

## **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, 2013

## CONTENTS

### COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS AND OFFICE OF INDIGENT DEFENSE SERVICES STAFF

#### ORGANIZATIONAL CHART

<b>EXECUTIVE SUMMARY</b> .....	1
<b>REPORT</b> .....	3
<b>IDS ORGANIZATIONAL STRUCTURE AND FUNCTIONS</b> .....	3
IDS Commission and Committees .....	3
IDS Administrative Offices.....	4
Relationship Between IDS and AOC .....	8
<b>PROGRAM OVERSIGHT AND ADMINISTRATION</b> .....	9
County and District Public Defender Offices .....	9
Private Assigned Counsel.....	11
Requests for Proposals and Contracts .....	13
Office of the Capital Defender .....	15
Offices of the Appellate Defender and Parent Representation Coordinator .....	15
Office of Special Counsel .....	16
Office of the Juvenile Defender .....	17
Inmate Access to the Courts.....	17
Innocence Inquiry Commission Proceedings .....	18
<b>TRAINING, RESOURCES, AND SUPPORT</b> .....	19
IDS Website .....	19
IDS Listservs and EBlasts .....	19
Grant Funding for Special Projects .....	20
Improved Training.....	20
Performance Guidelines and Reference Manuals .....	21
Additional Improved Resources.....	22
<b>BUDGETARY OVERSIGHT AND FACTS</b> .....	23
Controlling the Cost of Indigent Representation.....	23
Factors Driving Growth in Demand.....	23
Improved Revenue Collection.....	24
Historical Underfunding and Current Projections for Fiscal Year 2012-13 .....	25
<b>RESEARCH AND REPORTS</b> .....	26
Misdemeanor Reclassification Study .....	26
Waiting-in-Court Study and Alternative Scheduling Survey.....	28
Capital Case Costs and Dispositions Study.....	29
Systems Evaluation Project.....	29

<b>CASE VOLUME AND COST STATISTICS BY DISTRICT</b> .....	30
<b>CONTRACTS WITH LOCAL GOVERNMENTS FOR ASSISTANT PUBLIC DEFENDERS</b> .....	30
<b>LEGISLATIVE RECOMMENDATIONS</b> .....	31
Increase Funding for the Private Assigned Counsel/Contractor Fund .....	31
Funding for Public Defender Case Management System .....	32
Additional Staff for Existing Defender Offices .....	32
Consider Reclassifying Minor Misdemeanors as Infractions.....	32
Repeal or Amend Prohibition on Paying Public Defenders for Travel Within County of Residence .....	32
Allow Retired State Employees to Accept Indigent Appointments and/or Resolve Pending Cases on an Appointed or Pro Bono Basis.....	33
Additional Legislative Recommendations .....	33
<b>CONCLUSION</b> .....	33
 <b>APPENDICES</b>	
Indigent Defense Budget Charts .....	Appendix A
Fiscal Year 2011-12 County-by-County Recoupment Data .....	Appendix B
Fiscal Year 2011-12 District Case Volume and Cost Statistics .....	Appendix C

## COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS

*Mr. W. James Payne, Chair*

Powell & Payne, Shallotte  
Appointed by IDS Commission

*Mr. Burton Craige, Vice-Chair*

Patterson Harkavy, LLP, Raleigh  
Appointed by NC Advocates for Justice

*Mr. Daryl V. Atkinson*

Southern Coalition for Social Justice, Durham  
Appointed by NC Association of Black Lawyers

*Mr. James P. Cooney, III*

Womble, Carlyle, Sandridge & Rice, PLLC, Charlotte  
Appointed by NC Bar Association

*The Honorable Robert C. Ervin*

District 25A Senior Resident Superior Court Judge, Morganton  
Appointed by Chief Justice of NC Supreme Court

*Mr. David Mark Hullender*

David Mark Hullender, P.A., Kings Mountain  
Appointed by Speaker of the House

*Professor Irving L. Joyner*

North Carolina Central School of Law, Durham  
Appointed by NC Association of Public Defenders

*Ms. Carol Huffman Kendrick*

Huffman & Kendrick, Monroe  
Appointed by NC Association of Women Lawyers

*The Honorable Bradley B. Letts*

District 30 Senior Resident Superior Court Judge, Sylva  
Appointed by IDS Commission

*Ms. Christine Mumma*

The North Carolina Center on Actual Innocence, Durham  
Appointed by President Pro Tempore of the Senate

*Ms. Jenni Weinreb Owen*

Center for Child and Family Policy, Duke University, Durham  
Appointed by Governor

*Mr. David R. Teddy*

Teddy & Meekins, Shelby  
Appointed by NC State Bar

*Mr. Normand Travis*

N.J. Travis, CPA, PLLC, Durham  
Appointed by IDS Commission

**OFFICE OF INDIGENT DEFENSE SERVICES CENTRAL STAFF**

123 West Main St., Suite 400  
Durham, NC 27701  
Phone: (919) 354-7200  
Facsimile: (919) 354-7201  
[www.ncids.org](http://www.ncids.org)

**Thomas K. Maher**  
**Executive Director**  
[Thomas.K.Maher@nccourts.org](mailto:Thomas.K.Maher@nccourts.org)

***Legal***

*Danielle M. Carman*  
Assistant Director/General Counsel  
[Danielle.M.Carman@nccourts.org](mailto:Danielle.M.Carman@nccourts.org)

*Susan E. Brooks*  
Public Defender Administrator  
[Susan.E.Brooks@nccourts.org](mailto:Susan.E.Brooks@nccourts.org)

*Jennifer M. Howard*  
Contracts Administrator  
[Jennifer.M.Ricker@nccourts.org](mailto:Jennifer.M.Ricker@nccourts.org)

*D. Tucker Charns*  
Division I and III Regional Defender  
[Tucker.Charns@nccourts.org](mailto:Tucker.Charns@nccourts.org)

*Susan D. Perry*  
Legal Associate  
[Susan.D.Perry@nccourts.org](mailto:Susan.D.Perry@nccourts.org)

***Financial***

*Elisa Wolper*  
Chief Financial Officer  
[Elisa.Wolper@nccourts.org](mailto:Elisa.Wolper@nccourts.org)

*Catrinel S. Rosu*  
Auditor  
[Catrinel.S.Rosu@nccourts.org](mailto:Catrinel.S.Rosu@nccourts.org)

*Carmen R. Jarmon*  
Financial Analyst  
[Carmen.R.Jarmon@nccourts.org](mailto:Carmen.R.Jarmon@nccourts.org)

***Information Technology***

*John C. Argentati*  
Information Technology Director  
[John.C.Argentati@nccourts.org](mailto:John.C.Argentati@nccourts.org)

***Research***

*Margaret A. Gressens*  
Research Director  
[Margaret.A.Gressens@nccourts.org](mailto:Margaret.A.Gressens@nccourts.org)

*John W. King*  
Research Associate  
[John.W.King@nccourts.org](mailto:John.W.King@nccourts.org)

*Kayla L. Sauls*  
Research Associate  
[Kayla.L.Sauls@nccourts.org](mailto:Kayla.L.Sauls@nccourts.org)

*Jennifer M. Morrell*  
Research Associate (grant funded)  
[Jennifer.M.Morrell@nccourts.org](mailto:Jennifer.M.Morrell@nccourts.org)

***Administration***

*Beverly M. McJunkin*  
Office Manager  
[Beverly.M.McJunkin@nccourts.org](mailto:Beverly.M.McJunkin@nccourts.org)

*Lyn M. Turner*  
Administrative Assistant  
[Lyn.M.Turner@nccourts.org](mailto:Lyn.M.Turner@nccourts.org)

***Resource Units***

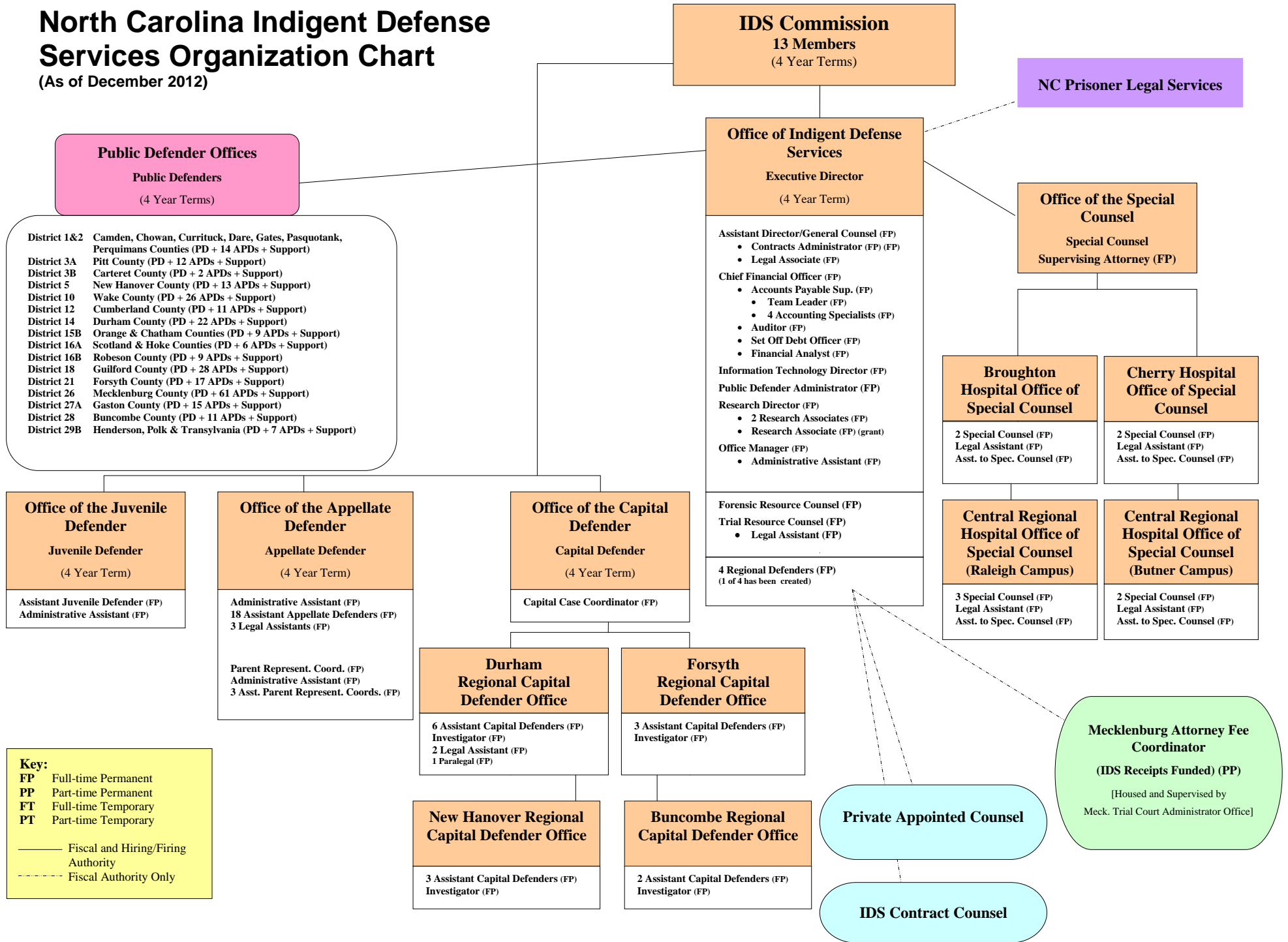
*Sarah H. Rackley*  
Forensic Resource Counsel  
[Sarah.H.Rackley@nccourts.org](mailto:Sarah.H.Rackley@nccourts.org)

*Elaine M. Gordon*  
Trial Resource Counsel  
[Elaine.M.Gordon@nccourts.org](mailto:Elaine.M.Gordon@nccourts.org)

*Clara C. Renaker*  
Legal Assistant, Trial Resource Unit  
[Clara.C.Renaker@nccourts.org](mailto:Clara.C.Renaker@nccourts.org)

# North Carolina Indigent Defense Services Organization Chart

(As of December 2012)



**Key:**  
 FP Full-time Permanent  
 PP Part-time Permanent  
 FT Full-time Temporary  
 PT Part-time Temporary  
 — Fiscal and Hiring/Firing Authority  
 - - - - Fiscal Authority Only

- Public Defender Offices**  
Public Defenders  
(4 Year Terms)
- District 1&2 Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans Counties (PD + 14 APDs + Support)
  - District 3A Pitt County (PD + 12 APDs + Support)
  - District 3B Carteret County (PD + 2 APDs + Support)
  - District 5 New Hanover County (PD + 13 APDs + Support)
  - District 10 Wake County (PD + 26 APDs + Support)
  - District 12 Cumberland County (PD + 11 APDs + Support)
  - District 14 Durham County (PD + 22 APDs + Support)
  - District 15B Orange & Chatham Counties (PD + 9 APDs + Support)
  - District 16A Scotland & Hoke Counties (PD + 6 APDs + Support)
  - District 16B Robeson County (PD + 9 APDs + Support)
  - District 18 Guilford County (PD + 28 APDs + Support)
  - District 21 Forsyth County (PD + 17 APDs + Support)
  - District 26 Mecklenburg County (PD + 61 APDs + Support)
  - District 27A Gaston County (PD + 15 APDs + Support)
  - District 28 Buncombe County (PD + 11 APDs + Support)
  - District 29B Henderson, Polk & Transylvania (PD + 7 APDs + Support)

**IDS Commission**  
13 Members  
(4 Year Terms)

**NC Prisoner Legal Services**

**Office of Indigent Defense Services**  
Executive Director  
(4 Year Term)

- Assistant Director/General Counsel (FP)
  - Contracts Administrator (FP) (FP)
  - Legal Associate (FP)
- Chief Financial Officer (FP)
  - Accounts Payable Sup. (FP)
  - Team Leader (FP)
  - 4 Accounting Specialists (FP)
- Auditor (FP)
- Set Off Debt Officer (FP)
- Financial Analyst (FP)
- Information Technology Director (FP)
- Public Defender Administrator (FP)
- Research Director (FP)
  - 2 Research Associates (FP)
  - Research Associate (FP) (grant)
- Office Manager (FP)
  - Administrative Assistant (FP)
- Forensic Resource Council (FP)
- Trial Resource Council (FP)
  - Legal Assistant (FP)
- 4 Regional Defenders (FP)  
(1 of 4 has been created)

**Office of the Special Counsel**  
Special Counsel  
Supervising Attorney (FP)

**Broughton Hospital Office of Special Counsel**  
2 Special Counsel (FP)  
Legal Assistant (FP)  
Asst. to Spec. Counsel (FP)

**Cherry Hospital Office of Special Counsel**  
2 Special Counsel (FP)  
Legal Assistant (FP)  
Asst. to Spec. Counsel (FP)

**Central Regional Hospital Office of Special Counsel (Raleigh Campus)**  
3 Special Counsel (FP)  
Legal Assistant (FP)  
Asst. to Spec. Counsel (FP)

**Central Regional Hospital Office of Special Counsel (Butner Campus)**  
2 Special Counsel (FP)  
Legal Assistant (FP)  
Asst. to Spec. Counsel (FP)

**Office of the Juvenile Defender**  
Juvenile Defender  
(4 Year Term)  
Assistant Juvenile Defender (FP)  
Administrative Assistant (FP)

**Office of the Appellate Defender**  
Appellate Defender  
(4 Year Term)  
Administrative Assistant (FP)  
18 Assistant Appellate Defenders (FP)  
3 Legal Assistants (FP)  
Parent Represent. Coord. (FP)  
Administrative Assistant (FP)  
3 Asst. Parent Represent. Coords. (FP)

**Office of the Capital Defender**  
Capital Defender  
(4 Year Term)  
Capital Case Coordinator (FP)

**Durham Regional Capital Defender Office**  
6 Assistant Capital Defenders (FP)  
Investigator (FP)  
2 Legal Assistant (FP)  
1 Paralegal (FP)

**Forsyth Regional Capital Defender Office**  
3 Assistant Capital Defenders (FP)  
Investigator (FP)

**New Hanover Regional Capital Defender Office**  
3 Assistant Capital Defenders (FP)  
Investigator (FP)

**Buncombe Regional Capital Defender Office**  
2 Assistant Capital Defenders (FP)  
Investigator (FP)

**Private Appointed Counsel**

**IDS Contract Counsel**

**Mecklenburg Attorney Fee Coordinator**  
(IDS Receipts Funded) (PP)  
[Housed and Supervised by  
Meck. Trial Court Administrator Office]

## 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 2011-12. The report also contains a number of legislative recommendations for the 2013 long session, as well as last fiscal year’s data on indigent caseloads and case costs across the State. More information about the work and accomplishments of the IDS Commission and Office, including a series of focused one-page fact sheets on various topics, is available at [www.ncids.org](http://www.ncids.org).

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. The Commission and Office have implemented a number of initiatives to improve the efficiency, cost-effectiveness, and quality of the State’s indigent defense program, including measures to slow the rate of increase in spending without compromising the quality of representation. The Commission and Office have also taken significant steps to enhance communication and resource-sharing with the defense bar and other system actors; to provide specialized training and support to the attorneys handling indigent cases; and to improve data collection and analysis capabilities.

In its first decade of operations, IDS has already taken significant steps to control increases in the cost of indigent representation. The increase in new demand (spending and current-year obligations) since IDS was created has averaged 6%, 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 4.5% and, as a result of the hourly rate reductions that the IDS Commission implemented in May 2011, there was a 8.9% decrease in new demand during fiscal year 2011-12.

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 in fiscal year 2009-10, increased modestly in fiscal year 2010-11, and decreased again in fiscal year 2011-12. Indigent defense per disposition expenditures in fiscal year 2011-12 were only \$2.93 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01) and were \$13.13 less than per disposition expenditures during fiscal year 2010-11. *See* Appendix A. While there have been some increases in average per case costs for some case types over the past decade, the overall increases in demand on the fund are primarily due to an expanding indigent caseload.

Despite the comparatively lower increases in new demand on the fund during the past decade, the significant reductions in the hourly rates that IDS pays to private assigned counsel, and the

decrease in per disposition expenditures during fiscal year 2011-12, indigent defense remains underfunded. The IDS Office is currently projecting that IDS will end this fiscal year with approximately \$6.5 to \$8.5 million of debt, which represents some improvement in IDS' debt at the end of the past two fiscal years but will still result in a significant payment delay for assigned counsel. As a result, the Commission and Office respectfully request that the General Assembly appropriate an additional \$7.5 million in non-recurring funds for fiscal year 2013-14 to enable IDS to pay off the anticipated carry-forward debt. The Commission and Office also request that the General Assembly appropriate \$2.8 million in additional recurring funds for fiscal year 2013-14 to maintain the current level of services at the reduced hourly rates and to cover the projected demand on the fund next year.



## 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.

As required by Session Law 2011-145, § 15.17, the IDS Office must report to the General Assembly by March 1, 2013 about the following matters:

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

In addition, 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.

## IDS ORGANIZATIONAL STRUCTURE AND FUNCTIONS

### IDS COMMISSION AND COMMITTEES

By statute, members of the IDS Commission must have significant experience in the defense of cases subject to the IDS Act or have a demonstrated commitment to quality representation in indigent cases. *See* G.S. 7A-498.4(d). The current members of the IDS Commission and their appointing authorities, as well as an organizational chart, appear at the beginning of this report.

Since IDS’ creation, the IDS Commission has formed a number of different committees responsible for addressing various aspects of its work. The current committees are:

Committee	Duties
Budget	Prepares proposed budgets, analyzes non-capital case costs and budgetary trends, and develops initiatives to enhance IDS’ oversight of spending
Capital	Addresses issues such as the quality of capital representation, recruitment of attorneys and experts, regional capital defender offices, compensation of capital attorneys and experts, and ways to provide cost-effective consulting services
Client Advisory	Discusses ways to obtain feedback from indigent clients about the services they

<b>Committee</b>	<b>Duties</b>
	receive, and identifies and promotes innovative projects that serve clients and communities
Contracts	Developing a Request for Proposals and contract system for delivering legal services to indigent persons, which the Legislature directed during the 2011 long session
Indigency Standards	Working to develop standards to guide judges in making indigency determinations and other ways to improve indigency screening and verification
Juvenile	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 guides the statewide Juvenile Defender’s work
Long-Term Planning	Addresses transition issues that arise, including Commissioner term expirations
Personnel	Evaluates the performance of Commission appointees, including the Executive Director, Appellate Defender, Capital Defender, and Juvenile Defender
Public Defender	Worked with the public defenders to develop plans to govern the qualifications and appointment of counsel in each public defender district, and makes recommendations to the full IDS Commission about the appointment of chief public defenders around the State
Review	Addresses all requests for review of the IDS Director’s fee and roster decisions
Senior Advisory	Comprised of former leaders on the Commission, helps maintain institutional knowledge and experience and advises the IDS Commission and staff
Systems Evaluation	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

In addition to the current committees, an Indigent Appointment Plan Committee developed a model indigent appointment plan for non-public defender districts; a Performance Guidelines Committee developed guidelines for indigent defense representation in non-capital criminal cases; and a Prisoner Access to the Courts Committee helped design the legislatively mandated evaluation of North Carolina Prisoner Legal Services.

## **IDS ADMINISTRATIVE OFFICES**

The IDS administrative offices are comprised of a central office in Durham and a Financial Services office in Raleigh. The central office staffs the IDS Commission and is responsible for administration and implementation of policy as directed by the Commission. The Financial Services office is responsible for processing and paying appointed attorney fee applications and performing other accounts payable functions. Both offices combined accounted for approximately 1.5% of IDS’ overall budget in fiscal year 2011-12.

The IDS Commission and Office developed rules to govern the continued delivery of services in cases under IDS’ oversight. The rules address non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); non-capital and non-criminal appeals; and inmate access to the courts. 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) and the Annotated Rules of North Carolina (LexisNexis).

The IDS Commission and Office have also developed a wide variety of policies and procedures that govern various aspects of the office’s work and the provision of legal services, such as:

- *Indigent Appointment Plans for Public Defender Districts:* The Commission and Office worked with the chief public defenders to develop plans for the appointment of counsel in non-capital criminal and non-criminal cases in all public defender districts, which provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation and contain qualification and performance standards for attorneys on the district indigent lists. As IDS implements contracts in districts pursuant to the Requests for Proposals that are required by § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, these local appointment plans are being supplemented or superseded by contractor appointment instructions that IDS is issuing in consultation with local court system actors.
- *Model Appointment Plan for Non-Public Defender Districts:* The Commission and Office developed a model indigent appointment plan for non-public defender districts, which is modeled after the public defender appointment plans, includes qualification standards for the various indigent lists, provides for more oversight by a local indigent committee, and includes some basic reporting requirements to the IDS Office. While Office staff are continuing to work with local actors in a variety of counties and districts to implement some version of the model plan, as above, these local plans will be supplemented or superseded by contractor appointment instructions as IDS implements the new contract system throughout the State.
- *Billing Policies Governing Non-Capital and Non-Criminal Cases at the Trial Level:* The IDS Office developed policies and procedures governing fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level. The 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.
- *Non-Capital and Non-Criminal Billing Education:* With the assistance of School of Government (“SOG”) faculty and the North Carolina Bar Association (“NCBA”), the IDS Office 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 video contains segments on the journey of a fee application, IDS’ billing policies, the various fee application forms, getting paid, and record keeping. The video is posted on the SOG and IDS websites, where attorneys can access it for free. It is also available on the NCBA website for one hour of continuing legal education ethics credit.
- *Billing and Compensation in Capital Cases and Appeals:* On July 1, 2001, the IDS Office 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. IDS 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, and developed detailed billing policies governing these case types, as well as financial auditing procedures that Office staff apply to every fee petition IDS receives. Office staff also conduct periodic intensive audits of attorneys who regularly handle potentially capital

cases, which involve compiling and comparing all billing by an attorney during a specified time period to ensure there are no errors or duplication across cases.

In December 2008, the IDS Commission approved an “exceptional case” policy that is designed to help IDS better monitor and control spending in the most complex 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 the IDS Director has declared a case exceptional based on the presence of certain enumerated criteria. 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. In addition, IDS is now requiring attorneys to develop pre-trial budgets in some cases.

- *Standardized Expert Rate Schedule:* In conjunction with the Administrative Office of the Courts (“AOC”), the IDS Office developed an 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 16 different categories of experts. 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.
- *Appointment of Counsel in Post-Release Supervision Cases:* The IDS Office has developed procedures for the appointment and payment of counsel in post-release supervision preliminary revocation hearings before a hearing officer, which may be held in any North Carolina county, as well as videoconference post-release supervision revocation hearings and criminal contempt hearings before the North Carolina Post-Release Supervision and Parole Commission, which are limited to seven Division of Adult Correction facilities in six North Carolina counties that have diagnostic centers. IDS expects the number of these hearings, and thus the cost of representation in this area, to increase significantly as a result of the Justice Reinvestment Act.

The IDS Commission and Office are continually working to develop additional policies and procedures governing other areas of IDS’ work, as well as additional resources for attorneys and others, such as:

- *Improved Indigency Screening:* 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.” Currently, the court system relies on affidavits of indigency that are submitted to judges. While no additional data is collected about the information that is self-reported, it is a Class I felony to make a false material statement about one’s indigency and attorneys have a statutory obligation to inform the court if they believe an assigned client has the resources to hire an attorney. IDS has conducted extensive research on indigency standards in other jurisdictions, as well as model standards promulgated by other state and national organizations. The IDS Office has also held meetings with the IDS Commission’s Indigency Standards Committee and other system actors, including the chief public defenders and a representative group of district court judges, to discuss methods of improving indigency screening in the State.

The research and meetings revealed that it will be very challenging to develop indigency standards that would be both meaningful and flexible enough to take into account the wide variety of financial situations facing defendants and respondents. Indeed, the North Carolina court system employed indigency screening staff in the 1990s and found that they were not cost effective. In addition, a 2007 study of indigency verification in Nebraska found that the process detected inaccurate information in approximately 5% of applications for court appointed counsel. However, only 4% of the 5% that included misstatements (or only 1 in every 500 applications) led to the appointment of counsel in cases in which counsel otherwise would not have been provided. A more significant percentage of the inaccurate applications overstated the applicants' financial resources. If the same holds true in North Carolina, it is highly unlikely that additional screening or verification of financial information in affidavits of indigency would pay for itself.

However, given the budget crisis, the IDS Commission and Office plan to investigate potential improvements to the current system, especially now that technological advances in access to financial data may streamline the process. The Office has begun analyzing a small retrospective sample of cases where IDS paid for representation during fiscal year 2009-10 to determine:

- ✓ If affidavits of indigency were completed as required by the IDS Rules.
- ✓ What information was provided on the affidavits about incomes, assets, and debts.
- ✓ If counsel was appointed or denied.
- ✓ If recoupment of attorney fees and the attorney appointment fee was ordered and collected.

IDS will then ascertain what data sources are available to verify information on the affidavits and if any of the defendants' income and assets were substantially higher than reported. Based on this sample data, IDS will determine if a broader effort would generate enough savings to justify the cost to the taxpayers of more vigorous efforts in this area, such as more concrete indigency standards and/or income verification.

- *Updated Average Hours Studies:* In order to assist judges in evaluating fee petitions that are submitted by private assigned counsel ("PAC"), the IDS Office completed statewide studies of the hours claimed by attorneys in non-capital cases in district and superior court in fiscal year 2004-05. The study reports provided average hours claimed and frequency distributions of claimed hours for various case types. IDS hopes to update both studies in the future.

In addition to development and implementation of policy, the central IDS Office also performs a number of ongoing administrative functions, such as:

- *Attorney and Expert Compensation in Capital Cases and Appeals:*
  - ✓ During fiscal year 2011-12, the IDS Office set uniform fee awards for 2,877 attorney fee applications in capital cases and appeals, including interim and final fees. During the first half of fiscal year 2012-13, the Office set an additional 1,325 attorney fee awards.
  - ✓ During fiscal year 2011-12, the IDS Office set fee awards for 2,483 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. During the first half of fiscal year 2012-13, the Office set an additional 1,234 expert fee awards.
- ✓ The Office is currently processing almost 100 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, the IDS Director routinely asks the presiding judge for his or her opinion about the attorney's fee application before awarding final fees.
  - *Appointment of Qualified Counsel in Capital Post-Conviction Cases:* During fiscal year 2011-12, the IDS Office made 22 attorney appointments in 16 different capital post-conviction cases. During the first half of fiscal year 2012-13, the Office made 11 additional attorney appointments in eight different capital post-conviction cases.
  - *Expert and Miscellaneous Expense Funding Authorizations in Capital Post-Conviction Cases:* During fiscal year 2011-12, the IDS Office reviewed and acted on 200 requests for expert funding and miscellaneous expenses in capital post-conviction cases. During the first half of fiscal year 2012-13, the Office acted on an additional 94 such requests. 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.

## **RELATIONSHIP BETWEEN IDS AND AOC**

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.

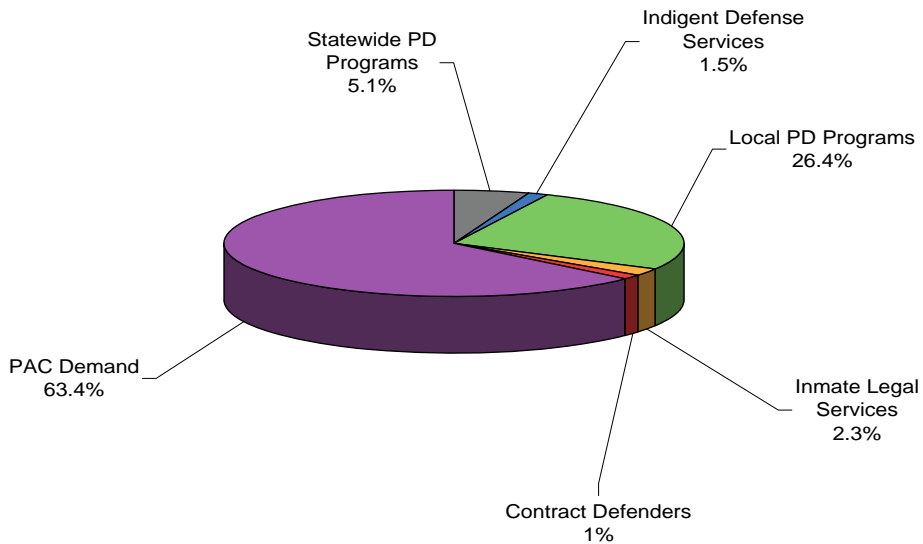
- *Accounts Payable:* In fiscal year 2005-06, AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including a number of accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and an employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. 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.
- *Defense Interpreting and Translation Costs:* In fiscal year 2005-06, AOC and IDS entered into a memorandum of agreement concerning the allocation of foreign language interpreter and translator costs. The memorandum provides that IDS will bear the cost of out-of-court interpretation and translation that is performed solely for the defense function. During fiscal year 2011-12, IDS spent approximately \$140,000 on out-of-court

interpretation and translation. In light of the United States Department of Justice’s March 2012 report finding significant deficiencies in the North Carolina court system’s policies and procedures with respect to access to interpreters and translators, as well as AOC’s subsequent commitment to expand language access services in compliance with federal law, IDS expects these out-of-court defense costs to increase in coming years.

- *Defense Lay Witness Costs:* 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 behalf of the court or prosecution. During fiscal year 2011-12, IDS spent almost \$14,800 on defense lay witness fees and expenses.

**PROGRAM OVERSIGHT AND ADMINISTRATION**

**FY12 ACTUAL BY TYPE OF PROGRAM**



**COUNTY AND DISTRICT PUBLIC DEFENDER OFFICES**

There are currently 16 county- and district-based public defender offices in North Carolina, which cover 17 judicial districts and 26 counties. The General Assembly has created five of those 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)—since IDS was established in 2001. At the request of local actors and pursuant to § 16.8 of Session Law 2012-142, IDS is currently in the process of working with the First District Chief Public Defender to expand that office into the Second District (Beaufort, Hyde, Martin, Tyrrell, and Washington Counties). The IDS Commission and Office regularly investigate the potential cost savings from and advisability of creating new public defender offices in other districts or regions, as well as expanding existing offices, and report any recommendations to the General Assembly. During fiscal year 2011-12,

all of the county and district public defender offices combined reported 103,074 dispositions and withdrawals.

The IDS Commission and Office oversee and provide support to the public defender offices in a number of ways:

- *Balloting Regulations and Plans for the Appointment of Counsel:* After consultation with the local bar and bench, the IDS Director adopts rules to govern the balloting and nomination process for the chief public defenders pursuant to G.S. 7A-498.7(b). For each new office, IDS Office staff also met with the chief public defenders 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.
- *Appointment of Chief Public Defenders:* In accordance with numerous national recommendations stressing the importance of an independent defense function, 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 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 Commission developed procedures to govern the appointment of chief public defenders, as well as an end-of-term evaluation form. The adopted procedures require the IDS Director to conduct a mid-term evaluation and an end-of-term evaluation, with the latter including 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 also includes a site visit to the public defender office. Based on the evaluations and any materials received from non-incumbent nominees, the IDS Director develops an appointment recommendation for the Public Defender Committee, which in turn develops a recommendation for the full Commission. Since assuming this responsibility, the IDS Commission has evaluated and reappointed seven incumbent chief public defenders.
- *Public Defender Disposition Reporting and Cost-Effectiveness Studies:* All public defender offices report their case closings to IDS via an on-line system that allows IDS Office staff to analyze data on case closings by office, by attorney, and by selected time periods. Based on that data, IDS has traditionally conducted annual studies of the cost-effectiveness of public defender offices, which compare the costs of those offices to the costs that IDS would have incurred if PAC had handled the same cases. In several recent years, the studies have also examined the impact on district-wide indigent defense expenditures and per case costs from the creation of new public defender offices. The 2011 study also attempted to quantify the county jail savings that are generated by the existence of a public defender office, which often far outweigh the county costs for providing office space and facilities.

Due to the significant changes in the rate structure for PAC that the IDS Commission implemented during fiscal year 2010-11 and the current shift toward a large-scale contract system, IDS did not conduct a cost-effectiveness study for fiscal year 2011-12. IDS Office staff are currently developing a new system to capture public defender



disposition data that will vastly improve the accuracy of the data that is collected, and the first complete year of data under that new system will be fiscal year 2013-14.

- *Expansion of Existing Public Defender Offices:* In the annual Appropriations Act, the General Assembly has historically given the IDS Office authority to create a certain number of new attorney and support staff positions within existing defender programs. The head of each defender office is then given the opportunity to submit a request and justification for additional staff, and IDS Office staff determine whether adding new personnel would help expand the work each office is doing, generate cost savings and efficiencies, and/or relieve overburdened offices.

The 2011 Appropriations Act (Session Law 2011-145, § 15.16(a)), authorized IDS to create up to 50 new attorney positions and 25 new support staff positions during fiscal year 2011-12. Last fiscal year, the IDS Director created 15 new attorney and three new support staff positions pursuant to this authority:

<b>Office</b>	<b>Type of Position</b>	<b># Positions</b>
Office of the Capital Defender	Assistant Capital Defender	4
Office of the Appellate Defender	Assistant Appellate Defender	3
Office of the Parent Representation Coordinator	Assistant Appellate Defender	1
District 1 Public Defender Office	Assistant Public Defender	1
District 5 Public Defender Office	Assistant Public Defender	1
District 10 Public Defender Office	Assistant Public Defender	2
District 26 Public Defender Office	Assistant Public Defender	1
Office of Indigent Defense Services	First and Third Division Regional Defender	1
Office of Indigent Defense Services	Public Defender Administrator	1
Office of the Capital Defender	Investigator	1
Office of the Capital Defender	Legal Assistant	1
District 26 Public Defender Office	Paralegal	1

## **PRIVATE ASSIGNED COUNSEL**

Currently, more than 2,300 PAC around the State handle more than 60% of the indigent caseload in North Carolina. IDS values the contributions and talent of the private appointed bar and is committed to maintaining private bar participation in North Carolina's indigent defense programs when it is cost effective and ensures quality. In its standards for administering indigent defense services, the American Bar Association ("ABA") recommends that indigent defense programs utilize a mix of service delivery systems, concluding that substantial private bar involvement is crucial to an effective program. PAC bring expertise and skills developed in their private practices to the representation of indigent clients. The PAC system also offers IDS the greatest flexibility to match capacity to demand because attorneys are assigned as cases arise and are paid for actual time spent on cases, which allows the cost of cases to be determined by their complexity. The benefits of this flexibility are particularly salient in rural areas with smaller and less predictable caseloads. During fiscal year 2011-12, IDS issued 204,739 payments to PAC.

In light of the State's fiscal crisis, the 2011 Appropriations Act reduced IDS' budget by \$10.5 million on top of an existing shortfall of almost \$10 million, and directed IDS to reduce the PAC

hourly rates to minimize the shortfall. Effective May 2011, the IDS Commission dramatically reduced the hourly rates that are paid to PAC, with estimated annual savings between \$17.5 million and \$19 million once the reductions are fully implemented. The following chart sets forth the hourly rate changes for cases at the trial level since IDS was created in 2001:

Case Type	Original IDS Rates	Aug. 2006 Rates	Feb. 2008 Rates	Jan. 2011 Rates	May 2011 Rates
Potentially Capital Cases	\$85	\$95	\$95	\$95 (\$85 after a non-capital declaration)	\$85 (\$75 after a non-capital declaration)
High-Level Felonies (Class A-D)	\$65	\$65	\$75	\$75	\$70
All Other Superior Court Cases	\$65	\$65	\$75	\$75	\$60
All Other District Court Cases	\$65	\$65	\$75	\$75	\$55

The May 2011 rate reductions were the deepest for the vast majority of cases in district court, where the rate was reduced by almost 27% to \$55 per hour, which is less than the hourly overhead of many small law firms in North Carolina. The hourly rates that are paid to PAC must cover reasonable overhead costs and a living wage to ensure that a sufficient number of competent attorneys are available to represent indigent defendants and respondents and that indigent persons receive quality representation. Indeed, an insufficient number of qualified attorneys to cover the caseload causes 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. With the exception of the new serious felony rate, the current standard rates are below the original rates that IDS established more than a decade ago; all of the current rates are significantly below what attorneys can earn in retained cases and appointed cases in federal court.

The private 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. For a typical DWI case, private lawyers in North Carolina charge between \$1,000 and \$3,000. By comparison, based on the current \$55 rate for DWIs resolved in district court, IDS pays an average of less than \$280 for representation in an indigent DWI case. 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.

In addition to the rate reductions, IDS’ historical underfunding has often led to payment delays for PAC. In fiscal year 2011-12, as a result of underfunding from prior years and carry-forward debt that had to be paid out of IDS’ appropriation for last fiscal year, IDS depleted its annual funding for PAC after paying fee applications received in April 2012, resulting in eight weeks of payment delays. Such delays create a significant hardship for the PAC who handle indigent cases, most of whom are solo practitioners or members of small law firms. They also make it difficult for IDS to recruit and retain qualified counsel to represent indigent persons. No other actors in the criminal justice system have their pay delayed as a result of the State’s budget problems.

## REQUESTS FOR PROPOSALS AND CONTRACTS

- *Individually Negotiated Contracts:* 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. As of June 30, 2012, the IDS Office had individually negotiated contracts with 41 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 2011-12, IDS had contracts 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 treatment court proceedings.

IDS believes 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 10% (over \$150,000) during fiscal year 2011-12 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments.

- *Requests for Proposals (“RFPs”) 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.

IDS’ existing individually negotiated contracts cover less than 3% of the non-capital cases at the trial level that are handled by PAC. During fiscal year 2011-12, IDS processed more than 200,000 individual PAC fee applications from more than 2,300 different attorneys. 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 represents a fundamental shift in the way that indigent defense services are provided in North Carolina. Because of the sheer volume of indigent cases handled by PAC and limitations on the IDS staff and resources that can be devoted to this process, IDS is staggering the issuance of RFPs geographically and by case type.

IDS has taken a number of steps to lay the groundwork for an effective large-scale contract system, including:

- ✓ 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, to identify best practices and potential pitfalls.
- ✓ Developing policies to govern the issuance of RFPs and the establishment of legal services contracts.
- ✓ Drafting a model RFP, including standard contract terms and conditions, and a model offer form.
- ✓ Creating a page on the IDS website dedicated to RFPs and contracts.
- ✓ Releasing an on-line virtual education program for interested attorneys about the RFP process and the contract system.
- ✓ Analyzing three fiscal years of case data by county to determine the number of hours needed to provide representation and to develop appropriate caseload units.

The Office is also in the process of 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.

In most case types, upon receipt of all required monthly data reporting, IDS will pay contractors a set and cost-effective monthly payment that is based on an expected range of annual dispositions. Based on IDS' case and cost data for the past three fiscal years (adjusted for the May 2011 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 is seeking per session cost/price offers in addition to qualifying offers.

In May 2012, IDS issued the first RFP for all adult non-capital criminal cases and treatment courts that were previously handled by PAC in Districts 9 (Franklin, Granville, Vance, and Warren Counties), 10 (Wake County), and 14 (Durham County). Contracts went into effect in those districts on December 1, 2012. In November 2012, IDS released a second RFP for the same case types in Districts 9A (Caswell and Person Counties), 15A (Alamance County), and 15B (Chatham and Orange Counties). Contracts will go into effect in those districts on June 1, 2013. IDS plans to release the next RFP during the spring of 2013. Future RFPs will also expand into additional case types, including delinquency, parent representation, child support contempt, and special proceedings.

While IDS has designed the contract system to be cost effective, it has the potential to have a negative impact on IDS' recoupment revenues. Contractors will be required to print recoupment applications from the web-based reporting system and to submit them

to the presiding judge for entry of civil judgments 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.

## **OFFICE OF THE CAPITAL DEFENDER**

In addition to the Capital Defender, the Office of the Capital Defender currently employs 14 staff attorneys who represent indigent defendants charged with potentially capital cases at the trial level in four regional offices around the State. The regional offices are located in Asheville, Durham, Wilmington, and Winston-Salem. During fiscal year 2011-12, all of the regional offices combined handled 78 potentially capital cases at the trial level, including pending cases and withdrawals

The office also screens applications for and oversees the statewide capital trial rosters, and assigns counsel from those rosters to handle cases that cannot be handled in-house:

- During fiscal year 2011-12, the office made 587 attorney appointments in 493 potentially capital cases at the trial level. During the first half of fiscal year 2012-13, the office made an additional 298 attorney appointments in potentially capital cases.
- During fiscal year 2011-12, the office reviewed and acted on 1,986 requests for expert funding and miscellaneous expenses at the trial level. During the first half of fiscal year 2012-13, the office reviewed and acted on an additional 1,078 requests.

In addition to this work, the Office of the Capital Defender:

- Performs case consultations with trial attorneys who represent defendants in potentially capital cases.
- Maintains a listserv for attorneys who handle these cases.
- Works with other groups to develop and present specialized training programs for capital defense attorneys.

The work of the Office of the Capital Defender has significantly enhanced the quality and cost-effectiveness of capital representation in this State.

## **OFFICES OF THE APPELLATE DEFENDER & PARENT REPRESENTATION COORDINATOR**

In addition to the Appellate Defender, the Office of the Appellate Defender currently has 18 staff attorneys who represent indigent persons on direct appeal in the Appellate Division. In addition to the Parent Representation Coordinator, the Office of Parent Representation Coordinator, which is technically housed within the Office of the Appellate Defender but specializes in abuse/neglect/dependency, termination of parental rights, and child support contempt appeals, has three staff attorneys who represent indigent persons on direct appeal. During fiscal year 2011-12, both offices combined disposed of 211 direct appeals.

Both offices also screen applications for and oversee the statewide appellate rosters, and assign counsel from those rosters to handle appeals that cannot be handled in-house:

- During fiscal year 2011-12, the offices made 1,099 attorney appointments in capital, non-capital criminal, and non-criminal appeals. During the first half of fiscal year 2012-13, the offices made an additional 578 attorney appointments.

In addition to the work described above, the Office of the Appellate Defender and the Office of the Parent Representation Coordinator:

- Evaluate appellate briefs for inclusion in an on-line brief bank.
- Perform case consultations with trial and appellate attorneys.
- Maintain listservs for attorneys who handle capital, non-capital criminal, and non-criminal appeals, as well as attorneys who handle abuse/neglect/dependency, termination of parental rights, and child support contempt cases at the trial level.
- Work with SOG and other groups to develop and present specialized training programs for appellate and trial attorneys.

The Office of Parent Representation Coordinator also maintains a special parent representation page on the IDS website, and worked with an SOG committee that developed a manual for parent attorneys, which was produced by SOG in 2011. The Parent Representation Coordinator also serves 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. The work of both offices has significantly improved the quality and cost-effectiveness of appellate representation.

## **OFFICE OF SPECIAL COUNSEL**

The Office of Special Counsel represents indigent respondents in civil commitment proceedings around the State through regional offices at Cherry Hospital in Wayne County, Broughton Hospital in Burke County, Central Regional Hospital in Granville County, and on the campus of the former Dorothea Dix Hospital in Wake County. In fiscal year 2011-12, the four Offices of Special Counsel employed eight attorneys and eight support staff and disposed of a total of 10,954 cases.

In addition to providing direct representation, the Office of Special Counsel:

- Serves as a central resource and contact person for attorneys handling commitment cases.
- Performs individual case consultations upon request.
- Monitors and assesses the cost and effectiveness of the delivery of legal services in civil commitment and guardianship cases by appointed and contractual counsel.
- Maintains a listserv for attorneys practicing in the civil commitment area, as well as a civil commitment and guardianship page on the IDS website.
- Works with SOG to develop and sponsor training programs for commitment and guardianship attorneys.

The office also worked with SOG to develop and publish the North Carolina Civil Commitment Manual and the North Carolina Guardianship Manual, and continually monitors the implementation of the State Mental Health Reform Plan and makes necessary adjustments to the delivery of services by the regional offices. The office plays a critical role in ensuring that indigent respondents receive quality, cost-effective representation.

## **OFFICE OF THE JUVENILE DEFENDER**

The Office of the Juvenile Defender was created in response to an assessment of delinquency representation in North Carolina that was released in 2003 by the ABA Juvenile Justice Center. The office:

- Serves as a central resource and contact for individual juvenile defenders and juvenile associations statewide.
- Fields questions from practitioners and performs case consultations as needed.
- Develops ways to connect and support juvenile defense attorneys across the State, including maintaining a special delinquency page on the IDS website and a delinquency listserv.
- Evaluates the existing systems and practices, and the current quality of representation, in various areas of the State.
- Identifies training needs and works with SOG and other groups to develop and sponsor training programs.
- Develops and maintains a clearinghouse of materials on North Carolina juvenile law and practice.

The Office of the Juvenile Defender has also developed a statement on the role of defense counsel in juvenile delinquency proceedings; developed model qualification standards for attorneys who represent juveniles; worked with SOG to develop and publish a juvenile delinquency manual; developed and published a series of guides for attorneys representing special populations of youth, including girls and Hispanic youth; and served as an *ex officio* member of the Youth Accountability Planning Task Force, which was created by the General Assembly and charged with examining the issues that would be associated with raising the age of juvenile jurisdiction. Since its creation, the Office of the Juvenile Defender has taken significant strides toward elevating the quality of legal services provided to North Carolina's children.

## **INMATE ACCESS TO THE COURTS**

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

IDS Office staff work closely with NCPLS to ensure that the organization delivers high quality and cost-effective services. Because of the complexity of the State's structured sentencing scheme, NCPLS often identifies sentencing errors that, once corrected, save months or years of

incarceration for persons whose prior record levels were miscalculated. In calendar year 2012, NCPLS also corrected jail credit errors totaling 13,319 days. Thus, at the most recent daily cost of incarceration calculated by the DAC (\$76.02 per day), NCPLS generated more than \$1 million in savings from jail credit corrections alone. In addition to the calculable cost savings generated by NCPLS, the organization saves the State money and resources by resolving legitimate inmate concerns through negotiation with prosecutors and the DAC, and by discouraging frivolous litigation by explaining to inmates the boundaries of their legal rights.

Effective December 1, 2009, IDS entered into a contract with a Durham attorney to 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 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 Innocence Inquiry Act, G.S. 15A-1460 *et seq.*, establishes a right to appointed counsel during three phases of the proceedings:

- Prior to and at the execution of an agreement waiving the convicted person's procedural safeguards and privileges.
- Throughout any formal inquiry that is conducted by the Commission and its staff.
- In any proceedings before a special three-judge panel appointed by the Chief Justice.

The Innocence Inquiry Commission's rules and procedures 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 relies primarily on the public defender offices to supply counsel and has 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.

During fiscal year 2011-12, IDS spent a total of \$52,868.44 on one Warren County case pending before the Commission, as well as two Buncombe County cases that were referred by the Commission to a special three-judge panel during the spring of 2011. The three-judge panel in the latter cases unanimously found that both defendants were innocent.



## TRAINING, RESOURCES, AND SUPPORT

### IDS WEBSITE

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. Among other things, the website contains:

- News and update links addressing the state of indigent defense funding, timing of attorney payments, and any other recent developments or matters of interest.
- Contact information for the members of the IDS Commission, IDS staff, and all state defender offices.
- All approved minutes of IDS Commission meetings, and a list of IDS Commission committees and their participants.
- IDS rules, policies, and procedures.
- Focused one-page fact sheets about a variety of aspects of IDS' work.
- Forms and applications, including applications for the capital and appellate attorney rosters and attorney and expert fee application forms.
- All approved indigent appointment plans.
- Performance guidelines for non-capital criminal cases, juvenile delinquency cases, and abuse, neglect, dependency and termination of parental rights cases at the trial level.
- Materials used in IDS co-sponsored training programs and an index of all posted training materials by topic.
- Legal resources and reference materials, including all of the North Carolina indigent defense manuals.
- A North Carolina appellate brief bank, as well as capital and non-capital trial motions banks.
- Forensic science resources, including an expert database and State Bureau of Investigation ("SBI") laboratory protocols and procedures.
- Dedicated pages for specialized areas of the law, including juvenile delinquency; abuse, neglect, dependency; child support contempt; and civil commitment and guardianship.
- A page devoted to the RFPs and contracts that the General Assembly mandated during the 2011 legislative session.
- Reports and data generated by Office staff.

Since its creation in May 2002, there have been more than 440,000 visits to the IDS website.

### IDS LISTSERVS AND EBLASTS

With assistance from other groups, the IDS Office has established 16 specialized listservs for attorneys representing indigent defendants and respondents, and others who provide services to IDS' clients. The listservs have been extremely effective tools for improving communication, sharing information, and providing resources and support to attorneys and others across the State.

In addition, IDS has created a system for sending one-way "EBlasts" to PAC across the State so they can be more informed about matters that impact them, such as IDS' funding, the timing of

their payments, issued RFPs, and training opportunities. Attorneys can register to receive EBlasts by completing a simple form on the IDS website. As of February 2013, 1,280 people had registered to receive EBlasts.

## **GRANT FUNDING FOR SPECIAL PROJECTS**

The IDS Office regularly pursues grant funding to support special projects that the IDS Commission and Office are contemplating or undertaking.

- During calendar years 2010 and 2011, IDS and SOG received a total of \$95,000 in grant funding from Z. Smith Reynolds (with a \$30,000 match) to support the development of the Collateral Consequences Assessment Tool (“C-CAT”). C-CAT is an electronic database that compiles all of the civil consequences of criminal convictions in North Carolina. The database became available during the spring of 2012 and is a resource for 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. C-CAT can be accessed at <http://ccat.sog.unc.edu/>.
- In March 2010, the Governor’s Crime Commission (“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). The GCC grant funded four training programs around the State between December 2010 and February 2012.
- 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. Those funds were split equally between the prosecution and defense. The BJA grant funded four primary programs around the State between May 2011 and September 2012, as well as a supplemental DNA program during the summer of 2012.
- In May 2012, the Open Society Fund (“OSF”) awarded IDS \$225,000 in grant funds as part of a larger grant to the National Legal Aid and Defender Association (“NLADA”) to work on a project called the Justice Standards, Evaluation and Research Initiatives (“JSERI”). JSERI’s mission is to expand the research capacity of the indigent defense community nationally in order to more effectively advocate for funding and sensible criminal justice policies. \$125,000 of the grant funds will be used to support the Systems Evaluation Project that is described later in this report. The remaining \$100,000 will fund work to support NLADA’s national efforts, such as the development of a variety of research toolkits.

## **IMPROVED TRAINING**

IDS 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. During fiscal year 2011-12, in addition to the grant-funded

training programs described above, IDS and SOG co-sponsored the following in-person programs:

- The annual hands-on five-day Defender Trial School in July 2011, which is an intensive program in which participants develop trial skills by working on their own cases.
- An August 2011 conference for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings that focused on representing parents with mental health problems.
- An August 2011 juvenile defender conference that focused on the direct and indirect consequences of a delinquency adjudication.
- The annual new misdemeanor defender training in September 2011.
- A November 2011 regional program for PAC that focused on advanced cross-examination techniques, which was held in Rowan County.
- The annual new felony defender training in February 2012.
- A new juvenile defender conference in March 2012.
- The annual May 2012 conference for public defenders and investigators.
- A hands-on appellate advocacy training program in June 2012.

In addition to these programs, IDS and SOG have sponsored a number of other innovative programs during recent years, including programs for attorneys representing persons committed to mental health facilities, attorneys handling Chapter 35A guardianship proceedings, and attorneys representing defendants in child support contempt actions. 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.

As a cost-saving measure and a way of reaching more attorneys, IDS and SOG also sponsor 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 credit.

## **PERFORMANCE GUIDELINES AND REFERENCE MANUALS**

One of the IDS Commission's primary goals is to ensure that indigent defendants and respondents 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). Since its creation in 2001, the IDS Commission has developed and published performance guidelines for attorneys representing indigent defendants in non-capital criminal cases at the trial level, juveniles in delinquency proceedings, and indigent parent respondents in abuse, neglect, and dependency cases.

The performance guidelines are intended to serve as guides for attorney performance in the covered cases, and contain a set of considerations and recommendations to assist counsel in providing quality representation for indigent defendants and respondents. The guidelines have also proven to be useful as training tools and resources for new and experienced attorneys, and the Commission hopes they will serve as tools for potential systemic reform in some areas. Because the goals embodied in the guidelines will not be attainable without sufficient funding

and resources, the IDS Commission is relying on the General Assembly's continuing support of quality indigent defense services.

The IDS Office has also provided funding for improvements to SOG's North Carolina Defender Manual, as well as a number of new specialized indigent defense manuals, including a Civil Commitment Manual, a Guardianship Manual, a 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 by attorneys around the State for free.

### **ADDITIONAL IMPROVED RESOURCES**

IDS 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 jointly developed the on-line database of all of the collateral consequences of criminal convictions in North Carolina that is described above.

IDS has also created two Resource Counsel positions that improve the quality and cost-effectiveness of representation in complex cases by ensuring that attorneys do not have to "reinvent the wheel" in individual cases:

- *Forensic Resource Counsel:* 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, PAC, and contractors who are facing complex scientific and forensic issues in their cases. 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 public defenders, PAC, investigators, and others.
  - ✓ Maintaining a webpage on the IDS website that contains forensic resources, including a searchable database of prosecution and defense experts by name and area of expertise and SBI laboratory procedures and protocols.

The IDS Commission and Office believe that this position improves the quality of representation in cases involving forensic science issues and ensures that complex scientific issues are handled in a cost-effective manner.

- *Trial Resource Counsel:* In early 2011, 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. 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.
  - ✓ 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, IDS believes this position is helping to maintain quality representation in complex trials at a reduced cost.

## **BUDGETARY OVERSIGHT AND FACTS**

The IDS Commission and Office have taken significant steps to control increases in the cost of indigent representation, to analyze the factors driving growth in demand, and to increase recoupment revenues from former clients. However, indigent defense remains underfunded.

### **CONTROLLING THE COST OF INDIGENT REPRESENTATION**

The increase in new demand (spending and current-year obligations) since IDS was created has averaged 6%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. After adjusting for the May 2011 rate reductions, the demand during fiscal year 2011-12 was virtually flat compared to the demand during fiscal year 2010-11; without that adjustment, demand was down by 8.9%. Based on a three-year rolling average, the average growth rate by disposition year has fallen from 5.95% in fiscal year 2007-08 to 2.2% in fiscal year 2011-12. 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.

### **FACTORS DRIVING GROWTH IN DEMAND**

While there have been some increases in average per case costs, the overall increases in demand on the fund are largely attributable to more people being found indigent and entitled to court-appointed counsel. Annually, IDS Office staff update a study comparing the total number of indigent case file numbers in district and superior court to the total number of court file numbers 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 contempt. The 2013 study revealed that there has been a 4.7% *decrease* in the number of total criminal non-traffic court file numbers between fiscal years 2001-02 and 2011-12. However, during that same time period, there has been a 42% *increase* in the number of criminal non-traffic public defender and PAC file numbers that are funded through IDS.

	FY02	FY04	FY06	FY08	FY10	FY11	FY12
Criminal Non-Traffic Court Files	850,541	842,488	876,555	872,486	823,737	832,055	810,894
IDS Criminal Non-Traffic Files	291,954	318,460	366,294	392,011	412,970	452,842	414,594
IDS Disps. as % of Criminal Non-Traffic Court Files	34.3%	37.8%	41.8%	44.9%	50.1%	54.4%	51.1%

*Note: These studies are based on total criminal non-traffic and indigent case disposition numbers provided by AOC, which counts every closed CR or CRS file number as a disposition. In other studies, IDS staff calculate dispositions differently, counting all file numbers disposed on the same day before the same presiding judge as one disposition.*

As shown in the chart in Appendix A labeled “Indigent Defense Expenditure History per Disposition,” 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, increased modestly in fiscal year 2010-11, and decreased in fiscal year 2011-12.

Overall, indigent defense expenditures per disposition during fiscal year 2011-12 were only \$2.93 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01) and were \$13.13 less than per disposition expenditures during fiscal year 2010-11. PAC per disposition expenditures during fiscal year 2011-12 were \$25.41 less than PAC per disposition expenditures the year before IDS was established, and \$55.99 less than PAC per disposition expenditures during fiscal year 2010-11. While public defender per disposition expenditures have risen since IDS was established, public defender per disposition expenditures during fiscal year 2011-12 were still \$49.68 less than PAC per disposition expenditures.

To the extent that there have been modest changes in average per case costs over a decade, the IDS Commission and Office believe they are largely due to the increasingly complex nature of criminal defense. 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; and backlogs in an overburdened court system.

## **IMPROVED REVENUE COLLECTION**

IDS Office staff regularly evaluate data on the amount each county collects in recoupment (through probationary collections and civil judgments) each fiscal year, and determine the amount recouped as a percentage of that county’s expenditures on indigent defense. Total revenues from recoupment during fiscal year 2011-12, including the attorney appointment fee required by G.S. 7A-455.1, amounted to \$13.2 million, which represented an increase of 3.6% over the prior fiscal year, with a higher 9.7% growth rate in the appointment fee alone. While total recoupment increased, collection of fees through clerks’ offices fell slightly, which is probably attributable to the May 2011 decrease in the PAC hourly rates. The share of recoupment from the interception of state income tax refunds and lottery proceeds grew from 36% in fiscal year 2010-11 to 38% in fiscal year 2011-12.

During fiscal year 2011-12, there continued to be wide variability in recoupment among counties. Excluding one small county with an unusually high recoupment rate, recoupment as a percentage of non-capital spending on PAC and public defender offices ranged from a low of 3.7% to a high of 36.4%, with an overall statewide rate of 13.6%. IDS' most notable progress in improving collections has been with the attorney appointment fee, which netted over \$1.7 million in fiscal year 2011-12, a 68% increase over fiscal year 2008-09.

Since fiscal year 2009-10, IDS has also used case disposition data to look at recoupment rates adjusted for the proportion of spending that was recoupment eligible. For fiscal year 2011-12, IDS staff found that roughly 35.7% of attorney fees in criminal cases were not eligible for recoupment because the cases were dismissed or the clients were acquitted. That means the effective statewide recoupment rate (defined as total recoupment as a share of recoupment-eligible spending) last fiscal year was 21.3%. 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 clerks' offices around the State and AOC Court Services staff to ensure that attorney fee judgments are correctly docketed. In addition, as described above, IDS staff recently began a pilot project reviewing samples of court files to examine information included on affidavits of indigency and to better track recoupment proceeds.

## **HISTORICAL UNDERFUNDING AND CURRENT PROJECTIONS FOR FISCAL YEAR 2012-13**

During the 2009 legislative session, the General Assembly shifted \$3.5 million in funding for IDS from recurring to non-recurring, and reduced IDS' continuation budget for fiscal year 2010-11. Thus, while IDS ended fiscal year 2009-10 with no shortfall, the Office's fiscal year 2010-11 projections showed there would be a \$5.1 million shortfall the next fiscal year. During the 2010 legislative session, IDS requested a recurring increase of \$5.1 million to fully fund PAC at the prior hourly rates during fiscal year 2010-11. However, the final budget included a \$5.875 million non-recurring decrease in the PAC fund, and IDS ended fiscal year 2010-11 with almost \$9.9 million of unpaid debt. Because OSBM allowed IDS to carry forward more than \$700,000 in unspent recoupment revenues, the fiscal year 2010-11 shortfall was reduced to \$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 non-recurring funds to pay off the carry-forward 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 lower the PAC hourly rates to minimize the shortfall. Despite the dramatic rate reductions that the IDS Commission and Office implemented in May 2011, the fiscal year 2011-12 shortfall was again \$9.9 million.

So far this fiscal year, PAC demand is 5.6% below fiscal year 2011-12. However, since the May 2011 rate reductions have reduced the cost of this year's demand by an estimated 26% (compared to 16% in fiscal year 2011-12), real rate-adjusted demand is increasing. Similarly, IDS has received 4.4% more fee applications during the first seven months of this fiscal year than it received during the same time period last fiscal year. Assuming some real growth in demand (between 2% and 7%) over fiscal year 2011-12, a modest short-term increase in costs from the transition to up-front contractual payments at the same time IDS is paying PAC fee applications, collection of full budgeted receipts, and the expected amount of lapsed salary from defender offices and the IDS Office, current projections suggest that IDS will end this fiscal year with a shortfall between \$6.5 to \$8.5 million. Thus, at the current level of demand and the depressed hourly PAC rates, IDS is operating within its budget but remains plagued by underfunding in prior years. As a result, IDS will again have to stop paying PAC and defense experts well before the end of the fiscal year. Another lengthy payment delay on top of the dramatic rate reductions that PAC have suffered is untenable.

As the chart below shows, the certified appropriation for PAC has not kept pace with the growth in demand. Even with the unexplained decrease in the number of PAC dispositions during fiscal year 2011-12, the volume of cases increased 19.5% between fiscal year 2005-06 and fiscal year 2011-12. However, the certified appropriation for PAC this fiscal year is \$275,000 less than it was in fiscal year 2005-06.

<b>Fiscal Year</b>	<b>Certified PAC Appropriation</b>	<b>Fee Applications Paid by Disposition Year</b>
FY06	\$69,895,214	174,035
FY07	\$70,582,259	181,786
FY08	\$73,771,504	193,058
FY09	\$83,013,281	201,070
FY10	\$94,194,745	210,893
FY11	\$74,127,714	218,643
FY12	\$66,963,199	208,077
FY13	\$69,620,406	TBD

The IDS Commission and Office understand that the State is facing a continuing 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 2013-14, the Commission and Office respectfully request \$7.5 million in non-recurring funds to eliminate the carry-forward debt that dates back to fiscal year 2010-11 plus a \$2.8 million increase in recurring funding to cover the projected increased demand on the fund next fiscal year at the reduced PAC rates.



## RESEARCH AND REPORTS

IDS Office staff continually work with AOC and IDS Financial Services to develop better and more comprehensive data collection and reporting systems for the indigent defense program, and now receive periodic data exports from the AOC's Automated Criminal Infraction System ("ACIS") upon request. Based on that data, the IDS Commission and Office regularly conduct studies that examine various issues facing indigent defense and the court system. Three key studies, as well as an innovative project that IDS is undertaking, are highlighted below. Detailed reports about all IDS studies are available at [www.ncids.org](http://www.ncids.org) under the "Research & Reports" link.

### MISDEMEANOR RECLASSIFICATION STUDY

IDS spends a significant amount of money on appointed attorneys in low-level traffic and other misdemeanor 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. 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.

The fiscal year 2010-11 reclassification study 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. 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 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 study found that cases that involved at least one of the 31 statutes comprised 65.2% of the court system's caseload in fiscal year 2008-09 (or 977,750 cases), and 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 the identified statutes 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. 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. Reclassification would also relieve over-burdened

criminal courts and generate additional savings for the prosecutors, courts, jails, corrections, and probation.

## **WAITING-IN-COURT STUDY AND ALTERNATIVE SCHEDULING SURVEY**

In August 2005, IDS completed a study of the costs associated with paying PAC to wait in court for their cases to be called during fiscal year 2004-05. The study found that 68.9% of attorney fee applications reported some waiting-in-court time and that, on average, PAC 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 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.

During April 2009, IDS 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. 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. 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 survey respondents and meeting participants raised a number of new ideas and approaches that IDS believes are worth exploring, such as:

- 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.
- Developing systems that encourage both district attorneys and defense counsel to set aside time to discuss cases and negotiate pleas before a court date.
- Creating systems that provide for early discovery or other information exchange.
- 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.
- 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,

encouraging even more screening of cases for alternative resolution prior to a court date, and/or creating web-based systems that would allow minor cases to be resolved with the payment of a fine without a court appearance.

## **CAPITAL CASE COSTS AND DISPOSITIONS STUDY**

In December 2008, the IDS Commission and Office 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:

- 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.
- 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.
- 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.
- The dispositions of these cases do not justify the expenditures. Over 83% of the cases in the study 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. 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.

## **SYSTEMS EVALUATION PROJECT**

The goal of the Systems Evaluation Project ("SEP") is 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:

- Clearly defining what successful indigent defense systems should accomplish.
- Developing an evaluation tool that will measure, in objective terms, how well North Carolina's indigent defense systems achieve that definition of success.
- Seeking comments and feedback about the evaluation tool from key in-state and national reviewers.
- Developing the performance measures and data infrastructure themselves.

The IDS Commission and Office have completed the first three major phases of the project, and have developed a blueprint of the performance measures and statistical indicators, which has been circulated to a number of in-state and national reviewers for feedback. The blueprint defines the goals and objectives of a high quality indigent defense program and identifies the indicators that will measure performance for each objective.

In May 2012, the Open Society Fund ("OSF") awarded IDS \$125,000 in grant funds to support SEP. With that funding, SEP is working with three other pilot sites around the country to develop the necessary data collection infrastructure and to evaluate case outcomes, access to attorneys, and pre-trial release. In the long term, the IDS Commission and Office hope this project will enable IDS 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. Additional materials about SEP are available at [www.ncids.org](http://www.ncids.org) under the "Systems Evaluation Project" link.

### **CASE VOLUME AND COST STATISTICS BY DISTRICT**

The existing data on the volume and cost of cases handled in each district by PAC and public defenders during fiscal year 2011-12 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 public defenders, PAC, and contractors. The IDS Office hopes to continue improving the quality of the data that is reported in future annual reports.

### **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 2011-12, Mecklenburg County continued to fund positions throughout the local court system under the terms of a Master Agreement. For IDS, the Master Agreement included six assistant public defender positions and seven legal assistant positions for the public defender office. Total authorized expenditures for these during fiscal year 2011-12 were \$881,337.

In addition, Mecklenburg County Area Mental Health contracted with the local 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 2011-12 were \$55,676.25. Finally, Mecklenburg County reimburses 25% of the personnel expenses for two assistant public defenders under a long-standing arrangement to expedite drug-related cases. During fiscal year 2011-12, \$31,324 in expenses were reimbursed by Mecklenburg County under this arrangement.

## **LEGISLATIVE RECOMMENDATIONS**

### **INCREASE FUNDING FOR THE PRIVATE ASSIGNED COUNSEL/CONTRACTOR FUND**

IDS is currently projecting a one-time deficit in its appropriation for this fiscal year (2012-13) of approximately \$7.5 million, which will mean that funding for payments to PAC and defense experts will be depleted in May 2013 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 \$2.8 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 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. In addition, 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-forward debt from this fiscal year and a modest increase in recurring funding, IDS will be facing a potential deficit of more than \$10 million at the end of fiscal year 2013-14, which would mean that IDS' funding for PAC payments would be depleted in late April 2014. 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 \$7.5 million in non-recurring funds for fiscal year 2013-14 to enable IDS to pay off the anticipated debt, as well as a \$2.8 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 fiscal 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.

## **FUNDING FOR PUBLIC DEFENDER CASE MANAGEMENT SYSTEM**

In the near future, it will become impossible to maintain the public defender offices' existing Case Management System ("CMS") because of increasing problems with incompatibility and a lack of support for outdated software. IDS has discussed with AOC upgrading CMS to a web-based database comparable to the systems that AOC has created for the district attorneys and clerks. AOC has estimated the cost of converting CMS to the on-line format to be \$698,727. Ongoing maintenance, troubleshooting, and enhancement of the on-line system after the conversion would cost \$369,965 per year.

By starting this project in the middle of a fiscal year and spreading the non-recurring costs over a two-year period, IDS would be able to minimize the non-recurring costs needed next fiscal year. Thus, the IDS Commission and Office respectfully request a non-recurring appropriation of \$43,080 in fiscal year 2013-14, a non-recurring appropriation of \$100,699 in fiscal year 2014-15, plus an increase in IDS' recurring appropriation of \$369,965 for this purpose.

## **ADDITIONAL STAFF FOR EXISTING DEFENDER OFFICES**

During the 2013 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.

## **CONSIDER RECLASSIFYING MINOR MISDEMEANORS AS INFRACTIONS**

Particularly in light of the State's continuing 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. In the future, IDS also plans 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.

## **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 be reimbursed for expenses associated with 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.

### **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 an RFP, or resolve pending cases on an hourly or *pro bono* basis.

### **ADDITIONAL LEGISLATIVE RECOMMENDATIONS**

During the 2013 long session, the IDS Commission and Office may recommend additional changes in law or funding that would assist IDS in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

## **CONCLUSION**

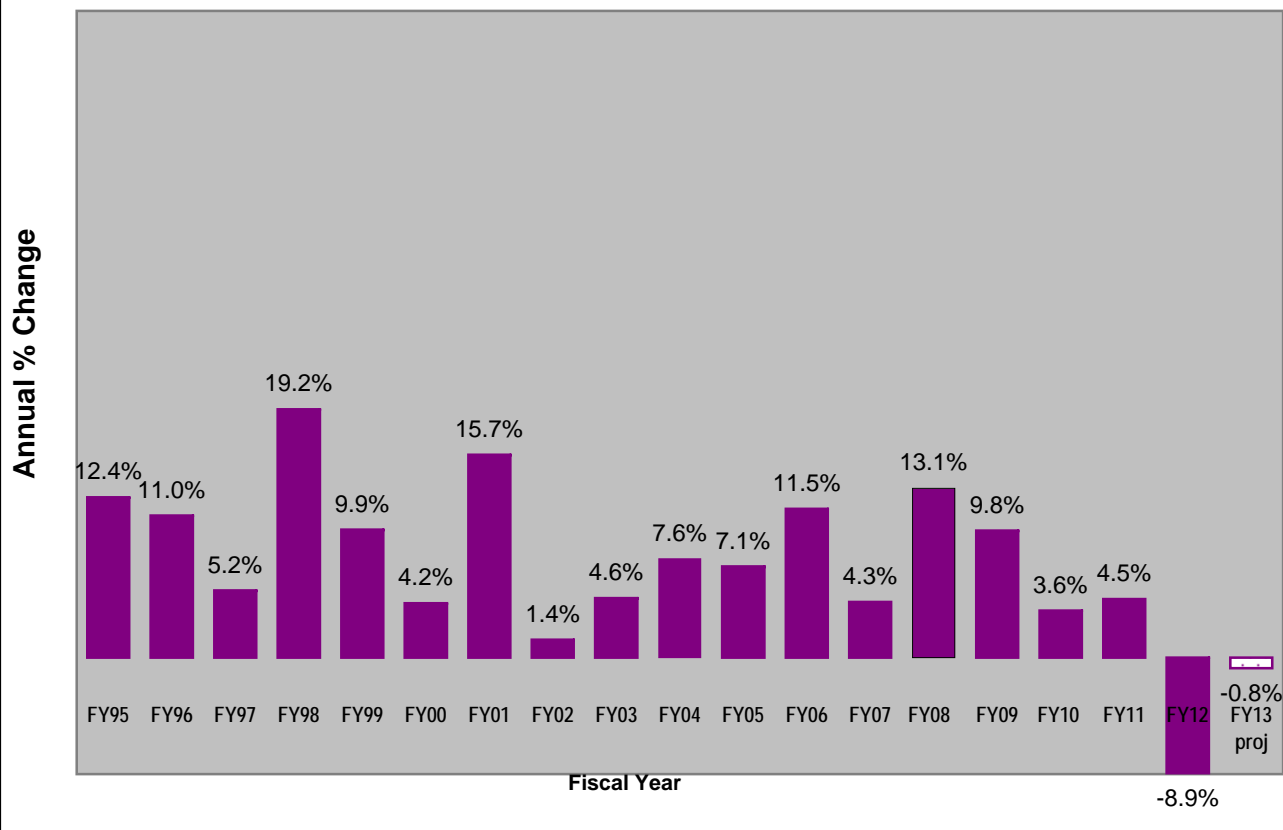
The General Assembly’s creation of the IDS Commission and IDS Office makes North Carolina a national leader in the development of quality, cost-effective, and accountable indigent defense programs. Several states, including Alabama, Georgia, South Carolina, Virginia, Tennessee, and Texas, have looked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

## **APPENDIX A**



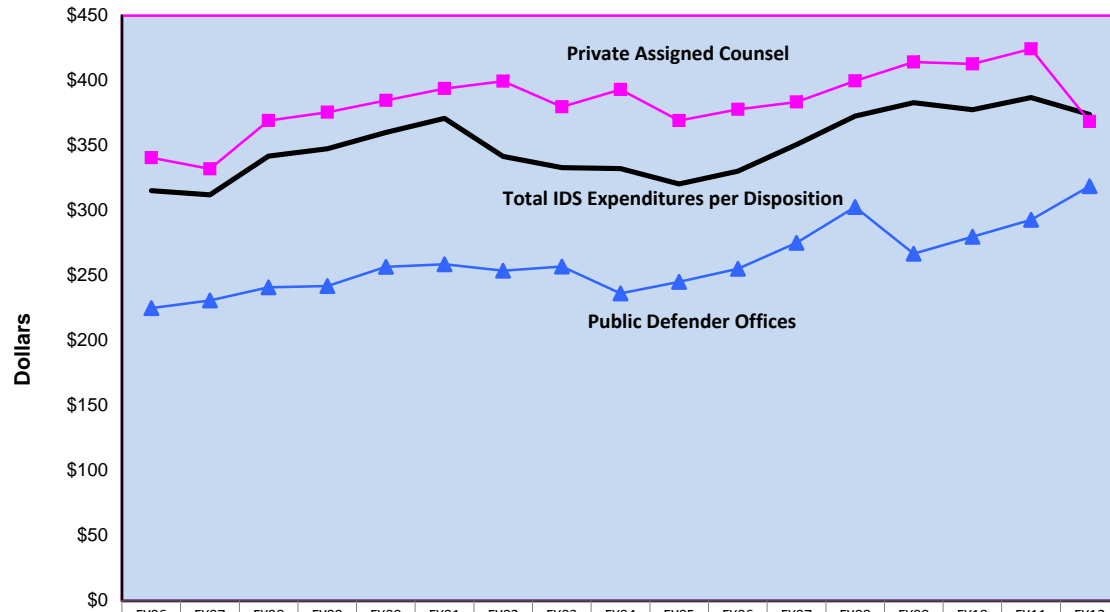
### Annual Percent Change in Actual Total Indigent Defense Expenditures (Demand)

(excludes prior year obligations and includes current obligations)



## Indigent Defense Expenditure History per Disposition

(Prior Year Obligations Removed FY96 to FY12)



	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12
— 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	\$373.87
— 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	\$424.46	\$368.47
— PD Office Expenditures per Dispositio	\$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	\$318.79

Fiscal Year

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

## **APPENDIX B**

**RECOUPMENT DATA FY2012**

<b>County</b>	<b>Appointment Fees</b>	<b>Attorney Fees</b>	<b>Total Recoupment</b>	<b>Non-Cap Spending</b>	<b>Recoup %</b>
Alamance	\$36,463	\$306,785	\$343,247	\$1,229,734	27.9%
Alexander	\$11,056	\$66,875	\$77,931	\$386,469	20.2%
Alleghany	\$3,752	\$18,220	\$21,972	\$115,825	19.0%
Anson	\$8,024	\$69,201	\$77,224	\$386,163	20.0%
Ashe	\$6,181	\$43,411	\$49,592	\$227,213	21.8%
Avery	\$5,610	\$33,847	\$39,457	\$168,379	23.4%
Beaufort	\$13,779	\$96,512	\$110,291	\$417,333	26.4%
Bertie	\$3,613	\$30,187	\$33,800	\$155,177	21.8%
Bladen	\$6,408	\$54,148	\$60,556	\$358,814	16.9%
Brunswick	\$25,178	\$181,519	\$206,697	\$1,274,986	16.2%
Buncombe	\$46,824	\$158,649	\$205,473	\$2,780,016	7.4%
Burke	\$14,022	\$134,877	\$148,900	\$645,052	23.1%
Cabarrus	\$61,343	\$346,167	\$407,510	\$1,199,075	34.0%
Caldwell	\$18,778	\$150,926	\$169,704	\$755,109	22.5%
Camden	\$957	\$6,290	\$7,247	\$44,757	16.2%
Carteret	\$12,731	\$53,302	\$66,033	\$685,830	9.6%
Caswell	\$7,043	\$53,225	\$60,268	\$197,693	30.5%
Catawba	\$15,165	\$180,748	\$195,914	\$1,203,336	16.3%
Chatham	\$7,067	\$29,473	\$36,539	\$682,096	5.4%
Cherokee	\$8,783	\$49,526	\$58,310	\$388,331	15.0%
Chowan	\$2,280	\$17,864	\$20,144	\$143,297	14.1%
Clay	\$3,101	\$21,245	\$24,346	\$116,216	20.9%
Cleveland	\$52,848	\$185,012	\$237,860	\$817,487	29.1%
Columbus	\$11,004	\$95,077	\$106,082	\$818,881	13.0%
Craven	\$19,231	\$132,798	\$152,029	\$563,969	27.0%
Cumberland	\$36,724	\$114,364	\$151,089	\$3,307,573	4.6%
Currituck	\$4,812	\$32,929	\$37,741	\$417,735	9.0%
Dare	\$6,866	\$46,792	\$53,657	\$522,324	10.3%
Davidson	\$53,760	\$325,169	\$378,929	\$1,436,917	26.4%
Davie	\$11,468	\$65,390	\$76,858	\$319,294	24.1%
Duplin	\$14,603	\$99,741	\$114,344	\$474,386	24.1%
Durham	\$40,788	\$211,294	\$252,083	\$4,307,763	5.9%
Edgecombe	\$10,568	\$104,487	\$115,054	\$478,995	24.0%
Forsyth	\$82,343	\$322,606	\$404,950	\$3,490,464	11.6%
Franklin	\$11,821	\$75,578	\$87,399	\$450,524	19.4%
Gaston	\$23,070	\$90,257	\$113,326	\$2,553,814	4.4%
Gates	\$592	\$5,288	\$5,880	\$87,556	6.7%
Graham	\$1,348	\$9,875	\$11,223	\$124,669	9.0%
Granville	\$11,529	\$88,542	\$100,071	\$453,186	22.1%
Greene	\$3,147	\$23,736	\$26,883	\$234,873	11.4%
Guilford	\$92,194	\$327,907	\$420,101	\$5,098,011	8.2%
Halifax	\$14,055	\$146,144	\$160,200	\$1,002,079	16.0%
Harnett	\$15,380	\$101,975	\$117,356	\$657,387	17.9%
Haywood	\$17,207	\$125,939	\$143,146	\$768,072	18.6%
Henderson	\$26,609	\$111,672	\$138,281	\$1,100,572	12.6%
Hertford	\$4,510	\$46,620	\$51,130	\$209,622	24.4%
Hoke	\$3,418	\$34,720	\$38,138	\$603,466	6.3%
Hyde	\$1,710	\$11,574	\$13,284	\$33,900	39.2%
Iredell	\$43,664	\$262,902	\$306,567	\$1,366,769	22.4%
Jackson	\$10,260	\$61,715	\$71,974	\$353,116	20.4%
Johnston	\$28,517	\$175,299	\$203,815	\$1,066,867	19.1%
Jones	\$3,834	\$21,398	\$25,231	\$98,142	25.7%
Lee	\$18,417	\$99,793	\$118,210	\$465,477	25.4%
Lenoir	\$22,173	\$186,877	\$209,051	\$592,916	35.3%
Lincoln	\$22,052	\$103,303	\$125,354	\$580,101	21.6%
Macon	\$7,743	\$61,677	\$69,419	\$324,351	21.4%
Madison	\$4,348	\$42,938	\$47,286	\$243,589	19.4%

County	Appointment Fees	Attorney Fees	Total Recoupment	Non-Cap Spending	Recoup %
Martin	\$6,417	\$42,762	\$49,179	\$150,088	32.8%
McDowell	\$14,594	\$93,585	\$108,179	\$536,482	20.2%
Mecklenburg	\$30,151	\$538,349	\$568,500	\$11,710,387	4.9%
Mitchell	\$5,412	\$43,100	\$48,512	\$144,355	33.6%
Montgomery	\$5,280	\$24,584	\$29,864	\$226,144	13.2%
Moore	\$16,606	\$143,786	\$160,391	\$890,845	18.0%
Nash	\$20,512	\$185,034	\$205,546	\$780,936	26.3%
New Hanover	\$36,435	\$357,487	\$393,922	\$2,791,219	14.1%
Northampton	\$2,054	\$22,413	\$24,466	\$142,455	17.2%
Onslow	\$32,249	\$257,039	\$289,288	\$1,016,079	28.5%
Orange	\$11,527	\$39,309	\$50,836	\$1,382,078	3.7%
Pamlico	\$2,364	\$15,983	\$18,347	\$84,351	21.8%
Pasquotank	\$6,720	\$51,574	\$58,294	\$244,076	23.9%
Pender	\$10,202	\$77,518	\$87,720	\$417,687	21.0%
Perquimans	\$1,390	\$10,468	\$11,858	\$120,757	9.8%
Person	\$10,733	\$90,848	\$101,581	\$573,231	17.7%
Pitt	\$15,593	\$149,365	\$164,958	\$2,285,948	7.2%
Polk	\$4,715	\$18,882	\$23,597	\$235,656	10.0%
Randolph	\$28,205	\$185,558	\$213,763	\$1,140,612	18.7%
Richmond	\$17,796	\$149,382	\$167,179	\$929,105	18.0%
Robeson	\$19,803	\$173,304	\$193,107	\$3,136,459	6.2%
Rockingham	\$28,815	\$218,958	\$247,773	\$1,118,971	22.1%
Rowan	\$49,107	\$291,526	\$340,633	\$1,450,265	23.5%
Rutherford	\$40,317	\$167,280	\$207,597	\$719,402	28.9%
Sampson	\$16,002	\$95,421	\$111,422	\$478,084	23.3%
Scotland	\$3,117	\$41,476	\$44,593	\$847,689	5.3%
Stanly	\$9,668	\$72,321	\$81,988	\$490,766	16.7%
Stokes	\$7,787	\$70,039	\$77,826	\$387,982	20.1%
Surry	\$23,718	\$186,201	\$209,919	\$611,354	34.3%
Swain	\$3,724	\$26,988	\$30,713	\$228,955	13.4%
Transylvania	\$7,864	\$41,006	\$48,870	\$372,801	13.1%
Tyrrell	\$1,591	\$8,553	\$10,143	\$15,691	64.6%
Union	\$38,073	\$255,191	\$293,265	\$1,448,513	20.2%
Vance	\$10,508	\$106,323	\$116,831	\$599,686	19.5%
Wake	\$98,688	\$355,236	\$453,924	\$6,802,541	6.7%
Warren	\$4,373	\$33,375	\$37,748	\$181,343	20.8%
Washington	\$3,601	\$19,315	\$22,916	\$64,115	35.7%
Watauga	\$10,890	\$78,173	\$89,064	\$317,737	28.0%
Wayne	\$27,989	\$206,878	\$234,867	\$863,002	27.2%
Wilkes	\$29,976	\$119,445	\$149,421	\$411,003	36.4%
Wilson	\$7,349	\$109,330	\$116,679	\$546,916	21.3%
Yadkin	\$10,272	\$88,576	\$98,847	\$336,153	29.4%
Yancey	\$3,222	\$47,121	\$50,343	\$194,901	25.8%
	<b>\$1,786,177</b>	<b>\$11,363,444</b>	<b>\$13,149,621</b>	<b>\$96,412,567</b>	<b>13.6%</b>

## **APPENDIX C**

**COST AND CASE DATA ON REPRESENTATION OF INDIGENTS**  
July 1, 2011-June 30, 2012

	<b>Number of Cases*</b>	<b>Total Cost**</b>
<b>Private Assigned Counsel (PAC)</b>		
Capital cases	1,540	\$11,071,935
Adult cases (other than capital)	192,298	\$58,289,738
Juvenile cases	8,374	\$1,973,612
Guardian ad Litem assigned to IDS	2,525	\$844,124
<b>Total</b>	<b>204,737</b>	<b>\$72,179,410</b>
<b>Private Counsel Contracts</b>	<b>9,140</b>	<b>\$1,587,782</b>
<b>Legal Services to Inmates</b>		<b>\$2,911,996</b>
<b>Public Defender Offices</b>		
District 1	2,010	\$1,256,937
District 3A	3,812	\$1,476,311
District 3B (Carteret County)	1,223	\$403,459
District 5 (New Hanover)	5,649	\$1,647,125
District 10	9,751	\$3,095,913
District 12	6,439	\$1,834,125
District 14	10,138	\$2,526,262
District 15B	3,438	\$1,347,722
District 16A	2,552	\$936,605
District 16B	3,596	\$1,466,801
District 18	10,796	\$3,233,654
District 21	7,513	\$2,319,224
District 26	19,133	\$6,604,170
District 27A	6,611	\$2,044,237
District 28	7,781	\$1,766,921
District 29B	2,632	\$899,902
<b>Total</b>	<b>103,074</b>	<b>\$32,859,367</b>
<b>Office of the Appellate Defender</b>		<b>\$2,358,253</b>
<b>Office of the Capital Defender</b>		<b>\$2,482,706</b>
<b>Office of Special Counsel</b>		<b>\$1,307,049</b>
		<b>\$6,406,058</b>
<b>Support Services (PAC only)</b>		
Transcripts, records, and briefs		\$842,853
Expert witness fees		\$2,606,059
Investigator fees		3,258,026
Interpreters & Translators		\$119,547
Lay Witness Expenses		\$13,520
<b>Total</b>		<b>\$6,840,005</b>
<b>Set-Off Debt Collection</b>		<b>\$118,114</b>
<b>Indigent Defense Services</b>		<b>\$1,860,136</b>
<b>Office of the Juvenile Defender</b>		<b>\$258,050</b>
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$124,762,868</b>
<b>Sentencing Services Program (close out costs)</b>		<b>\$80,297</b>
<b>GRAND TOTAL</b>		<b>\$124,843,165</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 FY12.

\*\* 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. Because IDS had roughly \$9.9 Million in unpaid fee applications at the end of FY11 paid in FY12 and again unpaid at the end of FY12, the demand figures do not differ significantly from the cash figures. These figures exclude 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, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 1</u></b>		
Camden	18	\$8,892.22
Chowan	82	\$70,195.87
Currituck	179	\$115,235.14
Dare	314	\$198,182.40
Gates	21	\$32,479.56
Pasquotank	166	\$181,116.64
Perquimans	46	\$67,278.99
District Total	826	\$673,380.82
<b><u>District 2</u></b>		
Beaufort	1,640	\$481,755.30
Hyde	91	\$33,900.48
Martin	753	\$287,532.88
Tyrrell	56	\$15,690.88
Washington	246	\$65,710.30
District Total	2,786	\$884,589.84
<b><u>District 3A</u></b>		
Pitt	2,610	\$1,049,550.72
District Total	2,610	\$1,049,550.72
<b><u>District 3B</u></b>		
Carteret	540	\$286,337.75
Craven	1,965	\$742,578.86
Pamlico	225	\$84,391.95
District Total	2,730	\$1,113,308.56
<b><u>District 4A</u></b>		
Duplin	1,658	\$576,109.10
Jones	325	\$132,541.12
Sampson	1,887	\$517,101.76
District Total	3,870	\$1,225,751.98
<b><u>District 4B</u></b>		
Onslow	3,971	\$1,330,028.24
District Total	3,971	\$1,330,028.24
<b><u>District 5</u></b>		
New Hanover	3,962	\$1,239,674.92
Pender	1,357	\$451,293.84
District Total	5,319	\$1,690,968.76



**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 6A</u></b>		
Halifax	3,043	\$1,242,743.69
District Total	3,043	\$1,242,743.69
<b><u>District 6B</u></b>		
Bertie	577	\$159,020.51
Hertford	716	\$233,057.10
Northampton	516	\$235,604.31
District Total	1,809	\$627,681.92
<b><u>District 7A</u></b>		
Nash	2,267	\$980,008.15
District Total	2,267	\$980,008.15
<b><u>District 7B/C</u></b>		
Edgecombe	1,569	\$585,022.56
Wilson	1,745	\$695,910.45
District Total	3,314	\$1,280,933
<b><u>District 8A</u></b>		
Greene	566	\$281,102.02
Lenoir	2,023	\$753,536.39
District Total	2,589	\$1,034,638.41
<b><u>District 8B</u></b>		
Wayne	3,049	\$1,278,286.27
District Total	3,049	\$1,278,286.27
<b><u>District 9</u></b>		
Franklin	1,449	\$505,404.17
Granville	1,337	\$496,599.42
Vance	1,782	\$747,892.32
Warren	575	\$222,209.19
District Total	5,143	\$1,972,105.10
<b><u>District 9A</u></b>		
Caswell	537	\$237,630.04
Person	1,539	\$648,708.84
District Total	2,076	\$886,338.88

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 10</u></b>		
Wake	13,116	\$5,592,398.30
District Total	13,116	\$5,592,398.30
<b><u>District 11A</u></b>		
Harnett	2,842	\$909,184.20
Lee	1,867	\$550,034.64
District Total	4,709	\$1,459,218.84
<b><u>District 11B</u></b>		
Johnston	3,967	\$1,455,195.34
District Total	3,967	\$1,455,195.34
<b><u>District 12</u></b>		
Cumberland	4,346	\$2,312,205.07
District Total	4,346	\$2,312,205.07
<b><u>District 13A</u></b>		
Bladen	1,154	\$532,189.63
Columbus	2,109	\$971,699.55
District Total	3,263	\$1,503,889.18
<b><u>District 13B</u></b>		
Brunswick	3,983	\$1,397,809.33
District Total	3,983	\$1,397,809.33
<b><u>District 14</u></b>		
Durham	5,072	\$2,240,494.21
District Total	5,072	\$2,240,494.21
<b><u>District 15A</u></b>		
Alamance	4,177	\$1,693,862.01
District Total	4,177	\$1,693,862.01
<b><u>District 15B</u></b>		
Chatham	565	\$256,269.69
Orange	962	\$611,007.61
District Total	1,527	\$867,277.30

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 16A</u></b>		
Hoke	339	\$351,622.37
Scotland	630	\$482,260.93
District Total	969	\$833,883.30
<b><u>District 16B</u></b>		
Robeson	5,975	\$2,810,115.83
District Total	5,975	\$2,810,115.83
<b><u>District 17A</u></b>		
Rockingham	3,750	\$1,275,673.76
District Total	3,750	\$1,275,673.76
<b><u>District 17B</u></b>		
Stokes	1,327	\$457,913.82
Surry	2,553	\$630,006.91
District Total	3,880	\$1,087,920.73
<b><u>District 18</u></b>		
Guilford	5,865	\$2,370,083.18
District Total	5,865	\$2,370,083.18
<b><u>District 19A</u></b>		
Cabarrus	4,310	\$1,372,094.08
District Total	4,310	\$1,372,094.08
<b><u>District 19B</u></b>		
Montgomery	1,165	\$285,533.87
Randolph	4,631	\$1,363,311.90
District Total	5,796	\$1,648,845.77
<b><u>District 19C</u></b>		
Rowan	5,449	\$1,627,213.80
District Total	5,449	\$1,627,213.80
<b><u>District 19D</u></b>		
Moore	3,001	\$1,283,458.33
District Total	3,001	\$1,283,458.33

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 20A</u></b>		
Anson	1,529	\$450,824.15
Richmond	3,784	\$1,073,757.74
Stanly	1,722	\$631,897.65
District Total	7,035	\$2,156,479.54
<b><u>District 20B</u></b>		
Union	5,052	\$1,904,618.24
District Total	5,052	\$1,904,618.24
<b><u>District 21</u></b>		
Forsyth	6,190	\$1,697,889.64
District Total	6,190	\$1,697,889.64
<b><u>District 22A</u></b>		
Alexander	1,317	\$406,373.24
Iredell	4,619	\$1,582,779.47
District Total	5,936	\$1,989,152.71
<b><u>District 22B</u></b>		
Davidson	5,935	\$1,525,325.52
Davie	1,260	\$382,433.02
District Total	7,195	\$1,907,759
<b><u>District 23</u></b>		
Alleghany	324	\$137,061.73
Ashe	720	\$243,530.11
Wilkes	2,157	\$496,640.13
Yadkin	981	\$338,231.32
District Total	4,182	\$1,215,463.29
<b><u>District 24</u></b>		
Avery	629	\$207,931.08
Madison	880	\$272,009.97
Mitchell	502	\$160,289.18
Watauga	1,097	\$513,321.06
Yancey	717	\$222,085.43
District Total	3,825	\$1,375,636.72

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 25A</u></b>		
Burke	2,259	\$846,603.41
Caldwell	3,506	\$926,266.45
District Total	5,765	\$1,772,869.86
<b><u>District 25B</u></b>		
Catawba	4,434	\$1,571,246.12
District Total	4,434	\$1,571,246.12
<b><u>District 26</u></b>		
Mecklenburg	15,916	\$7,315,202.59
District Total	15,916	\$7,315,202.59
<b><u>District 27A</u></b>		
Gaston	1,641	\$820,078.61
District Total	1,641	\$820,078.61
<b><u>District 27B</u></b>		
Cleveland	3,990	\$971,989.71
Lincoln	2,133	\$668,697.68
District Total	6,123	\$1,640,687.39
<b><u>District 28</u></b>		
Buncombe	3,962	\$1,553,916.21
District Total	3,962	\$1,553,916.21
<b><u>District 29A</u></b>		
McDowell	1,646	\$578,144.22
Rutherford	3,092	\$769,443.61
District Total	4,738	\$1,347,587.83
<b><u>District 29B</u></b>		
Henderson	1,522	\$628,081.25
Polk	279	\$125,391.79
Transylvania	428	\$208,521.31
District Total	2,229	\$961,994.35

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2011-June 30, 2012**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 30A</u></b>		
Cherokee	985	\$420,249.41
Clay	258	\$116,791.53
Graham	302	\$129,655.44
Macon	900	\$364,612.40
Swain	625	\$396,617.71
District Total	3,070	\$1,427,926.49
<b><u>District 30B</u></b>		
Haywood	2,061	\$803,058.22
Jackson	1,055	\$397,242.79
District Total	3,116	\$1,200,301.01
<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 fee applications received during FY11 but not paid until FY12, but includes fee applications held for payment in FY13.</i>		