staff are now able to analyze demand on the fund by case disposition dates, rather than the date a fee application was submitted. Office staff can also now analyze how much a given year of work has cost IDS, because there will be no more payments for cases disposed before or during fiscal year 2004-05. In addition, IDS staff have used past year spending trends to predict how much more remains to be paid on fiscal year 2005-06 dispositions during the current fiscal year. Thus, the deadlines have given Office staff a new way to predict future annual growth rates in the private counsel fund based on dispositions each fiscal year, which have historically averaged 5.3%.

Mitigation Specialist Rosters and Standard Hourly Rates

On May 6, 2005, the IDS Commission adopted qualification standards for individuals who serve as mitigation specialists in capital cases. See *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003) (holding that the capital defense team has a constitutional obligation to investigate and discover all reasonably available mitigating evidence). The standards were based on a number of sources, including Guideline 4.1 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Rev. Feb. 2003), the Federal Judicial Center’s Resource Guide for Managing Capital Cases (Dec. 16, 2002), and standards developed by the State of Kentucky. The standards provide for three different levels of mitigation specialists, which are based on educational background and experience, with corresponding hourly pay rates of \$35, \$45, and \$60 per hour. (The standards are available at www.ncids.org under the “IDS Rules & Procedures” link.)

IDS Office staff then worked with the Capital Defender to develop a comprehensive application form for mitigation specialists to seek placement on the various rosters, with an initial March 3, 2006 deadline for applications to be submitted. Effective April 17, 2006, only individuals who have been approved for one of the rosters are eligible to work as mitigation specialists on capital cases in North Carolina. As of the date of this report, 40 individuals have been approved for one of the mitigation specialist rosters.

Sentencing Services Program

In the 2002 Appropriations Act, the General Assembly reduced the overall budget for the Office of Sentencing Services (“OSS”) by almost 40% and transferred 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 and hired SOG Professor John Rubin as Interim Administrator. In November 2003, the IDS Director hired Susan Brooks as the permanent half-time Administrator of OSS. In the 2005 Appropriations Act, the General Assembly further reduced OSS’ budget by an additional 30% and directed IDS to close low-performing programs.

OSS has been substantially reorganized pursuant to these two budget reductions, including the elimination of 10 programs after consultation with the senior resident superior court judges in those districts, pursuant to the 2005 Appropriations Act. OSS also eliminated other state positions and reduced the non-profit programs’ grants to meet the new budget amount. Despite these reductions, OSS programs are continuing to provide quality services. During fiscal year 2001-02, OSS programs across the State contacted 14,539 offenders through referrals and targeting, opened 3,474 cases, and presented 2,228 plans to courts. During fiscal year 2002-03, after the first funding reduction discussed above, OSS programs contacted 9,692 offenders (a decrease of 33%), opened 2,120 cases (a decrease of 39%), and presented 1,732 plans to courts (a decrease of only 22%). During fiscal year 2003-04, OSS programs contacted 11,459 offenders (an increase of 18% from the prior fiscal year), opened 2,520 cases (an increase of 19% from the prior fiscal year), and presented 1,830 plans to courts (an increase of 6% from the prior fiscal year). In fiscal year 2004-05, the programs became more efficient with their time, contacting 9,536 offenders (a 17% decrease) and opening 2,319 cases (an 8% decrease), but presenting 1,963 plans (an 8% increase). Consequent to the second funding reduction, which resulted in fewer programs providing services and less money for the remaining programs, during fiscal year 2005-06, the programs contacted 5,904 offenders (a 38% decrease), opened 1,835 cases (a 21% decrease), and presented 1,451 plans (a 26% decrease). In addition, the programs continue to report that the majority of cases are attributable to referrals from attorneys and judges.

B. New and Ongoing Initiatives:

Ongoing Division of Administrative and Budgetary Responsibilities

The IDS Act requires the Administrative Office of the Courts (“AOC”) to provide general administrative support to the IDS Office. *See* G.S. 7A-498.2(c). The relationship between the two agencies continues to evolve over time, and IDS and AOC staff consult frequently to

determine the most effective methods of performing the administrative functions necessary for the proper operation of the courts. As it does for all other Judicial Branch components, the AOC continues to perform purchasing and personnel functions for the IDS Office, and to provide technological and telecommunications support.

Effective July 1, 2006, the AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including four accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and one full-time employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. In order to maintain timely data entry and payments to private attorneys, IDS added a fifth accounting specialist position to the new IDS Financial Services division in January 2007. AOC personnel continue to print checks for legal services and to maintain the imaging system that is used to store electronic copies of fee petitions. In addition, effective September 1, 2006, IDS began employing a full-time attorney as the Special Counsel Supervising Attorney to perform tasks that were previously performed by AOC's legal department. *See* "Special Counsel Program" below.

In August 2006, AOC and IDS entered into a memorandum of agreement concerning the allocation of foreign language interpreter costs for cases where the State bears the cost of representation. The memorandum provides that IDS will bear the cost of out-of-court interpretation that is performed solely for the defense function. Pursuant to that memorandum, during the current fiscal year, AOC will be retroactively transferring to IDS money from their interpreter fund to reimburse IDS for any payments made for out-of-court defense interpretation.

Committees of the IDS Commission

The IDS Commission has formed a number of different committees responsible for addressing various aspects of its work. Based on work done by IDS Office staff, the Budget Committee has prepared fiscal notes for all major IDS initiatives, analyzed non-capital case costs in district and superior court and developed a standard hourly rate for those cases, analyzed budget trends, discussed initiatives to enhance IDS' oversight of spending in non-capital cases, and prepared proposed budgets for the 2003-05, 2005-07, and 2007-09 biennia. The Capital Committee has addressed issues such as the quality of capital representation, recruitment of qualified attorneys and experts, regional capital defender offices, compensation of capital defense attorneys and experts, ways to provide cost-effective consulting services to capital attorneys, and qualification standards for mitigation specialists. *See* "Mitigation Specialist Rosters and Standard Hourly Rates" above.

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

Training Committee has worked with staff and other groups to develop new and innovative training programs for attorneys representing indigent persons. See “Improved Training and Resources” below.

The Standards Committee developed the performance guidelines for indigent defense representation that are discussed above, which the full Commission subsequently refined and adopted. See “Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level” above. The Systems Evaluation Committee is working with staff and outside participants to develop an objective tool to measure the quality and performance of indigent defense systems at the county, regional, and statewide levels. See “Systems Evaluation Project” below. The Juvenile Committee worked with a group of outside juvenile experts to evaluate the findings and recommendations in the American Bar Association’s 2003 report—“North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings”—and to develop recommendations for reform initiatives. See “Improved Juvenile Delinquency Representation” below. A recently formed Indigent Appointment Plan Committee will be looking at indigent appointment regulations in non-public defender districts, establishing some criteria for approving and denying revisions to those plans as they are proposed by the local bar, and developing one or more model plans. See “Improvements in Response to Performance Audit by the Office of the State Auditor, Model Appointment Plans for Non-Public Defender Districts” below.

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

Improved Data Collection and Reporting

IDS Office staff have continued to work with AOC staff to develop better and more comprehensive data collection systems for the indigent defense program. During the spring of 2002, the IDS Office asked AOC Financial Services to collect additional data from all non-capital fee applications that are signed by judges and submitted 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 began collecting the total hours claimed by counsel in each case on August 1, 2003, and had refined the accuracy of that data collection by December 1, 2003.

At IDS’ request, the AOC and Office of State Controller (“OSC”) subsequently agreed to reprogram the financial accounting system to allow the collection of much more detailed information about cases by account code and type of charge or proceeding. The OSC did that reprogramming at no charge to AOC or IDS. AOC staff previously only entered data on adult non-capital cases that was broken down into the following categories: felony, felony plus another charge, driving while impaired, misdemeanor, involuntary commitment, and other. After

the system was reprogrammed, AOC staff began entering data broken down into adult superior court and adult district court. In turn, the adult superior and district court data is now broken down into the following case types: felony, felony probation violation, misdemeanor (non-traffic), misdemeanor probation violation, driving while impaired, other traffic, criminal contempt, child support contempt, and other. AOC Financial Services began data collection under the new scheme on July 1, 2004. Thus, during fiscal year 2004-05, IDS had access to much better data about cases and attorney time than it has ever had in the past. *See* “District and Superior Court Average Hours Studies” above.

As noted in “Ongoing Division of Administrative and Budgetary Responsibilities” above, effective July 1, 2006, AOC transferred to IDS several accounting specialist positions to process fee petitions for appointed counsel. Now that IDS has responsibility for and supervision of the data collection system and personnel, IDS Office staff will continue working to expand and enhance the collection and reporting of available data.

The IDS Office has also worked with the Appellate Defender to design case-reporting and time-keeping software in Microsoft Access. During fiscal year 2006-07, attorneys in the Office of the Appellate Defender have been tracking their time on case-related and office activities manually by hand. The Office of the Appellate Defender intends to pilot-test the new database in the near future and, if it is successful, complete case reporting and time data should be available from that office during fiscal year 2007-08. If the database meets that office’s needs, IDS staff may then make it available to the Office of the Capital Defender and all public defender offices.

Expansion of Existing Public Defender Offices

In the 2005 Appropriations Act, the General Assembly gave the IDS Office authority to create up to 10 new attorney positions and five new support staff positions within existing IDS defender programs. The head of each defender office was then given the opportunity to submit a request and justification for additional staff to the IDS Director. IDS Office staff subsequently reviewed those requests and made decisions about whether adding new personnel would help expand the work each office is doing and/or relieve overburdened offices.

During fiscal year 2005-06, the IDS Director allotted all 10 of the new attorney positions as follows: 1) two new assistant public defenders in the Gaston County Public Defender Office; 2) two new assistant public defenders in the Guilford County Public Defender Office; 3) two new assistant public defenders in the Mecklenburg County Public Defender Office; 4) one new assistant public defender in the First District Public Defender Office; 5) one new assistant public defender in the Robeson County Public Defender Office; 6) one new assistant appellate defender in the Office of the Appellate Defender; and 7) one new legal associate in the central IDS Office.

During fiscal year 2005-06, the IDS Director also allotted four of the five new support staff positions as follows: 1) one new legal assistant in the First District Public Defender Office; 2) one new legal assistant in the Robeson County Public Defender Office; 3) one new chief investigator in the Mecklenburg County Public Defender Office; 4) one half-time legal assistant in the Orange/Chatham Public Defender Office to make an existing half-time position full time;

and 5) one half-time legal assistant in the Forsyth County Public Defender Office to make an existing half-time position full time.

In the 2006 Appropriations Act, the General Assembly similarly gave the IDS Office authority to create up to 20 new attorney positions and 10 new support staff positions within existing IDS defender programs. The head of each defender office has been given the opportunity to submit a request and justification for additional staff to the IDS Director. IDS Office staff have reviewed those requests and placed some of the new positions where they would be most beneficial. IDS' March 2008 report to the General Assembly will include details on the placements during fiscal year 2006-07.

Public Defender Cost-Effectiveness Studies

IDS Office staff conduct annual studies of the cost-effectiveness of all public defender offices in the State. In those studies, Office staff build caseload models for the public defender offices, and examine and quantify efficiencies of scale. The studies also quantify the system costs involved with using private counsel by including in the analysis the administrative time involved with making appointments, setting fee awards, and processing and issuing fee payments. The fiscal year 2005-06 study found that the 14 public defender offices in existence last fiscal year handled 31.8% of the cases assigned to public defenders and private counsel combined, but accounted for only 23.6% of the combined expenditures on appointed counsel. The study further concluded that all of the public defender offices together cost the State approximately \$2 million less than what it would have cost to pay private attorneys to handle the same cases.

During the second half of fiscal year 2004-05, IDS Office staff worked with a committee of the chief public defenders and SOG faculty to design a much more detailed disposition reporting system for the public defender offices. The new system gives IDS Office staff access to the same expanded data that is now available with private appointed counsel fee applications, *see* "Improved Data Collection and Reporting" below, and also gives IDS staff data on public defender felony dispositions by felony class. Under the new system, public defender offices report dispositions by case type, including felony class, and provide IDS with additional workload measures for the offices, such as the number of trials and review hearings for certain types of cases. Moreover, IDS office staff are now auditing public defender disposition reports to guarantee their accuracy. The new procedures also replaced the previous paper-based system with an electronic system, which has led to enhanced efficiencies. The new reporting system went into effect on July 1, 2005, and enabled the fiscal year 2005-06 cost-effectiveness analysis of the offices to include a significant amount of additional information. In addition, while prior IDS studies have not compared the relative quality of representation in public defender and private counsel systems, IDS staff are developing a list of value-added activities that are performed by public defender offices and private counsel, and hope to incorporate them into future analyses. *See also* "Systems Evaluation Project" below.

In September 2006, IDS Office staff analyzed the costs expended on private assigned counsel in a number of non-public defender districts compared to the costs of potential new public defender offices in those districts. The results indicated that the State could save money by

creating new public defender offices in a number of areas of North Carolina, including projected annual savings of \$165,000 from a fully staffed and operational office in the Fifth District (New Hanover and Pender counties) and projected annual savings of \$160,000 from a fully staffed and operational office in the Twenty-Second District (Alexander, Davidson, Davie, and Iredell counties). In accordance with G.S. 7A-498.5(e), the IDS Commission then solicited comments from the bar and bench in the Fifth and Twenty-Second Districts and, in February 2007, recommended that the General Assembly create new public defender offices there. *See* “Other Legislative Recommendations” below. In addition, the IDS Commission and Office will continue to investigate the advisability of new public defender offices in other districts or regions. *See also* “Improvements in Response to Performance Audit by the Office of the State Auditor, Regionalization of the Public Defender System” below.

Study of Indigent Dispositions Compared to Total Court Dispositions

In February 2007, IDS Office staff updated a prior study comparing the total number of indigent case dispositions to the total number of court dispositions in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support.³ That study revealed that the number of total criminal non-traffic court dispositions declined between fiscal years 2001-02 and 2003-04, and then increased modestly in fiscal years 2004-05 and 2005-06. However, the number of criminal non-traffic public defender and private appointed counsel dispositions that are funded through IDS has risen steadily over that same time period.

| | FY02 | FY03 | FY04 | FY05 | FY06 |
|--|---------|---------|---------|---------|---------|
| Total Criminal Non-Traffic Court Dispositions | 774,795 | 761,665 | 767,483 | 786,134 | 798,622 |
| Total IDS Criminal Non-Traffic Dispositions | 270,295 | 280,636 | 294,054 | 317,854 | 337,578 |
| IDS Dispositions as a % of Total Criminal Non-Traffic Court Dispositions | 34.9% | 36.8% | 38.3% | 40.4% | 42.3% |

The greatest increase in indigent case dispositions has been in criminal district court, where IDS dispositions as a percentage of total court dispositions increased 7.9% between fiscal years 2001-02 and 2002-03, another 5.5% between fiscal years 2002-03 and 2003-04, another 7.3% between fiscal years 2003-04 and 2004-05, and another 5.6% between fiscal years 2004-05 and 2005-06.

Based on this study, IDS staff believe the increases in demand on the indigent defense fund over the past several years are largely attributable to more people being found indigent and entitled to court-appointed counsel. IDS Commission and staff will continue to monitor this trend and to report our findings to the General Assembly. In addition, as discussed later in this report, the IDS Commission will be developing standards to guide judges in making indigency determinations pursuant to G.S. 7A-498.5(c)(8). *See* “Consultation with Other Actors and Recommended Cost-Saving Measure” below.

³ The updated study was based on total criminal non-traffic and indigent case disposition numbers provided by AOC, which count every closed CR or CRS file number as a disposition. In other studies, IDS staff calculate dispositions differently, and count all file numbers disposed of on the same day before the same presiding judge as one disposition.

Indigent Defense Fund Demand and Budget Needs: Historical and Future

The IDS Commission has taken significant steps to control increases in the cost of indigent representation, and to analyze the factors driving growth in the fund. The increase in new demand (spending and current-year obligations) during fiscal year 2001-02 was only 1.36% above fiscal year 2000-01, which was the lowest increase in at least a decade. The increase in new demand during fiscal year 2002-03 was 4.63% above fiscal year 2001-02, the increase in new demand during fiscal year 2003-04 was 7.6% above fiscal year 2002-03, and the increase in new demand during fiscal year 2004-05 was 7.1% above fiscal year 2003-04, all of which were still significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. While the increase in new demand during fiscal year 2005-06 was 11.5% above fiscal year 2004-05, the IDS Commission and staff believe the higher growth rate last fiscal year was an anomaly due in part to a new deadline for the submission of older fee applications. Current projections suggest that the growth rate during fiscal year 2006-07 will be 4.3%. *See* Appendix A.

Moreover, indigent defense expenditures per disposition declined significantly over the first four years after IDS was established, with a slight increase in per disposition costs last fiscal year, demonstrating that the overall increases in demand on the fund are attributable to an expanding indigent caseload rather than a rise in per case costs. As shown in the chart in Appendix A labeled "Indigent Defense Expenditure History per Disposition," there was a spike in total expenditures per disposition in fiscal year 2000-01, the year before IDS assumed responsibility for the fund. Total expenditures per disposition then declined significantly over the next four fiscal years. While there was a slight increase in expenditures per disposition in fiscal year 2005-06, they still were the second lowest of the five fiscal years since IDS was established. Expenditures per disposition on private counsel have been somewhat volatile, but expenditures per disposition on public defenders have been more stable. IDS Office staff believe that the recent expansion of the public defender system has contributed to IDS' ability to stabilize overall per disposition expenditures.

Despite the comparatively lower increases in new demand during the past five fiscal years, as well as the overall trend of declining per disposition expenditures since IDS was established, indigent defense has been under-funded. IDS staff analyses suggest that IDS' historical cycle of debt was largely due to insufficient available funds to meet new demand. As shown below, IDS had fewer funds available for new demand in fiscal years 2001-02, 2002-03, and 2003-04 than the actual new demand on the fund in fiscal year 2000-01, the year before IDS was established. However, as also shown below, the General Assembly's increased appropriations to indigent defense in fiscal years 2005-06 and 2006-07 have finally enabled IDS to begin combating an historical cycle of debt.

Fiscal Year 2000-01:

In fiscal year 2000-01, when the AOC was in charge of the indigent defense fund, there was about \$69.95 million in new demand on the fund. Because AOC had insufficient funding to meet that demand, indigent defense ended the year with \$1.7 million of debt.

Fiscal Year 2001-02:

In fiscal year 2001-02, which was IDS' first year of operations, the actual budget for indigent defense services was approximately \$68.05 million, taking into account actual revenues as well as subsequent salary, benefit, and other adjustments that fiscal year. However, during that fiscal year, IDS had to pay off the \$1.7 million of debt inherited from the AOC and revert an additional \$2.8 million to the Office of State Budget. Thus, IDS had approximately \$63.55 million available to spend on new demand during fiscal year 2001-02. Because there was about \$70.9 million in new demand (a 1.36% increase from the prior year), IDS ended fiscal year 2001-02 with \$7.4 million of debt.

Fiscal Year 2002-03:

With the assistance of AOC staff and IDS Office staff, *see* G.S. 7A-498.2(d), the IDS Commission prepared a proposed budget for fiscal year 2002-03. In that proposed budget, IDS asked for an increase of \$6.4 million to cover the debt that was projected at that time, as well as some additional defender staff and equipment needs. The General Assembly ultimately appropriated an additional \$4.95 million in non-recurring funds. Thus, in fiscal year 2002-03, the actual budget for indigent defense services was approximately \$73 million, again taking into account actual revenues and other adjustments. However, because IDS had to pay off the \$7.4 million of fiscal year 2001-02 debt and contribute \$137,000 to the statewide negative reserve, the indigent defense fund was left with about \$65.5 million available to spend on new demand during fiscal year 2002-03. Because there was about \$74.2 million in new demand (a 4.63% increase from the prior year), IDS ended fiscal year 2002-03 with \$8.7 million of debt.

Fiscal Year 2003-04:

Again with the assistance of AOC staff and IDS Office staff, the IDS Commission prepared a proposed budget for the 2003-2005 biennium. In that proposed budget, IDS asked for an increase of about \$19 million in fiscal year 2003-04. That request was intended only to maintain, not expand, existing services, and predicted a modest 4.5% annual growth in demand on the fund. In addition, the request was intended to restore fiscal year 2002-03's non-recurring appropriation of \$4.95 million and to pay off fiscal year 2002-03's then-projected debt.

The General Assembly ultimately adopted a budget for fiscal year 2003-04 that included the prior year's \$4.95 million non-recurring appropriation in IDS' base budget for the biennium, and appropriated an additional \$3.5 million to indigent defense. Thus, in fiscal year 2003-04, the actual budget for indigent defense services was approximately \$76.8 million, again taking into account actual revenues and other adjustments. However, because IDS had to pay off the \$8.7 million of fiscal year 2002-03 debt, the indigent defense fund was left with about \$68.1 million available to spend on new demand during fiscal year 2003-04. Because there was about \$79.85 million in new demand (a 7.6% increase from the prior year), IDS ended fiscal year 2003-04 with \$11.7 million of debt. That amount of debt represented more than a 10-week payment delay to private attorneys and defense experts.

Fiscal Year 2004-05:

The IDS Commission's original proposed budget for the 2003-2005 biennium also requested an increase of about \$14 million in fiscal year 2004-05. Again, that request was intended only to maintain existing services, and was based on another predicted 4.5% growth in demand on the

fund during fiscal year 2004-05. The requested increase for 2004-05 was less than the requested increase for 2003-04 because of an assumption that all carry-over debt would have been eliminated in light of the previous year's increase. However, IDS' original appropriation for fiscal year 2004-05 only included a net increase of \$1.5 million over fiscal year 2002-03, because the General Assembly had to meet stricter targets for the second year of the biennial budget.

In response to a subsequent request for a \$13 million increase during the next legislative session, the General Assembly appropriated an additional \$11 million to indigent defense for fiscal year 2004-05—\$8.5 million in non-recurring funds plus \$2.5 million in recurring funds—which represented a net increase of \$9 million over fiscal year 2003-04. Thus, in fiscal year 2004-05, the actual budget for indigent defense services was approximately \$88.3 million, again taking into account revenue shortfalls and other adjustments, including a \$1.3 million transfer to IDS in late June 2005. However, because IDS had to pay off the \$11.7 million of fiscal year 2003-04 debt, the indigent defense fund was left with about \$76.6 million available to spend on new demand during fiscal year 2004-05. Because there was about \$85.5 million in new demand (a 7.1% increase from the prior year), IDS ended fiscal year 2004-05 with almost \$9 million of debt. That amount of debt again represented about a two-month payment delay to private attorneys and defense experts.

Fiscal Year 2005-06:

With the assistance of IDS Office staff, the IDS Commission developed a proposed budget for the 2005-2007 biennium, which asked the General Assembly to include the prior year's \$8.5 million non-recurring appropriation in IDS' base budget for the biennium, and to appropriate net increases of \$18 million and \$13 million for fiscal years 2005-06 and 2006-07, respectively. At the time the request was submitted, the IDS Commission believed this additional funding would pay off the then-anticipated unpaid attorney and expert fees from fiscal year 2004-05, and accommodate an annual growth rate of 7.5%. In response to that request, the General Assembly appropriated net increases of \$11.7 million and \$6.2 million for fiscal years 2005-06 and 2006-07, respectively.

While the actual growth rate during fiscal year 2005-06 was higher than expected (11.5%), only 5.1% represented real growth in demand on the private counsel fund, with the largest increase occurring in adult district court. The remaining growth was attributable to a number of factors, including 4.1% from expansion and increased personnel and equipment costs in state defender offices and 2.3% from the January 2006 deadline for submission of older fee applications. *See* "Private Attorney Fee Application Deadlines" above. Based on the new demand and other growth in spending, the indigent defense fund ended fiscal year 2005-06 with approximately \$4.1 million in unpaid fee awards that had to be paid out of IDS' appropriation for fiscal year 2006-07.

The IDS Commission is extremely grateful for the additional funding that indigent defense has received over the past several years. However, IDS' debt in prior years has made it difficult to recruit and retain qualified counsel to represent indigent defendants, and significantly impeded the IDS Commission's ability to manage the fund properly. Indeed, it was not until fiscal year 2004-05 that IDS' annual appropriation included enough of an increase to ensure that the amount

available to spend on new demand (\$76.6 million) was more than the actual new demand on the fund the year before IDS was created (\$69.95 million). As can be seen from the comparatively lower debt for fiscal year 2005-06 (\$4.1 million), the General Assembly's support of indigent defense last fiscal year finally enabled IDS to begin combating our historical cycle of debt.

Fiscal Year 2006-07:

The IDS Commission submitted a budget request for fiscal year 2006-07, which asked the General Assembly for an additional \$7 million (\$3 million recurring plus \$4 million non-recurring) to maintain the current level of services at a projected 5% growth rate during fiscal year 2006-07. The IDS Commission also requested an additional recurring appropriation of \$9.28 million to cover a \$10 raise in the hourly rates paid to private appointed attorneys in non-capital and capital cases. See "Uniform Rates of Compensation" above. In response, the General Assembly appropriated an additional \$4.5 million in non-recurring funds plus a recurring increase of \$1.6 million to support a \$10 raise in the capital hourly rate.

Current projections suggest there will be a 4.3% increase in new demand this fiscal year. Thus, unless there is a significant and unexpected increase in demand during the remaining months of this fiscal year, IDS should end the current year with virtually no debt, which would be IDS' best financial situation since the office was established almost six years ago. Now that the appropriation to IDS is close to meeting the real demands on the fund and supporting timely payments to private counsel throughout the fiscal year, the IDS Commission is in a stronger position to manage the indigent defense fund in an efficient and equitable manner.

Fiscal Biennium 2007-09:

The IDS Commission has submitted a proposed budget for the 2007-09 biennium, which asks the General Assembly to include fiscal year 2005-06's \$4.5 million non-recurring appropriation in IDS' base budget for the biennium, to appropriate recurring increases of \$1.5 million in fiscal year 2007-08 and \$5.15 million in fiscal year 2008-09 to maintain the current level of services at projected annual growth rates of 5.3%, and to appropriate recurring increases of \$8.5 million in fiscal year 2007-08 and \$9 million in fiscal year 2008-09 to support a \$10 raise in the \$65 non-capital hourly rate that is paid to private appointed attorneys. The IDS Commission is grateful for the additional funding to increase the capital rate during fiscal year 2005-06, and hopes the General Assembly will appropriate sufficient funds during the next biennium to enable the Commission to raise the non-capital rate by \$10 as well. See "Other Legislative Recommendations" below.

Improvements in Response to Performance Audit by the Office of the State Auditor

In S.L. 2006-66, § 14.16, the General Assembly directed the Office of the State Auditor to "conduct an analysis of the fee payment practices of the Office of Indigent Defense Services and make recommendations for process improvements of fee applications, including recommendations regarding automation." Because the auditors believed that any service acquisition process should ensure that purchased services meet established service criteria, they included an examination of independence and competence policies to ensure that IDS only pays for legal services that comply with the purposes of the IDS Act. The auditors conducted their

field work between November 2006 and February 2007, and focused on IDS' operations between November 1, 2005 and October 31, 2006.

On February 28, 2007, the Office of the State Auditor released its report on the performance audit of IDS, which included detailed responses from the IDS Commission and staff at the end of the report. The audit report and IDS' responses have been submitted to the General Assembly, and are posted on the Office of the State Auditor's website (www.ncauditor.net). The auditors' main findings were as follows: 1) the existing attorney selection and appointment procedures do not ensure adequate independence; 2) attorney selection and performance are not adequately monitored to ensure competent representation; 3) attorney fee payment processes lack adequate controls; 4) attorney fee payment processes are inefficient and labor intensive; and 5) the IDS Office lacks sufficient resources.

The IDS Commission and staff are committed to ensuring that North Carolina's indigent defense system is as strong as possible, to providing high quality legal services to indigent defendants and respondents across the State, and to maintaining the confidence of the taxpayers who fund this system. The Commission and staff were already aware of and concerned about most of the issues contained in the auditors' report. The Commission and staff have already devoted time and energy to solving many of the problems the auditors identified, and have not yet been able to reach other problems in light of the competing demands on IDS' staff and resources. IDS will take prompt steps to address all of the issues and recommendations contained in the audit report, including discussing the problems and potential solutions within the IDS Commission and Office, consulting with other system actors as appropriate, and making recommendations to and requests of the General Assembly.

Rather than repeating in detail the auditors' findings and recommendations, and IDS' responses to those findings and recommendations, this report will describe the steps the IDS Commission and staff are currently taking to remedy some of the major problems identified by the auditors. As other problems are discussed within IDS and with other court system actors, and as solutions to those problems are generated, IDS will address them in future annual reports.

Regionalization of the Public Defender System:

One of the IDS Office's key functions is to determine the most appropriate method of providing legal representation in each judicial district, from both a cost and quality perspective. The IDS Act authorizes the IDS Office to use appointed counsel on a case-by-case basis, 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 with legislative approval, or use any combination of these or other methods. This flexibility allows the IDS Office to tailor indigent defense services to the needs in different parts of the State and in different types of cases.

As noted by the auditors, the IDS Commission and staff believe that the current systems in many areas of North Carolina do not lend themselves to extensive management and oversight by IDS. Indeed, IDS' efforts to oversee the delivery of legal services to indigent defendants and respondents are frustrated by our reliance on public defenders who are not accountable to IDS, on local committees that are composed of volunteers, and on judges who operate independently

of IDS. The IDS Commission and staff believe that an expansion and regionalization of the existing public defender system would vastly improve IDS' ability to fulfill its statutory mission, and would address many of the problems identified by the performance audit. However, the Commission and staff also strongly believe that a regional system must be coupled with a more appropriate and effective management and supervisory relationship between IDS and the chief public defenders, which can only be accomplished if IDS has hiring authority, as it does with the Appellate, Capital, and Juvenile Defenders. *See* "Consultation with Other Actors and Recommended Cost-Saving Measures" below.

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

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

This model of a defender office with full-time assistant defenders and oversight responsibility for appointed attorneys in other counties is similar to the model IDS has already successfully established in the statewide Offices of the Appellate Defender and Capital Defender. In addition, regionalized public defender systems are successfully used in other states, such as Minnesota. In the near future, the IDS Commission and staff will be developing more specific public defender regionalization proposals for the General Assembly.

Model Appointment Plans for Non-Public Defender Districts:

In the vast majority of non-public defender counties, the local indigent appointment plans were approved by the North Carolina State Bar before IDS was created. When IDS assumed responsibility for indigent defense in 2001, the IDS Commission grand-fathered in the existing plans and adopted a rule requiring future plan modifications to be approved by the Commission.

The IDS Commission has formed a committee to develop one or more model indigent appointment plans for non-public defender districts and will explore the feasibility of including uniform qualification standards in those model plans. See “Committees of the IDS Commission” above. Once those models are developed, Office staff will begin working with local districts to implement some version of the model plans at the local level. However, in the long run, the IDS Commission and staff believe this task would be better undertaken by the appropriate regional defender with IDS’ assistance and oversight. See “Regionalization of the Public Defender System” above.

Electronic Case Reporting and Fee Filing:

For many years, IDS Office staff have been interested in developing a web-based system that would allow the Office to receive and process attorney fee applications electronically via the Internet. Such a system also could enable attorneys to review their case assignments and the status of their fee applications on-line. Initially, Office staff hope to pilot-test a web-based system in all capital and appellate cases statewide, and then expand the system to allow electronic receipt and processing of private attorney fee applications in all indigent cases throughout North Carolina—currently more than 190,000 cases annually.

In 2003 and 2006, IDS staff submitted grant applications to the Governor’s Crime Commission seeking funds to develop a pilot system. Neither of those applications was selected for grant funding. In addition, the IDS Office asked the General Assembly for funds to pilot test an automated system during the 2006 legislative session; while that request was not granted, the General Assembly directed the Office of the State Auditor to conduct the performance audit described in this section and to include recommendations on automation. One of IDS’ 2007 expansion requests is for \$175,000 in non-recurring funds to create a pilot web-based system for electronic submission of fee applications. While additional funds would be necessary later to expand the system, the IDS Commission and staff believe the long-term efficiency savings to the State would significantly outweigh the initial costs for development and implementation.

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. In addition, it would greatly improve the ability of IDS staff to collect and analyze data that is currently inaccessible, thereby enhancing the IDS Commission’s ability to make informed decisions about resource allocation.

System for Identifying Potential Duplicate Payments Before they Issue:

IDS Office staff began looking into problems with duplicate payments after a financial audit of the AOC during the Spring of 2005. Using an FTP data download that the Office receives from the North Carolina Accounting System (“NCAS”), IDS staff developed a procedure for manipulating the data in SPSS to identify suspected duplicates based on overlap among certain fields in NCAS. That procedure allows staff to identify potential duplicates that may have slipped through the safeguards in NCAS. Once a suspected duplicate is found, IDS Office staff investigate it and determine whether there is sufficient evidence that payment was issued twice for the same services to justify writing the attorney and asking for repayment.

Because of the labor and inefficiencies associated with identifying and collecting duplicate payments after they have been issued, as well as the tax consequences for the attorneys, IDS Office staff have been working with the Office of the State Controller to develop a program that can be run before each payment date to enable us to identify potential duplicates in SPSS. The procedure would involve: 1) capturing the mainframe data on the current day's check run to compare to our history file and to identify suspected duplicates; 2) holding the checks in question while researching prior payments; and 3) canceling payment before the check is mailed if appropriate. This system would be less time consuming than recovering duplicate payments after the fact.

Finally, in almost all instances where duplicate payments have been issued, it has been because the same fee claim was sent to Financial Services twice by a clerk's office, typically either due to error or because the original submission was not paid promptly. The quicker IDS Financial Services' turn-around time in processing fee applications, the less often this happens. Thus, until IDS has improved technology, timely data entry and payment may be the most effective ways to prevent inadvertent duplicate payments.

Other Initiatives and Recommendations:

For additional initiatives and recommendations that are consistent with the auditors' findings, see also "Mecklenburg County Attorney Fee Coordinator Position and Time Sheets" below (discussing a possible statewide time sheet requirement); "New IDS Auditor Position" below (discussing a new auditor position within the IDS Office); "Systems Evaluation Project" below (discussing a long-term project to develop a tool to evaluate the quality and performance of indigent defense systems); "Increase the Use of Public Defenders and Improve IDS' Ability to Supervise the Chief Public Defenders" below (recommending that the General Assembly expand the public defender system and establish a more appropriate management and supervisory relationship between IDS and the chief public defenders); and "Direct AOC and IDS to Conduct a Feasibility Study of Providing IDS with Indigent Case Information when Cases are Initiated" below (discussing the technological barriers to implementing the auditors' recommendation that IDS obtain case information when cases are initiated, and suggesting that the General Assembly direct AOC and IDS to consult and develop a proposal).

Improved Revenue Collection

IDS Office staff have worked with AOC staff to gather data on the amount each county collected in recoupment (through probationary collections and civil judgments) during each fiscal year since 2001-02. Staff then analyze that data annually to determine the amount recouped by each county as a percentage of that county's expenditures on indigent defense. Total revenues from recoupment during fiscal year 2005-06, including the \$50 attorney appointment fee, amounted to \$8.6 million, which represented an increase of \$1.4 million (or 19%) over the past two fiscal years since 2003-04. However, during fiscal year 2005-06, there continued to be wide variability in recoupment among counties. Recoupment as a percentage of non-capital spending on private attorneys and public defender offices ranged from a low of 1.9% to a high of 35.4% (excluding one county with an abnormally high recoupment rate of more than 70%), with an overall statewide rate of 11.7%. For a county-by-county comparison of recoupment rates, see Appendix D. In addition, there appears to be a strong negative correlation

between the size of the indigent caseload in a county and recoupment as a percentage of spending. For example, during fiscal year 2005-06, recoupment in the 10 counties with the highest amount of spending averaged 6.5%, while recoupment in the 10 counties with the lowest amount of spending averaged 27.6%.

The IDS Office has undertaken a number of initiatives to improve the recoupment process and increase revenues to the indigent defense fund. For instance, IDS Office staff continue to work with the public defender offices to ensure that they submit fee applications for entry of judgment in all recoupment-eligible cases and have held meetings around the State with public defenders, judges, and clerks to discuss ways to increase revenues. In addition, IDS Office staff worked with the AOC Forms Committee to revise the fee applications and facilitate easier entry of judgments for attorney fees.

Effective December 1, 2002, the General Assembly enacted G.S. 7A-455.1, which established a \$50 attorney appointment fee for indigent criminal defendants who are appointed counsel at State expense. Implementing the attorney appointment fee proved to be more complicated and problematic than was expected. In addition, on February 6, 2004, the Supreme Court of North Carolina issued an opinion in *State v. Webb*, 358 N.C. 92, 591 S.E.2d 505, which held that certain portions of the \$50 attorney appointment fee statute violated the North Carolina Constitution. The Court held that the \$50 fee may not be imposed prior to disposition, and may only be imposed upon defendants after they have been convicted or pled guilty or nolo contendere to one or more charges. The Court further held that any indigent defendant who paid the \$50 fee prior to disposition between April 2, 2003 and February 6, 2004, and who was acquitted or whose case was dismissed, was entitled to a refund. After the Court's opinion was issued, more than \$15,000 was refunded to defendants statewide. In addition, the revenues generated by the fee have decreased significantly since February 2004. Effective August 4, 2005, the General Assembly amended the \$50 attorney appointment fee statute to conform with the Supreme Court's opinion in *Webb*. As with regular attorney fee recoupment, there continues to be great variation in the rate of collection of the \$50 fee from county to county, with nine counties reporting no \$50 fee collections during fiscal year 2005-06 and a number of other counties reporting collections of a few hundred dollars or less. *See* Appendix D.

For purposes of verifying taxpayer identity to collect outstanding judgments for attorney fees, the Division of Motor Vehicles ("DMV") previously allowed AOC and IDS staff to access social security numbers in their automated system. However, in 2005, the DMV revoked that access pursuant to G.S. 20-7(b2), which may negatively impact IDS' future ability to collect attorney fee judgments through the set-off debt program. During the 2007 legislative session, IDS will be asking the General Assembly to amend G.S. 20-7(b2) to allow DMV to disclose social security numbers to IDS staff for the purpose of verifying taxpayer identity and collecting outstanding attorney fee judgments. *See* "Other Legislative Recommendations" below.

Contracts with Attorneys

Since the Spring of 2003, the IDS Office has been exploring the use of contracts with attorneys as an alternative method of delivering legal services to indigent persons in various districts in North Carolina. Currently, the IDS Office has contracts with 19 different attorneys in

Dare, Forsyth, Guilford, Martin, and Stanly counties, and in District 22 (Alexander, Davie, and Iredell counties only), as well as with the Children's Law Center in Charlotte and the Elder Law Clinic of the Wake Forest School of Law in Winston-Salem. The IDS contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, civil commitment, and guardianship proceedings.

In November 2003, the IDS Director hired Susan Brooks as the half-time Contracts Administrator for the IDS Office, in addition to her responsibilities as the Administrator of OSS. As the IDS Contracts Administrator, Brooks is monitoring the existing contracts, evaluating reports regularly submitted by the contract attorneys, working with other IDS Office staff to improve data collection and better assess the cost-effectiveness of the contracts, conducting on-site evaluations of the services being delivered by contract counsel, and exploring other areas of the State in which new attorney contracts might save money and increase quality.

IDS Office staff believe that carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered. Indeed, during fiscal year 2005-06, all of the IDS contracts combined saved over \$216,000 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments. Office staff will continue to evaluate the existing contracts from both a cost and quality perspective, and hope to expand IDS' use of contracts in the years to come.

Mecklenburg County Attorney Fee Coordinator Position and Time Sheets

During the summer and fall of 2005, as part of a random audit of private appointed attorneys in Mecklenburg County, IDS Office staff developed concerns about the billing practices of two Charlotte attorneys. Office staff discussed those concerns with local court system actors, and ultimately recommended that one of the attorneys be removed from the indigent list and that the other attorney be temporarily suspended pending further investigation. In December 2005, the IDS Office also obtained permission from the Joint Legislative Committee on Governmental Operations to create a new receipts-supported position (called an Attorney Fee Coordinator) funded from IDS' recoupment revenues in the Mecklenburg County Trial Court Administrator's Office. The Trial Court Administrator hired a person to fill that position and she began work on February 20, 2006, around the same time that the Charlotte Observer printed a series of articles about the billing practices of some local attorneys, including the two attorneys that had been identified by IDS staff. In addition, on January 1, 2006, the Mecklenburg County judges began requiring appointed attorneys to submit itemized time sheets in all indigent cases. The Attorney Fee Coordinator is responsible for reviewing private attorney fee applications, identifying ways to improve recoupment in Mecklenburg County, and doing indigency screening upon referral.

In February 2007, IDS Office staff conducted a study to look at the combined impact of requiring time sheets in Mecklenburg County and the new Attorney Fee Coordinator. That study found that the average hours claimed by private attorneys in Mecklenburg County has decreased significantly. For example, before time sheets and the Attorney Fee Coordinator, the average claim in Mecklenburg County for a superior court felony case was 13.8 hours, compared to a statewide average of 9.7 hours. After time sheets and the Attorney Fee Coordinator, the average claim in Mecklenburg County for a superior court felony case dropped to 8.8 hours. The

Office's study also showed that, after time sheets and the Attorney Fee Coordinator, judges cut the number of hours claimed by appointed attorneys in superior court cases in a smaller percentage of cases. Thus, the study suggests that time sheets may provide judges with a stronger basis for assessing the amount of time claimed by appointed attorneys.

In light of this study, as well as the recommendation by the Office of the State Auditor that IDS require time sheets in all indigent cases, the IDS Commission will be discussing a possible statewide requirement at its next quarterly meeting. *See also* "Improvements in Response to Performance Audit by the Office of the State Auditor" above. In addition, the IDS Office will continue to monitor the work of the Attorney Fee Coordinator and may use the position as a model for similar positions in other counties.

New IDS Auditor Position

In IDS' budget for fiscal year 2006-07, the General Assembly allotted funds to establish a new auditor position within the IDS Office "to analyze fee applications and effect cost savings by preventing over billing." At the same time, the General Assembly directed the Office of the State Auditor to conduct a performance audit of the IDS Office. *See* "Improvements in Response to Performance Audit by the Office of the State Auditor" above. The IDS Office waited to fill the new in-house auditor position until after the State Auditor's performance audit, in the hope that the auditors' process, findings, and recommendations would provide further guidance on the most appropriate requirements and duties for the position. IDS Office staff advertised the position and conducted a series of interviews with candidates in January 2007. An individual has been hired to fill that position and will start work on April 2, 2007.

The new auditor position will be housed within IDS' Financial Services division in Raleigh, and will oversee efforts to audit and analyze payments to appointed attorneys and defense experts. The auditor also will be responsible for developing and implementing procedures to prevent duplicate payments and inappropriate billing, and for collecting and analyzing fee petition data.

Improved Training and Resources

The IDS Office continues to provide funding for public defender training and has sponsored new training programs in areas of representation that traditionally have not had adequate continuing legal education. IDS Office staff worked with the Office of the Appellate Defender and SOG faculty to develop a new hands-on training program for private appellate attorneys who accept appointments in indigent cases. That training has been held annually since 2002 and has been extremely successful.

With the assistance of SOG faculty and former AOC staff, the IDS Office has planned new training programs for private counsel who work on involuntary commitment cases, and for full-time State employees who serve as Special Counsel for persons committed to mental health facilities. Those programs, which were held during February 2003 and January 2004, were the first of their kind in North Carolina. In addition, the 2005 Fall Public Defender Conference focused on mental health issues in criminal cases. In lieu of holding additional commitment

trainings during 2005 and 2006, the IDS Office provided funding for the development of a North Carolina Civil Commitment Manual, which was published jointly by IDS and the School of Government during the summer of 2006. The manual is available for free on the IDS website.

Also with the assistance of AOC, the SOG, and the Guardian ad Litem program, the IDS Office planned a training program for attorneys who represent parent respondents in Chapter 7B cases, including abuse, neglect, or dependency and termination of parental rights proceedings. That program was held twice in 2003, and also was the first of its kind in North Carolina. In April 2004 and December 2005, IDS and the North Carolina Academy of Trial Lawyers co-sponsored additional trainings for attorneys who represent parent respondents in these proceedings. Another one-day conference for parent attorneys is planned for August 2007.

Annually since 2003, the IDS Office and SOG have offered five-day trial advocacy programs for public defenders, which are intensive hands-on training programs in which participants develop trial skills by working on their own cases. That program will be offered again in July 2007. With the assistance of the statewide Juvenile Defender and SOG, in June 2005, IDS co-sponsored its first annual conference on representing children in juvenile delinquency proceedings. A second annual conference was held in August 2006 and a third is scheduled for August 2007. *See* “Improved Juvenile Delinquency Representation” below. Also with the assistance of the Juvenile Defender and SOG, IDS sponsored four regional workshops for attorneys who handle juvenile delinquency cases in February, March, April, and May 2006. In February 2007, IDS also sponsored an intensive hands-on training for new juvenile delinquency attorneys.

For the past several years, IDS has sponsored an investigators conference for public defender staff investigators and private investigators who do a significant amount of appointed work. In March 2006, IDS and the SOG worked with the South Carolina Commission on Indigent Defense to co-sponsor a joint North and South Carolina public defender investigators conference. A second joint training is scheduled for March 2007. Finally, in April 2005, IDS and the SOG co-sponsored the first management training program for the chief public defenders and their administrative assistants; a second management program was held in April 2006.

Again with the assistance of the SOG, IDS will be sponsoring a number of training programs during the rest of the 2007 calendar year. A current calendar of all IDS co-sponsored training programs is available at www.ncids.org under the “Defender Training” link. The IDS Office also posts on its website all materials that are used in IDS co-sponsored training programs, as well as a comprehensive training materials index, so that attorneys around the State can benefit from programs they were unable to attend in person.

The IDS Office has provided funding for improvements to the SOG’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. As discussed above and in “Special Counsel Program” below, IDS has provided funding for a new Civil Commitment Manual, which is also available on the IDS website. The IDS Office is currently funding the development of a juvenile delinquency manual, *see* “Improved Juvenile Delinquency Representation” below, and is funding the development of an immigration manual,

so that appointed defense attorneys are in a better position to understand and advise their clients about the collateral immigration consequences of criminal convictions.

The IDS Office is considering more ways in which additional improved training and resources can be provided to public defenders and private attorneys, both to enhance the quality and efficiency of the services they provide, and to assist them in meeting the performance guidelines discussed above. *See* “Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level” above.

Improved Juvenile Delinquency Representation

In conjunction with the American Bar Association (“ABA”) Juvenile Justice Center, the National Juvenile Defender Center, and the Southern Juvenile Defender Center, the IDS Office conducted a statewide assessment of the quality of juvenile delinquency representation in North Carolina. As part of its mission to provide support to states working to improve their systems for delivering legal services to juveniles, the ABA had previously conducted similar assessments in a number of other states, including Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Montana, Ohio, Texas, and Virginia. During the Spring of 2003, surveys were mailed to all district court judges, all chief court counselors, and more than 200 private defense attorneys and assistant public defenders who represented juveniles around the State. In addition, teams of in-state and national experts conducted site visits to 11 selected North Carolina counties, observed juvenile court, and interviewed judges, defense attorneys, prosecutors, juvenile clerks, court counselors, and other system actors.

On October 22, 2003, the ABA released its report on North Carolina’s juvenile defense programs. The report contained a number of key findings about access to and quality of representation in delinquency proceedings in this State, such as: 1) the quality of juvenile defense was very uneven, partly due to a lack of statewide practice standards and insufficient training opportunities; 2) many juvenile defenders inadequately prepared their cases and had little or no access to support services; 3) many juvenile defenders had insufficient and/or untimely contact with their young clients; 4) juvenile defenders rarely filed pre-adjudication motions, including competency motions; 5) North Carolina overused and misused pre-adjudicatory detention; 6) in some counties, as many as 90% of juvenile cases ended in plea bargains; 7) minority children were over-represented in the juvenile justice system; 8) defenders rarely advocated for dispositional alternatives to detention, and were overly reliant on court counselor recommendations; 9) post-disposition representation was virtually non-existent, and juvenile appeals were rare; and 10) community-based treatment and mental health programs were inadequate.

The report also contained a number of ABA recommendations, such as: 1) ensure that juveniles have the assistance of counsel at the earliest possible stage; 2) consistently allocate sufficient resources to support the meaningful representation of juveniles; 3) designate a statewide Juvenile Defender to bring together resources and expertise, continue the evaluation process, and implement specific policies and programs; 4) work to stop the misuse and overuse of secure detention; 5) develop appropriate strategies to reduce disproportionate minority representation in the juvenile justice system; 6) develop specialized qualification standards and

performance guidelines for juvenile defenders; 7) create and support programs to elevate the status of indigent juvenile defense practice; 8) conduct an examination of juvenile caseloads to ensure that they are consistent with quality expectations; 9) develop and offer comprehensive training programs for juvenile defenders; 10) support pilot projects in more counties to increase the availability of diversion opportunities and treatment alternatives; and 11) develop procedures for expediting appeals in juvenile delinquency cases.

After the ABA's report was released, the IDS Commission formed a Juvenile Committee to review the ABA's findings and prepare recommendations for reform initiatives. That Committee in turn sought the assistance of 13 outside juvenile experts, including delinquency attorneys, special education and mental health advocates, and academics and law school clinical faculty. The Juvenile Committee met four times between December 2003 and February 2004, and delivered a formal report of its findings and recommendations to the General Assembly in May 2004. The Committee's primary recommendations were to create a new statewide Juvenile Defender position so that someone is working full-time on needed reform initiatives, and to develop and offer comprehensive training programs for juvenile defense attorneys. The General Assembly subsequently authorized the creation of a new statewide Juvenile Defender position, and the IDS Commission appointed attorney Eric J. Zogry to that position in November 2004. Zogry began work in January 2005.

Some of the Juvenile Defender's duties are to serve as a central resource and contact person for individual juvenile defenders and juvenile associations statewide; to field questions from practitioners and perform case consultations as needed; to develop ways to connect and support juvenile defense attorneys across the State; to evaluate the existing systems and practices, and the current quality of representation, in various areas of the State; to identify training needs and work with the SOG and other groups to formulate a long-term training plan; and to develop and maintain a clearinghouse of materials on North Carolina juvenile law and practice. The Juvenile Defender has also been assigned a number of long-term responsibilities, including developing uniform qualification standards, specialized performance guidelines, and caseload standards for juvenile defense attorneys.

Since January 2005, the Juvenile Defender has identified approximately 800 attorneys who are handling appointed juvenile delinquency cases throughout North Carolina, and created a listserv for those attorneys that currently has almost 300 members. The Juvenile Defender also created an advisory board composed of juvenile defense attorneys and other juvenile justice experts who help him focus the goals and tasks of the office. With the assistance of that advisory board, the Juvenile Defender developed a statement on the role of defense counsel in juvenile delinquency proceedings, which was adopted by the IDS Commission on November 4, 2005. That role statement was attached as Appendix E. to IDS' March 2006 report to the General Assembly. The Juvenile Defender has also developed a special page on the IDS website that is dedicated to juvenile delinquency representation and includes, among other things, an index of juvenile defender trial motions and forms, notes about juvenile delinquency case law since the new Juvenile Code went into effect in 1999, information about juvenile defender training programs, and links to related sites.

With the assistance of the Juvenile Defender Advisory Board, the Juvenile Defender developed model qualification standards for attorneys who represent juveniles, which were then circulated for comments in the 14 public defender districts. As of the date of this report, four public defender districts (Districts 10, 12, 15B, and 18) have incorporated some version of the model standards into their local appointment plans; three additional public defender districts (Districts 16B, 21, and 28) recently approved the model standards, and IDS Office staff will be incorporating them into those local plans in the coming weeks. The IDS Office is also providing funding for the development of a new juvenile delinquency manual and has contracted with an author to draft that manual. An editorial board of practitioners and law school clinic faculty has been formed, and the Juvenile Defender will be serving as the managing editor. IDS hopes to publish the manual and post it on our website by the end of 2007.

Since April 2006, the Juvenile Defender has been working with a committee composed of delinquency attorneys, a law school clinic professor, a district court judge, and an IDS Commissioner to develop specialized performance guidelines for attorneys who represent juveniles in delinquency proceedings. As with the non-capital criminal guidelines discussed above, the delinquency representation guidelines are intended to serve as a guide for attorney performance in the covered cases, to contain a set of considerations and recommendations to assist counsel in providing quality representation, and to be a training tool and resource. The committee plans to complete a final draft by May 2007, which will then be presented to the IDS Commission for approval to start a comment period with the bar, bench, and other system actors. After the comment period is complete, the committee will reconvene to review all of the comments that are received and make changes and improvements to the draft as appropriate. The final draft will then be presented to the IDS Commission for approval and published on the IDS website.

As discussed above, the Juvenile Defender is also actively working with SOG faculty to provide training programs for juvenile delinquency attorneys. See “Improved Training and Resources” above. The IDS Commission and staff believe the creation of this new position is a significant step toward elevating the quality of legal services provided to North Carolina’s children.

Improved Representation of Parent Respondents

The IDS Office has taken some steps to assess and improve the representation of parent respondents in abuse, neglect, or dependency and termination of parental rights cases. Since August 2003, the Assistant Director of the IDS Office has served as a parent attorney representative on the Advisory Committee to the North Carolina Court Improvement Project for Children and Families (“NC-CIP”), which is an organization dedicated to improving the quality of North Carolina’s family courts. During the fall of 2003, IDS Office staff set up a listserv for attorneys representing parent respondents in Chapter 7B cases across the State, which currently has almost 200 members. The IDS Office has also added attorney positions in the Durham County Public Defender Office and the Hoke/Scotland Public Defender Office to represent parent respondents in these proceedings.

In the fall of 2006, the IDS Commission established a new position in the Office of the Appellate Defender called the Parent Representation Coordinator; that position was filled in November 2006. Among other things, the Parent Representation Coordinator is responsible for coordinating appellate representation of indigent parent respondents in Chapter 7B cases; appointing counsel in all indigent Chapter 7B appeals statewide; helping ensure that appellate counsel are able to comply with the expedited deadlines in Rule 3A of the Rules of Appellate Procedure; working with SOG, NC-CIP, and others to develop training programs for trial and appellate lawyers who handle Chapter 7B cases; evaluating appellate briefs in Chapter 7B cases for inclusion in a statewide on-line brief bank; and performing case consultations with trial and appellate attorneys who represent parent respondents.

In May 2005, the IDS Office submitted a grant application to NC-CIP, which is funded by a grant from the United States Department of Health and Human Services' Administration for Children and Families. The grant application requested \$30,700 over a two-year period to cover staff time and expenses associated with developing specialized performance guidelines for attorneys who represent indigent parent respondents at the trial level. In September 2005, the AOC Director notified the IDS Office that the grant proposal had been approved in full. In January 2006, the IDS Director selected attorney Douglas L. Hall to serve as the Performance Guidelines Project Coordinator. Hall represents parent respondents at the trial level in Burke County, as well as the Department of Social Services ("DSS") in Avery County. With assistance from IDS Office staff, Hall initially developed a draft of performance guidelines for parent attorneys. Since March 2006, Hall has been working with a committee composed of parent attorneys, the new Parent Representation Coordinator, IDS Office staff, SOG faculty, a chief district court judge, a DSS Attorney, and a Guardian ad Litem Attorney Advocate to review drafts of the guidelines.

As with the non-capital criminal guidelines discussed above, the parent representation guidelines are intended to serve as a guide for attorney performance in the covered cases, to contain a set of considerations and recommendations to assist counsel in providing quality representation, and to be a training tool and resource. The committee plans to complete a final draft by May 2007, which will then be presented to the IDS Commission for approval to start a comment period with the bar, bench, and other system actors. After the comment period is complete, the committee will reconvene to review all of the comments that are received and make changes and improvements to the draft as appropriate. The final draft will then be presented to the IDS Commission for approval and published on the IDS website.

Finally, as shown in "Improved Training and Resources" above, the IDS Office has worked with SOG faculty and other system actors to develop new training programs for attorneys who represent parents. The IDS Commission and staff intend to devote more attention to improving parent representation in the future.

Special Counsel Program

During fiscal year 2005-06, the IDS Office continued to work with former AOC attorney Dolly Whiteside to make the existing special counsel programs around the State, which represent indigent respondents in involuntary commitment proceedings, more effective. Currently, there

are special counsel offices at Dorothea Dix Hospital in Wake County, Cherry Hospital in Wayne County, Umstead Hospital in Granville County, Broughton Hospital in Burke County. Effective September 1, 1006, IDS hired Whiteside as the new Special Counsel Supervising Attorney and she began working in the Office of Special Counsel at Dorothea Dix.

Sometime in late 2007 or early 2008, pursuant to the State Mental Health Reform Plan, Dorothea Dix Hospital will close and a new hospital will open in Butner, North Carolina that will serve the combined and realigned Dix and Umstead catchment areas. There also continues to be discussion of a new inpatient treatment facility or facilities opening in Wake County, including the possible expansion of Holly Hill Hospital, which is served by the Dix Special Counsel office. As the implementation of that reform progresses, as well as the planned realignment of the Cherry and Broughton hospital catchment areas and the construction of new facilities there in 2010 and 2012, IDS staff will continue to monitor and adjust Special Counsel Office staffing to ensure cost-effective quality representation.

In addition, after evaluation by IDS and AOC staff and the Orange/Chatham County Public Defender, the method of payment to private appointed counsel handling civil commitment cases in Orange County was modified in November 2003, which has generated annual savings since then. IDS and AOC staff also evaluated representation by appointed counsel in civil commitment cases in Cumberland County and instituted a new arrangement there during fiscal year 2004-05 to increase efficiencies and generate additional savings in that county. IDS staff continue to monitor the Cumberland County arrangement, as well as another contractual arrangement in Forsyth County, for continued cost-effectiveness and quality of representation. IDS staff are also exploring arrangements in other counties to identify additional areas for potential improvement and cost savings.

Effective August 22, 2005, the IDS Office also entered into a contract with Raleigh attorney Lou Newman to produce a manual for appointed attorneys who represent respondents in commitment matters. The manual went to print in early June 2006, and the AOC subsequently provided it to court officials involved in the commitment process, including judges, clerks, and magistrates. The comprehensive manual provides guidance for special counsel, assistant public defenders, and appointed counsel for respondents facing involuntary inpatient commitment, outpatient commitment, substance abuse commitment, and voluntary admission procedures for minors or incompetent adults. IDS has provided the manual to public defenders who handle commitment cases, and has made the manual available for free to indigent defense attorneys by posting it on the IDS website. The manual also will be used as a tool in training programs for appointed attorneys.

Evaluation of North Carolina Prisoner Legal Services

Pursuant to a contract with the State of North Carolina, North Carolina Prisoner Legal Services, Inc. (“NCPLS”) provides legal advice and assistance to prisoners in the custody of the Department of Correction (“DOC”). NCPLS also works toward administrative resolutions of inmate problems, and provides representation in state and federal court in criminal post-conviction proceedings, jail credit cases, and civil proceedings challenging conditions of confinement or the actions of government officials. Effective October 1, 2005, the General

Assembly transferred NCPLS' contract from DOC to IDS, and directed IDS to evaluate the program and report its findings. IDS in turn enlisted the assistance of a SOG Professor who specializes in program evaluation. The evaluation has consisted of documenting NCPLS' case-management process in work-flow format, recruiting 16 specialists in one or more of the areas covered by the contract to review a random sample of case files, and interviewing NCPLS staff. Pursuant to § 14.9(b) of S.L. 2005-276, the IDS Office will be reporting to the General Assembly on the findings of that evaluation in a separate report due by May 1, 2007.

Systems Evaluation Project

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

The planned major phases of the Systems Evaluation project include: 1) clearly defining what successful indigent defense systems should accomplish; 2) developing an evaluation tool that will measure, in objective terms, how well North Carolina's indigent defense systems achieve that definition of success; 3) pilot-testing the evaluation tool in one or two counties; 4) testing the reliability and accuracy of the evaluation tool by conducting an independent on-site evaluation, and then comparing the results of the on-site evaluation to the results of the evaluation tool; and 5) identifying data infrastructure needs and developing an implementation plan.

The Systems Evaluation Committee and staff are currently working on the first major phase of this project. On May 31, 2005, the IDS Office hired attorney Anna Levinsohn to be the Systems Evaluation Project Coordinator. With the assistance of Levinsohn and a professional facilitator from AOC Human Resources, the Committee and staff have undertaken a number of steps to define the mission and goals of indigent defense in North Carolina, and to articulate what an evaluation tool should measure. First, on March 18, 2005, IDS hosted a one-day conference for organizations that focus on criminal justice issues, innovative indigent defense programs around the country, and indigent defense service organizations from other states. IDS' out-of-pocket expenses for this conference were reimbursed by the Z. Smith Reynolds Foundation. The conference created, for the first time, a national forum where practitioners and criminal justice social scientists gathered to discuss approaches and strategies for evaluating indigent defense. Participants examined the role indigent defense should play and considered strategies for how best to meet clients' short and long-term interests, overall court system obligations, and community interests. In addition, participants began to identify ways to measure and communicate about the benefits to the public from quality indigent defense services.

Second, between March and October 2006, IDS Office staff conducted a series of focus groups around the State to interview representatives of groups or populations with different perspectives in the criminal justice system and community, including defense attorneys, judges, prosecutors, court clerks, clients, law enforcement, investigators, corrections, advocacy groups, and government and business representatives. A summary report of those focus groups should be posted on the IDS website in the coming months. Third, Office staff plan to assemble a Project Advisory Board of practitioners, criminal justice social scientists, and other stakeholders to work with IDS in developing a meaningful tool. Fourth, IDS staff plan to conduct periodic surveys to obtain critical input and feedback from the indigent defense community, the criminal justice system, and the public.

Once an evaluation tool is developed and tested, IDS intends to begin assessing the performance of existing systems in various North Carolina counties and districts, identifying best practices, and making recommendations for change where needed. However, before 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. In addition, the IDS Office must obtain legislative approval before establishing or abolishing a district or regional public defender office. In accordance with the IDS Act, the IDS Commission and IDS Office plan to obtain input from all of the State's 46 superior court districts during the evaluation process. (Additional materials about the Systems Evaluation Project, including the March 18, 2005 conference report, are available at www.ncids.org under the "Systems Eval. Project" link.)

II. DISTRICT CASE VOLUME AND COST STATISTICS

The existing data on the volume and cost of cases handled in each district by private assigned counsel and public defenders during fiscal year 2005-06 is attached to this report as Appendix E. While the reported data is limited in scope, the IDS Office continually works with AOC and the newly formed IDS Financial Services division to improve data collection procedures and data reporting capabilities for cases handled by private appointed attorneys, *see* "Improved Data Collection and Reporting" above, and has worked with the public defenders to improve disposition reporting from the public defender offices, *see* "Public Defender Cost-Effectiveness Studies" above. The IDS Office now has access to a full year of data collection under the revised systems for both private attorneys and public defenders, and hopes to include more detailed and helpful analyses in future annual reports.

III. CONTRACTS WITH LOCAL GOVERNMENTS FOR ASSISTANT PUBLIC DEFENDERS

G.S. 7A-346.2(a) directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions, including the number of such contracts, the number of attorney positions, and the dollar amount of each contract. During fiscal year 2005-06, as part of a broader "court set" grant from Mecklenburg County, the IDS Office had a contract with the county to fund two assistant public defender positions and six legal assistant positions in the Mecklenburg County Office of the Public Defender; the contractual amount for those positions was \$386,887. Also during fiscal year 2005-06, the IDS Office had a contract with Durham County to fund one assistant public defender position in the

Durham County Office of the Public Defender for a bond hearing project; the contractual amount for that position was \$48,376. In addition, the University of North Carolina (“UNC”) School of Law paid IDS \$20,000 during the Fall 2005 and \$20,000 during the Spring 2006 semesters for one Durham County assistant public defender to spend a portion of his time supervising law students in the UNC Criminal Law Clinic, which represents juveniles in delinquency proceedings in Durham County district court.

IV. CONSULTATION WITH OTHER ACTORS AND RECOMMENDED COST-SAVING MEASURES

Session Law 2005-276, § 14.12 directs the IDS Office to consult with the Conference of District Attorneys, the Conference of District Court Judges, and the Conference of Superior Court Judges to formulate proposals aimed at reducing future costs, such as decriminalizing minor traffic offenses, changing the way criminal district court is scheduled, and reevaluating the handling of capital cases. Section 14.12 further directs the IDS Office to include any proposals in this annual report.

Pursuant to § 14.12, members of the IDS Commission and staff have held a series of meetings with other court system actors to discuss potential cost-saving measures and to solicit their ideas and feedback. On September 8, 2006, IDS Commissioner and Retired Superior Court Judge Melzer A. Morgan and the IDS Director met with nine superior court judges to discuss potential reforms. On September 28, 2006, the IDS Director gave a presentation at the annual Clerk’s Conference, during which he discussed potential reforms. On October 11, 2006, the IDS Director met with all of the chief district court judges at their conference in Asheville. Finally, on January 11, 2007, the IDS Director met with the Executive Committee of the Conference of District Attorneys.

The IDS Commission has discussed the feedback that has been received from the actors identified above, and believes that a number of systemic changes would save taxpayer money and enhance the efficiency of North Carolina’s courts. Pursuant to § 14.12, the IDS Commission makes the following recommendations to the General Assembly.

A. Recommendations for Non-Capital Cases:

Fund Pilot Tests of More Efficient Scheduling Practices

The IDS Commission recommends that the General Assembly appropriate a modest amount of money to staff one or more pilot tests of alternative scheduling systems in district and/or superior court that would minimize attorney wait time. As discussed in “Private Appointed Counsel Waiting-in-Court Study” above, IDS Office staff have completed a study demonstrating that defense attorney wait time attributable to the current scheduling system in North Carolina adds significant costs to indigent defense, particularly in criminal district court. *See* Appendix B. The IDS Commission and staff believe a modernized approach to scheduling cases would generate substantial savings in taxpayer money. The IDS Commission recommends that, as a first step toward minimizing some of those unnecessary costs, IDS should work with one or more districts on a voluntary basis to pilot test alternative systems. The Commission believes that any

pilot programs would need to last at least one full year before IDS will be in a position to make more wide-ranging recommendations about scheduling.

Fund a Study to Identify Misdemeanors that Should be Decriminalized

IDS spends a significant amount of money on appointed attorneys in lower-level traffic offenses in district court that carry the theoretical possibility of imprisonment, and the IDS Commission believes that decriminalization of some of those offenses would save money. *See also Without Favor, Denial or Delay: A Court System for the 21st Century 53-54* (Commission for the Future of Justice and the Courts in North Carolina, Dec. 1996). The IDS Commission recommends that the General Assembly appropriate a modest amount of money to fund a joint study by IDS and the North Carolina Sentencing and Policy Advisory Commission to identify misdemeanors that would be most appropriate for decriminalization because they never result in jail sentences. If the identified offenses are later decriminalized, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. Some examples of offenses that might be appropriate for decriminalization include minor non-DWI-related traffic offenses, worthless checks, failure to return rental property, willful destruction of private property, wildlife offenses, and other offenses where it is currently permissible for the defendant to waive appearance and enter a plea.

Increase the Use of Public Defenders and Improve IDS' Ability to Supervise the Chief Public Defenders

The IDS Commission believes that expansion and regionalization of the public defender system would generate savings and improve IDS' ability to fulfill its statutory mission. *See "Improvements in Response to Performance Audit by the Office of the State Auditor, Regionalization of the Public Defender System"* above. However, for the reasons described below, the IDS Commission also strongly believes that a regional public defender system must be coupled with a more effective management and supervisory relationship between IDS and the chief public defenders.

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

Second, the current system of appointment by senior resident superior court judges is not conducive to active supervision of the chief public defenders. The judges who currently appoint the chief public defenders do not have the time or information to exercise coordinated management of the public defender offices. Even if the judges had such time and information, it would not be appropriate for judicial officials to manage and supervise the public defender

offices when the attorneys in those offices appear before them in court. The pending lawsuit against IDS and AOC for former Durham County Public Defender's alleged sexual harassment of female employees illustrates the need for a more effective system of supervising the public defenders and for providing recourse for their employees in the event of improper behavior.

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

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

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

Sixth, because the population and caseload in many rural areas of North Carolina would be insufficient to support a traditional public defender office, the IDS Commission believes that a regionalized public defender system would be most suited to this State. See "Improvements in Response to Performance Audit by the Office of the State Auditor, Regionalization of the Public Defender System" above. If IDS' vision of regionalized public defender offices is implemented,

most public defender regions would encompass more than one superior court district, which would also necessitate changes to the current system of appointment by the local senior resident superior court judge.

Improved Recoupment of Attorney Fees

The IDS Commission believes that improvements to the procedures for recouping attorney fees from clients who have been ordered to repay the State would generate additional revenues for IDS and, thus, decrease our reliance on legislative appropriations. Currently, recoupment rates vary widely among counties. See “Improved Revenue Collection” above and Appendix D. The IDS Commission and staff believe that increasing the recoupment rates in low-performing counties to the statewide average of 11.7% would generate an additional \$2.2 million for the indigent defense fund. The Commission has discussed the following two possible initiatives to improve recoupment revenues: 1) The General Assembly could direct each elected clerk to designate one person in his or her office as the point person for recoupment; and/or 2) Recoupment revenues could be shared with the clerks’ offices in counties that have recoupment rates higher than some threshold, so there is an incentive and benefit to the clerks for collecting.

On February 1, 2007, the IDS Director wrote a letter about this matter to the President and Executive Director of the Conference of Clerks of Superior Court, in which he asked for their reactions to these ideas and solicited any other suggestions they may have for improving recoupment revenues. The Executive Committee of the Conference of Clerks discussed this matter at their February 15, 2007 meeting and subsequently responded that these recommendations “raise grave concerns” for the Clerks of Superior Court. With respect to the potential recommendation that the General Assembly direct each elected clerk to designate one person in his or her office as the point person for recoupment, the Clerks responded that this would require one additional staff person in each clerk’s office. With respect to the potential recommendation that recoupment revenues could be shared with the clerks’ offices in counties that have recoupment rates higher than some threshold, the Clerks replied that the recommendation “is not viable since there would be no governing mechanism or channel in which to pursue this action.” In light of the Clerks’ concerns about these suggestions, the IDS Commission recommends that the General Assembly direct IDS to consult further with the Clerks about the viability of these ideas and other potential measures to improve recoupment.

Improved Indigency Screening

Through the legislatively mandated consultations with other system actors, the IDS Commission and staff have identified improved indigency screening as an area of concern. However, the IDS Commission does not believe that any legislative action would be necessary or appropriate in this area at this time. G.S. 7A-498.5(c)(8) assigns responsibility for developing indigency standards to the IDS Commission and, in the coming months, the Commission will be forming a committee to develop those standards and to consider other methods to improve indigency determinations. The IDS Office will address this area further in its March 2008 report to the General Assembly.

B. Recommendations for Capital Cases:

Eliminate Felony Murder as a Ground for a Death Sentence

The IDS Commission and staff believe that narrowing the definition of a potentially capital case would generate significant savings. IDS recommends that the General Assembly amend G.S. 14-17 to eliminate felony murder as a possible basis for a death sentence.

Other Systemic Changes

The IDS Commission and staff are currently engaged in discussions with other court system actors concerning additional systemic changes that could generate savings in capital cases. See “Capital Case Disposition Study” above.

V. OTHER LEGISLATIVE RECOMMENDATIONS

A. Increased Funding for the Private Appointed Counsel Fund:

The IDS Commission has developed a proposed budget for fiscal years 2007-08 and 2008-09, which asks the General Assembly to continue this fiscal year’s \$4.5 million appropriation as recurring funding. The proposed budget also requests an additional recurring increase of \$1.5 million in fiscal year 2007-08, and an additional recurring increase of \$5.15 million in fiscal year 2008-09, to maintain the current level of services during the next biennium at a projected 5.3% annual growth rate.

In addition, the IDS Commission has requested a recurring increase of \$8.5 million in fiscal year 2007-08, and a recurring increase of \$9 million in fiscal year 2008-09, to enable the Commission to raise the rate that is paid to private appointed attorneys in non-capital cases by \$10 per hour. As noted above in “Uniform Rates of Compensation,” while the IDS Commission intended the \$65 non-capital rate to be essentially revenue neutral, it was slightly below the prevailing average in a number of North Carolina counties at the time it was enacted in 2002. The standard rate is significantly below what attorneys can earn in retained cases, and needs to be increased to keep pace with increases in the costs of living and operating a law practice. Indeed, state employee salaries have increased by 10.2% since IDS was established, including 7.5% in the last two years alone, but the non-capital hourly rate paid to private attorneys has remained flat.

B. Increased Funding for Public Defender Office Equipment and Salaries:

The IDS Commission’s proposed budget for the 2007-2009 biennium also asks the General Assembly for \$98,800 in recurring funding for critical equipment replacement in state defender offices. In addition, if the General Assembly enacts the Governor’s recommendation that expansion funding be appropriated to add 25-year and 30-year longevity steps for court officials, IDS requests an additional \$105,991 in recurring funding to maintain the traditional pay parity between state-employed prosecutors and defense counsel in North Carolina.

If the AOC requests an increased appropriation to raise district attorney and assistant district attorney salaries based on a salary study performed by Fox Lawson & Associates in March 2005, IDS also will be asking for an increased appropriation to allow equivalent raises for public defenders, assistant public defenders, and other full-time defenders employed by IDS in order to maintain pay parity for state-employed defenders.

C. Funding to Develop a Pilot System for Electronic Fee Filing:

In fiscal year 2007-08, the IDS Commission is requesting \$175,000 in non-recurring funds to develop a pilot web-based system for electronic submission of fee applications in capital cases and appeals. As noted above, additional funds would be necessary later to expand the system statewide to all indigent case throughout North Carolina. However, the IDS Commission and staff, as well as the Office of the State Auditor, believe the long-term efficiency savings to the State would significantly outweigh the initial costs for development and implementation. *See* “Improvements in Response to Performance Audit by the Office of the State Auditor, Electronic Case Reporting and Fee Filing” above.

Because IDS’ ability to improve and automate the processing of fee applications statewide is dependent on the technology available to other court system actors, the IDS Commission and staff also believe AOC must be an active partner in this endeavor. In addition to the funding that would be needed to create a pilot web-based system, IDS suggests that the General Assembly direct AOC and IDS to consult about a statewide system of electronic fee submission and develop a proposal for statewide implementation.

D. Possible Increased Appropriation for Transcript Production:

The AOC Court Reporter Coordinator has asked IDS and AOC to increase the per page rates that the State pays for transcription in indigent cases. Currently, IDS pays court reporters \$1.75 per page for an original transcript, which has been the rate since 1999. The court reporters have asked IDS to increase the rate to \$3.00 per page for an original, either all at once or incrementally over a period of four years. The IDS Commission believes that IDS is not in a position to evaluate the merits of that request, or to increase the per page rates without a specific legislative appropriation for that purpose. Thus, the IDS Office wanted to notify the General Assembly of the court reporters’ request and to inform the Legislature that, based on fiscal year 2005-06 spending on transcripts, each \$.25 increase in the per page rate paid to court reporters would cost IDS an additional \$105,434 annually.

E. Additional Staff for Existing Public Defender Offices:

During the 2007 legislative session, the IDS Office will again ask the General Assembly for authority to add attorney and support staff positions to existing defender offices where IDS determines that the additions will be cost-effective and/or enhance the quality of representation in a district. *See* “Expansion of Existing Public Defender Offices” above.

F. New Public Defender Offices in District 5 and District 22:

One of the IDS Commission's statutory duties is to determine the most appropriate method for delivering quality and cost-effective legal services to indigent persons in each judicial district. *See* G.S. 7A-498.5(d) and (e). Prior to recommending any changes to the existing methods of service delivery, the Commission is required to ensure that the private bar has the opportunity for significant involvement in the decision-making process; to solicit written comments from the local bar, Senior Resident Superior Court Judge, and Chief District Court Judge; and to forward all comments received to the appropriate members of the General Assembly. G.S. 7A-498.5(e).

Consistent with those responsibilities, on October 26, 2006, the IDS Office formally invited the local bar and judicial officials to comment in writing about the possibility of new public defender offices in District 5 (New Hanover and Pender counties) and District 22 (Alexander, Davidson, Davie, and Iredell counties). On December 8, 2006, the IDS Commission reviewed and discussed the comments that were received, and unanimously voted to recommend establishing new offices in those districts. On February 20, 2007, the IDS Director submitted formal recommendations to the General Assembly.

IDS Office staff project that a District 5 office would save the State approximately \$165,000 annually once the office is operating at full capacity and that a District 22 office would save the State approximately \$160,000 annually once the office is operating at full capacity. The IDS Commission and staff recognize that, unless there is existing vacant space in the county courthouses, those State savings would be offset by any county costs associated with providing facilities. *See* G.S. 7A-300 *et seq.* However, the Commission and staff believe the annual savings to the State would be substantially higher than the annual cost to the counties. In addition, our experience has shown that, because public defender offices have the institutional infrastructure to work with the courts and jails to implement system efficiencies, they typically save counties money by reducing the jail population and county jail costs.

Based on comment periods that are currently underway, the IDS Commission may be recommending additional new public defender offices in other areas during the 2007 legislative session.

G. Authorization to Pay Attorneys for Filing *Certiorari* Petitions and Oppositions in the United States Supreme Court in Capital Cases and when Important Federal Issues Arise in Non-Capital Cases:

In the 2007 legislative session, the IDS Commission will ask the General Assembly to revise the current statutes to authorize IDS to pay private attorneys for filing *certiorari* petitions and oppositions in the Supreme Court of the United States in capital cases and when important federal issues arise in non-capital cases. The IDS Rules state that if a capitally sentenced defendant "does not receive sentencing relief in the Supreme Court of North Carolina, the appointed appellate lawyer shall prepare and file in the Supreme Court of the United States a timely petition for writ of *certiorari* to the Supreme Court of North Carolina, unless relieved of this responsibility by the IDS Director or Appellate Defender." Rules of the Commission on

Indigent Defense Services, Rule 2B.4 (July 1, 2001). This rule is consistent with the State Supreme Court's order in *In re Hunoval*, 294 N.C. 740 (1977), which requires an appointed attorney to file a *certiorari* petition in capital cases to discharge his or her ethical obligations to the client. In addition, counsel must file a *certiorari* petition to keep the State from setting an execution date pursuant to G.S. 15-194(2) while the defendant pursues post-conviction relief in state and federal court. Finally, Fourth Amendment violations can not be litigated in federal habeas proceedings and, if the Supreme Court of North Carolina denies relief on such a claim, the defendant's only possibility for relief is to seek *certiorari* review in the United States Supreme Court.

The current statutes, however, do not authorize IDS to pay private attorneys for performing this valuable service. See G.S. 7A-451(b) and 7A-498.8(b). The federal courts also will not pay for this work because the *certiorari* petition is deemed to be part of litigating the state court claims. Thus, private attorneys are currently expected to provide this service in capital cases without compensation. At the current capital rate of \$95 per hour, IDS estimates that paying for this work would cost approximately \$30,400 annually.

Similarly, there is no statutory authorization for IDS to pay an attorney for filing a *certiorari* petition in the Supreme Court of the United States when a non-capital case involves important federal constitutional issues. As with capital cases, the federal courts also will not pay for this work because the *certiorari* petition is deemed to be part of litigating the state court claims. If the General Assembly extends the entitlement to counsel to the filing of a *certiorari* petition or opposition in non-capital cases involving important questions of federal law, IDS intends to adopt a rule requiring prior approval from the Appellate Defender or IDS Director if an attorney wants to be compensated by the State for this service. At the current non-capital rate of \$65 per hour, IDS estimates that paying for this work would cost approximately \$48,750 annually. If the General Assembly appropriates sufficient funds for the IDS Commission to increase the non-capital rate to \$75 per hour, IDS estimates that paying for this work would cost approximately \$56,250 annually.

H. Allow the Division of Motor Vehicles to Disclose Social Security Numbers to the Office of Indigent Defense Services:

Pursuant to G.S. 20-7(b2), the social security number of an applicant for an identification card, learners permit, or drivers license is not a public record, and shall not be disclosed except as allowed under federal law. G.S. 20-7(b2) further provides:

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

- (1) For the purpose of administering the drivers license laws.
- (2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.
- (3) To the Department of Revenue for the purpose of verifying taxpayer identity.

While the Division of Motor Vehicles (“DMV”) previously allowed IDS staff to access social security numbers in their system for purposes of verifying taxpayer identity to collect outstanding judgments for attorney fees, DMV revoked that access in 2005 pursuant to the above statute. In the past, IDS set-off debt staff would get a weekly listing of attorney fee judgments from around the State, obtain the person’s date of birth and address from the statewide Automated Criminal Information System, and then use the social security numbers in the DMV system to verify the taxpayer’s identity before intercepting a state tax refund to satisfy a judgment. According to set-off debt program staff, revenues from recoupment have increased since DMV allowed that program to access social security numbers in its system, and can be expected to decrease now that the access has been revoked. During the 2007 legislative session, IDS will be asking the General Assembly to amend G.S. 20-7(b2) to allow DMV to disclose social security numbers to IDS staff for the purpose of verifying taxpayer identity and collecting outstanding attorney fee judgments.

I. Direct AOC and IDS to Conduct a Feasibility Study of Providing IDS with Indigent Case Information when Cases are Initiated:

The IDS Commission and staff agree with the Office of the State Auditor’s recommendation that IDS should obtain indigent case information when cases are initiated and before a fee application is received. *See* Performance Audit: Office of Indigent Defense Services (Feb. 2007), available at www.ncauditor.net. However, there currently are a number of technological and resource barriers to implementing these recommendations for the 190,000 private appointed counsel cases that IDS oversees annually.

All criminal cases in North Carolina are entered into a statewide automated criminal information system (“ACIS”). However, ACIS is not capable of directly communicating with the North Carolina Accounting System (“NCAS”). In addition, while ACIS identifies the attorney of record in a case, it does not distinguish between retained and appointed counsel, and it is not always up to date. AOC is in the process of phasing in a statewide automated case information system for juvenile cases (“J-Wise”), including abuse/neglect/dependency, termination of parental rights, and delinquency cases. At this time, 75% of the counties have access to J-Wise, with the remaining 25% expected to be on line by the summer of 2007. IDS staff believe that, like ACIS, J-Wise is not capable of directly communicating with NCAS. In addition, because juvenile cases are highly sensitive and confidential, AOC has informed the IDS staff that it will likely be at least one year before the security modules can be established to allow access to J-Wise by the central IDS Office. Chapter 35A competency cases and child support contempt cases are entered into a statewide civil information system (“VCAP”). However, VCAP also is not capable of directly communicating with NCAS, does not distinguish between retained and appointed counsel, and is not always up to date. Finally, there are some confidential civil cases under IDS’ oversight, such as commitment proceedings, that are not currently entered into any statewide automated information system and for which all records are kept manually. Thus, with our current systems, obtaining all indigent case information in advance would be difficult and cumbersome at best.

Because of the complicated issues involved with establishing these procedures, including the technological barriers, IDS suggests that the General Assembly direct AOC and IDS to consult, conduct a feasibility study, and develop a proposal for IDS Office staff to obtain indigent case information when cases are initiated.

J. Transfer the Chief Public Defenders, IDS Director, Appellate Defender, and Capital Defender to the Judicial Retirement System:

The IDS Commission supports the proposal of the Association of Public Defenders to transfer the Chief Public Defenders from the Teachers and State Employees Retirement System to the Judicial Retirement System if the General Assembly appropriates sufficient funding to IDS to cover the additional costs. Moreover, if the Chief Public Defenders are added to the Judicial Retirement System, the IDS Commission believes the IDS Director, Appellate Defender, and Capital Defender should also be added. IDS Office staff predict recurring costs of about \$200,000, with an additional \$10,000 for each new chief public defender if new offices are created. If the General Assembly implements this proposal, the IDS Commission also requests any necessary non-recurring funding that would be required based on an actuarial analysis.

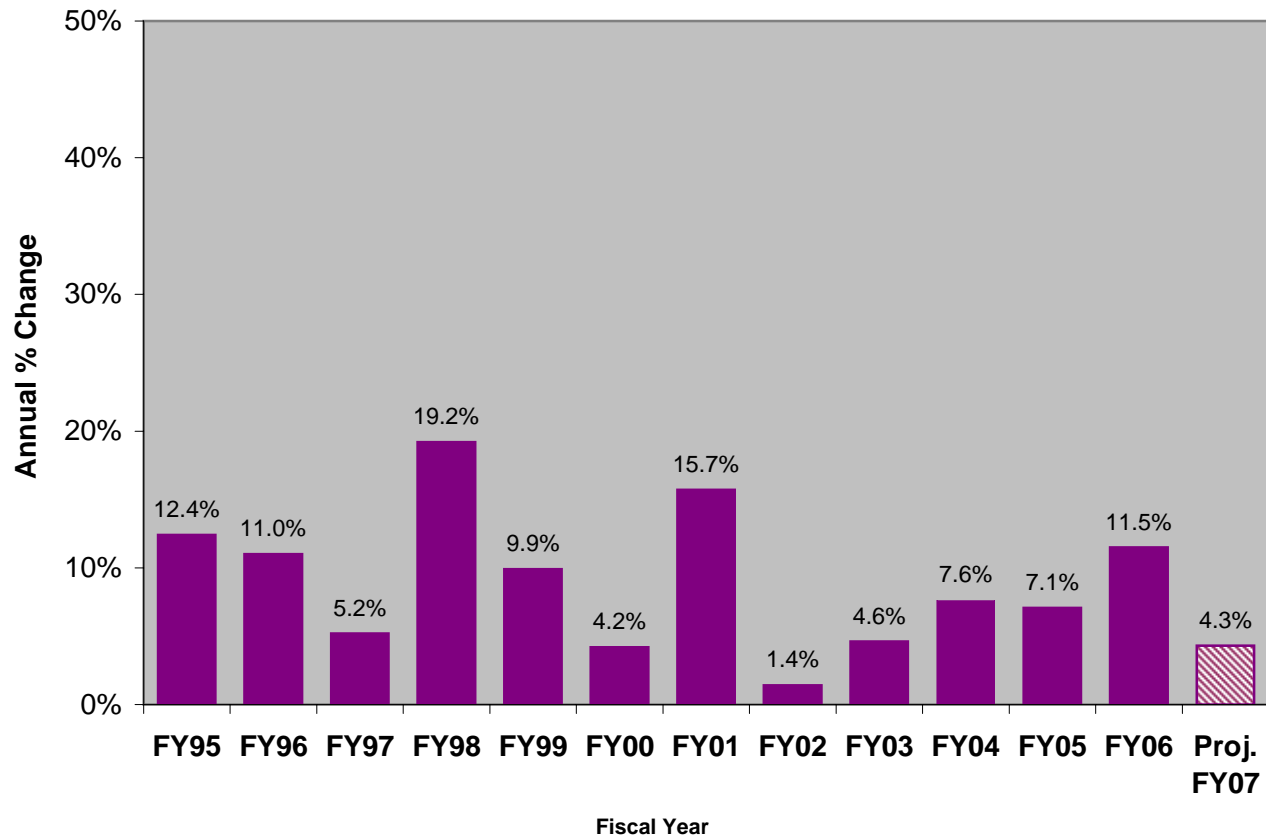
VI. CONCLUSION

The General Assembly's creation of the IDS Commission and IDS Office makes North Carolina a national leader in the development of quality, cost-effective, and accountable indigent defense programs. Several states, including Alabama, Georgia, South Carolina, Virginia, 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.

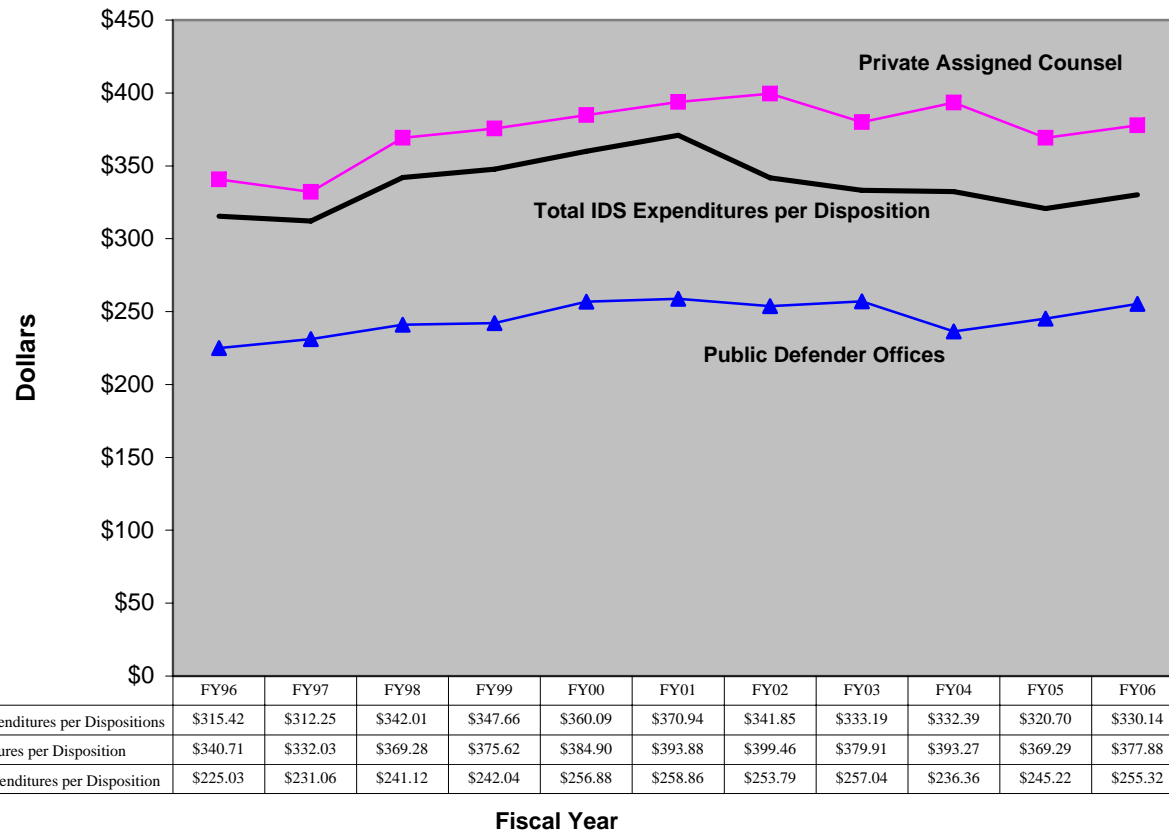
APPENDIX A

Annual Percent Change in Actual Total Indigent Defense Expenditures

(excludes prior year obligations and includes current obligations)



Indigent Defense Expenditure History per Disposition (Prior Year Obligations Removed FY94 to FY06)



Sources: Administrative Office of the Courts, Annual Reports 1988-99 through 2000-04 and IDS Office Chief Financial Officer. Based on caseload demand.

**Indigent Defense Expenditure History
FY89 to FY06**

| Type of Expenditure | FY89 | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 | FY03 | FY04 | FY05 | FY06 |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| <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 | 10,876,856 | 10,005,808 | 10,714,595 | 10,993,138 | 12,258,524 |
| 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 | 32,226,789 | 37,847,981 | 37,879,960 | 45,380,760 | 52,028,772 |
| 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 | 2,932,196 | 3,195,779 | 2,927,609 | 3,763,905 | 3,899,309 |
| GAL | 102,770 | 71,827 | 71,630 | 77,089 | 115,313 | 123,838 | 159,776 | 208,031 | 298,241 | 278,687 | 180,819 | 188,468 | 554,855 | 637,750 |
| 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 | \$ 4,566,156 | \$ 5,468,911 | \$ 5,735,608 | \$ 6,733,847 |
| Obligated at Year-End | 2,532,297 | 1,695,381 | 847,691 | 1,000,000 | - | - | 1,849,459 | 2,182,699 | 2,452,000 | 7,406,919 | 8,703,686 | 11,730,204 | 8,971,970 | 4,036,967 |
| Total PAC | \$ 17,500,240 | \$ 26,224,228 | \$ 27,956,909 | \$ 32,161,061 | \$ 33,883,335 | \$ 40,632,705 | \$ 44,551,915 | \$ 48,110,724 | \$ 56,863,403 | \$ 57,654,279 | \$ 64,500,229 | \$ 68,909,747 | \$ 75,400,236 | \$ 79,595,169 |
| 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 | \$ 55,202,279 | \$ 57,093,310 | \$ 60,206,061 | \$ 63,670,032 | \$ 70,623,199 | |
| Annual % Change excluding prior year oblig. Including current oblig. | | | 10.85% | 19.24% | 5.01% | 23.57% | 9.65% | 3.84% | 18.20% | 0.95% | 3.43% | 5.45% | 5.75% | |
| <i>Public Defender Offices & Special Counsel</i> | | | | | | | | | | | | | | |
| IDS Office | | | | | | | | | \$ 179,459 | \$ 472,471 | \$ 499,977 | \$ 580,360 | \$ 663,219 | \$ 749,008 |
| 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 | \$ 13,917,622 | \$ 15,987,985 | \$ 17,225,616 | \$ 19,980,044 |
| 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 | \$ 1,021,943 | \$ 1,048,528 | \$ 1,109,151 | \$ 1,228,353 |
| Capital Defender | | | | | | | \$ 183,896 | \$ 278,065 | \$ 352,240 | \$ 392,940 | \$ 777,491 | \$ 1,115,204 | \$ 1,796,881 | \$ 1,540,186 |
| Juvenile Defender | | | | | | | | | | | | | \$ 79,776 | \$ 154,617 |
| Set-Off Debt | | | \$ 91,109 | \$ 91,109 | \$ 86,152 | \$ 83,085 | \$ 82,489 | \$ 84,414 | \$ 92,402 | \$ 65,519 | \$ 71,373 | \$ 68,900 | \$ 72,913 | \$ 79,930 |
| Special Counsel | \$ 264,601 | \$ 378,859 | \$ 397,427 | \$ 415,995 | \$ 455,201 | \$ 476,500 | \$ 502,067 | \$ 512,718 | \$ 674,721 | \$ 773,292 | \$ 802,022 | \$ 845,239 | \$ 871,096 | \$ 993,071 |
| Total State Offices | \$ 5,557,586 | \$ 10,067,988 | \$ 10,347,097 | \$ 10,802,248 | \$ 11,413,943 | \$ 12,187,593 | \$ 13,502,925 | \$ 14,204,910 | \$ 15,268,200 | \$ 15,700,949 | \$ 17,090,428 | \$ 19,646,216 | \$ 21,818,652 | \$ 24,725,209 |
| Annual Percent Change | | | 2.8% | 4.4% | 5.7% | 6.8% | 10.8% | 5.2% | 7.5% | 2.8% | 8.8% | 15.0% | 11.1% | 13.3% |
| Total IDS Expenditures | \$ 23,057,826 | \$ 36,292,216 | \$ 39,627,762 | \$ 42,963,309 | \$ 45,297,278 | \$ 52,820,298 | \$ 58,054,840 | \$ 62,315,634 | \$ 72,131,603 | \$ 73,355,228 | \$ 81,590,657 | \$ 88,555,963 | \$ 97,218,888 | \$ 104,320,378 |
| Annual Percent Change | | | 9.2% | 8.4% | 5.4% | 16.6% | 9.9% | 7.3% | 15.8% | 1.7% | 11.2% | 8.5% | 9.8% | 7.3% |
| 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 | \$ 70,903,228 | \$ 74,183,738 | \$ 79,852,277 | \$ 85,488,684 | \$ 95,348,408 | |
| Percent Change in Total Expenditures (exclude prior yr oblig.) | | | 12.4% | 11.0% | 5.2% | 19.2% | 9.9% | 4.2% | 15.7% | 1.36% | 4.63% | 7.64% | 7.06% | 11.53% |

APPENDIX B

N.C. Office of Indigent Defense Services

**FY05 Private Appointed Counsel
Waiting-in-Court Study**

August 2005

Office of Indigent Defense Services
123 West Main Street, Suite 400
Durham, NC 27701
919-560-3380
www.ncids.org



FY05 PAC Waiting-in-Court Study

August 2005

Purpose

Estimate the cost to indigent defense services of paying for private appointed counsel (PAC) waiting-in-court time. The study also looked at court, county, and district wait-time trends and patterns to identify areas in the state where waiting-in-court time was either significantly better or worse than average, and where cost savings might be maximized.

Methodology

The study looked at all non-capital PAC fee applications paid during a three-month period in FY05. On each fee application, PACs report the total time needed to handle a case and a breakdown of this time into hours spent out-of-court, in-court, and waiting-in-court. AOC data-entry personnel record total time reported per fee application, but due to cost constraints, are currently unable to record PAC fee application time breakdowns. The study retrieved fee applications paid between August 1, 2004 and October 31, 2004 and entered all fee application data in-house. There were 44,975 non-capital fee applications paid during this time period. 90.6% (or 40,792) of the fee applications were entered by IDS data-entry personnel.

IDS-approved “attorney-for-the-day” and flat per case fee applications, fee applications that were missing a time breakdown, and data entry errors were excluded from study calculations. Fee applications signed by a superior court judge, but coded by AOC data-entry personnel as a “district court” fee application, were recoded as superior court cases. Similarly, fee applications signed by a district court judge, but coded by AOC data-entry personnel as “superior court,” were recoded as district court cases.

The following is a breakdown of all fee applications in the study:

| | |
|---|--------|
| All Fee Applications in Study | 40,792 |
| Superior Court | 7,290 |
| District Court | 25,658 |
| Juvenile | 3,059 |
| Data-Entry Errors, Etc. (removed from study calculations) | 4,785 |

Key Findings

The study looked at PAC waiting-in-court time for the state, and by court and district. In addition, in some courts, courtroom-scheduling procedures are handled differently for different types of cases. For example, in district court, district attorneys schedule criminal cases and courtroom clerks schedule competency and involuntary commitment cases. The study looked at different types of scheduling procedures independently.

PAC Reported Wait-Time

- 68.9% (or 24,795) of PAC fee applications reported some waiting-in-court time.
- On average, PACs reported spending 4.55 hours per case and 57 minutes (or 21%) of this time waiting in court.
- As reported, annualized for FY05, PAC waiting-in-court time cost \$9,804,678 (or 20.9%) of all fees paid.
- District court cases scheduled by the DA were the most costly, both in terms of wait-time cost and percentage of time per case spent waiting in court. PAC wait-time in these cases cost \$5.25 million and took up 26% of PAC total time per fee application.
- A breakdown of PAC hours per fee application by court and case type, as well as the cost of reported wait time, is presented in the table below.

| | A | B | C | D | E | F | G | H | I | J |
|----|---|--------------|--------------------------|------------------------------|----------------------------------|------------|---------------|---------------------------------|----------------|---|
| 1 | Breakdown of Average Hours Reported per PAC Non-Capital Fee Applications | | | | | | | | | |
| 2 | | No. Fee Apps | Average Hrs of Wait-Time | Average Hrs of In Court Time | Average Hrs of Out of Court Time | Total Time | Total Cost | Total No. of Hours of Wait Time | Wait-Time Cost | Wait-Time Cost Annualized (J+(J*.10) ⁴) |
| 3 | Statewide | 36,007 | .95 (21%) | 1.04 (23%) | 2.57 (56%) | 4.55 | \$ 10,530,811 | 34,282 | \$ 2,228,336 | \$ 9,804,678 |
| 4 | Superior Court Criminal* | 7,180 | 1.33 (16%) | 1.63 (20%) | 5.19 (64%) | 8.15 | \$ 3,754,273 | 9,525 | \$ 619,125 | \$ 2,724,150 |
| 5 | District Court (DA scheduled)** | 20,995 | .87 (26%) | .78 (24%) | 1.67 (50%) | 3.33 | \$ 4,494,455 | 18,360 | \$ 1,193,400 | \$ 5,250,960 |
| 6 | Juvenile Delinquency & Undisciplined Contempt*** | 2,233 | 1.55 (19%) | 2.11 (26%) | 4.47 (55%) | 8.13 | \$ 592,232 | 3,469 | \$ 225,485 | \$ 992,134 |
| 7 | A/N/D and TPR (Non-DA) | 3,749 | .95 (18%) | 1.38 (26%) | 2.94 (56%) | 5.28 | \$ 1,279,402 | 3,573 | \$ 232,245 | \$ 1,021,878 |
| 8 | Invol. Commitment & Competency (non-DA) | 998 | .12 (5%) | .59 (23%) | 1.86 (72%) | 2.57 | \$ 170,998 | 122 | \$ 7,930 | \$ 34,892 |
| 9 | * Calculations for Superior Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases. | | | | | | | | | |
| 10 | **Calculations for District Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases. | | | | | | | | | |
| 11 | *** Calculations for Juvenile Court excluded Juvenile Other and GAL case types because too little is known about those case types. | | | | | | | | | |

- Comparing fee applications with some wait-time to fee applications with no wait-time, the study found that wait-time did not cause a one-to-one increase in the total time reported per case. Instead, in district court, every additional hour of wait-time per case amounted to a 40-minute increase in total hours per case. In superior court, every additional hour of wait-time amounted to a 16-minute increase in total hours.

Zero Wait-Time Adjusted

More than 30% of all fee applications reported zero time waiting-in-court. Because it is difficult to believe that one-third of all PAC cases had zero waiting-in-court time, PAC wait-time appears to be significantly under-reported on fee applications. There are a number of reasons why wait-time might be regularly under-reported or not reported, such as concern about not being reimbursed for this time and the lack of accurate time-keeping by attorneys between the categories of waiting-in-court time and in-court time.

Since it is unlikely that over 30% of all fee applications would have no waiting-in-court time, the study assumed that fee applications reporting some wait-time were more accurate than fee applications reporting zero wait-time. The study then adjusted for applications reporting zero wait-time by calculating statewide and courtroom wait-time averages using only the fee applications reporting some wait-time. Those averages were then applied to the zero wait-time fee applications to estimate the true cost of wait-time in North Carolina. A breakdown of PAC hours per fee application when some wait time was reported, as well as the cost of wait time under the zero wait-time adjusted methodology, is presented in the table on the following page. The true cost of PAC wait-time in North Carolina likely falls somewhere between the low estimate (PAC Reported Wait Time) and the high estimate (Zero Wait-Time Adjusted).

| | A | B | C | D | E | F | G | H | I | J | K | L | M |
|----|---|--------------|--------------------------|------------------------------|----------------------------------|------------|--------------|---------------------------------|--|--|---|----------------|---|
| 1 | Breakdown of Average Hours Reported per PAC Non-Capital Fee Application for Fee Applications Reporting Some Wait-Time | | | | | | | | | | | | |
| 2 | | No. Fee Apps | Average Hrs of Wait-Time | Average Hrs of In Court Time | Average Hrs of Out of Court Time | Total Time | Total Cost | Total No. of Hours of Wait Time | No. of Zero Wait Time Fee Applications | Total Estimated Wait-Time Hrs for Fee Apps with Zero Wait-Time | Total Estimated Wait-Time Including Zero-Wait-Time Fee Apps | Wait-Time Cost | Wait-Time Cost Annualized (J+J*.10) ⁴ |
| 3 | Statewide | 24,795 | 1.38 (29%) | 0.85 (18%) | 2.57 (54%) | 4.81 | \$ 7,626,001 | 34,282 | 11,212 | 15,473 | 49,755 | \$ 3,234,046 | \$14,229,804 |
| 4 | Superior Court Criminal* | 5,154 | 1.85 (22%) | 1.33 (16%) | 5.1 (62%) | 8.28 | \$ 2,731,433 | 9,525 | 2,026 | 3,748 | 13,273 | \$ 862,752 | \$ 3,796,107 |
| 5 | District Court (DA scheduled)** | 14,775 | 1.24 (35%) | 0.62 (17%) | 1.71 (48%) | 3.57 | \$ 3,381,094 | 18,360 | 6,220 | 7,713 | 26,073 | \$ 1,694,732 | \$ 7,456,821 |
| 6 | Juvenile Delinquency & Undisciplined Contempt*** | 1,556 | 2.23 (28%) | 1.76 (22%) | 4.09 (51%) | 8.08 | \$ 423,517 | 3,469 | 677 | 1,510 | 4,979 | \$ 323,616 | \$ 1,423,911 |
| 7 | A/N/D and TPR (Non-DA) | 2,544 | 0.58 (17%) | 0.55 (16%) | 2.23 (66%) | 3.37 | \$ 871,707 | 3,573 | 1,205 | 699 | 4,272 | \$ 277,674 | \$ 1,221,763 |
| 8 | Invol. Commitment & Competency (non-DA) | 210 | 1.45 (29%) | 0.9 (18%) | 2.69 (53%) | 5.04 | \$ 47,114 | 122 | 788 | 1,143 | 1,265 | \$ 82,199 | \$ 361,676 |
| 9 | | | | | | | | | | | | | |
| 10 | * Calculations for Superior Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases. | | | | | | | | | | | | |
| 11 | **Calculations for District Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases. | | | | | | | | | | | | |
| 12 | *** Calculations for Juvenile Court excluded Juvenile Other and GAL case types because too little is known about those case types. | | | | | | | | | | | | |
| 13 | | | | | | | | | | | | | |

County and District Breakdowns

The study looked at average wait-time by district in a number of ways to try to identify: 1) areas or regions that were better or worse than average in terms of wait-time, and 2) whether the fact that a district is urban or rural, or has a public defender office, had any impact on wait-time. The study looked at wait-time by district, instead of by county, because in 34 counties the sample size was too small.

Average wait time was computed for each district by superior court, district court, juvenile court, and all courts combined using the two methodologies described above: 1) wait-time as reported, and 2) zero wait-time adjusted. Districts were then classified as either *Above Average*, *Average*, or *Below Average* based on their percentage of wait-time compared to total time. Districts were classified on a 25%—50%—25% basis and on a 33%—33%—33% basis. No districts were consistently *Above Average* or *Below Average* under any of the methodologies employed, and no urban/rural or PD office/non-PD office patterns emerged.

Upon further investigation, the study concluded that these analyses were inconclusive because the zero wait-time fee applications distorted the data. In district court, the percentage of all fee applications reporting zero wait-time per district ranged from 4% to 93% (see table on the following page). The strong variation in the percentage of zero wait-time reporting across districts made comparing districts impossible. For example, a district with 93% of fee applications having zero wait-time could have as much as ten times greater the data distortion than a district with only 4% of fee applications reporting zero wait-time. Because the true amount of distortion produced by zero wait-time fee applications is unknown, the study could not make statistical adjustments, such as weighting, that would allow for meaningful district comparisons.

The study looked at the percentage of fee applications reporting zero wait-time by district in district court, and compared those results to the average total hours per district court fee application in that district. If the reported zero wait-time were accurate, one would expect a negative correlation between the percentage of zero wait-time fee applications and the average hours per district court fee application. In other words, as the percentage of fee applications with zero wait-time grows, one would expect the average hours per fee application to decline. The correlation was not present.

In conclusion, this study was unable to determine if there are specific counties or districts that have scheduling practices resulting in more or less wait time, or whether being an urban or rural district or having a public defender office impacts wait-time.

| | A | B | C | D |
|----|--|--------------------------|---|--|
| 1 | FY05 District Court PAC Fee Applications: Percentage of Fee Applications with Zero Wait-Time Reported and Average Hours per Fee Application by District | | | |
| 2 | District Number | FY05 No. of Fee Apps. | % of Fee Applications with Zero Wait-Time | Average Hours Reported per District Court Fee Application |
| 3 | 20A | 2,254 | 4% | 3.66 |
| 4 | 19C | 375 | 8% | 2.95 |
| 5 | 20B | 1,856 | 9% | 3.09 |
| 6 | 15A | 1,099 | 9% | 2.90 |
| 7 | 21 | 1,184 | 10% | 3.71 |
| 8 | 19A | 33 | 10% | 3.65 |
| 9 | 30A | 983 | 12% | 3.93 |
| 10 | 17B | 1,184 | 15% | 3.42 |
| 11 | 5 | 4,731 | 17% | 3.35 |
| 12 | 3A | 1,152 | 17% | 3.57 |
| 13 | 18 | 1,112 | 19% | 3.31 |
| 14 | 2 | 939 | 20% | 2.51 |
| 15 | 17A | 1,354 | 21% | 2.70 |
| 16 | 30B | 1,314 | 22% | 3.96 |
| 17 | 22 | 5,003 | 23% | 3.00 |
| 18 | 25B | 1,043 | 23% | 2.93 |
| 19 | 27B | 1,857 | 23% | 2.35 |
| 20 | 6B | 508 | 24% | 4.42 |
| 21 | 9 | 1,195 | 24% | 3.81 |
| 22 | 11A | 1,932 | 24% | 2.87 |
| 23 | 16A | 273 | 25% | 4.31 |
| 24 | 11B | 1,478 | 25% | 2.79 |
| 25 | 24 | 854 | 25% | 3.79 |
| 26 | 15B | 589 | 26% | 4.14 |
| 27 | 19B | 2,932 | 26% | 3.01 |
| 28 | 3B | 642 | 28% | 4.37 |
| 29 | 12 | 353 | 28% | 4.29 |
| 30 | 7B/C | 860 | 29% | 3.33 |
| 31 | 14 | 894 | 29% | 4.05 |
| 32 | 9A | 957 | 30% | 3.83 |
| 33 | 8B | 1,102 | 30% | 2.49 |
| 34 | 25A | 2,261 | 33% | 2.64 |
| 35 | 1 | 591 | 34% | 3.43 |
| 36 | 23 | 1,878 | 34% | 1.98 |
| 37 | 29 | 4,480 | 36% | 3.66 |
| 38 | 4A | 1,118 | 38% | 3.31 |
| 39 | 28 | 559 | 40% | 2.38 |
| 40 | 10 | 10,187 | 44% | 2.97 |
| 41 | 13 | 1,981 | 45% | 3.40 |
| 42 | 7A | 659 | 45% | 3.75 |
| 43 | 6A | 975 | 47% | 3.29 |
| 44 | 4B | 769 | 53% | 2.65 |
| 45 | 16B | 535 | 55% | 3.61 |
| 46 | 26 | 3,430 | 60% | 3.19 |
| 47 | 8A | 674 | 79% | 2.36 |
| 48 | 27A | 441 | 93% | 1.47 |
| 49 | Total | 72,580 | 30% | 3.17 |

Public Defender Wait-Time Costs

Since public defender offices handle approximately 30% of all indigent cases in the state, PAC wait-time cost estimates alone significantly under-state the cost of wait-time to North Carolina taxpayers. While IDS has PD office cost data, we do not have wait-time hours data for PD offices. PD offices report to IDS that their wait-time is longer than PAC wait-time because courts often give priority to retained-attorney cases first, and to PAC cases second, with the result that public defenders wait in court for longer periods of time. Giving PAC cases priority over PD cases in the courtroom is more efficient from a purely financial standpoint, since the hourly rate of public defenders is less than the \$65 rate paid to PACs. However, if true, it could have a significant negative impact on the cost-effectiveness of PD offices compared to PACs.

For all courts, the percentage of total hours spent waiting in court for PAC cases was the following under the two methodologies used in the study:

| | |
|-------------------------|-----|
| Reported Wait-Time | 21% |
| Zero Wait-Time Adjusted | 29% |

Since PD wait-time is believed to be at least equal to, if not more than, PAC wait-time per case, the study estimated PD wait-time costs by applying the percentage of total costs expended on PAC wait-time to PD office total costs under each of the two methodologies used in the study. The results are presented in the table below.

| | A | B | C | D | E | F |
|---|---|-------------------------------|---|----------------------------------|----------------------------|--|
| 1 | FY05 Estimated Cost of PAC and PD Wait-Time in Court | | | | | |
| 2 | Wait-Time Methodology | FY05 PD Office Expend. | % of Total Time Spent Waiting in Court | PD Office Wait-Time Costs | PAC Wait-Time Costs | Total Estimated PAC & PD Wait-Time Costs to Taxpayers |
| 3 | | \$ 17,455,328 | | | | |
| 4 | Reported Wait-Time | | 21% | \$ 3,665,618.88 | \$ 9,804,678 | \$ 13,470,296.62 |
| 5 | Zero Wait-Time Adjusted | | 29% | \$ 5,062,045.12 | \$ 14,229,804 | \$ 19,291,849.28 |

Recommendations

The study demonstrates that wait-time adds significant costs to indigent defense and the taxpayers. IDS recommends that we work with other actors in the court system to identify ways to reduce these unnecessary costs.

APPENDIX C

| | A | B | C | D |
|----|---|--------------------------------|---------------------------|--|
| 1 | PAC Potentially Capital Trial-Level Cases by Disposition | | | |
| 2 | Cases with Warrant Served Date after 6/30/01 | | | |
| 3 | Dispositions* | | | |
| 3 | Proceeded Capital = 2 Attorneys | No. of Dispositions | % of Case Type | Disposition |
| 4 | Proceeded Capital | 2 | 0.5% | Resen - Death |
| 5 | | 3 | 0.8% | Resen - Life |
| 6 | | 7 | 1.9% | Trial - SH Death |
| 7 | | 29 | 8.0% | Trial - SH, Life |
| 8 | | 18 | 4.9% | Trial - Guilty, 1st Murder LWOP |
| 9 | | 5 | 1.4% | Trial - Guilty, 2nd Murder |
| 10 | | 2 | 0.5% | Trial - Guilty, Vol. Mans |
| 11 | | 12 | 3.3% | Trial - Not Guilty |
| 12 | | 6 | 1.6% | Mistrial |
| 13 | | 1 | 0.3% | Plea - SH, Death |
| 14 | | 0 | 0.0% | Plea - SH, Life |
| 15 | | 70 | 19.2% | Plea - 1st Degree, Life |
| 16 | | 119 | 32.7% | Plea - 2nd Degree Murder |
| 17 | | 14 | 3.8% | Plea - Access After |
| 18 | | 15 | 4.1% | Plea - Other Felony |
| 19 | | 16 | 4.4% | Plea - Vol. Mans |
| 20 | | 5 | 1.4% | Plea - Invol. Mans |
| 21 | | 29 | 8.0% | Vol. Dismissal |
| 22 | | 0 | 0.0% | Vol. Dismissal with Leave |
| 23 | | 1 | 0.3% | Abated |
| 24 | | 2 | 0.5% | Not competent to proceed |
| 25 | | 8 | 2.2% | Other |
| 26 | | 364 | 100.0% | Total |
| 27 | Proceeded Non-Capital | 42 | 5.5% | Trial - Guilty, 1st Murder LWOP |
| 28 | | 27 | 3.5% | Trial - Guilty, 2nd Murder |
| 29 | | 5 | 0.7% | Trial - Guilty, Other Felony |
| 30 | | 15 | 2.0% | Trial - Guilty, Vol. Mans |
| 31 | | 25 | 3.3% | Trial - Not Guilty |
| 32 | | 2 | 0.3% | Not Guilty by Reason of Insanity |
| 33 | | 1 | 0.1% | Mistrial |
| 34 | | 14 | 1.8% | Plea - 1st Degree, Life |
| 35 | | 242 | 31.6% | Plea - 2nd Degree Murder |
| 36 | | 33 | 4.3% | Plea - Access After |
| 37 | | 40 | 5.2% | Plea - Other Felony |
| 38 | | 108 | 14.1% | Plea - Vol. Mans |
| 39 | | 59 | 7.7% | Plea - Invol. Mans |
| 40 | | 133 | 17.3% | Vol. Dismissal |
| 41 | | 1 | 0.1% | Voluntary Dismissal with leave |
| 42 | | 1 | 0.1% | Abated |
| 43 | | 3 | 0.4% | Not Competent to Proceed |
| 44 | | 16 | 2.1% | Other |
| 45 | | 767 | 100.0% | Total |
| 46 | Case Status Unknown | 2 | 11.1% | Trial - SH, Life |
| 47 | | 1 | 5.6% | Trial - Guilty, 2nd Murder |
| 48 | | 1 | 5.6% | Trial - Guilty, Other Felony |
| 49 | | 2 | 11.1% | Trial - Guilty, Vol. Mans |
| 50 | | 1 | 5.6% | Not Guilty by Reason of Insanity |
| 51 | | 5 | 27.8% | Plea - 2nd Degree Murder |
| 52 | | 1 | 5.6% | Plea - Other Felony |
| 53 | | 4 | 22.2% | Plea - Vol. Mans |
| 54 | | 1 | 5.6% | Plea - Invol. Mans |
| 55 | | 5 | 27.8% | Vol. Dismissal |
| 56 | | 2 | 11.1% | Other |
| 57 | | 18 | 100.0% | Total |
| 58 | All | 2 | 0.2% | Resen - Death |
| 59 | | 3 | 0.3% | Resen - Life |
| 60 | | 7 | 0.6% | Trial - SH Death |
| 61 | | 31 | 2.7% | Trial - SH, Life |
| 62 | | 60 | 5.2% | Trial - Guilty, 1st Murder LWOP |
| 63 | | 33 | 2.9% | Trial - Guilty, 2nd Murder |
| 64 | | 6 | 0.5% | Trial - Guilty, Other Felony |
| 65 | | 19 | 1.6% | Trial - Guilty, Vol. Mans |
| 66 | | 37 | 3.2% | Trial - Not Guilty |
| 67 | | 3 | 0.3% | Not Guilty by Reason of Insanity |
| 68 | | 7 | 0.6% | Mistrial |
| 69 | | 1 | 0.1% | Plea - SH, Death |
| 70 | | 84 | 7.3% | Plea - 1st Degree, Life |
| 71 | | 366 | 31.7% | Plea - 2nd Degree Murder |
| 72 | | 47 | 4.1% | Plea - Access After |
| 73 | | 56 | 4.8% | Plea - Other Felony |
| 74 | | 128 | 11.1% | Plea - Vol. Mans |
| 75 | | 65 | 5.6% | Plea - Invol. Mans |
| 76 | | 167 | 14.4% | Vol. Dismissal |
| 77 | | 1 | 0.1% | Voluntary Dismissal with Leave |
| 78 | | 2 | 0.2% | Abated |
| 79 | | 5 | 0.4% | Not Competent to Proceed |
| 80 | | 26 | 2.2% | Other |
| 81 | | 1156 | 100.0% | Total |
| 82 | | 934 | 80.8% | Percent Potentially Capital Cases End in Plea 2nd Degree or Less, Not Guilty, Dismissal*** |
| 83 | | 220 | 60.4% | Percent Proceeded Capital Cases End in Plea 2nd Degree or Less, Not Guilty, Dismissal*** |
| 84 | | 167 | 14.4% | Percent Potentially Capital Cases End in a Dismissal*** |
| 85 | | 29 | 8.0% | Percent Proceeded Capital Cases End in a Dismissal*** |
| 86 | Disposition data from all potentially capital cases that have gone through the Capital Defenders Office since July 1, 2001. * Dispositions include all known dispositions for all years of data. *** Does not include Dismissal with Leave, Mistrial, or Other dispositions. | | | |

APPENDIX D

ALL RECOUPMENT BY COUNTY (Clerk Collections, Set-Off Debt, and Appointment Fee)

| | <u>FY05 Recoup \$</u> | <u>FY05 Recoup %</u> | <u>FY06 Recoup \$</u> | <u>FY06 Recoup %</u> |
|------------|-----------------------|----------------------|-----------------------|----------------------|
| Alamance | \$170,483.85 | 21.0% | \$209,087.74 | 23.4% |
| Alexander | \$44,453.82 | 20.9% | \$40,165.38 | 12.8% |
| Allegany | \$15,135.61 | 45.9% | \$16,556.04 | 29.4% |
| Anson | \$46,935.81 | 12.1% | \$46,832.18 | 13.2% |
| Ashe | \$26,700.37 | 25.9% | \$28,644.43 | 26.1% |
| Avery | \$25,961.07 | 25.0% | \$23,438.01 | 20.3% |
| Beaufort | \$59,742.32 | 19.1% | \$65,305.34 | 19.2% |
| Bertie | \$25,972.52 | 15.7% | \$36,087.46 | 24.5% |
| Bladen | \$32,182.94 | 10.8% | \$48,926.02 | 16.2% |
| Brunswick | \$94,404.55 | 16.3% | \$118,419.65 | 20.2% |
| Buncombe | \$190,665.40 | 12.3% | \$189,301.51 | 9.8% |
| Burke | \$117,419.22 | 22.2% | \$113,805.78 | 16.6% |
| Cabarrus | \$230,365.05 | 21.6% | \$274,208.99 | 23.8% |
| Caldwell | \$134,716.58 | 20.9% | \$151,239.60 | 22.9% |
| Camden | \$9,361.88 | 32.9% | \$10,608.60 | 72.2% |
| Carteret | \$26,946.36 | 6.3% | \$30,623.91 | 6.1% |
| Caswell | \$38,087.12 | 21.1% | \$37,608.34 | 17.5% |
| Catawba | \$130,453.68 | 13.1% | \$147,390.73 | 13.5% |
| Chatham | \$18,758.36 | 5.6% | \$25,403.72 | 6.1% |
| Cherokee | \$35,000.22 | 12.9% | \$59,607.91 | 17.7% |
| Chowan | \$11,849.43 | 10.8% | \$17,917.49 | 8.7% |
| Clay | \$8,749.54 | 32.9% | \$8,089.39 | 18.6% |
| Cleveland | \$81,018.01 | 11.6% | \$91,799.87 | 13.9% |
| Columbus | \$61,770.83 | 14.1% | \$80,008.08 | 17.1% |
| Craven | \$83,132.84 | 18.0% | \$93,445.68 | 21.0% |
| Cumberland | \$82,013.47 | 3.0% | \$97,792.48 | 3.4% |
| Currituck | \$35,685.32 | 22.6% | \$27,703.33 | 19.3% |
| Dare | \$61,605.22 | 22.0% | \$56,591.57 | 15.6% |
| Davidson | \$226,807.13 | 20.0% | \$228,604.76 | 18.1% |
| Davie | \$48,113.86 | 21.1% | \$45,195.88 | 16.7% |
| Duplin | \$53,984.61 | 19.6% | \$65,675.15 | 21.4% |
| Durham | \$149,889.03 | 5.8% | \$165,808.50 | 5.4% |
| Edgecombe | \$52,411.13 | 15.5% | \$64,456.75 | 15.5% |
| Forsyth | \$246,194.67 | 10.2% | \$265,123.37 | 9.8% |
| Franklin | \$61,017.03 | 19.8% | \$62,581.56 | 21.0% |
| Gaston | \$43,090.92 | 2.5% | \$35,674.09 | 1.9% |
| Gates | \$11,883.12 | 29.9% | \$10,931.96 | 20.7% |
| Graham | \$13,015.42 | 15.8% | \$15,985.35 | 20.1% |
| Granville | \$63,800.11 | 21.9% | \$68,551.70 | 19.8% |
| Greene | \$21,418.61 | 20.5% | \$21,353.76 | 21.6% |
| Guilford | \$181,557.31 | 5.2% | \$225,964.46 | 5.7% |
| Halifax | \$79,565.14 | 14.0% | \$99,619.27 | 16.9% |
| Harnett | \$87,038.00 | 15.0% | \$104,754.19 | 12.5% |
| Haywood | \$70,208.18 | 15.7% | \$92,895.10 | 13.7% |
| Henderson | \$140,944.72 | 16.8% | \$147,350.25 | 17.8% |
| Hertford | \$34,803.74 | 18.2% | \$40,317.45 | 15.6% |
| Hoke | \$25,477.42 | 5.8% | \$35,213.31 | 8.4% |
| Hyde | \$9,638.62 | 29.4% | \$12,297.14 | 35.4% |
| Iredell | \$186,972.14 | 26.2% | \$206,352.96 | 20.3% |
| Jackson | \$42,223.77 | 17.6% | \$41,291.33 | 16.2% |
| Johnston | \$116,160.45 | 19.7% | \$104,469.29 | 12.0% |
| Jones | \$6,993.38 | 15.2% | \$10,297.69 | 17.0% |
| Lee | \$70,689.01 | 21.9% | \$83,364.11 | 21.3% |

| | <u>FY05 Recoup \$</u> | <u>FY05 Recoup %</u> | <u>FY06 Recoup \$</u> | <u>FY06 Recoup %</u> |
|--------------|-----------------------|----------------------|-----------------------|----------------------|
| Lenoir | \$83,557.93 | 25.3% | \$109,698.90 | 22.3% |
| Lincoln | \$55,848.84 | 20.5% | \$66,550.05 | 16.8% |
| Macon | \$24,531.36 | 15.2% | \$48,741.49 | 19.5% |
| Madison | \$21,035.94 | 23.9% | \$18,762.48 | 24.0% |
| Martin | \$23,891.87 | 27.1% | \$25,692.03 | 22.1% |
| McDowell | \$50,733.79 | 11.4% | \$62,281.40 | 12.6% |
| Mecklenburg | \$289,366.08 | 4.0% | \$283,463.02 | 3.7% |
| Mitchell | \$25,394.38 | 24.6% | \$26,939.67 | 28.2% |
| Montgomery | \$18,154.96 | 11.1% | \$17,725.27 | 11.4% |
| Moore | \$62,619.45 | 12.0% | \$63,526.61 | 10.9% |
| Nash | \$90,636.19 | 16.4% | \$101,069.30 | 17.4% |
| New Hanover | \$254,689.02 | 13.5% | \$294,531.57 | 13.3% |
| Northampton | \$31,999.51 | 17.5% | \$44,922.62 | 20.6% |
| Onslow | \$161,618.68 | 25.5% | \$177,224.42 | 20.6% |
| Orange | \$39,965.44 | 3.9% | \$45,412.24 | 4.5% |
| Pamlico | \$12,617.94 | 14.3% | \$18,677.46 | 25.5% |
| Pasquotank | \$54,283.10 | 23.1% | \$64,863.64 | 24.0% |
| Pender | \$59,757.68 | 23.4% | \$58,038.82 | 20.3% |
| Perquimans | \$11,340.26 | 13.2% | \$13,341.74 | 20.0% |
| Person | \$88,400.64 | 17.6% | \$72,676.52 | 18.0% |
| Pitt | \$91,759.79 | 5.8% | \$90,823.51 | 4.8% |
| Polk | \$24,594.21 | 18.4% | \$21,442.04 | 12.5% |
| Randolph | \$115,354.43 | 18.0% | \$122,372.15 | 11.8% |
| Richmond | \$112,834.12 | 11.7% | \$123,556.53 | 13.4% |
| Robeson | \$73,889.85 | 4.3% | \$84,754.77 | 4.5% |
| Rockingham | \$160,264.57 | 28.8% | \$171,155.05 | 24.1% |
| Rowan | \$154,422.03 | 13.6% | \$196,652.00 | 15.6% |
| Rutherford | \$114,525.65 | 18.8% | \$136,621.98 | 18.8% |
| Sampson | \$73,208.73 | 21.6% | \$78,980.81 | 22.2% |
| Scotland | \$49,049.14 | 7.3% | \$55,036.19 | 7.7% |
| Stanly | \$38,138.01 | 9.7% | \$43,049.82 | 11.6% |
| Stokes | \$52,310.25 | 19.2% | \$57,637.72 | 17.6% |
| Surry | \$135,285.49 | 31.6% | \$150,460.78 | 26.1% |
| Swain | \$18,735.15 | 17.5% | \$20,336.92 | 18.0% |
| Transylvania | \$35,402.93 | 14.0% | \$46,834.92 | 17.5% |
| Tyrrell | \$5,779.08 | 12.5% | \$7,135.39 | 12.8% |
| Union | \$131,766.82 | 14.6% | \$156,853.40 | 16.3% |
| Vance | \$80,136.01 | 19.7% | \$77,975.57 | 13.6% |
| Wake | \$365,064.99 | 9.1% | \$380,084.15 | 7.1% |
| Warren | \$26,394.65 | 31.0% | \$19,134.87 | 16.7% |
| Washington | \$10,255.76 | 20.3% | \$18,119.23 | 21.3% |
| Watauga | \$42,324.50 | 16.7% | \$67,939.21 | 19.8% |
| Wayne | \$150,540.66 | 24.4% | \$175,794.67 | 23.6% |
| Wilkes | \$100,225.62 | 30.7% | \$99,006.10 | 26.5% |
| Wilson | \$69,246.84 | 15.6% | \$69,304.49 | 14.4% |
| Yadkin | \$42,856.74 | 42.2% | \$47,032.70 | 28.0% |
| Yancey | \$13,932.75 | 11.7% | \$16,915.14 | 12.7% |
| Statewide | \$7,692,210.74 | 12.2% | \$8,549,887.97 | 11.7% |

recoup % is total recoupment as a share of spending on private counsel (excluding capital cases) and public defender offices.

RECOUPMENT BY COUNTY (Appointment Fee Only)

| | <u>FY06 Total</u> | <u>FY05 Total</u> | <u>% Change</u> |
|------------|-------------------|-------------------|-----------------|
| Alamance | \$15,251.06 | \$10,361.20 | 47.2% |
| Alexander | \$374.45 | \$101.56 | 268.7% |
| Allegany | \$3,537.50 | \$2,122.50 | 66.7% |
| Anson | \$468.52 | \$310.00 | 51.1% |
| Ashe | \$2,924.52 | \$1,265.48 | 131.1% |
| Avery | \$0.00 | \$0.00 | 0.0% |
| Beaufort | \$2,344.31 | \$2,310.85 | 1.4% |
| Bertie | \$2,376.29 | \$1,692.92 | 40.4% |
| Bladen | \$1,620.60 | \$496.43 | 226.5% |
| Brunswick | \$10,041.64 | \$4,877.50 | 105.9% |
| Buncombe | \$3,100.00 | \$2,637.50 | 17.5% |
| Burke | \$8,610.00 | \$8,825.00 | -2.4% |
| Cabarrus | \$25,013.45 | \$21,544.00 | 16.1% |
| Caldwell | \$12,129.45 | \$10,171.71 | 19.2% |
| Camden | \$824.46 | \$478.82 | 72.2% |
| Carteret | \$3,012.86 | \$2,011.00 | 49.8% |
| Caswell | \$3,202.66 | \$2,836.12 | 12.9% |
| Catawba | \$5,948.52 | \$6,063.71 | -1.9% |
| Chatham | \$1,488.89 | \$555.00 | 168.3% |
| Cherokee | \$0.00 | \$45.00 | -100.0% |
| Chowan | \$1,173.37 | \$855.65 | 37.1% |
| Clay | \$415.00 | \$493.71 | -15.9% |
| Cleveland | \$10,975.19 | \$7,929.50 | 38.4% |
| Columbus | \$5,572.49 | \$4,258.77 | 30.8% |
| Craven | \$6,725.19 | \$4,321.80 | 55.6% |
| Cumberland | \$0.00 | \$45.00 | -100.0% |
| Currituck | \$45.00 | \$90.00 | -50.0% |
| Dare | \$765.48 | \$45.00 | 1601.1% |
| Davidson | \$12,717.78 | \$11,406.22 | 11.5% |
| Davie | \$4,850.15 | \$4,565.49 | 6.2% |
| Duplin | \$1,498.18 | \$641.26 | 133.6% |
| Durham | \$45.00 | \$0.00 | n/a |
| Edgecombe | \$2,130.86 | \$1,596.18 | 33.5% |
| Forsyth | \$27,420.00 | \$20,405.50 | 34.4% |
| Franklin | \$5,201.33 | \$4,512.99 | 15.3% |
| Gaston | \$157.21 | \$180.00 | -12.7% |
| Gates | \$0.00 | \$270.00 | -100.0% |
| Graham | \$844.97 | \$400.09 | 111.2% |
| Granville | \$5,638.82 | \$4,189.82 | 34.6% |
| Greene | \$2,103.82 | \$1,558.38 | 35.0% |
| Guilford | \$13,348.65 | \$7,654.50 | 74.4% |
| Halifax | \$6,673.86 | \$4,132.47 | 61.5% |
| Harnett | \$9,700.78 | \$8,328.31 | 16.5% |
| Haywood | \$6,443.05 | \$3,623.13 | 77.8% |
| Henderson | \$12,250.45 | \$10,240.95 | 19.6% |
| Hertford | \$0.00 | \$45.00 | -100.0% |
| Hoke | \$1,399.60 | \$456.96 | 206.3% |
| Hyde | \$667.67 | \$370.39 | 80.3% |
| Iredell | \$13,493.55 | \$9,425.64 | 43.2% |
| Jackson | \$2,650.27 | \$1,308.32 | 102.6% |
| Johnston | \$9,412.90 | \$9,050.00 | 4.0% |
| Jones | \$953.69 | \$403.10 | 136.6% |

| | <u>FY06 Total</u> | <u>FY05 Total</u> | <u>% Change</u> |
|--------------|--------------------------|--------------------------|------------------------|
| Lee | \$10,383.49 | \$7,991.92 | 29.9% |
| Lenoir | \$7,334.50 | \$4,671.00 | 57.0% |
| Lincoln | \$6,958.62 | \$5,572.06 | 24.9% |
| Macon | \$0.00 | \$0.00 | 0.0% |
| Madison | \$287.50 | \$0.00 | n/a |
| Martin | \$345.00 | \$0.00 | n/a |
| McDowell | \$6,284.96 | \$4,943.25 | 27.1% |
| Mecklenburg | \$142.15 | \$45.00 | 215.9% |
| Mitchell | \$1,643.75 | \$1,583.21 | 3.8% |
| Montgomery | \$1,366.44 | \$1,402.52 | -2.6% |
| Moore | \$165.00 | \$90.00 | 83.3% |
| Nash | \$5,563.00 | \$4,530.00 | 22.8% |
| New Hanover | \$9,916.44 | \$6,648.83 | 49.1% |
| Northampton | \$1,903.21 | \$1,779.65 | 6.9% |
| Onslow | \$15,690.08 | \$12,255.00 | 28.0% |
| Orange | \$4,167.35 | \$3,086.06 | 35.0% |
| Pamlico | \$1,276.70 | \$499.81 | 155.4% |
| Pasquotank | \$4,476.55 | \$2,793.47 | 60.3% |
| Pender | \$4,084.16 | \$2,627.59 | 55.4% |
| Perquimans | \$767.41 | \$517.16 | 48.4% |
| Person | \$4,960.00 | \$5,270.00 | -5.9% |
| Pitt | \$493.87 | \$596.26 | -17.2% |
| Polk | \$1,052.60 | \$135.00 | 679.7% |
| Randolph | \$282.18 | \$495.98 | -43.1% |
| Richmond | \$0.00 | \$65.00 | -100.0% |
| Robeson | \$0.00 | \$0.00 | n/a |
| Rockingham | \$7,221.52 | \$7,692.24 | -6.1% |
| Rowan | \$17,604.01 | \$11,738.30 | 50.0% |
| Rutherford | \$21,365.59 | \$16,584.68 | 28.8% |
| Sampson | \$6,030.88 | \$1,633.92 | 269.1% |
| Scotland | \$135.00 | \$100.00 | 35.0% |
| Stanly | \$0.00 | \$45.00 | -100.0% |
| Stokes | \$2,938.42 | \$360.00 | 716.2% |
| Surry | \$11,744.11 | \$7,140.58 | 64.5% |
| Swain | \$135.00 | \$227.17 | -40.6% |
| Transylvania | \$3,700.00 | \$2,205.00 | 67.8% |
| Tyrrell | \$537.06 | \$413.66 | 29.8% |
| Union | \$4,665.75 | \$138.71 | 3263.7% |
| Vance | \$4,888.28 | \$3,175.55 | 53.9% |
| Wake | \$23,325.87 | \$8,686.42 | 168.5% |
| Warren | \$1,596.82 | \$1,170.00 | 36.5% |
| Washington | \$1,154.81 | \$672.01 | 71.8% |
| Watauga | \$5,129.88 | \$2,676.21 | 91.7% |
| Wayne | \$14,236.61 | \$8,977.00 | 58.6% |
| Wilkes | \$13,215.36 | \$9,628.40 | 37.3% |
| Wilson | \$374.82 | \$360.00 | 4.1% |
| Yadkin | \$4,929.11 | \$3,529.72 | 39.6% |
| Yancey | \$45.00 | \$126.89 | -64.5% |
| Total | \$502,062.35 | \$356,390.66 | 40.9% |

APPENDIX E

COST AND CASE DATA ON REPRESENTATION OF INDIGENTS

July 1, 2005 – June 30, 2006

| | Number of Cases* | Total Cost |
|---|-----------------------------|-----------------------|
| Assigned Private Counsel | | |
| Capital offense cases | 1,379 | \$12,258,524 |
| Adult cases (other than capital) | 171,397 | 51,694,551 |
| Juvenile cases | 15,495 | 3,520,317 |
| Guardian ad Litem assigned to IDS | 2,037 | 637,750 |
| Totals | 190,308 | 68,111,142 |
| Private Counsel Contracts | 5,016 | 713,213 |
| Legal Services to Inmates | | 1,883,865 |
| Public Defender Offices | | |
| District 1 | 1,406 | \$735,810 |
| District 3A | 2,427 | 854,182 |
| District 3B (Carteret County) | 1,043 | 275,964 |
| District 10 | 5,041 | 1,149,825 |
| District 12 | 4,574 | 1,437,049 |
| District 14 | 9,657 | 1,907,730 |
| District 15B | 3,026 | 967,795 |
| District 16A | 1,846 | 672,139 |
| District 16B | 3,159 | 1,053,967 |
| District 18 | 8,308 | 2,464,766 |
| District 21 | 6,231 | 1,498,414 |
| District 26 | 19,557 | 4,397,914 |
| District 27A | 5,619 | 1,443,095 |
| District 28 | 5,823 | 1,166,208 |
| Totals | 77,717 | 20,024,858 |
| Office of the Appellate Defender | | 1,246,128 |
| Special Counsel at State Mental Health Hospitals | | 993,071 |
| Support Services | | |
| Transcripts, records, and briefs | | 878,143 |
| Professional examinations | | 975 |
| Expert witness fees | | 2,511,808 |
| Investigator fees | | 3,504,119 |
| Total | | 6,895,045 |
| Set-Off Debt Collection | | 79,930 |
| Indigent Defense Services | | 749,008 |
| Office of the Capital Defender | | 1,498,914 |
| Office of the Juvenile Defender | | 154,617 |
| TOTAL INDIGENT DEFENSE SERVICES | | \$102,349,791 |
| Sentencing Services Program | | \$2,478,038 |
| GRAND TOTAL | | \$104,827,829 |

* The number of "cases" shown for private assigned counsel is the number of payments (fee apps) made by IDS for appointed attorneys. For public defender offices, the number of "cases" is the number of indigents whose cases were disposed of by public defenders during the 2005-06 year.

ASSIGNED AND CONTRACTED PRIVATE COUNSEL*

Cases and Expenditures

* Expenditures exclude spending on expert witnesses, private investigators, and mitigation specialists

July 1, 2005 to June 30, 2006

| | Number of Fee Apps | Expenditures |
|------------------------|--------------------|------------------|
| <u>District 1</u> | | |
| Camden | 14 | \$6,316 |
| Chowan | 142 | 102,563 |
| Currituck | 176 | 70,045 |
| Dare | 350 | 158,363 |
| Gates | 67 | 27,881 |
| Pasquotank | 277 | 135,458 |
| Perquimans | 54 | 31,372 |
| District Totals | 1,080 | 531,998 |
| <u>District 2</u> | | |
| Beaufort | 1,399 | 351,341 |
| Hyde | 75 | 36,238 |
| Martin | 526 | 162,912 |
| Tyrrell | 188 | 66,969 |
| Washington | 327 | 113,092 |
| District Totals | 2,515 | 730,552 |
| <u>District 3A</u> | | |
| Pitt | 3,140 | 1,378,253 |
| District Totals | 3,140 | 1,378,253 |
| <u>District 3B</u> | | |
| Carteret | 556 | 284,453 |
| Craven | 1,640 | 596,301 |
| Pamlico | 239 | 145,851 |
| District Totals | 2,435 | 1,026,605 |
| <u>District 4A</u> | | |
| Duplin | 1,169 | 399,620 |
| Jones | 241 | 67,413 |
| Sampson | 1,506 | 702,725 |
| District Totals | 2,916 | 1,169,758 |
| <u>District 4B</u> | | |
| Onslow | 3,362 | 1,202,599 |
| District Totals | 3,362 | 1,202,599 |
| <u>District 5</u> | | |
| New Hanover | 8,284 | 2,551,163 |
| Pender | 1,025 | 328,527 |
| District Totals | 9,309 | 2,879,690 |
| <u>District 6A</u> | | |
| Halifax | 2,325 | 849,760 |
| District Totals | 2,325 | 849,760 |

| | Number of Fee Apps | Expenditures |
|------------------------|--------------------|------------------|
| <u>District 6B</u> | | |
| Bertie | 431 | 263,206 |
| Hertford | 736 | 361,738 |
| Northampton | 630 | 354,719 |
| District Totals | 1,797 | 979,663 |
| <u>District 7A</u> | | |
| Nash | 1,708 | 777,101 |
| District Totals | 1,708 | 777,101 |
| <u>District 7B-C</u> | | |
| Edgecombe | 1,344 | 534,315 |
| Wilson | 1,519 | 739,154 |
| District Totals | 2,863 | 1,273,469 |
| <u>District 8A</u> | | |
| Greene | 379 | 129,409 |
| Lenoir | 1,841 | 636,077 |
| District Totals | 2,220 | 765,486 |
| <u>District 8B</u> | | |
| Wayne | 2,927 | 1,070,519 |
| District Totals | 2,927 | 1,070,519 |
| <u>District 9</u> | | |
| Franklin | 1,052 | 343,787 |
| Granville | 1,277 | 531,760 |
| Vance | 1,577 | 722,043 |
| Warren | 372 | 119,949 |
| District Totals | 4,278 | 1,717,539 |
| <u>District 9A</u> | | |
| Caswell | 743 | 256,389 |
| Person | 1,383 | 529,905 |
| District Totals | 2,126 | 786,294 |
| <u>District 10</u> | | |
| Wake | 15,792 | 4,948,494 |
| District Totals | 15,792 | 4,948,494 |
| <u>District 11A</u> | | |
| Harnett | 3,147 | 1,218,437 |
| Lee | 1,520 | 453,256 |
| District Totals | 4,667 | 1,671,693 |
| <u>District 11B</u> | | |
| Johnston | 3,555 | 1,378,061 |
| District Totals | 3,555 | 1,378,061 |

| | Number of Fee Apps | Expenditures |
|------------------------|--------------------|------------------|
| <u>District 12</u> | | |
| Cumberland | 3,128 | 1,969,533 |
| District Totals | 3,128 | 1,969,533 |
| <u>District 13</u> | | |
| Bladen | 981 | 356,984 |
| Brunswick | 2,015 | 715,599 |
| Columbus | 1,301 | 559,609 |
| District Totals | 4,297 | 1,632,192 |
| <u>District 14</u> | | |
| Durham | 2,937 | 1,633,512 |
| District Totals | 2,937 | 1,633,512 |
| <u>District 15A</u> | | |
| Alamance | 3,184 | 1,311,187 |
| District Totals | 3,184 | 1,311,187 |
| <u>District 15B</u> | | |
| Chatham | 397 | 136,831 |
| Orange | 837 | 353,033 |
| District Totals | 1,234 | 489,864 |
| <u>District 16A</u> | | |
| Hoke | 378 | 247,858 |
| Scotland | 914 | 387,309 |
| District Totals | 1,292 | 635,167 |
| <u>District 16B</u> | | |
| Robeson | 2,305 | 1,649,918 |
| District Totals | 2,305 | 1,649,918 |
| <u>District 17A</u> | | |
| Rockingham | 2,840 | 802,292 |
| District Totals | 2,840 | 802,292 |
| <u>District 17B</u> | | |
| Stokes | 1,185 | 407,529 |
| Surry | 2,282 | 683,052 |
| District Totals | 3,467 | 1,090,581 |
| <u>District 18</u> | | |
| Guilford | 5,143 | 2,101,772 |
| District Totals | 5,143 | 2,101,772 |
| <u>District 19A</u> | | |
| Cabarrus | 4,591 | 1,526,387 |
| District Totals | 4,591 | 1,526,387 |

| | Number of Fee Apps | Expenditures |
|-------------------------|--------------------|------------------|
| <u>District 19B</u> | | |
| Montgomery | 701 | 253,117 |
| Moore | 2,850 | 725,492 |
| Randolph | 3,706 | 1,190,020 |
| District Totals | 7,257 | 2,168,629 |
| <u>District 19C</u> | | |
| Rowan | 4,966 | 1,507,297 |
| District Totals | 4,966 | 1,507,297 |
| <u>District 20A</u> | | |
| Anson | 1,445 | 534,074 |
| Richmond | 3,748 | 1,096,539 |
| District Totals | 5,193 | 1,630,613 |
| <u>District 20B</u> | | |
| Stanly | 1,457 | 672,311 |
| Union | 3,534 | 1,316,028 |
| District Totals | 4,991 | 1,988,339 |
| <u>District 21</u> | | |
| Forsyth | 4,773 | 1,562,831 |
| District Totals | 4,773 | 1,562,831 |
| <u>District 22</u> | | |
| Alexander | 1,237 | 354,318 |
| Davidson | 4,999 | 1,368,325 |
| Davie | 884 | 342,265 |
| Iredell | 4,438 | 1,124,417 |
| District Totals | 11,558 | 3,189,325 |
| <u>District 23</u> | | |
| Alleghany | 284 | 59,740 |
| Ashe | 587 | 141,287 |
| Wilkes | 2,088 | 381,702 |
| Yadkin | 801 | 165,882 |
| District Totals | 3,760 | 748,611 |
| <u>District 24</u> | | |
| Avery | 350 | 144,462 |
| Madison | 244 | 88,731 |
| Mitchell | 326 | 102,609 |
| Watauga | 740 | 362,724 |
| Yancey | 404 | 180,399 |
| District Totals | 2,064 | 878,925 |
| <u>District 25A</u> | | |
| Burke | 2,825 | 818,444 |
| Caldwell | 3,494 | 826,015 |
| District Totals | 6,319 | 1,644,459 |

| | Number of Fee Apps | Expenditures |
|------------------------|--------------------|-------------------|
| <u>District 25B</u> | | |
| Catawba | 4,999 | 1,341,588 |
| District Totals | 4,999 | 1,341,588 |
| <u>District 26</u> | | |
| Mecklenburg | 11,217 | 4,231,100 |
| District Totals | 11,217 | 4,231,100 |
| <u>District 27A</u> | | |
| Gaston | 1,615 | 664,870 |
| District Totals | 1,615 | 664,870 |
| <u>District 27B</u> | | |
| Cleveland | 3,986 | 881,415 |
| Lincoln | 1,463 | 428,546 |
| District Totals | 5,449 | 1,309,961 |
| <u>District 28</u> | | |
| Buncombe | 3,407 | 1,033,504 |
| District Totals | 3,407 | 1,033,504 |
| <u>District 29</u> | | |
| Henderson | 3,079 | 1,042,071 |
| McDowell | 1,664 | 596,807 |
| Polk | 575 | 185,985 |
| Rutherford | 3,029 | 919,846 |
| Transylvania | 715 | 308,133 |
| District Totals | 9,062 | 3,052,842 |
| <u>District 30A</u> | | |
| Cherokee | 1,140 | 387,715 |
| Clay | 154 | 44,209 |
| Graham | 226 | 93,463 |
| Macon | 674 | 283,164 |
| Swain | 357 | 132,303 |
| District Totals | 2,551 | 940,854 |
| <u>District 30B</u> | | |
| Haywood | 2,001 | 718,076 |
| Jackson | 709 | 232,592 |
| District Totals | 2,710 | 950,668 |
| STATE TOTALS | 195,324 | 68,824,355 |