

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

Submitted to the North Carolina General Assembly  
Pursuant to Session Law 2011-145, § 15.17

March 1, 2012

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## EXECUTIVE SUMMARY

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

As required by Session Law 2011-145, § 15.17, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2010-11, as well as new and ongoing initiatives in progress. The report also contains a number of legislative recommendations for the 2012 short session, as well as last fiscal year’s data on indigent caseloads and case costs across the State.

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

In addition, the IDS Commission and Office have taken significant steps to improve data collection and analysis capabilities; established a website and a number of specialized listservs to enhance communication and resource-sharing with public defenders, private defense attorneys, and other system actors; worked with the School of Government and other groups to develop and offer a number of new and innovative training programs, as well as a series of specialized indigent defense manuals; created a new statewide Office of the Juvenile Defender as

recommended by the American Bar Association Juvenile Justice Center in its 2003 report on access to and quality of legal representation in North Carolina delinquency proceedings; taken significant steps to improve and support representation of indigent parent respondents in abuse, neglect, and dependency cases, indigent defendants in child support contempt proceedings, and persons facing commitment proceedings; created new resource counsel positions to enhance the quality and cost effectiveness of representation in complex criminal cases; and adopted performance guidelines for indigent representation in non-capital criminal cases, juvenile delinquency cases, and abuse, neglect, dependency, and termination of parental rights cases at the trial level.

The IDS Commission and Office are also in the process of working on a number of other initiatives, including conducting analyses of budgetary trends and current indigent defense spending; developing additional specialized training programs and resources for attorneys representing indigent persons; working with North Carolina Prisoner Legal Services to continue improving legal services for inmates; developing a web-based database of all of the collateral consequences of criminal convictions; applying for grant funding to support various initiatives; and designing and implementing a large-scale contract system as directed by the General Assembly, which should contain future costs and allow enhanced data collection and reporting through a web-based system. 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 decade 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) over the past ten years has averaged 6.7%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. The increase in new demand during fiscal year 2010-11 was 4.3% and, as a result of the hourly rate reductions that the IDS Commission and Office implemented in May 2011, current projections suggest that there will be more than a 5% decrease in new demand this fiscal year. *See* "Indigent Defense Fund Demand and Budget Needs," below.

Indigent defense per disposition expenditures (for both public defender offices and private assigned counsel combined) declined over the first four years that IDS was in existence, increased modestly over the next three fiscal years, decreased again in fiscal year 2009-10, and increased modestly again in fiscal year 2010-11. Indeed, indigent defense per disposition expenditures in fiscal year 2010-11 were only \$16.06 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01) and \$3.99 more than per disposition expenditures during fiscal year 2008-09. *See* Appendix A. While there have been some increases in average per case costs for felonies and driving while impaired cases, the overall increases in demand on the fund are primarily due to an expanding indigent caseload, not a rise in per case costs.

Despite the comparatively lower increases in new demand on the fund during the past decade, the modest increases in per disposition expenditures since IDS was established, and the recent dramatic reductions in the hourly rates that IDS pays to private assigned counsel, indigent defense remains underfunded. Office staff are currently projecting that IDS will end this fiscal



year with approximately \$14 million of debt. As a result, the Commission and Office respectfully request that the General Assembly appropriate an additional \$14 million in non-recurring funds for fiscal year 2012-13 to enable IDS to pay off that anticipated carry-over debt. The Commission and Office also request that the General Assembly appropriate \$4 million in additional recurring funds for fiscal year 2012-13 to maintain the current level of services at the reduced hourly rates and to cover the projected demand on the fund next year. See “Indigent Defense Fund Demand and Budget Needs” and “Legislative Recommendations,” below.

## REPORT

In 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (Session Law 2000-144; G.S. 7A-498 *et seq.*) (“IDS Act”), creating a new statewide Office of Indigent Defense Services (“IDS Office”), housed in the Judicial Department and governed by the 13-member Commission on Indigent Defense Services (“IDS Commission”). The IDS Act charges the IDS Office with the responsibility of overseeing the provision of legal representation to indigent defendants and respondents who are entitled to counsel under North Carolina law. In accordance with that Act, the IDS Office assumed responsibility for overseeing indigent defense services on July 1, 2001.<sup>1</sup>

As required by Session Law 2011-145, § 15.17, the IDS Office must report to the General Assembly by March 1, 2012 about the following matters:

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

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

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

## I. IDS INITIATIVES

### A. Major Initiatives Implemented to Date:

This section describes the main initiatives that the IDS Commission and IDS Office have implemented since July 1, 2001, with a particular emphasis on fiscal year 2010-11.

#### *Rules Governing the Delivery of Counsel Services in Non-Capital Cases, Capital Cases, Non-Capital and Non-Criminal Appeals, and Cases Involving Inmate Access to the Courts*

To ensure that appropriate procedures were in place by July 1, 2001, the IDS Commission developed rules to govern the continued delivery of services in cases under its oversight. The rules deal with non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); and non-capital and non-criminal appeals. The original IDS Rules became effective on July 1, 2001. Since the initial rules took effect, the IDS Commission has adopted a number of revisions in light of experience and to address new issues as they have arisen; the most recent revisions became effective in December 2011. In March 2010, the Commission also approved a new Part 4 of the IDS Rules, which governs inmate access to the courts. *See* G.S. 7A-498.3(a)(2a). The current rules are available on the IDS website ([www.ncids.org](http://www.ncids.org)), and are published in North Carolina Rules of Court, State (Thomson-West 2012) and the Annotated Rules of North Carolina (LexisNexis 2012).

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

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

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

The IDS Office has developed an independent website ([www.ncids.org](http://www.ncids.org)) that allows greater and more comprehensive communication with the bar, bench, and public, and enhances the resources available to defense attorneys across the State. The website contains news and update links addressing the state of indigent defense funding, timing of attorney payments, IDS’ main accomplishments since July 2001, and any other recent developments or matters of interest. The following materials, among others, are also posted on the website: contact information for the members of the IDS Commission, IDS staff, and all state defender offices; a list of IDS

Commission committees and their participants; all approved minutes of IDS Commission meetings; a calendar of upcoming events; IDS rules, policies, and procedures; reports and data generated by Office staff; applications for the capital and appellate attorney rosters; attorney and expert fee application forms; the public defender appointment plans; a model appointment plan for non-public defender districts and the actual non-public defender plans that have been approved since the model plan was adopted; performance guidelines for non-capital criminal cases at the trial level, juvenile delinquency cases at the trial level, and abuse, neglect, dependency and termination of parental rights cases at the trial level; materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; legal resources and reference materials; all of the North Carolina indigent defense manuals; a North Carolina appellate brief bank; capital and non-capital trial motions banks; forensic science resources, including an expert database and State Bureau of Investigation (“SBI”) laboratory protocols and procedures; juvenile delinquency forms, motions, and case notes; abuse, neglect, dependency motions, case notes, and legislative updates; civil commitment and guardianship resources and training materials; child support contempt resources 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 390,000 visits to the IDS website.

Moreover, with assistance from other groups, the IDS Office has established listservs for attorneys representing indigent capital defendants at the trial level, attorneys representing indigent criminal defendants and non-criminal respondents on appeal, capital post-conviction attorneys, attorneys representing juveniles in delinquency proceedings, attorneys representing indigent parent respondents in Chapter 7B cases, involuntary commitment attorneys, child support contempt attorneys, public defenders and assistant public defenders, investigators, mitigation specialists, and support staff in public defender offices. 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. Finally, in January 2011, IDS created a system for sending one-way “EBlasts” to private appointed counsel (“PAC”) across the State so that they can be more informed about matters that impact them, such as IDS’ funding, the timing of their payments, and training opportunities that are available to them. Attorneys can register to receive EBlasts by completing a simple form on the IDS website.

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

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

Between July 1, 2001 and January 20, 2012, the Capital Defender made 7,503 attorney appointments in 6,186 potentially capital cases at the trial level:<sup>2</sup>

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

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12 YTD
# attorneys appointed	735	855	741	750	760	754	711	692	642	541	322
# potentially capital cases	570	656	599	604	629	620	603	585	551	483	281

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

Between July 1, 2001 and January 20, 2012, the Appellate Defender and Parent Representation Coordinator made 10,840 attorney appointments in capital, non-capital criminal, and non-criminal appeals:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12 YTD
# attorneys appointed in appeals	819	829	1,097	1,047	1,020	1,017	1,038	1,186	1,089	1,115	583

Finally, between July 1, 2001 and January 20, 2012, the IDS Director made 388 attorney appointments in 244 capital post-conviction cases:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10 <sup>3</sup>	FY11 <sup>4</sup>	FY12 YTD
# attorneys appointed	61	60	37	23	37	39	36	23	47	14	11
# capital PC cases	35	34	21	17	22	23	23	17	33	12	7

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

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

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

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year than the second attorney, these numbers are higher than the number of new potentially capital cases that are opened each year.

<sup>3</sup> Twenty-four of the 47 capital post-conviction attorney appointments in fiscal year 2009-10 were appointments in older cases pending in federal court that needed new state court appointments to investigate and potentially litigate claims under the North Carolina Racial Justice Act.

<sup>4</sup> Three of the 14 capital post-conviction attorney appointments in fiscal year 2010-11 were appointments in older cases pending in federal court that needed new state court appointments to investigate and potentially litigate claims under the North Carolina Racial Justice Act.

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

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

Between July 1, 2001 and January 20, 2012, IDS Office staff set appropriate and uniform fee awards for 25,753 attorney fee applications in capital cases and appeals, including interim and final fees:<sup>5</sup>

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12 YTD
# attorney fee awards	1,860	2,278	2,363	2,340	2,569	2,709	2,850	2,798	2,953	3,033	1,693

Also between July 1, 2001 and January 20, 2012, the Office set fee awards for 22,118 expert bills in capital cases and appeals, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts, again including interim and final fees:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12 YTD
# expert fee awards	960	1,419	1,977	2,184	2,045	2,349	2,663	2,771	2,976	2,774	1,435

The Office is currently processing approximately 112 attorney and expert fee applications per week, and generally forwards those awards to IDS Financial Services for payment within one to two weeks of receiving each fee petition. In potentially capital cases that have been resolved by

<sup>5</sup> See “Capital Case Costs and Dispositions Study,” below, for a discussion of the growing number of pending potentially capital cases each year.

plea or trial, the IDS Director routinely asks the presiding judge for his or her opinion about the attorney’s fee application before awarding final fees.

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 Attorney Compensation,” “Non-Capital and Non-Criminal Billing Policies and Education,” and “Improved Revenue Collection,” below.

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

Between July 1, 2001 and January 23, 2012, the Capital Defender reviewed and acted on 19,638 requests for expert funding and miscellaneous expenses at the trial level:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12 YTD
# trial level expert and misc. expense requests	482	1,347	1,783	1,947	1,914	2,086	2,282	2,304	2,268	2,143	1,082

During that same time period, the IDS Office reviewed and acted on 2,660 requests for expert funding and miscellaneous expenses in capital post-conviction proceedings:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10 <sup>6</sup>	FY11	FY12 YTD
# PC expert and misc. expense requests	284	250	184	230	215	298	188	245	374	256	136

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

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

The IDS Office has adopted a number of policies and procedures to govern fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level. Those policies address general billing principles, reimbursable expenses, recoupment of attorney fees, and expert and support services, and contain detailed instructions on completing the various fee application forms. The most recent version of the policies is dated October 2011 and is available at [www.ncids.org](http://www.ncids.org).

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<sup>6</sup> The spike in capital post-conviction expert requests during fiscal year 2009-10 was attributable to the North Carolina Racial Justice Act.

With the assistance of SOG faculty, IDS Office staff also developed a video training program for appointed attorneys in non-capital and non-criminal cases at the trial level entitled “Ethics and Practice: Billing in Appointed Indigent Cases.” The North Carolina Bar Association (“NCBA”) co-sponsored the program, and it was filmed at their headquarters in Cary in December 2007. The video contains substantive segments on the journey of a fee application, IDS’ billing policies, the various fee application forms, getting paid, and record keeping. Since May 2008, the video has been posted on the SOG and IDS websites, where attorneys can access it for free. Since December 2008, it has also been available on the NCBA website for one hour of continuing legal education ethics credit.

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

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

The January 1, 2006 deadline for submission of older fee applications caused a significant one-time increase in spending during fiscal year 2005-06, and the one-year deadline for all other cases appears to have caused a quickening of submissions for same-year dispositions. *See* “Indigent Defense Fund Demand and Budget Needs,” below. However, the deadlines have enabled IDS staff to obtain more accurate data about the current demand on the indigent defense fund. For example, IDS Office staff are now able to analyze demand on the fund by case disposition dates, rather than the date a fee application was received. Office staff can also analyze how much a given year of work has cost IDS, and can use past year spending trends to predict how much more remains to be paid of a given fiscal year’s dispositions. Thus, the deadlines have given Office staff a new way to make long-term predictions about future annual growth rates in the PAC fund based on dispositions each fiscal year. Based on a three-year rolling average, the average growth rate by disposition year has fallen from 6.4% in fiscal year 2007-08 to 3.7% in fiscal year 2010-11. However, growth rates measured both by demand and by disposition year remain difficult to predict because court resources and other volatile factors affect the timing of case dispositions.

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

Since IDS was established in 2001, the General Assembly has created five new public defender offices—in Forsyth County, Judicial District 1 (Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties), Wake County, New Hanover County, and Judicial

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

The IDS Commission and Office will continue to investigate the potential cost savings from and advisability of creating new public defender offices in other districts or regions, and will report any recommendations to the General Assembly.

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

On May 6, 2005, the IDS Commission adopted qualification standards for individuals who serve as mitigation specialists in capital cases. *See Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003) (holding that the capital defense team has a constitutional obligation to investigate and discover all reasonably available mitigating evidence). The standards, which are available on the IDS website under the “IDS Rules & Procedures” link, provide for three different levels of mitigation specialists based on educational background and experience. While the corresponding pay rates were originally set at \$35, \$45, and \$60 per hour, the rate for the most experienced mitigation specialists was reduced to \$55 per hour for all authorizations dated on or after June 1, 2011. Effective April 2006, only individuals who have been approved for one of the rosters are eligible to work as mitigation specialists on capital cases. As of January 2012, 65 individuals had been approved for one of the mitigation specialist rosters.

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

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

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<sup>7</sup> Effective July 1, 2011, the IDS Commission assumed responsibility for appointing chief public defenders pursuant to §15.16(b) of Session Law 2011-145. *See* “Appointment of Chief Public Defenders,” below.



Guidelines” link. (For details about the process of developing the guidelines, see IDS’ March 2009 annual report.)

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

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

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

As with the non-capital criminal guidelines, the delinquency representation guidelines are intended to serve as a guide for attorney performance in the covered cases, to contain a set of considerations and recommendations to assist counsel in providing quality representation, and to be a training tool and resource. *See also* “Improved Juvenile Delinquency Representation,” below.

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

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

In January 2006, the IDS Director selected an attorney to serve as the Performance Guidelines Project Coordinator. In March 2006, that attorney began working with a committee, which completed a final draft of proposed guidelines in May 2007. The committee's draft was presented to the IDS Commission in June 2007 for approval to start a comment period with the bar, bench, and other system actors. After the comment period was complete, the committee made a number of improvements to the draft. Final guidelines were then approved by the IDS Commission in December 2007, and are available on the IDS website. (For details about the process of developing the guidelines, see IDS' March 2009 annual report.)

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

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

In order to assist judges in evaluating fee petitions that are submitted by PAC, the IDS Office completed statewide studies of the hours claimed by attorneys in district and superior court. In the district court hours study, IDS Office staff analyzed all district court fee applications that were paid between July 1, 2004 and April 12, 2005. The study found that PAC 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, driving while impaired ("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 is posted on the IDS website under the "Reports & Data" link.

In the non-capital superior court hours study, IDS Office staff analyzed two different data sets. For the ten felony classes, the staff analyzed a three-month sample of felony fee applications that were paid between August 1, 2004 and October 31, 2004. For the remaining superior court charge types—felony probation violation, DWI, misdemeanor non-traffic, misdemeanor traffic, and misdemeanor probation violation—the staff analyzed all superior court fee applications that were received by Financial Services during fiscal year 2004-05. The study found that, while PAC 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 is also posted on the IDS website under the "Reports & Data" link.

IDS Office staff hope to prepare comprehensive updates of both studies in the future. In the meantime, Office staff recently completed a preliminary comparison between the average hours by case type that PAC claimed in the fiscal year 2004-05 studies and the average hours by case type that PAC claimed in fiscal year 2010-11. The preliminary analysis of fiscal year 2010-11 data revealed significant increases in average per case time claims in most felonies and DWIs, slight increases in average per case time claims in most other case types, and slight decreases in average per case time claims in some probation violation cases. Average hours claimed in misdemeanors, which represent a large portion of IDS' budget, remained flat in district court and increased slightly in superior court.

**PAC Average Hours Per Case: District Court**

<b>Case Type</b>	<b>FY05 Hours Study</b>	<b>FY11 Disposition Data</b>
All Felonies	3.8	4.6
Felony PV	3.0	2.8
DWI	3.7	4.3
Misdemeanor Non-Traffic	3.0	3.0
Misdemeanor Traffic	2.9	2.9
Misdemeanor Probation Violation	2.6	2.7

**PAC Average Hours Per Case: Superior Court**

<b>Case Type</b>	<b>FY05 Hours Study</b>	<b>FY11 Disposition Data</b>
Class B1 or B2 Felony	19.6	26.3
Class C Felony	14.7	16.0
Class D Felony	13.4	15.4
Class E Felony	10.0	12.4
Class F Felony	10.2	10.5
Class G Felony	8.3	9.3
Class H Felony	7.0	8.0
Class I Felony	6.3	7.0
Felony PV	3.2	3.1
DWI	7.2	8.6
Misdemeanor Non-Traffic	5.8	6.2
Misdemeanor Traffic	4.4	4.6
Misdemeanor Probation Violation	3.3	3.3

At least some of the changes in average time claims are attributable to the enhanced accuracy of IDS' data collection and analysis capabilities between fiscal years 2004-05 and 2010-11. For instance, in the fiscal year 2004-05 studies, IDS was unable to exclude withdrawals and interim fee applications. With the fiscal year 2010-11 data, however, Office staff excluded all withdrawal fee applications and matched all interim fee applications to the final fee applications to arrive at per case totals.

IDS does not currently collect data on district court felonies by class, so the Office cannot determine whether the modest 0.8 of an hour increase in average time claims for district court felonies was a result of a different mix of case types. Office staff believe that the increases in average time claims for DWIs are attributable to the increasing complexity of the law governing DWIs. Similarly, Office staff believe that the increase in average time claims for Class B1 and

B2 felonies is at least partly attributable to the increasing complexity of the law governing satellite-based monitoring and other sex-offender registration issues. Other factors that may be impacting average per case costs include evolving standards of representation, such as the United States Supreme Court opinion holding that defense counsel has an obligation to advise clients of immigration and other collateral consequences of conviction (*see Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)); the increasing volume of electronic discovery in felony cases; more attorneys on the appointment lists and a resulting decrease in efficiencies; backlogs in an overburdened court system; or some combination of other factors. These trends appeared before the hourly rate reductions in May 2011 and are not attributable to the reduced hourly rate structure.

Because the Office examined only two sets of data points (fiscal year 2004-05 and fiscal year 2010-11) and has not analyzed similar data for each fiscal year in between, it is not clear to what extent these changes represent a trend or year-to-year fluctuations due to a different mix of cases and the inevitable variability in case-specific needs. The IDS Office will continue to monitor this data in the years to come.

### ***Private Appointed Counsel Waiting-in-Court Study and Alternative Scheduling Survey***

In August 2005, IDS Office staff completed a study of the costs associated with paying PAC 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 PAC 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 PAC 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. Thus, the study demonstrated that defense attorney wait time attributable to the current scheduling systems in North Carolina adds significant costs to indigent defense, particularly in criminal district court. The PAC waiting-in-court study report is posted on the IDS website under the “Reports & Data” link.

During April 2009, the IDS Office conducted an on-line survey about scheduling practices in criminal district court with criminal defense attorneys, district attorneys, judges, and clerks that sought information about the current scheduling practices in their districts, as well as their suggestions about systemic changes that would improve efficiency. IDS received 481 responses to the scheduling survey, which reflected a wide range of diverse opinions and suggestions. Overall, the responses made clear that the time of all court system actors, as well as defendants, witnesses, and victims, is currently being wasted on district court cases that do not move forward because one or more parties are not ready to proceed. Despite the lack of readiness to move forward, cases are still placed on the calendar and everyone is still required to be present in

court, which takes time away from cases that are ready to move forward and further clogs the dockets. A report on the survey responses was published in October 2009 and is available on the IDS website under the “Reports & Data” link.

After analyzing the survey results, IDS staff held a meeting with a number of criminal defense attorneys who regularly practice in criminal district court to discuss the survey’s findings and to brainstorm potential pilot programs that would improve scheduling. The conversation revealed that there are a number of complicated issues involved with improving scheduling in district court, in part due to the sheer volume of cases moving through the system. In addition, because of the significant variations in local needs and practices, IDS understands that there probably is no “one size fits all” approach to district court scheduling that would be workable and appropriate. However, the survey respondents and meeting participants raised a number of new ideas and approaches that IDS believes are worth exploring, such as: 1) creating an on-line system that would facilitate and enhance pre-court communication between opposing counsel, such as a simple web-based notification system that would allow appointed defense counsel to notify the prosecutor in advance of a court date whether a case will be pled or tried, or whether a continuance will be sought, which should in turn help prosecutors schedule cases more efficiently; 2) developing systems that encourage both district attorneys and defense counsel to set aside time to discuss cases and negotiate pleas before a court date; 3) creating systems that provide for early discovery or other information exchange; 4) exploring alternatives to the traditional system of appointing counsel on a case-by-case rotation, such as assigning appointed counsel to specific days of the week or month or appointing a given attorney to cases involving a certain officer or officers; and 5) exploring alternatives to the traditional system of full-day calendar calls for multiple case types, such as setting specific dates and times by type of case or proceeding or by attorney, as well as additional specialized courts and dockets.

In addition, to the extent that some types of cases can be removed from the court dockets, that would alleviate some of the burden on the system. Potential strategies for removing certain case types from the docket include reclassifying as infractions certain low-level misdemeanors where that change would not cause any harm to public safety, *see* “Misdemeanor Reclassification Study,” below, encouraging even more screening of cases for alternative resolution prior to a court date, and/or creating additional web-based systems that would allow minor cases to be resolved with the payment of a fine without a court appearance. In future years, the IDS Commission and staff hope to continue working with other actors in the court system to identify ways to reduce the costs associated with defense attorney wait time.

### ***Capital Case Costs and Dispositions Study***

In December 2008, IDS Office staff finalized a study on IDS’ spending on PAC and experts in potentially capital cases at the trial level, as well as the dispositions of all potentially capital cases at the trial level that were initiated after G.S. 15A-2004 was revised effective July 1, 2001; those revisions gave prosecutors discretion to proceed non-capitally even if there is evidence of an aggravating factor.

The study generated four primary findings. First, the study demonstrated that IDS’ per case spending on potentially capital cases at the trial level had not risen. While there had been some

fluctuation in the average cost of cases from year to year, IDS' total annual expenditures on potentially capital cases have grown because the number of pending cases has grown each year. Indeed, the number of open cases in which IDS paid attorney or expert fees grew 49%, from 746 cases in fiscal year 2001-02 to 1,112 cases in fiscal year 2007-08.

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

Third, the study concluded that IDS' spending on potentially capital cases is driven by prosecutorial decisions over which the defense function has no control, including prosecutors' decisions to charge the vast majority of intentional homicides as first-degree or undesignated degree of murder and to proceed capitally and seek the death penalty. Based on data provided by the AOC, 86% to 88% of all intentional homicides in North Carolina are charged as first-degree or undesignated degree of murder, as opposed to second-degree murder or voluntary manslaughter. Between fiscal years 2001-02 and 2005-06, the average cost of a case charged as first-degree or undesignated degree of murder was \$27,834, compared to an average cost of \$1,931 for a second-degree murder case (a B2 felony) and \$1,385 for a voluntary manslaughter case (a D felony). In addition, potentially capital cases that actually proceed capitally cost IDS at least three times more than similar cases that do not proceed capitally.

Finally, the study compiled the dispositions of all potentially capital cases that opened after IDS was established and were disposed by April 22, 2008. Over 83% of those cases ended in convictions of second-degree murder or less, and 45% ended in convictions of less than second-degree murder. More than 12% ended in dismissals without leave to refile, no true bills, or no probable cause.<sup>8</sup> For cases that actually proceeded capitally, 60% ended in second-degree murder or less and 22% ended in less than second-degree murder. A mere 3% of the cases that actually proceeded capitally ended in a death verdict. The IDS Commission and staff believe that these findings show there is significant room for improvement in the way potentially capital cases are charged and screened in North Carolina.

The capital case study report has been distributed to the elected district attorneys, all of the superior court judges, and a number of legislators. It is also available on the IDS website under the "Reports & Data" link.

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

In the 2002 Appropriations Act, the General Assembly reduced the overall budget for the Office of Sentencing Services ("OSS") by almost 40% and transferred the program to IDS, with directions to reconfigure the program as necessary to implement the budget reduction. IDS assumed responsibility for OSS in September 2002 and, in November 2003, the IDS Director hired a permanent half-time Administrator of OSS. In the 2005 Appropriations Act, the General

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<sup>8</sup> These percentages exclude cases resolved by voluntary dismissals with leave, not guilty by reason of insanity, and not competent to proceed, as well as cases in which the defendant died of natural causes before the case was resolved.

Assembly further reduced OSS' budget by an additional 30% and directed IDS to close low-performing programs. OSS was substantially reorganized pursuant to those two budget reductions, including the elimination in 2005 of 10 programs after consultation with the senior resident superior court judges in those districts. During 2005, OSS also eliminated other state positions and reduced the non-profit programs' grants to meet the new budget amount. In the 2009 Appropriations Act, the General Assembly again reduced OSS' budget by 15%, resulting in the closure of four more programs, further reductions to non-profit budgets, and a cut in state employee hours and salaries. The 2009 Appropriations Act also subjected the program to a continuation review. Based on the continuation review, the General Assembly restored funding for Sentencing Services in 2010, but reduced the appropriation by 5%, resulting in the closure of two additional programs.

In 2011, the General Assembly eliminated funding for Sentencing Services beginning in fiscal year 2011-12. Programs stopped accepting new cases and began preparing to cease sentencing services activity several weeks prior to the end of fiscal year 2010-11, leading to final year totals of 3,917 contacted defendants (a 9% decrease from the prior fiscal year), 1,512 opened cases (a 22% decrease from the prior fiscal year), and 1,278 presented plans (a 16% decrease from the prior fiscal year). During their years of operation under IDS, the programs reported that the majority of cases were attributable to referrals from attorneys and judges.

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

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

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

Effective July 1, 2006, AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including a number of accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and a full-time employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. Since assuming this responsibility, the IDS Office has taken a number of steps to improve the training, support, and supervision of the accounts payable staff. (For details about those steps, see IDS' March 2011 annual report.) In addition, employees in IDS' central office have assumed responsibility for establishing new attorney and expert vendors in the accounting system, and IDS Financial Services staff have assumed responsibility for processing non-attorney payments that are confined to IDS' budget. AOC personnel continue to print checks for legal services and to manage the imaging system that is used to store electronic copies of fee petitions.

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

Effective July 1, 2011, § 64 of Session Law 2011-391 amended G.S. 7A-314 to transfer funding responsibility for defense-requested lay witnesses from AOC to IDS. AOC remains responsible for funding lay witnesses acting on the behalf of the court or prosecution. After the Session Law became effective, IDS staff worked with AOC staff to develop procedures for ensuring that lay witness fees and expenses are charged to the appropriate agency. During the first half of fiscal year 2011-12, IDS expended approximately \$9,000 on defense lay witness fees and expenses.

### *Committees of the IDS Commission*

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

The Public Defender Committee has worked with the public defenders to develop plans to govern the appointment and qualifications of counsel in each public defender district, and has discussed IDS staff site visits to the public defender offices and ways to improve IDS' communication with the public defenders. Effective July 1, 2011, when the Commission assumed responsibility for appointing chief public defenders pursuant to §15.16(b) of Session Law 2011-145, the Public Defender Committee also assumed responsibility for receiving the IDS Director's recommendations with respect to the appointment of chief public defenders around the state, for approving or rejecting those recommendations after due deference, and for presenting the Committee's recommendations to the full IDS Commission. *See* "Appointment of Chief Public Defenders," below.

The Review Committee developed procedures to govern review of the IDS Director's fee and roster decisions, and addresses all such requests for review. With the assistance of SOG faculty, the Personnel Committee developed personnel policies for the IDS Office and tools to evaluate



the performance of the Executive Director, Appellate Defender, Capital Defender, and Juvenile Defender.

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

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

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

In December 2007, the Commission formed a Long-Term Planning Committee to address a number of transition issues that faced the Commission and staff during fiscal year 2008-09, including the term expirations of three founding Commissioners in September 2008 and the retirement of the founding IDS Director in December 2008. The Long-Term Planning Committee continues to address similar transition issues as they arise. In August 2010, a Senior Advisory Committee comprised of former leaders on the Commission was formed to help maintain institutional knowledge and experience as the IDS Commission and IDS Office move into their second decade of existence.

Also in August 2010, a new Private Counsel Compensation Committee was formed to examine the payment structure for appointed counsel and to determine whether a more nuanced hourly rate system would be appropriate and feasible. A new Client Advisory Committee was

formed around the same time to discuss ways to get feedback from indigent clients about the services they receive. Finally, after the 2011 General Assembly directed IDS to issue Requests for Proposals (“RFPs”) for contracts for cases currently handled pursuant to case-by-case appointments of private attorneys, the Commission formed a Contracts Committee to work with the staff on developing this new system for delivering legal services to indigent defendants and respondents. *See* “Requests for Proposals and Contracts,” below.

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

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

In addition, effective July 1, 2007, IDS Financial Services began electronically capturing data on the case dispositions that are reported on all non-capital criminal case fee applications and, effective July 1, 2009, IDS Financial Services began capturing data on the judgment and sentencing in those cases. Effective July 1, 2008, IDS Financial Services began capturing data on the resolution of charges in delinquency and undisciplined contempt cases. And, effective July 1, 2010, IDS Financial Services began capturing disposition data for juvenile delinquency and civil cases. This new data will enable IDS staff to conduct analyses of case dispositions, to analyze and report costs per case for the various case types broken down into cases that were resolved by trial and cases that were resolved without a trial, and to further refine the public defender cost-effectiveness studies.

In addition, the IDS Office worked with the Appellate Defender and an outside contractor to design a case-reporting and time-keeping database in Microsoft Access. The Office of the Appellate Defender began using the database on July 1, 2007, and is in a position to provide complete case reporting and time data for fiscal year 2007-08 and beyond. The Appellate Defender also regularly uses the database to assess caseloads and for other management purposes. The information in the database will be critical to any cost-effectiveness study of the office that IDS may conduct in the future. During fiscal year 2012-13, the Office of the Capital Defender plans to begin using a modified version of the same database.

Finally, during fiscal year 2009-10, IDS Office staff worked out an agreement with AOC to receive periodic data exports from the Automated Criminal Infraction System (“ACIS”) upon request, which should help IDS staff conduct more meaningful research in a number of areas. Office staff have designed an interface that makes the data from ACIS more accessible for data mining, and have written programs to clean the data and convert it from charge-based data to

case-based data. Currently, the Office is working to automate the data cleaning and conversion programs for future downloads, which will be useful for a variety of analyses, such as workload assessments and the misdemeanor reclassification study discussed below.

### *Uniform Rates of Attorney Compensation*

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

In light of the State's fiscal problems, for cases with warrant dates on or after January 1, 2011, the Commission adopted a policy reducing the trial-level hourly rate from \$95 to \$85 for all services rendered by appointed defense counsel after communication by the assigned prosecutor that the case will not be prosecuted capitally, after a formal declaration by the assigned prosecutor in open court or at a Rule 24 hearing that the case will not be prosecuted capitally, or after 12 months have passed since the date the warrant was issued without the Court conducting a Rule 24 hearing. To implement this policy, appointed attorneys representing defendants in potentially capital cases at the trial level with a warrant date on or after January 1, 2011 are required to complete and submit fee application addendums that provide information about the status of the cases.

During the 2011 legislative session, it became clear that the General Assembly intended to significantly reduce IDS' budget on top of an existing shortfall of almost \$10 million. Indeed, the final budget adopted by the General Assembly reduced IDS' budget by an additional \$10.5 million and directed IDS to reduce the PAC hourly rates to minimize the shortfall. As a result, at its May 2011 quarterly meeting, the IDS Commission voted to implement a number of reductions in the hourly rates paid to PAC. For potentially capital cases in which counsel accepted appointment on or after May 2, 2011, the rates were reduced to \$85 and \$75 per hour, depending on whether the case is proceeding capitally.

After conducting a statewide survey, as well as studies of district and superior court fee awards during fiscal year 2001-02, the IDS Commission adopted a standard statewide rate of \$65 per hour for all non-capital and non-criminal cases, effective April 1, 2002. The IDS Commission intended the \$65 non-capital rate to be essentially revenue neutral, but it was slightly below the prevailing average in a number of North Carolina counties at the time it was established. From an additional legislative appropriation during fiscal year 2007-08, the Commission was able to raise the non-capital rate to \$75 per hour, effective for fees approved on or after February 1, 2008.

Also in response to the funding reductions in the 2011 Appropriations Act, the IDS Commission implemented a new reduced and variable rate structure for non-capital and non-

criminal cases at the trial level where judges remain responsible for setting fees. The new rates are \$70 per hour for serious felonies (Class A through D), \$60 per hour for all other cases disposed in superior court, and \$55 per hour for all other cases disposed in district court. In most case types, the reductions apply to cases in which the attorney was appointed on or after May 2, 2011. In case types that tend to last for an extraordinarily long time period, such as abuse, neglect, and dependency cases, the reduced rates apply to work done on or after July 1, 2011 regardless of the date the attorney was appointed. All of the rate reductions combined are projected to generate savings of approximately \$16.7 million annually once they are fully implemented, with projected savings this fiscal year closer to \$12.5 million.

The IDS Commission and staff believe that standard rates have the advantages of increasing the stability and predictability of PAC payments, improving pay equity and fairness across the State, and enhancing the independence of defense counsel. The standard rates have also helped IDS control increases in indigent defense expenditures and make more accurate projections about future demands on the fund. However, with the exception of the new serious felony rate, the current standard rates are below the original rates that IDS established a decade ago. In addition, all of the current rates are significantly below what attorneys can earn in retained cases and appointed cases in federal court. Indeed, while approving the rate reductions, the Commission simultaneously adopted a resolution stating that the rate reductions are being imposed on IDS by budgetary constraints; that the reductions are necessary to avoid stopping payments to PAC and necessary defense experts in the middle of the fiscal year and accumulating an untenable level of debt; and that the new rates are unreasonably low and may not be sufficient to ensure that indigent persons receive competent counsel.

The PAC hourly rates will need to be increased again over time to ensure that a sufficient number of competent attorneys are available to represent indigent defendants and respondents. Since the rate reductions were imposed, there are some areas of the State, particularly rural areas, in which there are no longer enough qualified attorneys willing to handle the indigent caseload. For example, the courts in the Second Judicial District have asked IDS to expand the First Judicial District Public Defender Office into the Second District because there are not enough attorneys willing to handle indigent cases at the new rates. Courts in Duplin and Montgomery counties are experiencing similar problems with some types of indigent cases. An insufficient number of qualified attorneys to cover the caseload will cause additional delays in the court system, and could lead to spiraling costs later as errors and ineffective assistance of counsel claims need to be addressed through more costly appellate and post-conviction litigation.

The PAC hourly rates will also need to be increased to keep pace with increases in the costs of living and operating a law practice. According to the NCBA's most recent Economic Survey, which was released in 1998, the total annual operating expenses of one- to four-person law firms in North Carolina during 1997 averaged more than \$43 per hour per lawyer (based on a 48-week work year at 40 hours per week). Between December 1997 and December 2011, the Consumer Price Index for all Urban Consumers rose by 39.9% (from 161.3 to 225.67). 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 \$61 per hour. Thus, on average, appointed attorneys handling most district and superior court cases are now losing money for their work, and appointed attorneys handling serious felonies are netting a mere \$9 per hour.

The attorneys who represent indigent persons in North Carolina provide those professional services at an extremely low cost compared to the “market” cost of private legal services. While IDS’ current hourly rates are less than half the average hourly rate an attorney would charge in most areas of North Carolina, most private defense attorneys charge a flat fee depending on the nature of the case. For a typical DWI case, private lawyers in North Carolina charge between \$1,000 and \$3,000. By comparison, based on the new \$55 rate for DWIs resolved in district court, IDS pays an average of less than \$240 for representation in an indigent DWI case. *See* “District and Superior Court Average Hours Studies,” above. 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.

### ***Standardized Expert Rate Schedule***

Effective July 1, 2011, § 15.20 of Session Law 2011-145 amended G.S. 7A-498.5(f) to provide that the rate of compensation for defense expert witnesses funded by IDS may be no greater than the rate set by the AOC pursuant to G.S. 7A-314(d). After that provision was enacted, IDS staff worked with AOC staff to develop an appropriate and workable hourly rate schedule for experts for the courts, prosecution, and defense. The rate schedule is based on a combination of education and expertise, and addresses 15 different categories of experts, some of which are eligible for modest hourly enhancements based on years of experience. For the expert types that are eligible for experience enhancements, the schedule also includes a reduction in their hourly rates for time spent traveling and waiting in court. Both AOC and IDS policies allow prosecutors and defense attorneys to apply to the applicable agency director for a deviation from the standardized rate schedule based on extraordinary case-specific needs, such as the requested expert services are in a new, emerging, or novel area, and there is a limited number of experts in the field.

Once IDS and AOC agreed on the rate schedule, both agencies developed forms for prosecutors and defense attorneys to use in applying for expert funding. The form for defense attorneys in non-capital criminal and non-criminal cases (AOC-G-309) incorporates the defense request, court order, and standardized rate schedule, and contains a section that the expert completes to submit his or her bill after services are rendered. A separate form (AOC-G-310) is available for attorneys who are seeking a deviation from one of the standardized rates. IDS Office staff developed similar forms for attorneys who handle potentially capital cases at the trial level and capital post-conviction cases, where the expert requests are submitted to the Capital Defender and IDS Director, respectively.

### ***Appointment of Chief Public Defenders***

Effective July 1, 2011, § 15.16(b) of Session Law 2011-145 amended G.S. 7A-498.7(b) to transfer responsibility for appointing chief public defenders from the local senior resident superior court judges to the IDS Commission. The appointment still must be made from a list of two or three attorneys nominated by written ballot of the local bar. After that provision was enacted, the Public Defender Committee of the IDS Commission, *see* “Committees of the IDS Commission,” above, met to develop proposed procedures to govern the appointment of chief

public defenders, as well as an end-of-term evaluation form. The full IDS Commission approved the proposed procedures and evaluation form at its September 2011 quarterly meeting.

The adopted procedures require the IDS Director to conduct an informal mid-term review of each chief public defender, so that he or she will have an opportunity to receive feedback and to rectify any problems or concerns that are identified. The IDS Director is then required to conduct a formal end-of-term evaluation five to six months before the expiration of each term. That evaluation shall include personal contact with the local senior resident superior court judge and chief district court judge to solicit their comments, as well as the electronic solicitation of comments from other local court system actors. Whenever possible, the end-of-term evaluation shall also include a site visit to the public defender office. The procedures and evaluation form specify the criteria against which the chief public defenders will be evaluated, including but not limited to the quality of services provided by their offices, their management of resources, and their relationships with other system actors. The procedures also permit the electronic solicitation of local comments about any non-incumbent nominee(s), as well as an opportunity for non-incumbent nominee(s) to submit materials in support of their candidacy. Based on the evaluations and any materials received, the procedures require the IDS Director to develop an appointment recommendation for the Public Defender Committee, which in turn develops a recommendation for the full Commission. The adopted procedures and evaluation form are available at [www.ncids.org](http://www.ncids.org).

At its December 2011 quarterly meeting, the IDS Commission unanimously voted to reappoint to subsequent four-year terms two incumbent chief public defenders (in New Hanover County and District 29B) whose terms were set to expire in early 2012. The terms of five additional chief public defenders will expire later in the 2012 calendar year.

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

IDS Office staff have traditionally conducted 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 PAC by including in the analysis the administrative time involved with making appointments, setting fee awards, and processing and issuing fee payments. Due to competing demands on IDS staff time and the significant changes in the rate structure for PAC that the IDS Commission implemented during fiscal year 2010-11, the staff did not conduct a cost-effectiveness study for last fiscal year. The IDS Office intends to resume annual studies in fiscal year 2011-12.

In early 2005, IDS Office staff worked with a committee of public defenders and SOG faculty to design a much more detailed disposition reporting system for the public defender offices. The reporting system went into effect on July 1, 2005, and gives IDS Office staff access to the same expanded data that is now available for PAC fee applications, *see* "Improved Data Collection and Reporting," above, as well as data on public defender felony dispositions by felony class. Under the system, public defender offices report dispositions by case type, including felony class, and provide IDS with additional workload measures for the offices, such as the number of trials and review hearings for certain types of cases.

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

During early 2008, IDS Office staff conducted an analysis of the impact on district-wide indigent defense costs from the creation of new public defender offices. First, the study examined why the statewide percentage of cases being handled by public defender offices had remained fairly stable since fiscal year 2003-04, despite the continuing expansion of the public defender system. The study showed that, between fiscal years 2003-04 and 2007-08, statewide PAC dispositions increased more than public defender dispositions, despite the fact that public defender dispositions grew by 25% during that time period. In other words, the total number of indigent dispositions had been increasing at a faster rate than the public defender expansion. Second, the study looked at average costs per disposition in three of the newer public defender districts—Forsyth County, the First District, and Wake County—both before and after the offices were created. While there was some variation across those districts, the study concluded that per case costs did not appear to be negatively impacted by public defender expansion.

In the fiscal year 2009-10 public defender cost-effectiveness study, IDS staff again examined the overall impact of having a public defender office on district-wide indigent defense costs. The study compared the average district-wide expenditures per disposition to the average statewide PAC expenditures per disposition for case types that are handled by public defender offices. If the average expenditures per disposition in a public defender district are lower than the average PAC expenditures per disposition statewide, all factors being equal, this suggests that indigent defense expenditures in the district would have been higher without the public defender office. The study found that average expenditures per disposition in 11 of the 16 districts with public defender offices were lower than the average PAC expenditures per disposition statewide.

The fiscal year 2009-10 study then examined expenditure changes in the two districts with the most recently created public defender offices—District 29B and New Hanover County. In District 29B, the data clearly showed that establishing the public defender office significantly lowered indigent defense expenditures in the district. Total district-wide indigent defense expenditures decreased 9.2% from fiscal year 2006-07 to fiscal year 2009-10, and the district cost per disposition decreased 24.1%. In New Hanover County, the data was less definitive. Both total district-wide indigent defense expenditures and the district cost per disposition increased after the public defender office was established. However, an 11.3% rise in New Hanover County's indigent caseload explained most of the expenditure increase in the district. Based on statewide data on caseload growth during the relevant time period, the increase in New

Hanover County’s caseload may not reflect any increase in the rate of attorney appointments. Similarly, based on statewide data on costs per disposition for case types that public defender offices handle, which increased by 10.7% between fiscal years 2007-08 and 2009-10 due to a different mix of case types, the 2.9% increase in district-wide costs per disposition after the New Hanover County Office was created may not reflect any change in attorney behavior. The IDS Office will continue to monitor these trends in new public defender districts in the years to come.

Finally, in January 2011, IDS staff attempted to quantify the county jail savings that are generated by the existence of a public defender office. Using the New Hanover County Public Defender Office as an example, IDS staff compared the average daily jail population in 2008 (before the public defender office was created) to the average daily jail population in 2011 (after the public defender office was created). The following chart demonstrates the significant county jail savings that are associated with the public defender office, which far outweigh the county costs for providing office space and facilities:

	<b>Avg. Daily Jail Population<sup>9</sup></b>	<b>Annual Jail Cost @ \$80 per Inmate per Day<sup>10</sup></b>
Pre-PD Office (2008)	550	\$15,664,000
Post-PD Office (2011)	429	\$12,217,920
<b>PD Office County Jail Cost Savings</b>	<b>121</b>	<b>\$3,446,080</b>

### *Expansion of Existing Public Defender Offices*

In the 2010 Appropriations Act (Session Law 2010-31, § 15.3), the General Assembly authorized the IDS Office to create up to 12 new attorney positions and six new support staff positions within existing IDS defender programs during fiscal year 2010-11. The head of each defender office was then given the opportunity to submit a request and justification for additional staff to the IDS Director. IDS Office staff subsequently reviewed those requests to determine whether adding new personnel would help expand the work each office was doing, generate more cost savings and efficiencies, and/or relieve overburdened offices.

During fiscal year 2010-11, the IDS Director allocated nine of the 12 new attorney positions as follows, all of which were intended to decrease the number of cases that need to be farmed out to PAC and to expand the offices into cost-effective areas: 1) three new assistant public defenders in the Mecklenburg County Public Defender Office; 5) two new assistant public defenders in the Wake County Public Defender Office; 2) one new assistant public defender in the Durham County Public Defender Office; 3) one new assistant public defender in the Forsyth County Public Defender Office; 4) one new assistant public defender in the Pitt County Public Defender Office; and 6) one new assistant public defender in the District 29B Public Defender Office. In addition, IDS created a new Trial Resource Counsel position to assist public defenders and PAC who are facing complex trials, particularly capital trials, prepare for trial and evaluate plea options. See “Resource Counsel Positions,” below.

<sup>9</sup> The average daily jail population figures are from the daily “Jail Facility Inmate List by Name” report, which is generated by the New Hanover County Sheriff’s Office. The report is distributed on a daily basis to each criminal courtroom and to the Public Defender Office.

<sup>10</sup> The daily cost of incarcerating an inmate was provided by Captain M.J. Adams, Detention Division Commander in the New Hanover County Sheriff’s Office.



During fiscal year 2010-11, the IDS Director allocated all six of the new support staff positions as follows: 1) one new legal assistant in the Cumberland County Public Defender Office to make that office's staffing levels more comparable to other offices; 2) one new investigator in the New Hanover County Public Defender Office to make that office's staffing levels more comparable to other offices; 3) one new investigator in the Pitt County Public Defender Office to perform work previously done by an investigator who was on short-term disability and planning to retire; 4) one new legal assistant in the Wake County Public Defender Office to make that office's staffing levels more comparable to other offices; 5) one new investigator in the Durham-based Office of the Capital Defender to decrease the use of outside investigators; and 6) one new paralegal in the central IDS Office to support the new Trial Resource Counsel position.

In the 2011 Appropriations Act (Session Law 2011-145), the General Assembly again gave the IDS Office authority to create up to 50 new attorney and 25 new support staff positions during fiscal year 2011-12 for the expansion of existing offices, for the creation of new public defender offices within existing public defender programs, or for the establishment of regional public defender programs. Session Law 2011-145 also authorized IDS to use some of those new positions "within existing defender programs to handle cases in adjacent counties or districts."<sup>11</sup> Pursuant to that authority, the Office of the Capital Defender has begun appointing some assistant public defenders to handle potentially capital cases at the trial level in counties or districts adjacent to their offices. IDS' March 2013 annual report to the General Assembly will include details on any new positions created pursuant to this provision.

### ***Misdemeanor Reclassification Study***

IDS spends a significant amount of money on appointed attorneys in low-level traffic and other offenses in district court that carry the theoretical possibility of imprisonment, and the IDS Commission and staff believe that reclassifying some of those offenses as infractions could save a significant amount of money, both for IDS and for other state and county agencies. *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) (recommending reclassification of all but the most serious traffic offenses).

During February 2009, Office staff conducted a preliminary study of the potential cost savings that would be associated with reclassifying a number of different misdemeanor offenses as infractions. If those offenses are reclassified as infractions, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. However, the study was complicated by limitations inherent in the data available through ACIS, and there appeared to be duplication in the case counts used in the study. After further review of the data available in ACIS, IDS staff concluded that the rough cost savings that were included in IDS' March 2009 annual report were significantly overstated.

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<sup>11</sup> In § 14.15 of Session Law 2006-66, the General Assembly also gave IDS authority "to create up to two new assistant public defender positions and one new support staff position in the First Defender District and up to one new assistant public defender position in Defender District 3A, for the purpose of representing indigent persons eligible for the appointment of counsel in Superior Court District 2 and District Court District 2."

As discussed in “Improved Data Collection and Reporting,” above, the IDS Office now has access to regular exports of ACIS data and has built an interface to facilitate mining of that data. Using that interface, the Office began conducting another study of the savings that would be generated from reclassifying different misdemeanor offenses as infractions. In January 2010, IDS staff circulated a draft of the study design to the AOC Director, the President of the Association of Chief District Court Judges, the President of the Association of District Court Judges, the President of the Conference of District Attorneys, the Director of the Conference of District Attorneys, the Director of the Sentencing and Policy Advisory Commission, the President of the Association of Public Defenders, and the President of the Conference of Clerks of Superior Court, with a request that they provide feedback on the planned study.

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

The reclassification study ultimately examined the sentence outcomes and potential cost savings that would be associated with reclassifying 31 different misdemeanors as infractions, as well as 13 additional misdemeanors that the Sentencing and Policy Advisory Commission recommended for reclassification pursuant to § 19.5 of Session Law 2010-31. Many of the 31 offenses were identified for study because there is a high volume of cases, a high percentage of dismissals or other resolution without conviction, and a lower likelihood of objection to reclassification because, for example, the offense is a victimless crime or reclassification should not have a negative impact on public safety. Additional related statutes were examined to ensure that projected savings could not be eliminated or minimized if prosecutors simply start charging defendants who engage in the same conduct pursuant to a different but related criminal statute. The study analyzed all charges associated with cases disposed in fiscal year 2008-09 that included at least one of the identified statutes. The data was analyzed by defendant, file number, statute, additional charges against the defendant, and case outcomes.

The study found that cases that involved at least one of the 31 statutes selected by IDS comprised 65.2% of the court system’s caseload in fiscal year 2008-09 (or 977,750 cases). In half of those cases, the defendant was charged with only one selected statute. In an additional 20% of the cases, the defendant was charged with multiple statutes selected by IDS. In the remaining cases, the defendant was also charged with one or more other offenses not selected for potential reclassification. The study found that the majority of selected statutes rarely or never resulted in active or intermediate time or probation. Most often, the cases resulted in a financial penalty only or a dismissal without leave. Excluding driving while license revoked (“DWLR”)

cases, the study concluded that IDS would save approximately \$2.25 million annually in attorney fees if all of the statutes identified by IDS were reclassified as infractions. While reclassification of DWLRs would generate an additional \$2.83 million in annual savings, there are more than 70 ways for a defendant's license to be revoked and the IDS Commission and Office would only recommend reclassification of DWLRs that are based on a failure to comply or other similar conditions, not DWLRs that are based on a prior DWI conviction. IDS Office staff attempted to obtain data from the Department of Motor Vehicles about the license revocation events underlying the DWLRs that were disposed in fiscal year 2008-09, but were unable to obtain that data. In addition to the 31 offenses selected by IDS, the study concluded that reclassification of the 13 offenses recommended by the Sentencing and Policy Advisory Commission would generate almost \$1 million in attorney fee savings.

While the attorney fee savings associated with reclassification of these misdemeanors is more modest than the IDS Commission and staff expected given the volume of the cases, reclassification would also relieve over-burdened criminal courts and generate additional savings for the prosecutors, courts, jails, corrections, and probation. The misdemeanor reclassification study is available on the IDS website under the "Reports & Data" link.

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

In February 2011, IDS Office staff updated a prior study comparing the total number of indigent case dispositions in district and superior court to the total number of court dispositions in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support.<sup>12</sup> However, the updated study was complicated by a change in AOC's methodology for counting misdemeanor non-traffic dispositions. Prior to fiscal year 2010-11, if there was any traffic charge associated with a CR file number, AOC counted the case as a traffic case. In fiscal year 2010-11, AOC changed that methodology and began counting a case as a traffic case only if *all* charges associated with a file number were traffic charges. In other words, cases that used to be counted as traffic cases are now more accurately counted as misdemeanor non-traffic cases. AOC estimated that 12% of the increase in total criminal non-traffic dispositions between fiscal years 2009-10 and 2010-11 was the result of the improved accuracy of the new methodology. To make non-traffic data from prior fiscal years comparable to fiscal year 2010-11 data, the 12% accuracy improvement rate from fiscal year 2010-11 was applied to prior fiscal years; thus, the adjusted data in the chart below is different than the data in IDS' prior annual reports.

The updated study revealed that there has been a 2.2% decrease in the number of total criminal non-traffic court dispositions between fiscal years 2001-02 and 2010-11. However, during that same time period, there has been significant growth (55.1%) in the number of criminal non-traffic public defender and PAC dispositions that are funded through IDS:

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<sup>12</sup> The updated study was based on total criminal non-traffic and indigent case disposition numbers provided by AOC for fiscal year 2010-11. AOC counts every closed CR or CRS file number as a disposition. In other studies, IDS staff calculate dispositions differently, counting all file numbers disposed on the same day before the same presiding judge as one disposition.

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Total Criminal Non-Traffic Court Disps.	850,541	835,995	842,488	863,094	876,555	860,154	872,154	869,284	823,737	832,055
Total IDS Criminal Non-Traffic Disps.	291,954	303,570	318,460	344,713	366,294	371,290	392,011	416,539	412,970	452,842
IDS Disps. as % of Total Criminal Non-Traffic Court Disps.	34.3%	36.3%	37.8%	39.9%	41.8%	43.2%	44.9%	47.9%	50.1%	54.4%

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

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

The IDS Commission and Office have taken significant steps to control increases in the cost of indigent representation and to analyze the factors driving growth in the fund. The increase in new demand (spending and current-year obligations) during the first ten years of IDS’ operations has averaged 6.7%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS’ creation.<sup>13</sup> The increase in new demand during fiscal year 2010-11 was 4.3%. While the IDS Commission reduced the PAC hourly rates for appointments on or after May 2, 2011, IDS realized less than \$175,000 in savings from those reductions during fiscal year 2010-11.

While there have been some increases in average per case costs for felonies and DWIs over the past six years, the overall increases in demand on the fund are largely attributable to an expanding indigent caseload rather than a rise in per case costs. As shown in the chart in Appendix A labeled “Indigent Defense Expenditure History per Disposition,”<sup>14</sup> indigent defense expenditures per disposition (for both public defender offices and PAC combined) declined over the first four years after IDS was established—between fiscal years 2001-02 and 2004-05—with modest increases in per disposition costs between fiscal years 2004-05 and 2008-09. Per disposition expenditures then decreased again in fiscal year 2009-10 and increased modestly in fiscal year 2010-11.

<sup>13</sup> The increases in new demand during fiscal years 2005-06 and 2007-08 were the highest since IDS was established. However, approximately 2.3% of the 11.5% increase during fiscal year 2005-06 was attributable to the January 2006 deadline for submission of older fee applications. See “Private Attorney Fee Application Deadlines,” above. In addition, approximately 3.5% of the 13.12% increase during fiscal year 2007-08 was attributable to an increase in the standard hourly rates paid to private assigned counsel.

<sup>14</sup> The per disposition expenditures for fiscal years 2006-07 and 2007-08 that are shown in Appendix A are different than the per disposition expenditures that were reported in IDS’ 2009 and 2010 annual reports because of a change in methodology for counting drug treatment court dispositions by public defender offices.

Overall, indigent defense expenditures per disposition during fiscal year 2010-11 were only \$16.06 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01) and \$3.99 more than per disposition expenditures during fiscal year 2008-09. PAC per disposition expenditures during fiscal year 2010-11 were only \$27.71 more than PAC per disposition expenditures the year before IDS was established, only \$22.13 more than PAC per disposition expenditures during IDS' first year of operations, and only \$7.19 more than PAC per disposition expenditures during fiscal year 2008-09. Public defender per disposition expenditures during fiscal year 2010-11 were only \$34.20 more than public defender per disposition expenditures the year before IDS was established, only \$39.27 more than public defender per disposition expenditures during IDS' first year of existence, and \$9.90 less than their peak in fiscal year 2007-08. Those are very modest changes over a decade, particularly in light of the increasingly complex nature of criminal defense and the evolving standards of representation.

As a result of the rate reductions that the IDS Commission and Office implemented in May 2011, current projections suggest that there will be more than a 5% decrease in new demand during the current fiscal year. Without those rate reductions, current projections suggest there would have been a modest increase of 3.7%. Despite the modest increase in demand during fiscal year 2010-11 and the projected decrease in demand this fiscal year, IDS remains significantly underfunded. During the 2010 legislative session, IDS requested a recurring increase of \$5.1 million to fully fund PAC during fiscal year 2010-11. However, the final budget included a \$5.875 million non-recurring decrease in the PAC fund, and IDS ended last fiscal year with \$9.9 million of unpaid debt. Because OSBM allowed IDS to carry forward approximately \$700,000 in unspent recoupment revenues, last year's shortfall was reduced to approximately \$9.2 million. During the 2011 legislative session, IDS requested a recurring increase of \$7.4 million to fully fund PAC during fiscal year 2011-12 at the prior hourly rates plus \$9.3 million in non-recurring funds to pay off the carryover debt from fiscal year 2010-11. However, the final budget for fiscal year 2011-12 reduced IDS' budget by an additional \$10.5 million and directed IDS to reduce the PAC hourly rates to minimize the shortfall. Thus, even with the drastically reduced rates that IDS pays to appointed counsel, the Office is projected to end the current fiscal year with a shortfall between \$13 and \$15 million, which will mean that IDS will have to stop paying PAC and defense experts more than two months before the end of this fiscal year. Such a lengthy payment delay on top of the dramatic rate reductions that PAC have suffered is untenable.

The IDS Commission and Office understand that the State is facing a severe fiscal crisis and are committed to doing everything possible to reduce spending and increase revenues without sacrificing quality. However, the United States Constitution requires States to provide and pay for competent legal representation for indigent defendants who are accused of a crime and facing a possible deprivation of liberty. Various North Carolina General Statutes also require IDS to provide legal representation to indigent persons in a number of additional proceedings. Thus, for fiscal year 2012-13, the Commission and Office respectfully request \$14 million in non-recurring funds to eliminate this year's carry-over debt and a \$4 million increase in recurring funding to cover the projected demand on the fund next year at the reduced PAC rates. *See* "Legislative Recommendations," below.

### *Improved Revenue Collection*

IDS Office staff have worked with AOC staff to gather data on the amount each county collected in recoupment (through probationary collections and civil judgments) during each fiscal year since 2001-02. Staff then analyze that data annually to determine the amount recouped by each county as a percentage of that county's expenditures on indigent defense. Total revenues from recoupment during fiscal year 2010-11, including the attorney appointment fee required by G.S. 7A-455.1, amounted to \$12.76 million, which represented an increase of 6.6% over the prior fiscal year. In fiscal year 2010-11, 72 of North Carolina's 100 counties collected more recoupment revenues than they had in fiscal year 2009-10. Payments collected through clerks' offices at the time of conviction or while the defendant was under probationary supervision accounted for 66% of the total collected last fiscal year, with an additional 34% collected through the interception of state income tax refunds and lottery proceeds.

During fiscal year 2010-11, 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 3.7% to a high of 41.4%, with an overall statewide rate of 12%. 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 2010-11, recoupment in the 20 counties with the highest amount of spending averaged 11.9% while recoupment in the remaining 80 counties averaged 18.1%. The gap between large and small counties narrowed somewhat during 2010-11, from 8.1% in fiscal year 2009-10 to 6.2% in fiscal year 2010-11.

IDS' most notable progress in improving collections has been with the attorney appointment fee, which netted over \$1.5 million in fiscal year 2010-11, a 42% increase over fiscal year 2008-09. During fiscal year 2010-11, all counties reported collections of \$500 or more, half the counties reported collections of more than \$10,000, and 85 counties increased their gross collections over prior years. An increase in the amount of the appointment fee (from \$50 to \$60 for appointments on or after October 1, 2010) accounted for an estimated 14.8% of the 22% growth in revenues during fiscal year 2010-11.

In fiscal year 2009-10, IDS was able for the first time to look at recoupment rates adjusted for the proportion of spending that was recoupment eligible. Based on disposition data in criminal cases, IDS staff found that roughly 36.4% of attorney fees are not eligible for recoupment because the case was dismissed or the client was acquitted. That means the effective statewide recoupment rate (defined as total recoupment as a share of recoupment-eligible spending) last fiscal year was 18.8%. The data on the recoupment eligible share of dispositions by county is not yet complete enough to make that calculation at the county level. For a county-by-county comparison of unadjusted recoupment rates, see Appendix B.

The IDS Office has continued to undertake a number of initiatives to improve the recoupment process and to increase revenues to the indigent defense fund. For instance, IDS Office staff continue to work with the public defender offices to ensure that they submit fee applications for entry of judgment in all recoupment-eligible cases, and have held meetings around the State with public defenders, judges, and clerks to discuss ways to increase revenues.

IDS' Set-Off Debt program staff also work with clerk's offices around the state and AOC Court Services staff to ensure that attorney fee judgments are correctly docketed. 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.

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

In the vast majority of non-public defender counties, the local indigent appointment plans were approved by the North Carolina State Bar before IDS was created. When IDS assumed responsibility for indigent defense in 2001, the IDS Commission grand-fathered in the existing plans and adopted a rule requiring future plan modifications to be approved by the Commission. In March 2008, the IDS Commission approved a model indigent appointment plan for non-public defender districts. The plan is modeled after the public defender appointment plans discussed above, *see* "Development and Approval of Public Defender Plans," and includes qualification standards for the various indigent lists, provides for more oversight by a local committee appointed by the President of the District Bar, and includes some basic reporting requirements to the IDS Office. The model plan, as well as a model application form for the indigent appointment lists, is available on the IDS website.

After the model plan was approved by the IDS Commission, Office staff began working with a number of local districts across the State to implement some version of the plan at the local level. IDS staff mailed packets of materials—including the new model plan, the district's current approved plan, and the model application form—to the local Bar Presidents in a number of counties and districts. At the request of local actors in District 29A, IDS Office staff also developed a list of resources for new attorneys accepting indigent cases.

The Office is currently in discussions with the various Bar Presidents in a number of counties and districts, as well as the chairs of local indigent committees that were already in existence or have been reformed to address this issue. While the implementation process is taking longer than the staff anticipated and, as of February 2012, only three districts (Districts 19D, 30A, and 30B) and three additional counties (Alexander, Lee, and Vance) had officially adopted and implemented a version of the model plan, local actors in several districts and counties are in various stages of preparing new plans for IDS' review.

### ***Development of Indigency Standards***

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

The Indigency Standards Committee held its first meeting in August 2008, at which committee members discussed the staff's initial research and brainstormed ways to improve

indigency screening in North Carolina. Subsequently, the staff discussed potential indigency standards and improvements to the current systems for indigency screening with the chief public defenders and a representative group of district court judges. The judges who participated in the latter discussion did not appear to believe that indigency screening could be improved given current resource limitations. Because of the complexity of the task and competing demands on IDS Commission and staff time, the work of the Indigency Standards Committee has not progressed as quickly as expected.

### ***Individually Negotiated 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 quality and cost-effective legal services to indigent persons in various districts in North Carolina. Currently, the IDS Office has contracts with 43 different attorneys in Alexander, Avery, Brunswick, Buncombe, Catawba, Davie, Durham, Forsyth, Guilford, Harnett, Iredell, Johnston, Madison, Martin, Mitchell, Robeson, Rowan, Stanly, Watauga, Yadkin, and Yancey counties, with the Center for Children’s Defense and the Neighborhood Advocacy Center in Charlotte, and with the Elder Law Clinic of the Wake Forest School of Law in Winston-Salem. During fiscal year 2010-11, IDS contracted with 49 attorneys and the listed organizations to cover the above jurisdictions, as well as Currituck and Dare Counties.

The IDS contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, civil commitment, guardianship, and drug treatment court proceedings. The former half-time IDS Contracts Administrator has monitored the existing contracts, evaluated reports regularly submitted by the contract attorneys, worked with other IDS Office staff to improve data collection and to better assess the cost-effectiveness of the contracts, conducted on-site evaluations of the services being delivered by contract counsel, and explored other areas of the State in which new attorney contracts might save money and increase quality. Effective January 30, 2011, IDS hired a new full-time Contracts Administrator who will assume primary responsibility for oversight of the Requests for Proposals (“RFPs”) and resulting contracts that the General Assembly directed in § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391. *See* “Requests for Proposals and Contracts,” below.

IDS Office staff believe that carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered. Excluding the Buncombe County misdemeanor contracts and the contracts in Brunswick, Durham, Forsyth, and Robeson counties for youth and drug treatment courts, which were reported under a different system, all of the existing IDS contracts combined saved over \$400,000 during fiscal year 2010-11 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments.

### ***Requests for Proposals and Contracts***

Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, directs IDS to issue RFPs for the provision of all legal services for indigent clients in all judicial



districts. In cases where the proposed contract can provide representation more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards, the special provision directs IDS to use PAC funds to enter into contracts. In selecting contractors, the special provision further directs IDS to consider both the cost-effectiveness of the proposed contract and the ability of the potential contractor to provide effective representation for the clients served by the contract.

While IDS currently has a number of individually negotiated contracts, *see* “Individually Negotiated Contracts with Attorneys,” above, IDS’ existing contracts cover a mere 2.7% of the non-capital cases at the trial level that are handled by PAC. During fiscal year 2010-11, excluding potentially capital cases and appeals, IDS processed almost 200,000 individual PAC fee applications from more than 2,600 different attorneys at a cost of approximately \$68.7 million. Those fee applications represent more than 60% of the State’s indigent trial-level caseload, which is currently handled by PAC pursuant to case-by-case appointments. Thus, a large-scale contract system will represent a fundamental shift in the way that indigent defense services are provided in North Carolina.

As required by the special provision, on October 1, 2011, IDS submitted a detailed report about the work that the Commission and Office had accomplished to date on implementing the required RFPs and contracts. *See* Report of the Commission on Indigent Defense Services to the Joint Legislative Commission on Governmental Operations: Requests for Proposals and Contracts for Legal Services (Oct. 1, 2011), *available at* [www.ncids.org](http://www.ncids.org). In summary, those efforts involved reviewing North Carolina law governing RFPs and service contracts with state agencies; reviewing RFPs and legal services contracts in other jurisdictions, as well as national reports and recommendations for strong indigent defense contract systems; developing policies for the issuance of RFPs and the establishment of legal services contracts; and creating a page on the IDS website dedicated to RFPs and contracts. In December 2011, IDS and SOG also released an on-line virtual education program for interested attorneys about the RFP process and the upcoming contract system. In addition, Office staff have been working to keep the bar informed through electronic communication and attendance at various bar meetings across the State.

Because of the sheer volume of indigent cases handled by PAC across North Carolina, and limitations on the IDS staff and resources that can be devoted to this process, the IDS Commission and Office plan to stagger the issuance of RFPs geographically and by case type. The current plan is to issue the first RFPs in a portion of the Third Judicial Division, including two urban public defender districts and one rural non-public defender district, and then move to other areas of the State.

The Commission and Office are working to design a contract system that will incorporate the features of successful contract systems in other jurisdictions and be workable in North Carolina, where the vast majority of appointed attorneys are solo practitioners or members of small law firms. The Commission and Office have drafted a model RFP, including standard contract terms and conditions, and model offer forms. The Office is also in the process of designing and building a specialized web-based Contractor Case Reporting System that contractors will be required to use to report data about all contract cases, including actual time spent on each contract case or, if applicable, each substantive hearing or session. That system will give IDS

access to more complete and timely case information than is currently obtained through the paper fee application process, which will be crucial to IDS' ability to monitor contractors' caseloads and dispositions and will allow for more in-depth research and program evaluation projects.

For many years, IDS Office staff have been interested in developing a web-based system that would allow the Office to receive and process individual PAC fee applications electronically via the Internet. Such a system could also enable attorneys to review their case assignments and the status of their fee applications on-line. (See IDS' March 2011 annual report for a detailed discussion of the Office's previous efforts in this area.) While the initial Contractor Case Reporting System will only be available to contractors, and not to PAC handling cases pursuant to individual assignments, IDS may be able to expand the system in the future.

In most case types, upon receipt of all required data reporting, IDS will pay contractors a set and cost-effective monthly payment that is based on an expected range of annual dispositions or substantive hearings. Based on IDS' case and cost data for the past three fiscal years (adjusted for the recent rate reductions), the set monthly payment will cover attorney time and all routine out-of-pocket expenses. However, contractors will be able to seek additional compensation or a reduction in their contractual caseload for truly extraordinary cases, as well as reimbursement of extraordinary expenses. In limited case types (including child support contempt and treatment courts), IDS plans to seek per session cost/price offers in addition to qualifying offers.

A shift toward a contract system should enable IDS to obtain more information about the pending indigent caseload because, with the possible exception of special proceedings, IDS plans to require contractors to enter basic data on a monthly basis about all new contract cases that were assigned during the prior month. Section 14.7 of Session Law 2008-107 directed IDS, in consultation with AOC, to explore the feasibility of obtaining information about indigent cases when counsel is first appointed and to develop a proposal for statewide implementation of such a system. Office staff have consulted with AOC staff about this matter since the fall of 2008, but there have continued to be technological and resource barriers to implementing this recommendation for cases handled by PAC. (See IDS' March 2011 report for a detailed discussion of those barriers.) A large-scale contract system coupled with reporting requirements about newly assigned cases will make implementation of such a system much more feasible. However, a contract system also has the potential to have a negative impact on IDS' recoupment revenues. Contractors will be required to print recoupment applications from the web-based system and to submit them to the presiding judge for entry of a civil judgment for attorney fees in all recoupment-eligible cases. However, contractors who are paid to handle a bundle of cases, rather than on a per-case hourly basis, will not have a financial incentive to submit individual case-specific recoupment applications to the courts, and IDS' ability to enforce that contractual requirement will be limited.

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

The IDS Office continues to provide funding for defender training, and has sponsored a number of new training programs, many of which cover areas of representation that traditionally have not had adequate continuing legal education. In addition to the annual public defender conference and the annual new misdemeanor and felony training programs, IDS Office staff have

worked with SOG and other groups to develop a hands-on training program for private appellate attorneys who accept appointments in indigent cases; a five-day trial advocacy program for public defenders, which is an intensive program in which participants develop trial skills by working on their own cases; programs for PAC, assistant public defenders, and full-time state employees who serve as Special Counsel for persons committed to mental health facilities; programs for appointed counsel in Chapter 35A guardianship proceedings; programs for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings; programs for attorneys who represent children in juvenile delinquency proceedings; programs for attorneys who represent defendants in child support contempt actions; and programs for public defender staff investigators and private investigators who do a significant amount of appointed work. The IDS Office posts on its website materials that are used in IDS co-sponsored training programs, as well as a comprehensive training materials index, so that attorneys around the State can benefit from programs they were unable to attend in person.

During fiscal year 2010-11, IDS and SOG co-sponsored the following in-person programs: 1) the annual hands-on five-day Defender Trial School in July 2010; 2) an August 2010 conference for parent attorneys that focused on creative advocacy techniques in termination of parental rights proceedings; 3) an August 2010 juvenile defender conference that focused on motions practice; 4) the annual new misdemeanor defender training in September 2010; 5) a hands-on appellate advocacy training program in October 2010; 6) October 2010 and November 2010 regional interactive programs for appointed counsel who handle felony cases, which were held in the Sixth Judicial Division and focused on trial preparation and trial skills; 7) a January 2011 program on guardianship proceedings for appointed counsel; 8) a January 2011 civil commitment conference; 9) the annual new felony defender training in February 2011; 10) a new parent defender training in March 2011; 11) an April 2011 program for child support contempt attorneys; and 12) the annual May 2011 conference for public defenders and investigators.

As a cost-saving measure and a way of reaching more attorneys across the State, IDS and SOG also sponsored a number of on-line training programs, including webinars and self-paced virtual programs. Those programs can be accessed for free or purchased for continuing legal education (“CLE”) credit. A list of the current in-person and on-line offerings is available on the SOG website ([www.sog.unc.edu](http://www.sog.unc.edu)).

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

Finally, the IDS Office and the former Office of Sentencing Services developed an on-line treatment provider database that allows defense attorneys, prosecutors, judges, sentencing specialists, and the public to search for appropriate and available treatment resources in their

communities, and IDS and SOG are jointly developing an on-line database of all of the collateral consequences of criminal convictions in North Carolina. See “Grant Applications,” below.

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

### *Grant Applications*

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

In early December 2009, Z. Smith Reynolds notified IDS and SOG that its joint application to fund the development of C-CAT had been approved, at the level of \$65,000 for calendar year 2010 and \$30,000 for calendar year 2011 (with a \$30,000 match). C-CAT will be an electronic database that will compile all of the civil consequences of criminal convictions in North Carolina. IDS and SOG are planning to release an informational webinar to train attorneys and other users on the database in March 2012, and the system itself should be available sometime during the spring of 2012. Ultimately, the database will be a resource for indigent defense attorneys, prosecutors, judges, social service agencies, legal aid attorneys, and others. There is only one other jurisdiction in the country that currently has a resource similar to C-CAT.

In late March 2010, the GCC notified IDS that its application for funds for a capital and serious violent felony training initiative had been approved, at the level of \$39,132 spread over a two-year period (with a 25% match). Three programs funded by the GCC grant have been held to date—a December 2010 program in Greensboro that was completed by 23 attorneys, a March 2011 program in Fayetteville that was completed by 15 attorneys, and a December 2011 program in Charlotte that was completed by 20 attorneys. A fourth and final program is scheduled for late February 2012 in the Triangle area.

In September 2010, the Bureau of Justice Assistance (“BJA”) notified IDS and the Conference of District Attorneys that a joint application for training funds for a capital case litigation initiative had been approved, at a level of \$198,564 spread over a two-year period (with no match). Those funds are being split equally between the prosecution and defense. Two programs funded by the BJA grant have been held to date—a May 2011 program in Asheville that was completed by 23 attorneys and a September 2011 program in Wilmington that was completed by 22 attorneys. Two additional training programs are scheduled for May 2012 and

September 2012. Particularly in light of the State's fiscal crisis, IDS hopes to strengthen its efforts in the coming years to obtain grant funding for special projects.

### ***Racial Justice Act Reporting***

The North Carolina Racial Justice Act ("RJA"), Session Law 2009-464, provides that no person shall be subject to a death sentence or executed pursuant to a judgment that was sought or obtained on the basis of race. The RJA creates a right to raise a claim that race was a significant factor in the decision to seek or impose a death sentence in the county, district, division, or State at the time the death sentence was sought or imposed. The claim can be raised in a pre-trial motion, on appeal in capital cases, or in capital post-conviction. For claims raised in post-conviction, they had to be filed within one year of the effective date of the act (or by August 10, 2010). Evidence that may support such a claim includes, but is not limited to, statistical evidence and the testimony of criminal justice system actors.

Two Assistant Professors of Law at the Michigan State University College of Law conducted a statewide statistical study in North Carolina on race and the death penalty, the direct cost of which was covered by non-State grant funds. Preliminary results were available before the post-conviction filing deadline of August 10, 2010.

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

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

Pursuant to *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491 (1977), and a contract with the State of North Carolina, NCPLS provides legal advice and assistance to prisoners in the custody of DOC. NCPLS also works toward administrative resolutions of inmate problems, and provides representation in state and federal court in criminal post-conviction proceedings, jail credit cases, and civil proceedings challenging conditions of confinement or the actions of government officials.

Effective October 1, 2005, the General Assembly transferred NCPLS' contract from the Department of Correction ("DOC") to IDS, and directed IDS to evaluate the program and report its findings. Pursuant to § 14.9(b) of Session Law 2005-276, the IDS Office reported to the General Assembly on the findings of that evaluation in April 2007. (For details about the

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

In May 2008, IDS entered into a new contract with NCPLS for the provision of legal services to inmates, effective June 1, 2008 through June 30, 2009. That contract required a substantial reorganization of the NCPLS Board, with new bylaws to be adopted by June 1, 2008 and new appointments to be accomplished by June 30, 2008 or as soon thereafter as possible. The Board was subsequently reorganized and, in December 2008, the new Board hired a new Executive Director, effective January 5, 2009. Effective July 1, 2009 and July 1, 2011, IDS entered into additional two-year contracts with NCPLS. IDS Office staff continue to work closely with NCPLS to ensure that the organization is delivering high quality and cost-effective services.

Effective December 1, 2009, IDS also entered into a contract with a Durham attorney to review inmate letters and screen inmate cases for potential post-conviction claims when NCPLS has a conflict of interest and cannot perform that function. That contract has enabled IDS to ensure that North Carolina inmates who present a conflict of interest for NCPLS also have meaningful access to the courts.

### ***Innocence Inquiry Commission Proceedings***

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

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

For the initial rights waiver and formal inquiry, IDS is relying primarily on the public defender offices to supply counsel. All of the chief public defenders agreed to handle these cases at the initial stages, and IDS assigned every prison facility in North Carolina to the nearest public defender office. Because only a small number of cases reach a three-judge panel, IDS recruits qualified counsel for that stage of the proceedings on a case-by-case basis. IDS Office staff have developed a specialized form for public defenders to report their time associated with these cases and for private attorneys to seek compensation at the applicable standard hourly rate. IDS has also prepared a short on-line reference manual for the attorneys who handle these cases, which is available at [www.ncids.org](http://www.ncids.org).

During fiscal year 2010-11, IDS appointed attorneys from public defender offices to advise the defendants during the initial rights waiver and formal inquiry in two cases before the Innocence Inquiry Commission (one case in Robeson County and one case in Watauga County). IDS also appointed one private attorney to advise the defendant during the initial rights waiver and formal inquiry in a more complicated Buncombe County case where there was also a pending *pro se* motion for appropriate relief. Finally, IDS appointed two private attorneys to represent two defendants who were granted hearings before a special three-judge panel in the same Buncombe County case.

Also during fiscal year 2010-11, IDS spent \$3,787.50 for PAC services in one Warren County case pending before the Commission; that attorney was appointed because he had previously represented the defendant in a motion for appropriate relief. IDS also spent a total of \$26,133.25 on PAC fees in the Greg Taylor case that was referred by the Commission to a special three-judge panel during the fall of 2009. The three-judge panel in that case unanimously found that Taylor was innocent and dismissed his murder conviction.

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

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

After the ABA’s report was released, the IDS Commission formed a Juvenile Committee to review the ABA’s findings and to prepare recommendations for reform initiatives. The Committee delivered a formal report on its findings and recommendations to the General Assembly in May 2004. The Committee’s primary recommendations were to create a statewide Juvenile Defender position so that someone would be working full-time on needed reform initiatives and to develop and offer comprehensive training programs for juvenile defense attorneys. The General Assembly subsequently authorized the creation of a new statewide Juvenile Defender position, and the IDS Commission appointed attorney Eric J. Zogry for a four-

year term in November 2004. Zogry began work in January 2005, and was reappointed by the Commission for a second four-year term in November 2008.

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

The IDS Commission and staff believe the creation of this position has been a significant step toward elevating the quality of legal services provided to North Carolina's children. The Juvenile Defender has created a listserv for attorneys who handle appointed juvenile delinquency cases throughout North Carolina, which currently has 264 members. With the assistance of an advisory board, the Juvenile Defender developed a statement on the role of defense counsel in juvenile delinquency proceedings, which was adopted by the IDS Commission in November 2005. The Juvenile Defender also developed model qualification standards for attorneys who represent juveniles. In addition, the Juvenile Defender has developed a special page on the IDS website that is dedicated to juvenile delinquency representation and includes, among other things, an index of juvenile defender trial motions and forms, summaries of newly enacted legislation impacting juveniles, notes about juvenile delinquency case law since the current Juvenile Code went into effect in 1999, information about and materials from juvenile defender training programs, and links to related sites.

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

During calendar years 2008 and 2009, the Juvenile Defender undertook two projects reviewing a sample of delinquency files that ended in commitments to youth development centers. The projects involved reviewing the commitments for potential errors and, if errors were found and the juvenile wanted to pursue relief, filing a motion for review or asking the attorney who was appointed in district court to file such a motion. The Juvenile Defender's goals for these projects were to cure defective commitments if possible, to determine how often commitments are defective, to identify the reasons for any errors, and to improve training for juvenile defense attorneys. The studies found that a significant percentage of the files reviewed contained one or more "actionable errors," which were defined as errors that, if corrected, would have resulted in the release of the juvenile or a reduction in the juvenile's maximum term of



commitment. Reports from both studies are available on the IDS website. In December 2009, based on the initial study findings and the Juvenile Defender's recommendations, the AOC Forms Committee revised a number of existing AOC forms that are used in delinquency cases and created a number of new forms. The Juvenile Defender believes that utilization of the revised and new forms will increase the accuracy of commitment and other orders.

During fiscal year 2010-11, the Juvenile Defender also began assisting with two grant-funded projects involving committed juveniles, which are being undertaken by other organizations. First, with funding from a Z. Smith Reynolds Foundation grant, NCPLS has created an Incarcerated Youth Advocacy Project, which will represent juveniles in youth development and detention centers, as well as 16- and 17-year-olds in custody. Second, North Carolina Legal Aid has created a Juvenile Re-Entry Advocacy Project, which will work with juveniles committed to youth development centers or placed in long-term facilities who are returning to the community with special education or mental health needs. The Juvenile Defender assisted in the formation of those projects and has been continuing to help by developing goals and strategies, educating attorneys about the projects, making connections with other juvenile justice and youth advocates, and providing technical assistance.

During 2010, the Juvenile Defender was appointed as an *ex officio* member of the Youth Accountability Planning Task Force, which was created by § 18.9 of Session Law 2009-451 and charged with examining the issues that would be associated with raising the age of juvenile jurisdiction from 16 to 18. The Task Force released its report in January 2011, and has been extended through 2012 to address outstanding issues, including the use and costs of detention. In September 2010, the Juvenile Defender was also selected by the National Juvenile Defender Center to serve a term as the director of the Southern Juvenile Defender Center ("SJDC"). SJDC currently offers technical assistance and resources to juvenile defenders in seven southern states—Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina.

Finally, the Juvenile Defender is in the process of developing a series of guides for attorneys representing special populations of youth. So far, the office has published guides on representing youth of color and lesbian and gay youth. The office hopes to release future guides on Latino youth, female youth, Native American youth, and youth of poverty.

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

The IDS Office has taken significant steps to assess and improve the representation of parent respondents in abuse, neglect, dependency, and termination of parental rights cases. IDS Office staff created a listserv for attorneys representing parent respondents in Chapter 7B cases across the State, which currently has 464 members. The IDS Office has also added attorney positions in the Carteret County Public Defender Office, Durham County Public Defender Office, Hoke/Scotland Public Defender Office, New Hanover County Public Defender Office, Pitt County Public Defender Office, and the First District Public Defender Office to represent parent respondents in these proceedings. In the fall of 2006, the IDS Commission established a new position in the Office of the Appellate Defender called the Parent Representation Coordinator. Attorney Wendy Sotolongo was hired to fill that position in November 2006, and has since served as a parent attorney representative on the Advisory Committee to the North Carolina

Court Improvement Project for Children and Families (“NC-CIP”), which is an organization dedicated to improving the quality of North Carolina’s family courts.

Among other things, the Parent Representation Coordinator is responsible for coordinating appellate representation of indigent parent respondents in Chapter 7B cases; appointing counsel in all indigent Chapter 7B appeals statewide; helping ensure that appellate counsel are able to comply with the expedited deadlines in Rule 3.1 of the Rules of Appellate Procedure; evaluating appellate briefs in Chapter 7B cases for inclusion in a statewide on-line brief bank; performing case consultations with trial and appellate attorneys who represent parent respondents; and maintaining the listserv described above. Sotolongo also worked with IDS Office staff to develop a special page on the IDS website that is dedicated to representation of parent respondents. That webpage includes, among other things, a specialized appellate brief bank, trial and appellate forms, case summaries, legislative updates, and training and reference materials for abuse, neglect, dependency, and termination of parental rights cases.

In addition, Sotolongo has been working with SOG faculty, NC-CIP, and other system actors to develop new training programs for trial and appellate attorneys who represent parent respondents. *See* “Improved Training and Resources,” above. She also worked with a SOG committee that developed a manual for parent attorneys, which was produced by SOG in 2011. Finally, the Parent Representation Coordinator served as a primary staff member to the committee that developed the performance guidelines for parent attorneys discussed above. *See* “Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency and Termination of Parent Rights Proceedings at the Trial Level,” above.

Over the past few years, Sotolongo has also begun working on improving the quality and cost-effectiveness of representation in child support contempt proceedings. In May 2009, IDS and SOG co-sponsored its first conference for attorneys representing indigent defendants in child support contempt proceedings. Later that same month, Sotolongo worked with IDS and SOG staff to create a child support contempt webpage on the IDS website, which contains materials from training programs and other resources. With assistance from other groups, Sotolongo also started a child support contempt listserv, which currently has 190 members. Finally, in June 2009, she assumed responsibility for the appointment of appellate counsel in appeals from child support contempt proceedings. With Sotolongo’s leadership and guidance, the IDS Commission and staff intend to devote more attention to improving parent representation in the future.

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

In February 2012, the Parent Representation Coordinator updated a prior study of the number and percentage of appeals to the Court of Appeals from district court orders in abuse, neglect, dependency, and termination of parental rights cases, as well as the results of those appeals. G.S. 7B-1001 generally limits direct appeals in these types of proceedings to adjudication and disposition orders, orders changing custody, and orders terminating parental rights. The numbers and rates of appeal from adjudication and disposition orders and from orders terminating parental rights during fiscal years 2006-07, 2007-08, 2008-09, and 2010-11 are shown in the following chart:

<b>Orders and Appeals<sup>15</sup></b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY11</b>
# Adj/Disp District Court Orders	3,400	3,134	2,856	4,976
# Adj/Disp Orders Appealed	44 cases	23 cases	39 cases	40 children
% Adj/Disp Orders Appealed	1.29%	0.73%	1.36%	0.80%
# TPR District Court Orders	954	879	928	1,564
# TPR Orders Appealed	97 cases	126 cases	143 cases	276 children
% TPR Orders Appealed	10.16%	14.33%	15.41%	17.65%
# Other Appeals	49 cases	33 cases	29 cases	48 children
<b>Total # Appeals</b>	<b>190 cases</b>	<b>182 cases</b>	<b>211 cases</b>	<b>364 children (163 cases)</b>

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

<b>Appellate Decisions</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10</b>	<b>FY11</b>
# Adj/Disp Appellate Decisions	38	34	27	31	15
% Adj/Disp Appellate Decisions	14.9%	20.4%	17.4%	15%	9.2%
# TPR Appellate Decisions	176	118	108	149	121
% TPR Appellate Decisions	69%	70.7%	69.7%	72.3%	74.2%
# Other A/N/D or TPR Appellate Decisions	41	15	20	26	27
% Other A/N/D or TPR Appellate Decisions	16.1%	9%	12.9%	12.6%	16.6%
# Decisions Affirming/No Error <sup>16</sup>	189	117	107	152	118
% Decisions Affirming/No Error	74.1%	70.1%	69%	73.8%	72.4%
# Decisions Dismissing Appeal <sup>17</sup>	13	3	3	3	5
% Decisions Dismissing Appeal	5.1%	1.8%	1.9%	1.5%	3.1%
# Decisions Granting Relief <sup>18</sup>	53	47	45	51	40
% Decisions Granting Relief	20.8%	28.1%	29%	24.8%	24.5%
<b>Total # Appellate Decisions</b>	<b>255</b>	<b>167</b>	<b>155</b>	<b>206</b>	<b>163</b>

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

<sup>15</sup> The data on the statewide number of adjudication/disposition and termination of parental rights orders in district court was obtained from AOC's Guardian ad Litem ("GAL") program. The data on the number of appeals was obtained from the Office of the Parent Representation Coordinator. During fiscal years 2006-07, 2007-08, and 2008-09, the data was based on the number of family units. During fiscal year 2009-10, AOC's GAL program began using J-Wise data, which counts the number of children impacted. Because the Office of the Parent Representation Coordinator had been collecting data by family unit during that fiscal year, any analysis for fiscal year 2009-10 would be unreliable. For fiscal year 2010-11, both AOC's GAL program and the Office of the Parent Representation Coordinator used J-Wise data provided by AOC; because that data reflects children, rather than family units, the number of adjudication and disposition orders and the number of termination of parental rights orders in fiscal year 2010-11 appear artificially high compared to prior years.

<sup>16</sup> "Decisions Affirming/No Error" represent decisions in which the Court of Appeals affirmed a trial court's order that was adverse to one or both parents.

<sup>17</sup> "Decisions Dismissing Appeal" represent appeals that the Court of Appeals dismissed, thereby leaving intact a decision by a trial court that was adverse to one or both parents.

<sup>18</sup> "Decisions Granting Relief" represent decisions in which one or both parents received some relief from the Court of Appeals. Remands for clerical corrections are not included.

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

Previously, counsel appointed to handle an appeal taken pursuant to G.S. 7B-1001 did not have the option of filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) (holding that if counsel finds an appeal to be wholly frivolous after conscientious examination, he or she should request permission to withdraw and submit a brief referring to anything in the record that might arguably support the appeal). However, effective July 2, 2009, the Supreme Court of North Carolina amended the North Carolina Rules of Appellate Procedure to allow counsel in an appeal taken pursuant to G.S. 7B-1001 to file a “no-merit brief” if, after a conscientious review of the record on appeal, counsel concludes that the record does not contain any potentially meritorious issues on which to base an argument for relief and that the appeal would be frivolous. *See* N.C. R. App. P. 3.1(d) (July 2, 2009). During fiscal year 2010-11, appointed appellate counsel filed nine no-merit briefs.

### *Special Counsel Program*

During fiscal year 2010-11, the IDS Office continued to work with the Special Counsel Supervising Attorney, Dolly Whiteside, to enhance the quality of service delivery and cost effectiveness of the regional special counsel programs, which represent indigent respondents in civil commitment proceedings. Currently, there are special counsel offices at Cherry Hospital in Wayne County, Broughton Hospital in Burke County, and both the Raleigh and Butner campuses of Central Regional Hospital (“CRH”). In fiscal year 2010-11, the four Offices of Special Counsel disposed of a total of 12,111 cases.

In addition to providing management, oversight, and ongoing evaluation of the statewide program, which employed nine attorneys and eight support staff in the four regional offices during fiscal year 2010-11, some of the other duties of the Special Counsel Supervising Attorney include: serving as a central resource and contact person for assistant public defenders and appointed counsel handling commitment cases; providing individual case consultations upon request; responding to inquiries from court officials about the governing statutes and court administration of commitment matters; monitoring and assessing the cost and effectiveness of the delivery of legal services in civil commitment and guardianship cases by appointed and contractual counsel; and planning civil commitment and guardianship educational materials and training events with SOG. Whiteside continues to maintain a listserv for approximately 150 attorneys practicing in the civil commitment area, which the program uses to communicate about important appellate decisions, statutory changes, and training events. In late January 2009, she also launched a civil commitment and guardianship page on the IDS website, which contains resources and training materials for those two substantive areas.

The Supervising Attorney has continued to monitor the implementation of the State Mental Health Reform Plan and to make necessary adjustments to the delivery of services by the regional offices as the plan moves forward. The Special Counsel Office at CRH-Butner continues to serve clients at the CRH-Butner facility, as well as the R.J. Blackley Alcohol and Drug Abuse Treatment Center and Whitaker School that are located on the old John Umstead Hospital campus. During fiscal year 2010-11, the transfer of patients from CRH-Raleigh to

CRH-Butner moved forward in anticipation of the eventual closure of the Raleigh facility. Both the short-term and long-term adolescent units in Raleigh were closed effective June 30, 2010, resulting in all adolescent commitments for the central part of the State now being handled at CRH-Butner. Geriatric clients moved in late summer of 2010, followed by long-term and acute adult clients throughout the fall and early winter of 2010. The Special Counsel program continues to monitor the shift in clients and changes in regional office caseload and staffing connected to this move. The Special Counsel Office at the old Dix campus in Wake County continues to serve the remaining clients at the CRH-Raleigh facility, clients at Holly Hill Hospital, and inmates from Central and Women's Prison. The Wake County office also began representation of clients at the new WakeBrook facility in early fall 2011, and plans to absorb the caseload at other new Wake County facilities, such as the 92-bed psychiatric residential treatment facility ("PRTF") under construction in Garner.

The Special Counsel program has also provided regional administrative support and training, including assisting court officials, PAC, and public defender offices with setting up commitment court procedures for new inpatient beds at a Roanoke Rapids hospital, at Wayne Memorial Hospital in Goldsboro, and at several PRTF facilities across the state, including a 72-bed facility in Brunswick County. The Special Counsel Office at Cherry Hospital absorbed the new caseload at Wayne Memorial during fiscal year 2010-11. The Cherry office also plans to absorb the caseload at a PRTF facility in Wilson. IDS and Whiteside will continue to track all of the changes resulting from the implementation of the Mental Health Reform Plan and to work with the Department of Health and Human Services, court officials, and the Attorney General's Office to make adjustments to Special Counsel Office staffing, to assist with training of attorneys statewide, and to ensure continuing cost-effective and quality representation of indigent clients involved in the civil commitment process.

In 2006, IDS and SOG published the North Carolina Civil Commitment Manual for attorneys who represent respondents in commitment matters. In January 2009, the Commitment Manual was used as a primary tool in a civil commitment training program that was jointly sponsored by IDS and SOG for appointed attorneys, assistant public defenders, and special counsel. Whiteside, SOG faculty, and a special counsel staff attorney revised and updated the manual during 2010, and the second edition of the manual was released in January 2011. The manual is accessible for free on the IDS website, and has also been circulated to other court officials involved in the commitment process, including judges, clerks, and magistrates. The updated manual provides guidance for special counsel, assistant public defenders, and appointed counsel for respondents facing involuntary inpatient commitment, outpatient commitment, substance abuse commitment, and voluntary admission procedures for minors or incompetent adults.

In January 2008, IDS and SOG published the North Carolina Guardianship Manual for appointed counsel in Chapter 35A guardianship cases, and the Guardianship Manual was used as a primary training tool in February 2008 at a training program that was jointly sponsored by IDS and SOG for appointed attorneys and assistant public defenders. That manual is also available for free on the IDS website. In January 2011, IDS and SOG held a two-day educational event that provided training on both civil commitment and guardianship representation for PAC, assistant public defenders, and special counsel, and both the Guardianship Manual and newly updated second edition of the Commitment Manual were used as training tools.

### ***Resource Counsel Positions***

In 2010, partly in response to the negative press coverage about the SBI Crime Laboratory and the independent audit of the lab's forensic biology section, IDS created the position of Forensic Resource Counsel to assist public defenders and PAC who are facing complex scientific and forensic issues in their cases. An attorney was hired to fill that position in October 2010. Among other things, the Forensic Resource Counsel is responsible for consulting with attorneys who are handling indigent cases involving complex forensic science issues; helping attorneys identify appropriate forensic resources and experts; ensuring that counsel obtain and understand available discovery; assisting counsel in preparing legal challenges to forensic science evidence; creating and maintaining a clearinghouse of information concerning forensic science, such as available experts, transcripts, and published treatises; creating and presenting training materials on forensic science issues for appointed counsel, public defenders, investigators, and others; and identifying and seeking grant funding to assist in providing additional resources.

In February 2011, the Forensic Resource Counsel launched a webpage on the IDS website that contains, among other things, a searchable database of prosecution and defense experts by name and area of expertise; information about upcoming forensic science training programs; legal resources addressing forensic science issues; press coverage about the findings in the SBI lab audit and steps the lab is taking to remedy identified problems; SBI laboratory procedures and protocols; a forensic science brief and motions bank; and links to related sites. The IDS Office believes that this new position is improving the quality of representation in cases involving forensic science issues and ensuring that complex scientific issues are handled in a cost-effective manner.

In early 2011, IDS also created a new Trial Resource Counsel position to assist public defenders and PAC who are facing complex trials, particularly capital trials, prepare for trial and evaluate plea options. An attorney was hired to fill that position in February 2011. Among other things, the Trial Resource Counsel is responsible for providing technical assistance to and consulting with attorneys representing clients in complex cases, including meeting with the clients and members of the defense team when appropriate to discuss plea decisions and other case-related issues; and assisting in designing and implementing training programs for attorneys handling complex cases, including capital cases. This trial resource and consulting function was previously filled by the Center for Death Penalty Litigation's Trial Assistance Unit. By transferring the function to the central IDS Office at a lower staffing level, the IDS Office believes this position will help maintain quality representation in complex trials at a reduced cost.

### ***Systems Evaluation Project***

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

district or region with legislative approval, or to use any combination of these or other methods. This flexibility allows IDS to tailor indigent defense services to the needs in different parts of the State and in different types of cases.

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—either through individual appointments, a contract system, or a combination of both. 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.

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

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

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

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

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

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

After an evaluation tool has been developed and implemented, IDS hopes 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, absent a legislative directive, the IDS Act requires the IDS Office to consult with the local bar and bench before making any significant changes to the method of delivering services in a particular district. In addition, the IDS Office must obtain legislative approval before establishing or abolishing a district or regional public defender office. (Additional materials about the Systems Evaluation Project are available at [www.ncids.org](http://www.ncids.org) under the “Systems Eval. Project” link.)

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

The existing data on the volume and cost of cases handled in each district by PAC and public defenders during fiscal year 2010-11 is attached to this report as Appendix C. While the reported data continues to be limited in scope, the IDS Office is continually working to improve data collection procedures and data reporting capabilities for cases handled by PAC, *see* “Improved Data Collection and Reporting,” above, and has worked with the public defenders to improve disposition reporting from the public defender offices, *see* “Public Defender Disposition



Reporting and Cost-Effectiveness Studies,” above. The IDS Office hopes to continue improving the quality of the data that is reported in future annual reports.

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

G.S. 7A-346.2(a) directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions, including the number of such contracts, the number of attorney positions, and the dollar amount of each contract. During fiscal year 2010-11, Mecklenburg County continued to fund positions throughout the local court system under the terms of a Master Agreement that combined the long-standing Court Set contract with a number of new initiatives. For IDS, the Master Agreement included two assistant public defender positions and four legal assistant positions under the Court Set, one assistant public defender in the Criminal System Reorganization Plan, one assistant public defender and one legal assistant in a program for Early Intervention in Custody for Misdemeanants, two assistant public defenders for district court initiatives, and two legal assistants under the State Justice Services Personnel Agreement. Total authorized expenditures under the Master Agreement were \$1,030,849 for fiscal year 2010-11.

In addition, Mecklenburg County Area Mental Health contracted with the Mecklenburg County Public Defender Office to support a full-time social worker position to screen clients for appropriate treatments in an effort to prevent recidivism. Work under the contract began on July 28, 2009, and actual expenditures during fiscal year 2010-11 were \$54,777. Finally, Mecklenburg County reimburses 25% of the personnel expenses for two assistant public defenders under a long-standing arrangement to expedite drug-related cases. Expenses are reimbursed on a biannual basis; \$79,512 in expenses were reimbursed by Mecklenburg County under this arrangement during fiscal year 2010-11.

### **IV. LEGISLATIVE RECOMMENDATIONS**

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

IDS is currently projecting a one-time deficit in its appropriation for this fiscal year (2010-11) of approximately \$14 million, which will mean that funding for payments to PAC and defense experts will be depleted in late-April 2012 and IDS will not be able to resume payments until after the new fiscal year begins in July. Even with the fully annualized savings from the May 2011 PAC rate reductions, IDS is also projecting a recurring deficit next fiscal year of approximately \$4 million.

The IDS Commission and staff understand that the State is continuing to face a serious budget crisis and are working hard to identify additional ways to enhance efficiencies and minimize expenditures. While a shift toward a large-scale contract system, *see* “Requests for Proposals and Contracts,” above, may contain long-term costs through enhanced efficiencies, there will be a short-term increase in spending as IDS begins issuing up-front contractual payments at the same time it is paying PAC fee applications. In addition, because contractors

who are not being paid on a per-case hourly basis will not have a financial incentive to submit recoupment applications to the court, a shift to a contract system may have a negative impact on IDS' recoupment revenues. Next year's growth rate also may be higher than projected in light of the continued poor economy and the potential need for additional attorney and expert services as a result of the ongoing problems with the SBI Crime Laboratory. Finally, many district attorney offices appear to be shifting the cost of providing discovery to IDS by requiring appointed counsel to provide the necessary DVDs and/or paper. Those attorneys, in turn, seek reimbursement from IDS for their necessary expenses.

Without a non-recurring appropriation for next fiscal year to cover the anticipated carry-over debt from this fiscal year and a modest increase in recurring funding, IDS will be facing a potential deficit of \$18 million at the end of fiscal year 2012-13, which would mean that IDS' funding for PAC payments would be depleted in early-April 2013. With that combination of delayed payments and reduced rates, the IDS Commission and Office have serious concerns about the detrimental impact on the entire court system.

The IDS Commission and Office respectfully request that the General Assembly appropriate an additional \$14 million in non-recurring funds for fiscal year 2012-13 to enable IDS to pay off the anticipated debt from the current fiscal year, as well as a \$4 million recurring increase to maintain the current level of services at the reduced PAC rates and to cover the projected demand on the fund next year. These funding requests assume that the Office will be permitted to use all recoupment receipts and available lapsed salary from the public defender fund.

#### **B. Maintain Pay Parity Between Assistant District Attorneys and Assistant Public Defenders:**

During the 2012 legislative session, AOC plans to seek permission to grant salary increases to court personnel, including assistant district attorneys. If AOC is allowed to increase the salaries of assistant district attorneys on a merit basis, the IDS Commission and Office request that the General Assembly allow similar salary increases for assistant public defenders in order to maintain the traditional pay parity between full-time salaried prosecutors and full-time salaried defense counsel.

#### **C. Maintain Funding for North Carolina Prisoner Legal Services:**

As discussed in "Evaluation and Oversight of North Carolina Prisoner Legal Services," above, pursuant to *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491 (1977), and a contract with IDS, NCPLS provides legal advice and assistance to prisoners in the custody of the DOC. While the inmate population has increased more than 20% since 1998, NCPLS has been unable to increase staffing to meet the increased demand because of budget limitations. In addition, NCPLS is playing a critical role in reviewing and, if appropriate, relitigating the problematic cases identified in the audit of the SBI Crime Laboratory. The IDS Commission and Office request that the General Assembly maintain the current funding levels for NCPLS so that the office can continue to meet the State's constitutional obligation to provide inmates with meaningful access to the courts.

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

During the 2012 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.

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

Particularly in light of the State’s current fiscal crisis, the IDS Commission and Office recommend that the General Assembly consider reclassifying as infractions certain low-level traffic or other misdemeanors that rarely or never result in jail sentences when reclassification would not undermine public safety or compromise a defendant’s ability to resolve underlying issues. If some such offenses are reclassified, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. The IDS Commission and staff believe that reclassification of some offenses could generate savings for IDS and for other state and county agencies. *See* “Misdemeanor Reclassification Study,” above. In the future, IDS also hopes to examine the benefits and savings associated with eliminating private warrants, which allow private citizens to charge a person with a misdemeanor by swearing to a magistrate that such an offense has occurred with no screening by law enforcement.

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

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

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

### **G. Allow Retired State Employees to Accept Indigent Appointments and/or Resolve Pending Cases on an Appointed or Pro Bono Basis:**

G.S. 135-1(20) provides that, “[i]n order for a [former State employee’s] retirement to become effective in any month, the [former State employee] must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement.” Pursuant to this provision, a state employed defense attorney who retires cannot place his or her name on the indigent appointment lists and cannot resolve any cases that are pending at the time of his or her retirement (even on a pro bono basis). With respect to pending cases, IDS then has to pay a new state employed attorney or an appointed attorney to take over the representation and, in many cases, perform the same work over again. IDS recommends that the General Assembly consider some exception to this statutory prohibition for recently retired attorneys who want to accept new appointments from the indigent lists, submit an offer for a contract in response to a RFP, or resolve pending cases on an hourly or pro bono basis.

### **H. Add IDS Director and Juvenile Defender to Governor’s Crime Commission:**

The composition of the Governor’s Crime Commission (“GCC”) is governed by G.S. 143B-1100, which provides that one of the 38 voting members shall be a defense attorney. The GCC has three primary funding priorities—Criminal Justice Improvement, Crime Victims’ Services, and Juvenile Justice Planning. While the IDS Director is currently serving as the one defense attorney member, that service is not necessarily in his capacity as the IDS Director. Thus, the IDS Commission and Office recommend that an additional seat, separate from the defense attorney seat, be created for the IDS Director. In addition, because one of the GCC’s primary focuses is on juvenile justice, the IDS Commission and Office recommend creating a dedicated seat for the statewide Juvenile Defender.

### **I. Form a Legislative Study Commission to Examine Potential Changes to the Expunction Statutes:**

North Carolina’s existing expunction statutes are extremely narrow, and the IDS Commission and Office recommend that the General Assembly form a study commission to explore potential changes to those statutes. Particularly during this challenging economic time, the existence of old criminal records, often for one-time minor misconduct, makes it difficult for many North Carolina citizens to obtain employment. Adjustments to the eligibility for an expunction could assist the State in getting its citizens back to work.

### **J. Additional Legislative Recommendations:**

During the 2012 long session, the IDS Commission and Office may recommend additional changes in law or funding that would assist the Office in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

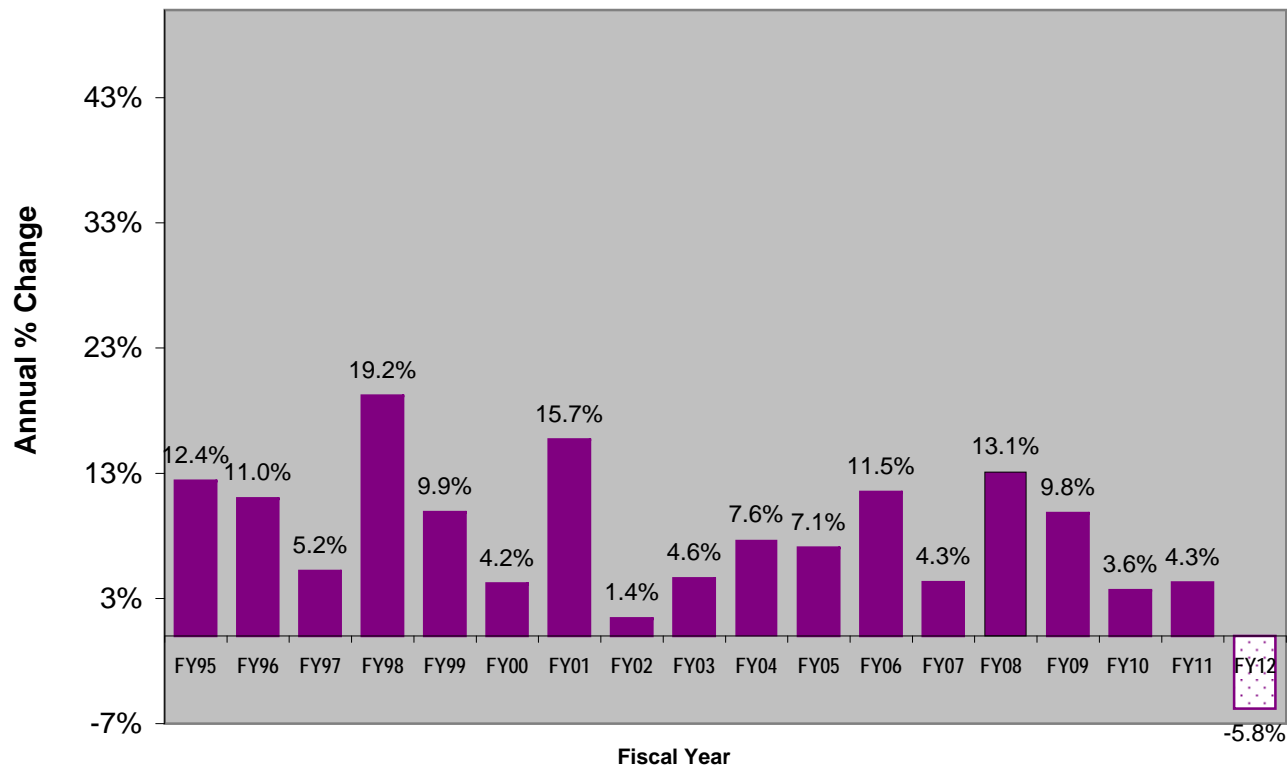
## V. CONCLUSION

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

## **APPENDIX A**

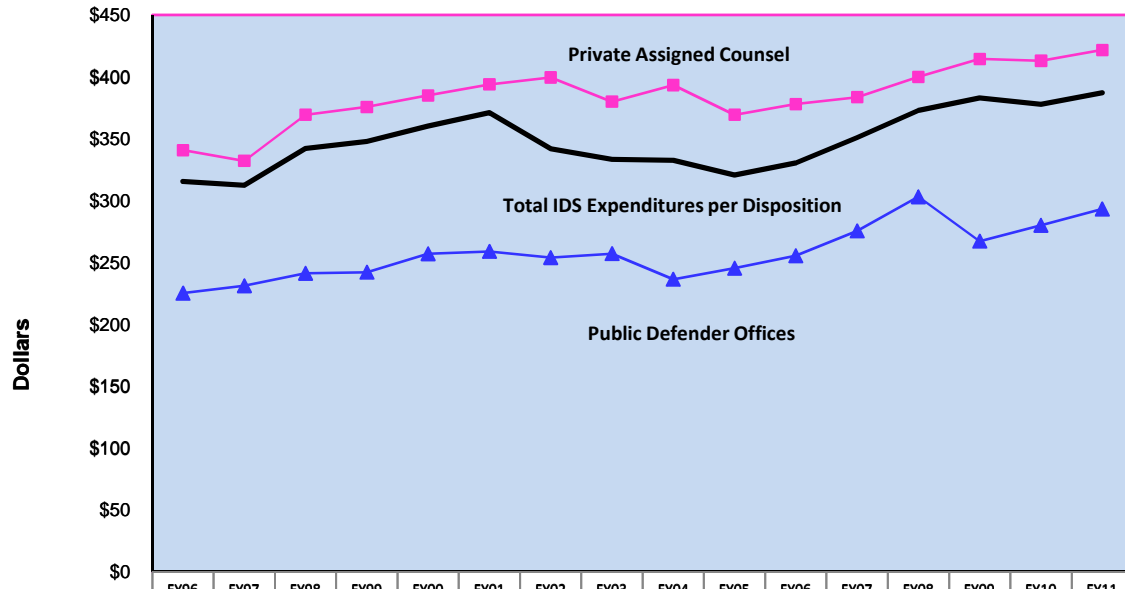
## Annual Percent Change in Actual Total Indigent Defense Expenditures (Demand)

(excludes prior year obligations and includes current obligations)  
FY12 projected decrease due to rate reductions imposed May 2011.  
If rates were held constant, FY12 projected increase would have been 3.7%.



## Indigent Defense Expenditure History per Disposition

(Prior Year Obligations Removed FY96 to FY11)



	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
— Total IDS Expenditures per Disposition	\$315.42	\$312.25	\$342.01	\$347.66	\$360.09	\$370.94	\$341.85	\$333.19	\$332.39	\$320.70	\$330.37	\$350.95	\$372.85	\$383.01	\$377.74	\$387.00
— PAC Expenditures per Disposition	\$340.71	\$332.03	\$369.28	\$375.62	\$384.90	\$393.88	\$399.46	\$379.91	\$393.27	\$369.29	\$377.88	\$383.52	\$399.90	\$414.40	\$412.95	\$421.59
— PD Office Expenditures per Disposition	\$225.03	\$231.06	\$241.12	\$242.04	\$256.88	\$258.86	\$253.79	\$257.04	\$236.36	\$245.22	\$255.32	\$275.39	\$302.96	\$267.07	\$279.98	\$293.06

Fiscal Year

Source: FY96 through FY04 data from Administrative Office of the Court, Annual Reports. FY05 and later data from IDS Chief Financial Officer. Based on caseload demand.



**Indigent Defense Expenditure History  
FY96 to FY11**

Type of Expenditure	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
<b>Private Assigned Counsel (PAC) (including contracts)</b>																
Capital	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	12,413,506	12,866,708	11,333,325	12,833,955	11,477,974
Adult	19,932,141	22,322,081	25,540,251	27,428,944	29,283,471	35,536,744	32,226,789	37,847,981	37,879,960	45,380,760	52,028,772	50,596,736	54,200,075	58,250,826	69,226,379	61,899,173
Juvenile	2,314,826	2,560,702	2,787,998	2,966,086	3,138,127	3,828,369	2,932,196	3,195,779	2,927,609	3,763,905	3,899,309	3,348,486	3,774,949	3,332,087	3,836,060	2,958,756
GAL	77,089	115,313	123,838	159,776	208,031	298,241	278,687	180,819	188,468	554,855	637,750	1,282,133	1,507,538	1,231,443	1,363,959	1,089,637
Support Services	\$ 1,886,392	\$ 2,431,457	\$ 2,591,432	\$ 2,970,751	\$ 3,218,862	\$ 3,475,239	\$ 3,932,832	\$ 4,566,156	\$ 5,468,911	5,735,608	6,733,847	6,639,085	7,819,519	7,713,657	8,461,267	7,097,820
Obligated at Year-End	1,000,000	0	-	1,849,459	2,182,699	2,452,000	7,406,919	8,703,686	11,730,204	8,971,970	4,036,967	827,447	637,939	6,422,328	664,752	9,940,378
Total PAC	\$ 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	\$ 75,107,393	\$ 80,806,728	\$ 88,283,666	\$ 96,386,372	\$ 94,463,738
Total PAC with prior year obligations removed	\$ 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	\$ 71,070,426	\$ 79,979,281	\$ 87,645,727	\$ 89,964,044	\$ 93,798,986
Annual % Change excluding prior year oblig. Including current oblig.	19.24%	5.01%	23.57%	9.65%	3.84%	18.20%	0.95%	3.43%	5.46%	5.75%	10.92%	0.63%	12.54%	9.59%	2.65%	4.26%
<b>Public Defender Offices &amp; Special Counsel</b>																
IDS Office						\$ 179,459	\$ 472,471	\$ 499,977	\$ 580,360	\$ 663,219	\$ 749,008	1,066,697	1,355,032	1,448,560	1,521,287	1,645,961
Public Defender	\$ 9,364,670	\$ 9,895,547	\$ 10,708,729	\$ 11,708,864	\$ 12,260,820	\$ 12,877,539	\$ 13,024,014	\$ 13,917,622	\$ 15,987,985	\$ 17,225,616	\$ 19,980,044	22,536,032	25,976,578	28,986,509	30,689,655	31,627,957
Appellate Defender	\$ 930,474	\$ 977,043	\$ 919,279	\$ 1,025,609	\$ 1,068,893	\$ 1,091,839	\$ 972,713	\$ 1,021,943	\$ 1,048,528	\$ 1,109,151	\$ 1,228,353	1,436,188	1,657,699	1,772,960	1,902,572	2,136,385
Capital Defender			\$ 183,896	\$ 278,065	\$ 352,240	\$ 392,940	\$ 777,491	\$ 1,115,204	\$ 1,796,881	\$ 1,540,186	1,929,257	1,976,974	2,058,075	2,291,610	2,197,787	
Juvenile Defender									\$ 79,776	\$ 154,617	88,542	192,209	246,205	257,616	275,675	
Set-Off Debt	\$ 91,109	\$ 86,152	\$ 83,085	\$ 82,489	\$ 84,414	\$ 92,402	\$ 65,519	\$ 71,373	\$ 68,900	\$ 72,913	\$ 79,930	163,719	92,084	105,482	95,531	108,483
Special Counsel	\$ 415,995	\$ 455,201	\$ 476,500	\$ 502,067	\$ 512,718	\$ 674,721	\$ 773,292	\$ 802,022	\$ 845,239	\$ 871,096	\$ 993,071	1,176,841	1,284,282	1,283,310	1,331,872	1,415,272
Total State Offices	\$ 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	\$ 28,397,276	\$ 32,534,858	\$ 35,901,101	\$ 38,090,143	\$ 39,713,050
Annual Percent Change	4.4%	5.7%	6.8%	10.8%	5.2%	7.5%	2.8%	8.8%	15.0%	11.1%	13.3%	14.9%	14.6%	10.3%	6.1%	4.3%
Total IDS Expenditures	\$ 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	\$ 103,504,669	\$ 113,341,586	\$ 124,184,767	\$ 134,476,515	\$ 134,176,788
Annual Percent Change	8.4%	5.4%	16.6%	9.9%	7.3%	15.8%	1.7%	11.2%	8.5%	9.8%	7.3%	-0.8%	9.5%	9.6%	8.3%	-0.2%
Total IDS Expenditures with prior year obligations removed	\$ 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	\$ 99,467,702	\$ 112,514,139	\$ 123,546,828	\$ 128,054,187	\$ 133,512,036
Percent Change in Total Expenditures (exclude prior yr oblig.)	11.0%	5.2%	19.2%	9.9%	4.2%	15.7%	1.36%	4.63%	7.64%	7.06%	11.53%	4.32%	13.12%	9.81%	3.65%	4.26%

Sources: Administrative Office of the Courts, Annual Reports 1988-99 through 2000-04 and IDS Office Chief Financial Officer.  
 Following financial information not included for comparison reasons:  
 Programs no longer in operation - Death Penalty Resource Center, Indigency Screening Program  
 Programs not under Indigent Defense Services - Guardian ad Litem Program  
 Pass through grants - NC State Bar Grant, Center for Death Penalty Litigation Grant  
 Sentencing Services, Prisoner Access to Courts.

## **APPENDIX B**

**SUMMARY RECOUPMENT DATA FY2011**

<b>County</b>	<b>Appointment Fees</b>	<b>Attorney Fees</b>	<b>Total Recoupment</b>	<b>Non-Cap Spending</b>	<b>Recoup %</b>
Alamance	\$ 31,025.89	\$ 280,204.95	\$ 311,230.84	\$ 1,232,085.45	25.3%
Alexander	\$ 10,038.60	\$ 59,817.73	\$ 69,856.33	\$ 354,283.75	19.7%
Alleghany	\$ 3,491.00	\$ 24,548.85	\$ 28,039.85	\$ 159,292.41	17.6%
Anson	\$ 6,383.20	\$ 61,244.03	\$ 67,627.23	\$ 460,970.38	14.7%
Ashe	\$ 6,996.78	\$ 49,385.93	\$ 56,382.71	\$ 304,006.86	18.5%
Avery	\$ 3,397.76	\$ 39,225.95	\$ 42,623.71	\$ 167,283.79	25.5%
Beaufort	\$ 12,963.07	\$ 89,972.79	\$ 102,935.86	\$ 426,358.17	24.1%
Bertie	\$ 3,210.76	\$ 33,718.11	\$ 36,928.87	\$ 166,055.50	22.2%
Bladen	\$ 6,017.89	\$ 49,869.00	\$ 55,886.89	\$ 451,475.96	12.4%
Brunswick	\$ 21,939.08	\$ 169,185.17	\$ 191,124.25	\$ 1,419,055.87	13.5%
Buncombe	\$ 41,937.63	\$ 168,146.69	\$ 210,084.32	\$ 2,888,289.79	7.3%
Burke	\$ 16,770.00	\$ 151,210.84	\$ 167,980.84	\$ 756,554.21	22.2%
Cabarrus	\$ 52,474.53	\$ 349,946.38	\$ 402,420.91	\$ 1,308,607.46	30.8%
Caldwell	\$ 18,294.02	\$ 151,908.73	\$ 170,202.75	\$ 985,266.94	17.3%
Camden	\$ 638.51	\$ 5,010.33	\$ 5,648.84	\$ 59,569.59	9.5%
Carteret	\$ 12,668.94	\$ 59,061.02	\$ 71,729.96	\$ 681,003.33	10.5%
Caswell	\$ 6,245.66	\$ 48,046.98	\$ 54,292.64	\$ 259,809.77	20.9%
Catawba	\$ 20,137.32	\$ 195,481.84	\$ 215,619.16	\$ 1,337,992.26	16.1%
Chatham	\$ 8,556.50	\$ 24,713.93	\$ 33,270.43	\$ 882,170.33	3.8%
Cherokee	\$ 7,824.31	\$ 54,846.97	\$ 62,671.28	\$ 490,816.64	12.8%
Chowan	\$ 1,624.84	\$ 12,631.45	\$ 14,256.29	\$ 218,270.99	6.5%
Clay	\$ 3,054.16	\$ 22,626.17	\$ 25,680.33	\$ 181,442.62	14.2%
Cleveland	\$ 40,656.36	\$ 162,832.87	\$ 203,489.23	\$ 879,919.97	23.1%
Columbus	\$ 9,288.59	\$ 87,989.07	\$ 97,277.66	\$ 1,037,964.38	9.4%
Craven	\$ 18,633.62	\$ 126,688.53	\$ 145,322.15	\$ 682,198.89	21.3%
Cumberland	\$ 28,510.40	\$ 132,807.81	\$ 161,318.21	\$ 3,648,456.20	4.4%
Currituck	\$ 3,812.38	\$ 28,180.42	\$ 31,992.80	\$ 370,228.59	8.6%
Dare	\$ 6,216.48	\$ 53,686.50	\$ 59,902.98	\$ 527,251.76	11.4%
Davidson	\$ 46,393.72	\$ 310,127.95	\$ 356,521.67	\$ 1,584,782.62	22.5%
Davie	\$ 9,375.76	\$ 57,208.23	\$ 66,583.99	\$ 417,460.99	15.9%
Duplin	\$ 11,507.46	\$ 100,349.30	\$ 111,856.76	\$ 506,401.43	22.1%
Durham	\$ 33,332.83	\$ 219,894.47	\$ 253,227.30	\$ 4,905,916.48	5.2%
Edgecombe	\$ 10,152.16	\$ 107,050.42	\$ 117,202.58	\$ 614,620.43	19.1%
Forsyth	\$ 69,206.19	\$ 328,456.71	\$ 397,662.90	\$ 3,591,916.70	11.1%
Franklin	\$ 9,402.93	\$ 78,512.98	\$ 87,915.91	\$ 496,963.27	17.7%
Gaston	\$ 8,908.88	\$ 88,409.24	\$ 97,318.12	\$ 2,583,737.98	3.8%
Gates	\$ 691.09	\$ 6,943.10	\$ 7,634.19	\$ 29,199.04	26.1%
Graham	\$ 1,763.56	\$ 15,686.72	\$ 17,450.28	\$ 127,335.85	13.7%
Granville	\$ 9,733.75	\$ 87,894.44	\$ 97,628.19	\$ 501,202.63	19.5%
Greene	\$ 3,635.68	\$ 29,274.65	\$ 32,910.33	\$ 235,523.85	14.0%
Guilford	\$ 72,442.35	\$ 273,979.49	\$ 346,421.84	\$ 5,316,581.69	6.5%
Halifax	\$ 13,160.16	\$ 136,800.20	\$ 149,960.36	\$ 1,100,168.14	13.6%
Harnett	\$ 16,622.19	\$ 130,616.37	\$ 147,238.56	\$ 881,624.04	16.7%
Haywood	\$ 15,940.07	\$ 129,790.54	\$ 145,730.61	\$ 1,013,206.92	14.4%
Henderson	\$ 27,097.14	\$ 115,004.73	\$ 142,101.87	\$ 1,092,506.25	13.0%
Hertford	\$ 1,964.62	\$ 44,991.87	\$ 46,956.49	\$ 255,961.54	18.3%
Hoke	\$ 2,549.47	\$ 39,652.42	\$ 42,201.89	\$ 634,843.26	6.6%
Hyde	\$ 1,178.03	\$ 9,325.29	\$ 10,503.32	\$ 43,144.10	24.3%
Iredell	\$ 40,147.23	\$ 264,604.11	\$ 304,751.34	\$ 1,774,846.84	17.2%
Jackson	\$ 7,944.14	\$ 63,394.23	\$ 71,338.37	\$ 395,021.75	18.1%
Johnston	\$ 26,007.95	\$ 162,278.63	\$ 188,286.58	\$ 1,455,917.14	12.9%
Jones	\$ 2,696.09	\$ 18,310.81	\$ 21,006.90	\$ 87,318.85	24.1%
Lee	\$ 17,502.39	\$ 102,056.08	\$ 119,558.47	\$ 558,672.19	21.4%
Lenoir	\$ 17,680.52	\$ 161,463.95	\$ 179,144.47	\$ 615,362.40	29.1%
Lincoln	\$ 16,895.89	\$ 105,398.28	\$ 122,294.17	\$ 564,638.31	21.7%

County	Appointment Fees	Attorney Fees	Total Recoupment	Non-Cap Spending	Recoup %
Macon	\$ 5,604.38	\$ 65,350.55	\$ 70,954.93	\$ 416,245.15	17.0%
Madison	\$ 3,647.32	\$ 45,382.20	\$ 49,029.52	\$ 272,780.29	18.0%
Martin	\$ 6,216.27	\$ 43,478.77	\$ 49,695.04	\$ 182,437.60	27.2%
McDowell	\$ 14,456.02	\$ 101,933.07	\$ 116,389.09	\$ 497,983.10	23.4%
Mecklenburg	\$ 26,322.27	\$ 487,883.01	\$ 514,205.28	\$ 12,599,787.53	4.1%
Mitchell	\$ 3,582.29	\$ 36,380.94	\$ 39,963.23	\$ 166,495.38	24.0%
Montgomery	\$ 5,635.93	\$ 33,208.69	\$ 38,844.62	\$ 254,487.44	15.3%
Moore	\$ 9,926.11	\$ 130,612.48	\$ 140,538.59	\$ 1,009,585.92	13.9%
Nash	\$ 18,347.42	\$ 182,994.35	\$ 201,341.77	\$ 934,159.58	21.6%
New Hanover	\$ 27,534.26	\$ 358,389.58	\$ 385,923.84	\$ 3,128,800.48	12.3%
Northampton	\$ 2,023.76	\$ 26,682.32	\$ 28,706.08	\$ 230,922.15	12.4%
Onslow	\$ 28,030.20	\$ 273,317.91	\$ 301,348.11	\$ 1,249,927.47	24.1%
Orange	\$ 10,102.02	\$ 35,970.43	\$ 46,072.45	\$ 1,258,413.75	3.7%
Pamlico	\$ 2,197.09	\$ 16,415.47	\$ 18,612.56	\$ 98,222.78	18.9%
Pasquotank	\$ 6,467.35	\$ 49,399.10	\$ 55,866.45	\$ 301,354.06	18.5%
Pender	\$ 8,617.74	\$ 71,305.95	\$ 79,923.69	\$ 410,053.14	19.5%
Perquimans	\$ 1,343.46	\$ 9,206.18	\$ 10,549.64	\$ 83,187.84	12.7%
Person	\$ 10,488.64	\$ 98,261.24	\$ 108,749.88	\$ 634,304.77	17.1%
Pitt	\$ 9,423.50	\$ 137,667.15	\$ 147,090.65	\$ 2,554,545.81	5.8%
Polk	\$ 4,816.38	\$ 24,131.98	\$ 28,948.36	\$ 214,291.19	13.5%
Randolph	\$ 24,502.01	\$ 183,302.44	\$ 207,804.45	\$ 1,259,105.32	16.5%
Richmond	\$ 17,263.40	\$ 154,527.13	\$ 171,790.53	\$ 1,153,720.31	14.9%
Robeson	\$ 17,304.98	\$ 162,650.10	\$ 179,955.08	\$ 3,120,304.54	5.8%
Rockingham	\$ 23,220.96	\$ 213,817.13	\$ 237,038.09	\$ 1,193,480.44	19.9%
Rowan	\$ 41,961.21	\$ 283,037.87	\$ 324,999.08	\$ 1,591,312.67	20.4%
Rutherford	\$ 39,863.02	\$ 166,732.77	\$ 206,595.79	\$ 673,090.39	30.7%
Sampson	\$ 16,363.43	\$ 109,153.87	\$ 125,517.30	\$ 626,017.15	20.1%
Scotland	\$ 1,748.85	\$ 50,756.24	\$ 52,505.09	\$ 687,437.79	7.6%
Stanly	\$ 8,435.33	\$ 63,255.28	\$ 71,690.61	\$ 773,595.40	9.3%
Stokes	\$ 10,007.94	\$ 95,906.17	\$ 105,914.11	\$ 486,903.06	21.8%
Surry	\$ 20,377.97	\$ 171,746.78	\$ 192,124.75	\$ 647,129.61	29.7%
Swain	\$ 3,362.22	\$ 24,719.63	\$ 28,081.85	\$ 241,690.72	11.6%
Transylvania	\$ 7,955.20	\$ 46,500.59	\$ 54,455.79	\$ 398,380.93	13.7%
Tyrrell	\$ 1,191.12	\$ 7,028.97	\$ 8,220.09	\$ 20,009.30	41.1%
Union	\$ 29,039.57	\$ 221,691.47	\$ 250,731.04	\$ 1,518,620.50	16.5%
Vance	\$ 10,053.50	\$ 97,378.82	\$ 107,432.32	\$ 742,186.21	14.5%
Wake	\$ 62,178.56	\$ 360,054.86	\$ 422,233.42	\$ 7,383,951.82	5.7%
Warren	\$ 5,060.00	\$ 31,053.47	\$ 36,113.47	\$ 212,012.13	17.0%
Washington	\$ 2,932.48	\$ 21,617.98	\$ 24,550.46	\$ 81,374.41	30.2%
Watauga	\$ 10,745.92	\$ 88,510.14	\$ 99,256.06	\$ 480,331.89	20.7%
Wayne	\$ 22,184.31	\$ 190,418.12	\$ 212,602.43	\$ 1,003,712.83	21.2%
Wilkes	\$ 28,754.98	\$ 125,391.15	\$ 154,146.13	\$ 551,114.49	28.0%
Wilson	\$ 5,866.92	\$ 99,029.36	\$ 104,896.28	\$ 713,427.04	14.7%
Yadkin	\$ 9,125.94	\$ 86,354.90	\$ 95,480.84	\$ 345,626.86	27.6%
Yancey	\$ 3,008.31	\$ 37,463.33	\$ 40,471.64	\$ 298,472.21	13.6%
<b>TOTAL</b>	<b>\$ 1,524,031.07</b>	<b>\$ 11,200,534.19</b>	<b>\$ 12,724,565.26</b>	<b>\$ 106,422,549.99</b>	<b>12.0%</b>

Non-capital spending includes PD office expenses, excluding specific capital related costs.

While statewide nominal recoupment percentage is 12.0%, because only 63.7% of spending is recoupment eligible, effective recoupment rate is 18.8%.

Effective recoupment rate data not yet complete at county level.

Statewide total recoupment includes \$36,679 not attributable by county.

These figures reflect \$347,551 in appointment fees collected through SOD so posted as attorney fees in NCAS.

## **APPENDIX C**

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

July 1, 2010-June 30, 2011

	<b>Number of Cases*</b>	<b>Total Cost**</b>
<b>Assigned Private Counsel</b>		
Capital cases	1,712	12,580,614
Adult cases (other than capital)	196,048	67,738,016
Juvenile cases	9,090	\$2,563,684
Guardian ad Litem assigned to IDS	2,884	\$1,214,424
<b>Total</b>	<b>209,734</b>	<b>84,096,738</b>
<b>Private Counsel Contracts</b>	<b>8,915</b>	<b>\$1,749,905</b>
<b>Legal Services to Inmates</b>		<b>\$2,908,773</b>
<b>Public Defender Offices</b>		
District 1	1,985	\$1,203,620
District 3A	3,602	\$1,388,046
District 3B (Carteret County)	1,296	\$380,507
District 5 (New Hanover)	4,949	\$1,544,180
District 10	9,825	\$2,806,672
District 12	6,886	\$1,735,448
District 14	9,343	\$2,424,086
District 15B	3,811	\$1,291,068
District 16A	2,371	\$873,766
District 16B	3,479	\$1,408,846
District 18	11,438	\$3,371,420
District 21	7,990	\$2,276,815
District 26	22,177	\$6,415,749
District 27A	7,733	\$2,001,654
District 28	8,007	\$1,686,938
District 29B	3,030	\$819,142
<b>Total</b>	<b>107,922</b>	<b>\$31,627,957</b>
<b>Office of the Appellate Defender</b>		<b>\$2,136,385</b>
<b>Special Counsel at State Mental Health Hospitals</b>		<b>\$1,415,272</b>
<b>Support Services</b>		
Transcripts, records, and briefs		\$931,153
Expert witness fees		\$2,638,434
Investigator fees		\$4,099,131
Interpreters (PAC only)		\$68,461
<b>Total</b>		<b>\$7,737,179</b>
<b>Set-Off Debt Collection</b>		<b>\$108,483</b>
<b>Indigent Defense Services</b>		<b>\$1,645,961</b>
<b>Office of the Capital Defender</b>		<b>\$2,197,787</b>
<b>Office of the Juvenile Defender</b>		<b>\$275,675</b>
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$135,900,114</b>
<b>Sentencing Services Program</b>		<b>\$2,120,982</b>
<b>GRAND TOTAL</b>		<b>\$138,021,096</b>

\* The number of "cases" shown for private assigned counsel is the number of payments (fee applications) made by IDS for appointed attorneys. For public defender offices, the number of "cases" is the number of indigent persons whose cases were disposed by public defenders during FY11.

\*\* IDS reports most PAC data on a demand basis, to reflect fee applications received in a given year, even if payment is held due to limited cash. Until FY10, this report was done on a cash basis. If FY11 figures were on a cash basis, they would be \$9.275 million less due to unpaid fee applications at year end. Most of that carry-over debt (\$8.1 million) was for non-capital attorney payments. These figures excludes contracts with CDPL, receipt supported positions in Mecklenburg and the IDS office, dual employment payments, and grant funded training programs.

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand  
All Accounts  
July 1, 2010-June 30, 2011**

	<u>Number of Payments</u>	<u>Demand</u>
<b>District 1</b>		
Camden	29	\$21,700.82
Chowan	97	\$170,733.95
Currituck	134	\$104,823.85
Dare	257	\$131,797.99
Gates	11	\$7,151.25
Pasquotank	181	\$208,616.60
Perquimans	42	\$42,032.33
District Total	751	\$686,856.79
<b>District 2</b>		
Beaufort	1,551	\$536,894.10
Hyde	110	\$44,493.35
Martin	739	\$332,637.52
Tyrrell	75	\$20,009.30
Washington	222	\$87,638.90
District Total	2,697	\$1,021,673.17
<b>District 3A</b>		
Pitt	3,280	\$1,863,771.53
District Total	3,280	\$1,863,771.53
<b>District 3B</b>		
Carteret	461	\$348,429.55
Craven	1,874	\$988,562.14
Pamlico	231	\$110,900.53
District Total	2,566	\$1,447,892.22
<b>District 4A</b>		
Duplin	1,545	\$535,342.52
Jones	238	\$107,130.58
Sampson	1,989	\$766,933.74
District Total	3,772	\$1,409,406.84
<b>District 4B</b>		
Onslow	4,188	\$1,622,458.61
District Total	4,188	\$1,622,458.61
<b>District 5</b>		
New Hanover	4,050	\$1,760,516.61
Pender	1,148	\$413,599.94
District total	5,198	\$2,174,116.55
<b>District 6A</b>		
Halifax	3,159	\$1,432,025.15
District Total	3,159	\$1,432,025.15
<b>District 6B</b>		
Bertie	465	\$179,262.77
Hertford	746	\$441,206.43
Northampton	528	\$331,099.98
District Total	1,739	\$951,569.18
<b>District 7A</b>		
Nash	2,466	\$1,236,594.52
District Total	2,466	\$1,236,594.52

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand  
All Accounts  
July 1, 2010-June 30, 2011**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 7B/C</u></b>		
Edgecombe	1,790	\$696,056.53
Wilson	1,922	\$855,081.71
District Total	3,712	\$1,551,138
<b><u>District 8A</u></b>		
Greene	609	\$340,734.65
Lenoir	2,118	\$688,222.59
District Total	2,727	\$1,028,957.24
<b><u>District 8B</u></b>		
Wayne	3,109	\$1,305,548.43
District Total	3,109	\$1,305,548.43
<b><u>District 9</u></b>		
Franklin	1,428	\$507,784.77
Granville	1,412	\$547,011.39
Vance	1,880	\$878,875.68
Warren	556	\$261,578.16
District Total	5,276	\$2,195,250.00
<b><u>District 9A</u></b>		
Caswell	600	\$321,097.44
Person	1,666	\$724,344.24
District Total	2,266	\$1,045,441.68
<b><u>District 10</u></b>		
Wake	12,767	\$5,805,325.20
District Total	12,767	\$5,805,325.20
<b><u>District 11A</u></b>		
Harnett	3,169	\$1,216,472.16
Lee	2,082	\$621,244.93
District Total	5,251	\$1,837,717.09
<b><u>District 11B</u></b>		
Johnston	4,186	\$1,822,773.31
District Total	4,186	\$1,822,773.31
<b><u>District 12</u></b>		
Cumberland	4,819	\$3,036,069.31
District Total	4,819	\$3,036,069.31
<b><u>District 13A</u></b>		
Bladen	1,316	\$643,165.95
Columbus	2,453	\$1,397,038.42
District Total	3,769	\$2,040,204.37
<b><u>District 13B</u></b>		
Brunswick	3,802	\$1,598,680.22
District Total	3,802	\$1,598,680.22
<b><u>District 14</u></b>		
Durham	5,578	\$2,972,230.44
District Total	5,578	\$2,972,230.44



**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand  
All Accounts  
July 1, 2010-June 30, 2011**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 15A</u></b>		
Alamance	3,983	\$1,599,594.58
District Total	3,983	\$1,599,594.58
<b><u>District 15B</u></b>		
Chatham	755	\$363,304.82
Orange	1,073	\$585,073.02
District Total	1,828	\$948,377.84
<b><u>District 16A</u></b>		
Hoke	322	\$419,352.60
Scotland	494	\$508,865.27
District Total	816	\$928,217.87
<b><u>District 16B</u></b>		
Robeson	4,819	\$2,436,459.22
District Total	4,819	\$2,436,459.22
<b><u>District 17A</u></b>		
Rockingham	3,732	\$1,367,379.69
District Total	3,732	\$1,367,379.69
<b><u>District 17B</u></b>		
Stokes	1,502	\$548,470.16
Surry	2,296	\$733,926.08
District Total	3,798	\$1,282,396.24
<b><u>District 18</u></b>		
Guilford	5,884	\$2,514,253.34
District Total	5,884	\$2,514,253.34
<b><u>District 19A</u></b>		
Cabarrus	4,113	\$1,445,146.06
District Total	4,113	\$1,445,146.06
<b><u>District 19B</u></b>		
Montgomery	1,049	\$285,943.63
Randolph	4,645	\$1,717,747.08
District Total	5,694	\$2,003,690.71
<b><u>District 19C</u></b>		
Rowan	5,160	\$1,772,266.49
District Total	5,160	\$1,772,266.49
<b><u>District 19D</u></b>		
Moore	2,952	\$1,280,899.94
District Total	2,952	\$1,280,899.94
<b><u>District 20A</u></b>		
Anson	1,582	\$536,827.49
Richmond	4,206	\$1,462,472.02
Stanly	2,231	\$809,607.78
District Total	8,019	\$2,808,907.29

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand  
All Accounts  
July 1, 2010-June 30, 2011**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 20B</u></b>		
Union	4,904	\$1,929,576.11
District Total	4,904	\$1,929,576.11
<b><u>District 21</u></b>		
Forsyth	7,010	\$2,120,414.05
District Total	7,010	\$2,120,414.05
<b><u>District 22A</u></b>		
Alexander	1,285	\$398,866.23
Iredell	5,332	\$2,042,330.67
District Total	6,617	\$2,441,196.90
<b><u>District 22B</u></b>		
Davidson	5,851	\$1,700,770.25
Davie	1,274	\$513,781.06
District Total	7,125	\$2,214,551
<b><u>District 23</u></b>		
Alleghany	352	\$171,256.31
Ashe	849	\$341,722.12
Wilkes	2,351	\$651,331.11
Yadkin	1,044	\$355,082.18
District Total	4,596	\$1,519,391.72
<b><u>District 24</u></b>		
Avery	487	\$167,283.79
Madison	810	\$273,833.04
Mitchell	482	\$195,159.12
Watauga	1,008	\$522,385.87
Yancey	804	\$318,280.58
District Total	3,591	\$1,476,942.40
<b><u>District 25A</u></b>		
Burke	2,223	\$835,118.46
Caldwell	3,367	\$1,190,910.12
District Total	5,590	\$2,026,028.58
<b><u>District 25B</u></b>		
Catawba	5,175	\$1,793,333.68
District Total	5,175	\$1,793,333.68
<b><u>District 26</u></b>		
Mecklenburg	17,363	\$7,872,959.85
District Total	17,363	\$7,872,959.85
<b><u>District 27A</u></b>		
Gaston	1,803	\$858,494.96
District Total	1,803	\$858,494.96
<b><u>District 27B</u></b>		
Cleveland	4,315	\$983,913.64
Lincoln	1,968	\$680,401.30
District Total	6,283	\$1,664,314.94

**Assigned and Contracted Private Counsel and Experts  
 Fee Applications and Demand  
 All Accounts  
 July 1, 2010-June 30, 2011**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 28</u></b>		
Buncombe	3,737	\$1,398,674.02
District Total	3,737	\$1,398,674.02
<b><u>District 29A</u></b>		
McDowell	1,557	\$747,924.55
Rutherford	2,720	\$842,682.54
District Total	4,277	\$1,590,607.09
<b><u>District 29B</u></b>		
Henderson	1,334	\$600,349.49
Polk	272	\$162,679.80
Transylvania	392	\$278,789.86
District Total	1,998	\$1,041,819.15
<b><u>District 30A</u></b>		
Cherokee	1,078	\$517,000.64
Clay	371	\$181,766.62
Graham	220	\$128,445.20
Macon	829	\$419,993.90
Swain	575	\$384,322.91
District Total	3,073	\$1,631,529.27
<b><u>District 30B</u></b>		
Haywood	2,307	\$1,084,223.02
Jackson	1,036	\$395,581.50
District Total	3,343	\$1,479,804.52
<i>Notes: Reports through FY07 included only payments to attorneys; FY08 through FY11 data includes payments to experts and investigators as well. Count of payments is not identical to number of cases but is a count of number of fee applications paid plus number of cases closed as reported by contractors. Interpreters not included. This data excludes the \$854,860 in fee applications received during FY10 but not paid until FY11 but includes \$9.9 M received in FY11 but paid in FY12.</i>		