



## **REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES**

Submitted to the North Carolina General Assembly  
Pursuant to G.S. 7A-498.9

March 15, 2018

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## COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS

*Mr. W. James Payne, Chair*  
W. James Payne Law, Shallotte  
Appointed by IDS Commission

*Mr. David R. Teddy, Vice-Chair*  
Teddy, Meekins & Talbert, PLLC, Shelby  
Appointed by NC State Bar

*Mr. Art F. Beeler*  
Clinical Assistant Professor, Criminal Justice, NC Central University  
Appointed by the Governor

*Mr. James P. Cooney, III*  
Womble Bond Dickenson, Charlotte  
Appointed by NC Bar Association

*Mr. Brian S. Cromwell*  
Parker Poe, Charlotte  
Appointed by NC Association of Black Lawyers

*Mr. Staples Hughes*  
Attorney at Law, Chapel Hill  
Appointed by NC Public Defender Association

*The Honorable Joseph Crosswhite*  
District 22A Senior Resident Superior Court Judge, Statesville  
Appointed by Chief Justice of NC Supreme Court

*Mr. David Mark Hullender*  
North Carolina Industrial Commission, Charlotte  
Appointed by Speaker of the House

*Mr. R. Channing Jones*  
Robeson Community College, Lumberton  
Appointed by IDS Commission

*Mr. Darrin D. Jordan*  
Whitley & Jordan, P.A., Salisbury  
Appointed by the NC Advocates for Justice

*The Honorable Lisa V. L. Menefee*  
District 21 Chief District Court Judge, Winston-Salem  
Appointed by IDS Commission

*Ms. Dorothy Hairston Mitchell*  
Assistant Clinical Professor of Law, North Carolina Central University  
Appointed by the NC Association of Women Attorneys

*Ms. Christine Mumma*  
The North Carolina Center on Actual Innocence, Durham  
Appointed by President Pro Tempore of the Senate

**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***

*Whitney B. Fairbanks*  
Assistant Director/General Counsel  
[Whitney.B.Fairbanks@nccourts.org](mailto:Whitney.B.Fairbanks@nccourts.org)

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

*Mario T. Richardson*  
Contracts Administrator  
[Mario.T.Ricahrdson@nccourts.org](mailto:Mario.T.Ricahrdson@nccourts.org)

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

*Valerie E. Pearce*  
Division II and IV Regional Defender  
[Valerie.E.Pearce@nccourts.org](mailto:Valerie.E.Pearce@nccourts.org)

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

***Administration***

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

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

***Financial***

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

*Catrinel S. Rosu*  
Attorney Fee 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***

*Joseph T. Meskey*  
Information Technology Director  
[Joe.Meskey@nccourts.org](mailto:Joe.Meskey@nccourts.org)

***Research***

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

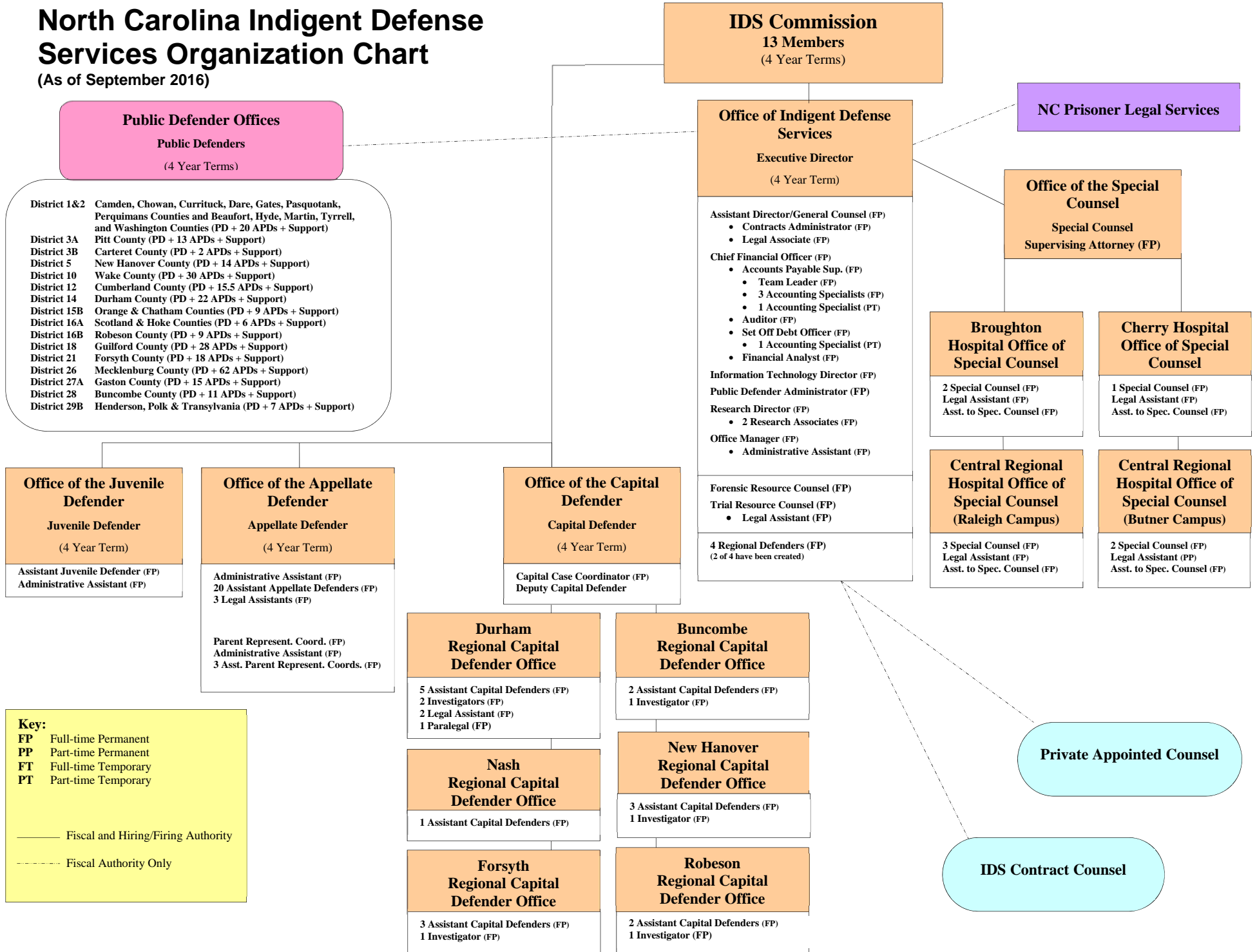
*Christina Scarano*  
Research Associate  
[Christina.L.Scarano@nccourts.org](mailto:Christina.L.Scarano@nccourts.org)

***Resource Unit***

*Sarah R. Olson*  
Forensic Resource Counsel  
[Sarah.R.Olson@nccourts.org](mailto:Sarah.R.Olson@nccourts.org)

# North Carolina Indigent Defense Services Organization Chart

(As of September 2016)



## 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 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 G.S. 7A-498.9, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2016-17. The report also contains a number of legislative recommendations for the 2018 legislative short 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 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. 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.

Since it was established in 2001, IDS has taken steps to control increases in the cost of indigent representation. The increase in overall IDS demand (spending and current-year obligations) since IDS was created has averaged 2.2%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS’s creation. The increase in overall demand over the past six fiscal years (between fiscal years 2010-11 and 2016-17) has averaged a mere 0.24%. Overall demand is projected to increase slightly this fiscal year. While there have been modest increases in average per case costs for some case types over the past 17 years, the overall increases in demand are primarily due to an expanding indigent caseload and changes in the mix of case types that are funded by IDS.

The IDS Office is currently projecting that IDS will end this fiscal year without carry forward debt, as was the case in FY2016-17. As a result of a \$3.4 million non-recurring appropriation in FY2016-17, slightly increased recoupment, contract savings, and slowed demand growth, the Private Assigned Counsel fund is fully funded. Absent unforeseen developments we anticipate no unpaid invoices at year end. Because the depressed PAC hourly rates, contract attorney pay, and uniform flat fees were unsustainable, the Indigent Defense Commission used existing available recurring funding to increase the rate for high-level felonies from \$70 to \$75 an hour, with proportional changes to affected contracts and the pilot fee schedule, in November 2017. In order to continue this overdue restoration of hourly rates, the Commission and Office

respectfully request an additional a recurring increase of \$5.2 million in FY 2018 and \$10.06 in FY 2019 to raise all of the PAC hourly rates by \$10 effective January 2019.



## 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”) 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. In the 2015 Appropriations Act, Session Law 2015-241, the IDS Office was transferred from the Judicial Department to the Administrative Office of the Courts (“AOC”) and its budget was made part of AOC’s budget. In addition, the Session Law gave the AOC Director authority to modify IDS’s budget or use funds appropriated to IDS without the approval of the Commission or Office, and directed AOC to conduct an annual audit of IDS.

As required by G.S. 7A-498.9, as amended by § 18B.1 of Session Law 2015-241, the IDS Office must report to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House of Representatives and Senate Committees on Justice and Public Safety by March 15, 2018 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.

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

| <b>Committee</b>                    | <b>Duties</b>   |
|-------------------------------------|---|
| Budget                              | Prepares proposed budgets, analyzes non-capital case costs and budgetary trends, and develops initiatives to enhance IDS's 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 receive, and identifies and promotes innovative projects that serve clients and communities   |
| Contracts                           | Developed and continues to enhance a Request for Proposals and contract system for delivering legal services to indigent persons, which the Legislature originally mandated 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                            | Guides the statewide Juvenile Defender's work in developing initiatives and reviewing proposed policies and best practices, including implementation of raising the age of juvenile jurisdiction  |
| Legislative Relations/<br>Executive | Addresses IDS's relationships with legislators and issues that arise during legislative sessions  |
| Long-Term Planning                  | Addresses transition issues that arise, including Commissioner term expirations; and long term goal planning including the development of a strategic plan for the Agency   |
| 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 previously made 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   |

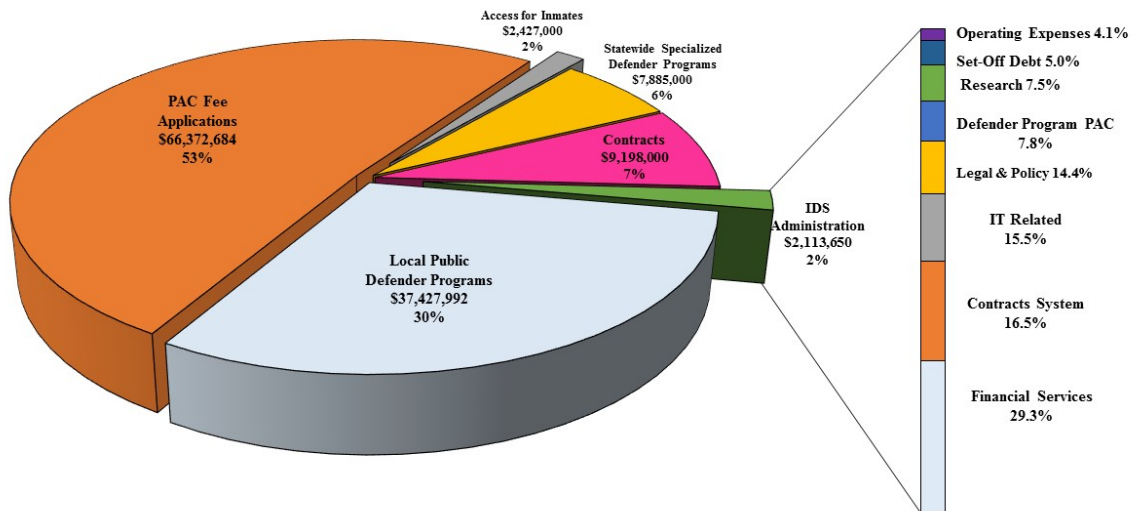
In addition to the current committees, an Indigent Appointment Plan Committee developed a model indigent appointment plan for non-public defender districts; a Performance Guidelines Committee developed guidelines for indigent defense representation in non-capital criminal cases; and a Prisoner Access 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,

issuing monthly payments to contract attorneys, and performing other accounts payable functions. Both offices combined accounted for 2.0% of IDS’s overall budget in fiscal year 2016-17.

### IDS MAJOR SPENDING CATEGORIES AND ADMINISTRATIVE EXPENSES



The IDS Commission and Office developed rules to govern the continued delivery of services in cases under IDS’s 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 has implemented contracts in districts pursuant to the Requests for Proposals that were required by § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, § 18A.4 of Session Law 2013-360, and § 18B.1(k) of Session Law 2014-100, these local appointment plans have been supplemented by contractor appointment instructions that IDS has issued 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 if IDS continues to expand 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’s 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.

For cases with warrant dates on or after January 2009, 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, since September 2012, IDS has been requiring attorneys to develop pre-trial budgets in some cases.

- *Standardized Expert Rate Schedule:* In conjunction with 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 17 different categories of experts. Both AOC and IDS policies allow prosecutors and defense attorneys to apply to the respective 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's work, as well as additional resources for attorneys and others.

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 2016-17, the IDS Office set uniform fee awards for 2,432 attorney fee applications in potentially capital cases and appeals, including interim and final fees. During fiscal year 2017-18 to date (through February 8, 2018), the Office set an additional 1,452 attorney fee awards.
  - ✓ During fiscal year 2016-17, the IDS Office set fee awards for 1,846 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 fiscal year 2017-18 to date (through February 8, 2018), the Office set an additional 1,114 expert fee awards.
  - ✓ The Office is currently processing more than 89 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.
  - ✓ In October 2014, the North Carolina Office of the State Auditor issued a report on a performance audit of IDS's payments to private assigned counsel ("PAC") in potentially capital cases at the trial level that opened between January 1, 2006 and June 30, 2013. The auditors reviewed a sample of 940 fee applications and found that all but four were paid at the correct rate pursuant to published IDS policies. The four errors, which represented an error rate of 0.4%, all occurred shortly after the date on which the IDS Commission reduced the applicable hourly rates due to budget reductions. The audit report is available at <http://www.ncauditor.net/EPSSWeb/Reports/Performance/PER-2013-2000.pdf>.

- *Appointment of Qualified Counsel in Capital Post-Conviction Cases:* During fiscal year 2016-17, the IDS Office made 10 attorney appointments in eight different capital post-conviction cases. During fiscal year 2017-18 to date (through December 31, 2016), the Office made six additional attorney appointments in six different capital post-conviction cases.
- *Expert and Miscellaneous Expense Funding Authorizations in Appeals and Capital Post-Conviction Cases:* During fiscal year 2016-17, the IDS Office reviewed and acted on 111 requests for expert funding and miscellaneous expenses in appeals and capital post-conviction cases. During fiscal year 2017-18 to date (through February 8, 2018), the Office acted on an additional 54 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.
- *Fee Transparency Special Provision:* Section 18A.1 of Session Law 2014-100 required IDS to post online certain information from attorney fee applications, including the name of the attorney filing the application, the case number and the county, the class of the highest charge against the defendant, an indication as to whether there were multiple charges against the defendant, the name of the judge who approved the fee application, the amount paid to the attorney, and the date of the payment. The special provision further provided that the data should be searchable and updated at least biweekly. The IDS Office worked with the Office of State Controller to develop a program to extract the required data from the North Carolina Accounting System (“NCAS”) and send it to a web-based Systemware application. IDS staff then download the data from Systemware and generate an Excel spreadsheet that can be searched and sorted. The posted data is limited to criminal case fee applications submitted by PAC for three reasons: 1) the data has to be generated from NCAS; 2) the special provision referred to “charges” and “defendants;” and 3) the provision stated that it did not require disclosure of information otherwise protected as confidential.
- *Internal Control Audits:* In the fall of 2016 AOC conducted an Internal Controls Audit of IDS pursuant to G.S. 7A-498.2(d), which requires AOC to audit IDS annually. The internal controls tested included a periodic analysis of case and cost data to identify potential for public defender expansion; approval of attorney fee applications; submission of attorney fee applications by public defenders; authorizations of judges to appoint attorneys to indigent defendants; authorizations of judges or IDS to use expert witnesses; identification and investigation of attorney fee applications that have characteristics of a duplicate nature; and public defender compliance with the travel policy. The initial Internal Controls audit was published November 1, 2016 and all internal controls tested by AOC were determined to be “Effective,” the highest rating possible under the system. The second Internal Controls audit was published January 25, 2018 and all internal controls tested by AOC were determined to be “Effective,” the highest rating possible under the system.
- *Trial Judges’ Perceptions of North Carolina’s Office of Indigent Defense Services: A Report on Survey Results:* On September 30, 2015, SOG sent a survey about IDS to all

Superior and District Court Judges in North Carolina. Responses were received from 54 Superior Court Judges (a 48% response rate) and 81 District Court Judges (a 30% response rate). The survey results demonstrated that the vast majority of judges are very satisfied with, satisfied with, or neutral about IDS's performance, with only a small percentage of judges expressing dissatisfaction. The full report may be found at [www.ids.org](http://www.ids.org).

## **RELATIONSHIP BETWEEN IDS AND AOC**

The IDS Act has always required the AOC to provide general administrative support to the IDS Office. *See* G.S. 7A-498.2(c). 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. In addition, §18A.17 of Session Law 2015-241 transferred the IDS Office from the Judicial Department to AOC, made IDS's budget part of AOC's budget, gave the AOC Director authority to modify IDS's budget or use funds appropriated to IDS without the approval of the Commission or Office, and directed AOC to conduct an annual audit of IDS. The relationship between the two agencies continues to evolve over time, and AOC and IDS staff consult regularly to determine the most effective methods of performing the administrative functions necessary for the proper operation of the courts.

- *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's 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's budget. AOC personnel continue to print checks for legal services, but IDS Office staff now 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 2016-17, IDS spent \$136,667 on out-of-court interpretation and translation services for PAC, contract attorneys, and defender offices. 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

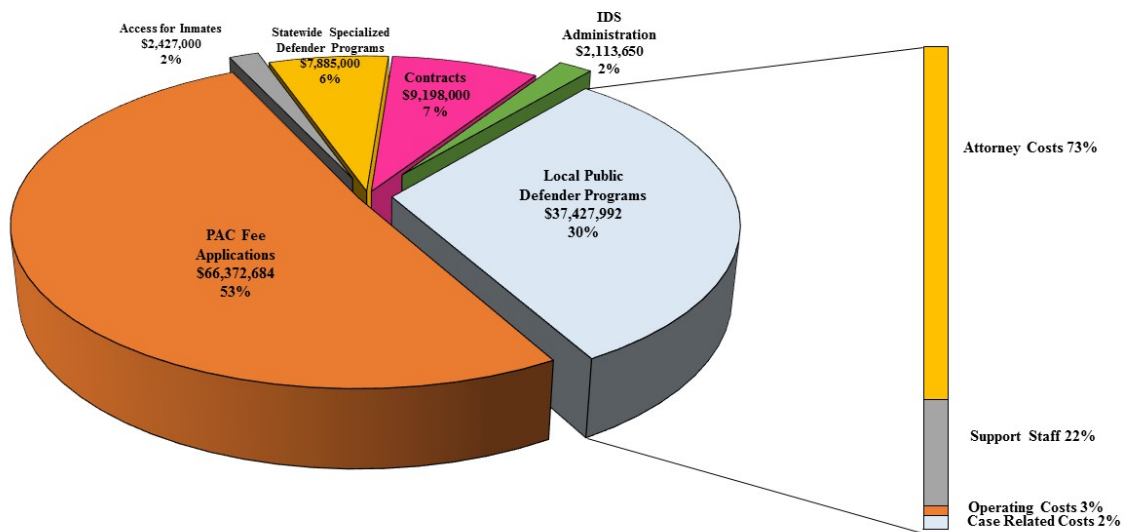


on behalf of the court or prosecution. During fiscal year 2016-17, IDS spent \$15,682 on defense lay witness fees and expenses in indigent cases handled by PAC, contract attorneys, and defender offices.

**PROGRAM OVERSIGHT AND ADMINISTRATION**

**COUNTY AND DISTRICT PUBLIC DEFENDER OFFICES**

**IDS MAJOR SPENDING CATEGORIES AND DETAILS ON LOCAL DEFENDER PROGRAMS**



There are currently 16 county- and district-based public defender offices in North Carolina, which cover 17 judicial districts and 31 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, the IDS Commission voted in June 2012 to expand the Judicial District 1 Public Defender Office into Judicial District 2 (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 2016-17, all of the county and district public defender offices combined reported 99,047 dispositions and withdrawals, which represented approximately 37.8% of the indigent caseload in North Carolina, including criminal and non-criminal cases.<sup>1</sup>

<sup>1</sup> Excludes cases handled by the Office of the Appellate Defender, Office of the Capital Defender, and Office of Special Counsel.



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.
- *Public Defender Disposition Reporting and Cost-Effectiveness Studies:* All public defender offices report their case closings to IDS via an online 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 compared the costs of those offices to the costs that IDS would have incurred if PAC had handled the same cases. Some of those studies also examined the impact on district-wide indigent defense expenditures and per case costs from the creation of new public defender offices. In addition, the 2011 study 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—including the 2011 reduction in fees, implementation of a large-scale contract system, and implementation of a uniform fee schedule pilot—IDS has not conducted a cost-effectiveness study since fiscal year 2010-11.
- *Tracking Public Defender Office Conflict Assignments:* Section 18A.6(a) of Session Law 2013-360 created new G.S. 7A-498.7(f1), which provides that, whenever practical, public defender offices should seek to assign conflict cases to another office in the region, rather than to PAC. The Session Law also directs IDS to submit annual reports on the number of public defender conflict cases that arose during the prior year and the associated PAC costs to resolve them, as well as the number of conflict cases assigned to neighboring offices pursuant to subsection (f1) and the associated PAC savings. The IDS Office submitted its most recent annual reports pursuant to this provision on October 1, 2017. To implement the provision, IDS Office staff revised the public defender offices' online disposition reporting system to enable those offices to enter data about the reasons for outside assignments, including case-specific conflicts and overload conflicts, and whether the cases were assigned to PAC or a neighboring public defender office. As explained in IDS's reports, with the possible exception of very serious felony cases and excluding the Gaston County conflict attorney who is housed in the Mecklenburg County office, it is rare for an assignment to a neighboring office to be practical because of the additional time it would take assistant public defenders to travel to a neighboring county and because of the disruption to their regular in-county caseloads.
- *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. For example, caseloads in the Office of Special Counsel have increased but IDS does not have the means to expand the office. The head of each defender office is then given the

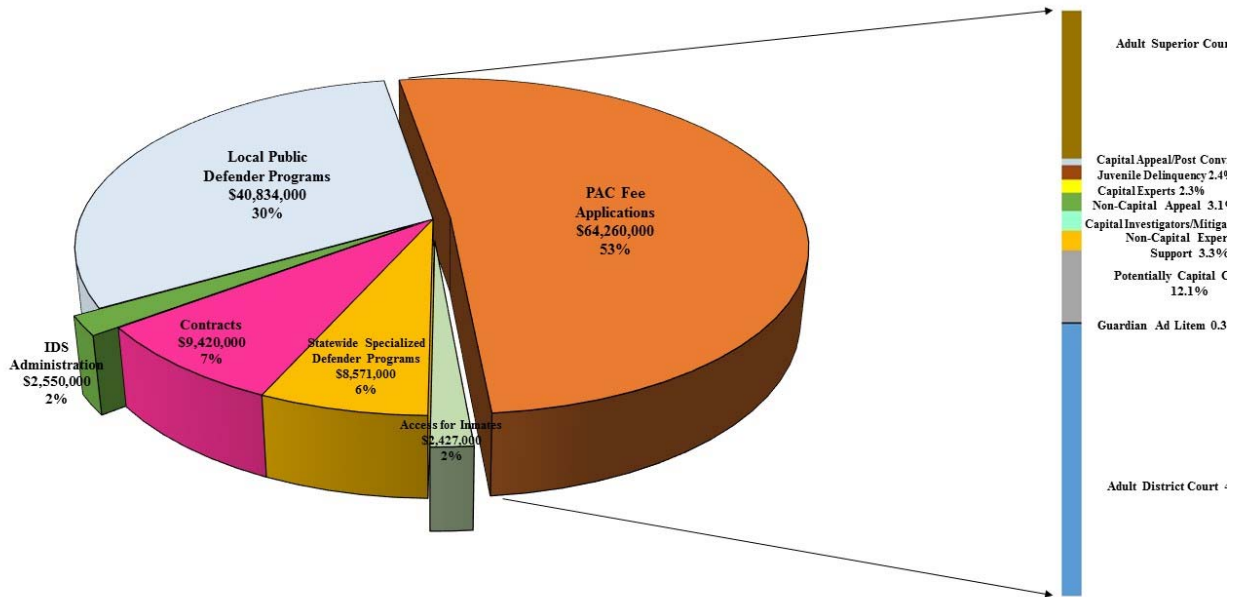
opportunity to submit a request and justification for additional staff, and IDS Office staff determine whether adding new personnel would help expand the work each office is doing, generate cost savings and efficiencies, and/or relieve overburdened offices.

The General Assembly has not authorized IDS to create new attorneys positions and has appropriated funds for this purpose since 2014. This flexibility is important for developing satellite offices and responding to changing caseloads in existing programs. With this flexibility IDS has used PAC funds to create new positions in defender offices, following statutory guidelines typically located in a special provision. The new ability to hire part-time assistant public defenders created additional flexibility to tailor public defender office standing to local needs. Furthermore, since the age of jurisdiction has been raised, IDS expects an increase demand on the Office of Juvenile Defender and on public defender offices.

- *Public Defender Case Management System:* Section 18B.10 of Session Law 2013-360 directed both IDS and AOC to contribute up to \$350,000 during the 2013-2015 fiscal biennium to develop or acquire a case management system for the public defender offices by February 1, 2015. In October 2013, AOC agreed to adapt the Criminal Court Information System—District Attorney (“CCIS-DA”) and create a Criminal Court Information System—Public Defender (“CCIS-PD”). IDS funds two information technology positions to maintain and enhance the system
- *Survey of Salaried Defenders:* During the spring of 2015, the IDS Commission and Office conducted a survey of attorneys in public defender and statewide defender offices about the impact of budget constraints on them and their work. The results showed that defenders are significantly stressed by financial hardships, making them unable to resolve debt and causing them to take on additional debt, delay life decisions, work other jobs, and rely on family for monetary aid. IDS released a report on the survey results in November 2015, which is available at [www.ncids.org](http://www.ncids.org).

## PRIVATE ASSIGNED COUNSEL

### IDS SPENDING MAJOR CATEGORIES AND DETAILS ON PAC FEES



Almost 2,500 PAC around the State handled approximately 53.3% of the indigent cases that were disposed during fiscal year 2016-17, including criminal and non-criminal cases.<sup>1</sup> 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.

In light of the State’s fiscal crisis, the 2011 Appropriations Act reduced IDS’s 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 reductions in PAC payments of approximately \$18 million once the cuts were fully implemented. The following chart sets forth the current hourly rates for cases at the trial level compared to the rates in 2002, shortly after IDS was created:

<sup>1</sup> Excludes cases handled by the Office of the Appellate Defender, Office of the Capital Defender, and Office of Special Counsel.

| Case Type   | Original PAC Rates (set in 2002) | Original PAC Rates Adjusted for Inflation to 2017 * | Current PAC Rates                           | Current PAC Rate as % of CPI Adjusted |
|---|----------------------------------|---|---|---------------------------------------|
| Capital Cases (declared capital at a Rule 24 hearing) | \$95                             | \$131.48  | \$90  | 68%                                   |
| Potentially Capital Cases                             | \$85                             | \$117.57  | \$85 (\$75 after a non-capital declaration) | 72%                                   |
| High-Level Felonies (Class A-D)                       | \$65                             | \$89.90   | \$75  | 83%                                   |
| All Other Superior Court Cases                        | \$65                             | \$89.90   | \$60  | 67%                                   |
| All Other District Court Cases                        | \$65                             | \$89.90   | \$55  | 61%                                   |

\* Based on CPI Inflation Calculator.

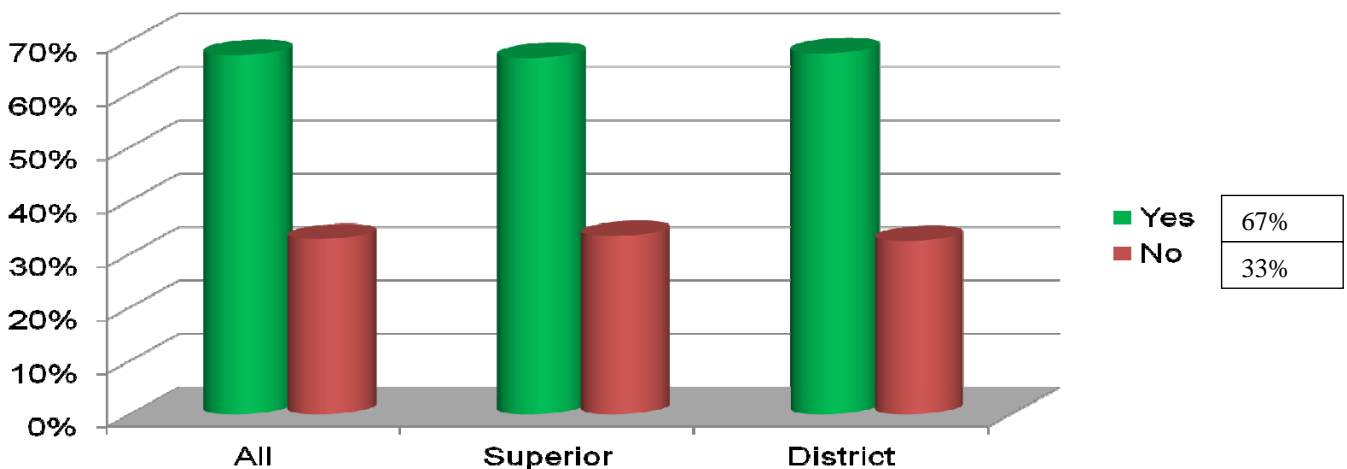
The May 2011 rate reductions were the deepest for the vast majority of cases in district court, where the rate was reduced by almost 27% to \$55 per hour, which is less than the hourly overhead of many small law firms in North Carolina. The hourly rates that are paid to PAC must cover reasonable overhead 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. Further, 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 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 impact on IDS's ability to recruit and retain qualified counsel due to the current depressed hourly rates is not limited to district court. IDS has been contacted by local officials in judicial districts throughout the state with concerns about the number of attorneys willing to accept court appointments in serious felony cases. The complexity and length of cases arising from serious felonies coupled with the low rate of compensation, make the work unattractive to more experienced attorneys. In an effort to address this need, IDS recently began providing "scholarships" to training events co-sponsored by IDS and the School of Government. While these scholarships have been well received, it has not eliminated the problems created by attrition. This pattern of attrition is untenable and will need to be addressed in order to assure that the attorneys handling indigent cases have adequate resources to provide constitutionally effective representation.

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, most private lawyers in North Carolina charge between \$1,500 and \$3,000. By comparison, based on the current hourly rates, IDS pays an average of less than \$307 for an indigent DWI case that is resolved in district court and an average of less than \$782 for an indigent DWI case that is resolved in superior court. The IDS Commission and staff are not aware of any other professional services offered by private practitioners to the State at such a steep discount.

In January 2015, the IDS Commission and Office released a survey of PAC to help determine the impact of the May 2011 rate cuts. The Office published a report on the survey results in March 2015, which is available at [www.ncids.org](http://www.ncids.org). Four hundred and twenty three PAC from all over the State responded to the survey, and 41.8% said the rate cuts were the primary cause of changes in their state court practice since May 2011. The responses demonstrated that a lot of attorneys, especially the most experienced and skilled ones, have stopped handling indigent cases as a result of the reduction in compensation, leaving less experienced counsel to handle the indigent caseload. They further demonstrated that there is a growing mismatch between the caseloads in many districts and the number of qualified attorneys available to accept indigent appointments. In addition, attorneys have had to cut back significantly on basic operating expenditures, including but not limited to office space, support staff, compensation and benefits, legal research tools, and training. When asked if they will stop accepting appointments to state court indigent cases in the next two years if the rates remain at current levels, 41.7% said they either definitely will or there is a strong possibility that they will; an additional 39.5% said they are considering that change. More than 80% of respondents indicated that the rate reductions have caused a decline in the quality of representation provided to indigent defendants and respondents.

SOG’s September 2015 survey of all of the Superior and District Court Judges, which is discussed earlier in this report, also asked the following question: “Due to reductions to its budget, in 2011 IDS was required to reduce the rates paid to private assigned counsel. Have you seen any impact on the quality of representation provided by assigned counsel that you think could be attributed to those rate reductions?” Like PAC, the judges’ responses showed that a significant majority have seen a decline in quality:

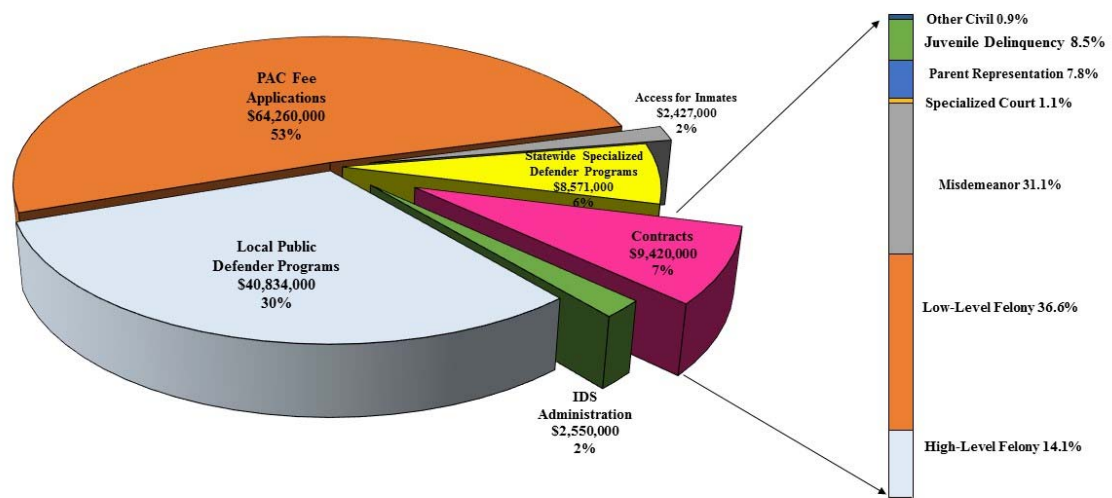


In addition to the rate reductions, IDS’s historical underfunding has often led to payment delays for PAC. While IDS did not end fiscal year 2016-17 with any carry forward debt, it ended as fiscal year 2015-16 with \$4.5 million in carry forward debt. Historically this carry forward debt has created a significant hardship for PAC, most of whom are solo practitioners or members of small law firms. It also makes 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.

IDS does not anticipate ending fiscal year 2017-18 with carry forward debt and the payment delays it causes. To some degree this is the result of the Commission’s guidance and IDS’s careful money management including the diversion of lapsed salary from the defender programs to the fund; however, the extremely low hour fee currently paid PAC is probably the single greatest contributing factor to IDS’s ability to reduce and eventually eliminate its carry forward debt.

## REQUESTS FOR PROPOSALS AND CONTRACTS

### IDS SPENDING MAJOR CATEGORIES AND DETAILS ON 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, 2017, IDS had individually negotiated contracts with 36 different attorneys in Avery, Brunswick, Buncombe, Catawba, Davie, Forsyth, Guilford, Harnett, Iredell, Johnston, Mitchell, Robeson, Rowan, Wake, 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 2016-17, IDS had contracts with 39 attorneys, some of which terminated mid-fiscal year, and the listed organizations to cover the above jurisdictions, as well as Martin and Madison County. IDS’s negotiated contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, adult and juvenile civil commitment, guardianship, Industrial Commission contempt, 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. IDS also believes that contracts will provide it the flexibility needed to respond to changes in the criminal justice system such as the increase in the age of jurisdiction for juveniles.

- *Requests for Proposals (“RFPs”) and Contracts:* Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, § 18A.4 of Session Law 2013-360, and § 18B.1(k) of Session Law 2014-100 directed IDS to issue RFPs for the provision of legal representation in all classes of indigent cases in all judicial districts. In cases where the proposed contract could 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 provisions directed IDS to use PAC funds to enter into contracts. In selecting contractors, the special provisions further directed IDS to consider the cost-effectiveness of the proposed contract. The 2014 special provision also provided that disputes about the ability of a potential contractor to provide effective representation shall be determined by the senior resident superior court judge for the district.

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 could be devoted to this process, IDS has staggered the issuance of RFPs geographically and by case type, with the initial RFPs limited to adult non-capital criminal cases and some per session courts. If the contract system continues, future RFPs could expand into additional case types, including delinquency, parent representation, child support contempt, and special proceedings.

After the initial special provision was adopted, IDS took a number of steps to lay the groundwork for an effective large-scale contract system, including:

- ✓ Reviewed North Carolina law governing RFPs and service contracts with state agencies.
- ✓ Reviewed 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.
- ✓ Developed policies to govern the issuance of RFPs and the establishment of legal services contracts.
- ✓ Drafted a model RFP, including standard contract terms and conditions, and a model offer form.
- ✓ Created a page on the IDS website dedicated to RFPs and contracts.
- ✓ Released an online virtual education program for interested attorneys about the RFP process and the contract system.
- ✓ Analyzed case data by county to determine the number of hours needed to provide representation and to develop appropriate caseload units.

In addition, IDS designed and is continuing to refine a specialized web-based Contractor Case Reporting System that contractors use to report data about pending and disposed contract cases, including actual time spent on each contract case. The system gives IDS access to more complete and timely case information than is currently obtained through

the paper-based PAC fee application process, which is crucial to IDS's ability to monitor contractors' caseloads and dispositions and which will allow for more in-depth research and program evaluation.

The current contracts are for two-year terms with an option to renew for one additional two-year term. In most case types, upon receipt of all required monthly data reporting, IDS pays contractors set and cost-effective monthly payments that are based on an expected range of annual dispositions. Based on three fiscal years of case and cost data (adjusted for the May 2011 rate reductions), the set monthly payment is intended to cover attorney time and all routine out-of-pocket expenses. However, contractors are able to seek additional compensation or a reduction in their contractual caseload for truly extraordinary cases, as well as reimbursement of extraordinary expenses. IDS also developed an overage payment schedule for contractors who exceed the maximum number of expected dispositions. In limited case types, including treatment courts, IDS seeks per session cost/price offers in addition to qualifying offers.

Since the original special provision was enacted, IDS has issued six full competitive RFPs and three renewal RFPs for offers to handle all of the adult non-capital criminal cases and a number of per session courts, such as drug treatment courts, in the following districts and counties:

| <b>RFP No.</b>   | <b>Districts Covered</b> | <b>Counties Covered</b>                                 | <b>Effective Date of Contracts</b> |
|------------------|--------------------------|---|------------------------------------|
| 12-0001          | 9, 10, 14                | Durham, Franklin, Granville, Vance, Wake, and Warren    | 12/1/2012                          |
| 12-0002          | 9A, 15A, 15B             | Alamance, Caswell, Chatham, Orange, and Person          | 6/1/2013                           |
| 13-0001          | 3A, 8A, 8B, 11A, 11B     | Greene, Harnett, Johnston, Lee, Lenoir, Pitt, and Wayne | 6/1/2014                           |
| 12-0001 Renewals | 9, 10, 14                | Durham, Franklin, Granville, Vance, Wake, and Warren    | 12/1/2014                          |
| 12-0002 Renewals | 9A, 15A, 15B             | Alamance, Caswell, Chatham, Orange, and Person          | 6/1/2015                           |
| 13-0001 Renewals | 3A, 8A, 8B, 11A, 11B     | Greene, Harnett, Johnston, Lee, Lenoir, Pitt, and Wayne | 6/1/2016                           |
| 16-0001          | 9, 10, 14                | Durham, Franklin, Granville, Vance, Wake, and Warren    | 12/1/2016                          |
| 16-0002          | 9A, 15A, 15B             | Alamance, Caswell, Chatham, Orange, and Person          | 6/1/2017                           |
| 17-01            | 3A, 8A, 8B, 11A, 11B     | Greene, Harnett, Johnston, Lee, Lenoir, Pitt, and Wayne | 6/1/2018                           |

The renewal rates for the three renewal RFPs were extremely high. Of the total number of units that were available for renewal, 98.6% were renewed in the first wave of contract counties, 99% were renewed in the second wave of contract counties, 92.5% were renewed in the third wave of contract counties, and 995 for our most recent wave. Due in part to the high renewal rates and the fact that contractors can terminate without cause by giving 30 days' notice, the Commission and Office are tentatively planning to move toward four-year contracts.



While IDS designed the contract system to be cost effective, it has the potential to have a negative impact on IDS’s recoupment revenues. Contractors are 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, do not have a financial incentive to submit individual case-specific recoupment applications to the courts. IDS has taken some steps to ensure that contractors comply with this requirement, such as flagging cases in the online system that are recoupment-eligible and marking whether they have been printed, but IDS’s ability to enforce that contractual requirement is limited.

As of March 13, 2018, RFP-based contract attorneys had entered data into the online reporting system more than 154,000 adult criminal cases, including pending and disposed cases:

| <b>Contract Category</b> | <b># Pending Cases in Online System (as of 03/13/18)</b> | <b># Disposed Cases in Online System (as of 03/13/18) *</b> |
|--------------------------|--|---|
| Misdemeanor              | 14, 962  | 78, 374   |
| Low-Level Felony         | 11,176   | 43,257  |
| High-Level Felony        | 1,683  | 4,578   |
| <b>Totals</b>            | <b>27, 821</b>   | <b>126, 209</b>   |

\* Disposed case numbers include withdrawals after substantive work.

The contract system has generated significant savings, particularly in the misdemeanor contract category. For more details about the RFPs and contracts, see IDS’s Report to the Chairs of the House Appropriations Committee on Justice and Public Safety, the Senate Appropriations Committee on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety: Requests for Proposals and Contracts for Legal Services (Oct. 01, 2017), available at [www.ncids.org](http://www.ncids.org).

- *Contractor Dispositions During Fiscal Year 2016-17:* During fiscal year 2016-17, non-RFP contractors reported 9,136 dispositions and withdrawals and RFP contractors reported 26,861 dispositions and withdrawals, for a total of 35,861 contractor dispositions, which represented approximately 10.25% of the indigent caseload in North Carolina, including criminal and non-criminal cases.<sup>3</sup>

### **FLAT FEE FOR SERVICES PILOT PROJECT (FY2017)**

Section 19A.4(a) of Session Law 2016-94, directed AOC, in conjunction with IDS, to implement a pilot project establishing a uniform fee schedule for the payment of attorneys’ fees for legal representation to indigent persons in district court. Based on input from IDS, AOC selected the below counties for piloting the project.

- (Large): Iredell County in District 22A and Davidson County in District 22B
- (Medium): Lincoln County in District 27B and Burke County in District 25

<sup>3</sup> Excludes cases handled by the Office of the Appellate Defender, Office of the Capital Defender, and Office of Special Counsel.

- (Small): Watauga County in District 24 and Macon County in District 30

The limited time in which the pilot has been in operation and the modest number of fee applications paid under the pilot preclude meaningful evaluation of the pilot in this report. IDS consequently expects to produce a report at the end of the calendar year that will include more data and allow for more meaningful analysis. While the NCAOC is expected to submit a report on the fee schedule pilot to the General Assembly on March 15, 2018, a summary of IDS’s work on the fee pilot is included here for convenience of reference.<sup>4</sup>

- IDS data collected by IDS from fee applications and determined the statewide average hourly rates for all cases types covered in the district court.
- In the spring of 2017, IDS visited all six counties selected for the pilot. IDS used feedback from the judges, attorneys, and court staff along with the IDS data to develop the fee schedule.
- Based on data collected by IDS from fee applications and considering these criteria, IDS developed a Model District Court Fee Schedule (“Fee Schedule”)<sup>5</sup>.
- On May 8, 2017, IDS issued policy guidelines to govern the pilot. IDS’s policies include an exceptional case policy, which deals with extraordinary cases in which the amount of time reasonably necessary to provide effective representation is above what can be considered part of the average. The exceptional case policy allows an attorney to request to be compensated under the hourly system instead of the fee schedule pilot if assigned counsel believes that the amount of time spent on a case qualifies as exceptional.
- The pilot began on June 1, 2017 in the six pilot counties and, with the exceptions noted above, applied to cases disposed in district court in which counsel was appointed on or after June 1, 2017.
- As of January 23, 2018, IDS has processed and paid 2,443 fee applications pursuant to the pilot, for a total of \$510,953. This represents 32 percent of the fee applications processed and 29 percent of the fees paid in the pilot counties. IDS anticipates that the share of cases paid pursuant to the fee schedule pilot will continue to increase as cases where counsel was appointed before June 1, 2017 are resolved and paid. Of the 2,443 fee application processed and paid under the pilot:
  - ✓ 2,154 fee applications were for representing adults in criminal district court,
  - ✓ 216 for representing parents in child welfare proceedings,
  - ✓ 72 for representing children in juvenile delinquency proceedings, and
  - ✓ one Rule 17 Guardian ad Litem, and
  - ✓ seven exceptional case fee applications, totaling \$4,097.
- In the winter and spring of 2018, IDS again visited all six counties selected for the pilot.

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<sup>4</sup> Copies of the guidelines (*Indigent Defense Services Policies Governing Attorney Fee and Expense Applications for Uniform Fee Pilot*), the FAQ sheet, and the Model Fee Schedule can be found at <https://goo.gl/7wceyZ>.

<sup>5</sup> With existing available recurring funding, the Indigent Defense Commission increased the rate for high-level felonies from \$70 to \$75 an hour and IDS adjusted the pilot fee schedule proportionally to reflect those changes, in November 2017.

In the meantime, IDS will continue to monitor and evaluate the pilot, using all available data and input from stakeholders as the project moves forward and intends to submit a report to the General Assembly at the end of the current calendar year.

## **STATEWIDE SPECIALIZED DEFENDER OFFICES**

### **OFFICE OF THE CAPITAL DEFENDER**

In addition to the Capital Defender, the Office of the Capital Defender currently employs 18 staff attorneys in six regional offices around the State who represent indigent defendants charged with potentially capital cases at the trial level. In order to meet needs with locally placed attorneys, the Office of the Capital Defender opened two satellite offices in 2016. These offices were created with existing positions being relocated from the Durham office. OCD now has regional offices in Asheville, Durham, Lumberton, Rocky Mount, Wilmington, and Winston-Salem. During fiscal year 2016-17, all of the regional offices combined handled 126 unique potentially capital cases at the trial level, including pending and disposed cases but excluding withdrawals. Because two assistant capital defenders are assigned to some cases that are proceeding capitally, the offices' workload last fiscal year (again excluding withdrawals) probably is higher than 126.

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 2016-17, OCD made 801 attorney appointments in 687 potentially capital cases at the trial level. During fiscal year 2016-2017 to date (through February 8, 2018), the office made an additional 400 attorney appointments in potentially capital cases.<sup>6</sup>
- During fiscal year 2016-17, OCD reviewed and acted on 1,836 requests for expert funding and miscellaneous expenses at the trial level. During fiscal year 2017-18 to date (through February 8, 2018), the office reviewed and acted on an additional 1,111 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 fund, 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.

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<sup>6</sup> Based on a review of appointments in a sample of 217 cases, a 2014 Office of the State Auditor's performance audit report concluded that the Office of the Capital Defender assigned second counsel to cases in accordance with IDS's published policies 100% of the time.

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

In addition to the Appellate Defender, the Office of the Appellate Defender currently has 20 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 was housed within the Office of the Appellate Defender during fiscal year 2016-17 but specializes in abuse/neglect/dependency, termination of parental rights, and contempt appeals, has three staff attorneys who represent indigent persons on direct appeal. During fiscal year 2016-17, both offices combined disposed of 276 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 2016-17, the offices made 992 attorney appointments in capital, non-capital criminal, and non-criminal appeals. During fiscal year 2017-18 to date (through February 8, 2018), the offices made an additional 592 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 online 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. In addition, the Parent Representation Coordinator 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 2016-17, in addition to the Special Counsel Supervising Attorney, the four Offices of Special Counsel employed seven attorneys and 7.5 support staff and disposed of a total of 13,411 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 requested.
- Develops ways to connect and support juvenile defense attorneys across the State, including maintaining a website, a listserv for juvenile defenders, and a blog. The office also supports juvenile defenders through Twitter at @NCOJD and Facebook.
- Evaluates the existing systems and practices, and the current quality of representation, in various areas of the State.
- Provides on-site monitoring of juvenile delinquency contractors;
- 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 and national juvenile law and practice.
- Since June 2015, provides limited direct representation in delinquency proceedings in Wake County.

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, publish, and update a juvenile delinquency manual; developed and published a series of guides for attorneys representing special populations of youth; and developed an expunction toolkit for juvenile defenders. In addition, the Office has been instrumental in the development of the legislation and policy in preparation for raising the age of juvenile jurisdiction, including service on the Juvenile Jurisdiction Subcommittee on the Chief Justice's Commission on the Administration of Law and Justice, and the Juvenile Jurisdiction Advisory Committee both created by the General Assembly and charged with examining the issues that would be associated with raising the age of juvenile

jurisdiction. The Office is developing and implementing a long-range plan to provide quality counsel for 16 and 17 year olds. 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 a contract with IDS, North Carolina Prisoner Legal Services (“NCPLS”), a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in the state. The State began contracting with NCPLS in 1989 as part of a settlement to enforce *Bounds v. Smith*, 430 U.S. 817 (1977), in which the United States Supreme Court held that inmates have a constitutional right to meaningful access to the courts. The State started contracting with NCPLS in 1989 by way of settlement of a lawsuit against the North Carolina Department of Correction – *Bounds v. Smith* – that had been litigated through the United States Supreme Court. *Bounds* established a constitutional right for all prisoners to have meaningful access to the courts. North Carolina also provides a statutory right to counsel for post-conviction review under certain circumstances, and NCPLS attorneys help IDS and superior court judges throughout the state to fulfill that requirement.

In addition to reviewing inmates’ cases for potential post-conviction claims and providing representation in criminal post-conviction proceedings, NCPLS previously provided representation in civil proceedings challenging conditions of confinement or the actions of government officials (*e.g.*, the provision of inadequate medical care, cases involving sexual abuse by prison guards and negligent failure to protect, and the application of gain time credits for disabled inmates). NCPLS also previously had a jail credit program, through which the organization identified and corrected unapplied jail credit.

NCPLS has also discontinued its jail credit program, and is referring inmates with jail credit issues back to trial counsel to be addressed locally. In calendar year 2012, NCPLS paralegals, who are considerably less expensive than attorneys, identified and corrected 13,319 days of unapplied jail credit, saving the State more than \$1 million in incarceration costs. Some appointed trial attorneys may now be submitting supplemental fee applications to IDS for correcting jail credit issues, which is a less efficient system and merely shifts costs from NCPLS’ budget to IDS’s budget. Other defendants will not receive the appropriate jail credit and will remain incarcerated for longer than they should at considerable cost to the State.

The United States Supreme Court noted that prisoner legal services programs, as opposed to law libraries, decrease the burden on federal and state courts because such services can engage in mediation and administrative resolution of prisoner complaints, often convince inmates to abandon or alter ill-founded complaints, and efficiently and skillfully handle prisoners’ cases when merited. *Bounds* at 831. For these and other reasons, prisoner legal services programs have been noted as a preferred method of providing access to the courts by state corrections commissioners, prison wardens, and treatment directors. *Id.* at 830 n.18.

NCPLS attorneys review and evaluate each and every inmate request for post-conviction relief. If an inmate has a meritorious claim relating to the legality of his conviction or sentence, NCPLS offers to represent that inmate. If an inmate’s conviction and sentence are valid, NCPLS

explains why litigation would be unsuccessful. NCPLS attorneys are also available for and frequently accept appointments by superior court judges who have determined that a *pro se* inmate requires representation. NCPLS is sometimes appointed to represent inmates in cases referred to it by the federal courts after those courts have determined that a complaint alleging an unconstitutional condition of confinement raises a non-frivolous claim.

NCPLS is a cost-efficient way for the State to meet its constitutional and statutory obligations to provide inmates with meaningful access to the courts. Because of the complexity of the State's structured sentencing scheme it is not uncommon for NCPLS lawyers to identify sentencing errors that result in a savings of months or even years of incarceration for persons whose prior record levels were miscalculated prior to their entry into DAC. According to the North Carolina Department of Public Safety, the average daily cost to incarcerate an inmate in 2017 was \$96.58. In calendar year 2017, NCPLS attorneys identified sentencing errors that by its most conservative estimate saved DPS in excess of 11,000 days of incarceration – well over a million dollars.

In addition to these calculable costs, NCPLS lawyers saves the State money and resources by resolving legitimate inmate concerns through negotiation with the DAC, and by discouraging frivolous inmate litigation by explaining to inmates the boundaries of their legal rights.

The alternative to NCPLS would be the provision of law libraries and persons trained in the law at DAC facilities. This would be burdensome on already understaffed prison officials, who would have to provide access to those libraries for all inmates, even those in restrictive housing, and would also create a system that would be highly unlikely to aid inmates with legitimate claims while at the same time enabling inmates who are inclined to file frivolous litigation.

Further, NCPLS can also assist disabled and non-English speaking inmates. Providing a developmentally or learning disabled or visually impaired inmate access to books or a computer terminal with no other legal assistance would be a violation of the Americans with Disabilities Act, which requires equal access to and effective communication about programs. NCPLS sends staff paralegals to prison facilities to assist disabled and illiterate inmates in completing case questionnaires. Because the North Carolina courts and DAC receive federal funds, Title VI applies and the State must provide Limited English Proficient (LEP) inmates with the same right of access to the courts. Approximately 5.5% of the inmates in DAC units are Hispanic and many speak little or no English. NCPLS has several bilingual staffers who assist with translations and provide Spanish-language materials.

IDS Office staff continue to work closely with NCPLS to ensure that the organization delivers high quality and cost-effective post-conviction 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 cases where an inmate's conviction and sentence are lawful and correct, NCPLS explains to the inmate why litigation would be fruitless, avoiding frivolous *pro se* filings.

## 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.

## 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 IDS staff members 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 fact sheets about various aspects of IDS's 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 North Carolina State Crime 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.
- Reports and data generated by Office staff, including searchable data about PAC payments in indigent criminal cases.

Since its creation in May 2002, there have been more than 595,000 visits to the IDS website.

### **IDS LISTSERVS AND EBLASTS**

With assistance from other groups, the IDS Office has established 19 specialized listservs for attorneys representing indigent defendants and respondents, and others who provide services to IDS's clients. The listservs have been extremely effective tools for improving communication, sharing information, and providing resources and support to attorneys and others.

In addition, IDS has created a system for sending one-way "EBlasts" to attorneys across the State so they can be more informed about matters that impact them, such as IDS's funding, the timing of PAC payments, issued RFPs, and training opportunities. Attorneys can register to receive EBlasts by completing a simple form on the IDS website. As of December 2015, more than 1,400 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. For the 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 Foundations (“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. \$225,000 of the grant funds was used to support the Systems Evaluation Project and data warehouse that is described later in this report, as well as the development of a variety of research toolkits. The grant expired in August 2014, although the work of the project has continued.
- In September 2013, BJA notified IDS and the Conference of District Attorneys that a second joint application for training funds for another capital case litigation initiative had been approved, at a level of \$169,714 spread over a two-year period. Those funds were again split equally between the prosecution and defense. The defense funds were used for four bring-your-own-case programs during 2014 and 2015.

## **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. In order to increase access to training, IDS allocates 2-3 scholarships to cover the registration fee for some of the multi-day programs for contract attorneys. During fiscal year 2016-17, in addition to the grant-funded training programs described above, IDS and SOG co-sponsored the following in-person programs and live webinars, which allow attendees to send questions electronically and get responses in real time:

- An annual one-day conference for contract attorneys in June 2017.
- A criminal law webinar in June 2017.
- The annual three-day conference for public defenders and investigators in May 2017.
- The annual three-day New Felony Defender Training in February 2017.
- A biennial one-day conference for attorneys who represent respondents in civil commitment proceedings in January 2017.
- A biennial one-day conference for attorneys who represent respondents in guardianship proceedings in January 2017.
- A criminal law webinar in December 2016.
- A regional training program for indigent defense attorneys on preparing for convictions in November 2016.
- The annual four-day New Misdemeanor Defender Training in September 2016.
- A two-day boot camp program for appellate attorneys called the “Boot Camp for Non-Capital Criminal Appeals” in September 2016.
- An annual one-day conference for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings in August 2016.

- An annual one-day juvenile defender conference in August 2016.
- The annual hands-on five-day Defender Trial School in July 2016, which is an intensive program in which participants develop trial skills by working on their own cases.

In addition to these programs, IDS and SOG have sponsored a number of other innovative programs during recent years. 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 online training programs, including the webinars mentioned above 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 are not 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 online manual for attorneys in Innocence Inquiry Commission Proceedings, and IDS and SOG have developed online orientation manuals for assistant public defenders and parent attorneys. All of the manuals are available from 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 online 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 online database of all of the collateral consequences of criminal convictions in North Carolina that is described above.

In 2010, partly in response to the negative press coverage about the then-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 have cases involving complex scientific and forensic issues. 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 attorneys, investigators, and others.
- Maintaining a page on the IDS website that contains forensic resources, including a searchable database of prosecution and defense experts by name and area of expertise and North Carolina State Crime 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 by ensuring that attorneys who are facing such issues do not have to “reinvent the wheel” in individual cases.

The IDS Office has also worked with the public defender and state defender offices to create a statewide North Carolina Forensic Consultant Network (“NCFCN”) and a statewide North Carolina Immigration Consequences Network (“NCICN”), and to assist the members of those networks in developing expertise that allows them to serve as resources for other attorneys within their offices.

## **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**

As shown in Appendix A, the increase in overall demand (spending and current-year obligations) since IDS was created has averaged 2.2%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS's creation. The increase in overall demand over the past six fiscal years (between fiscal years 2010-11 and 2016-17) has averaged a mere 0.07%. Comparing PAC demand over time is complicated by the drastic hourly rate reductions that the IDS Commission was required to implement in May 2011. The growth rate

declined significantly (-8.9% overall and -14.6% in the PAC fund alone) during fiscal year 2011-12, but the decline was largely attributable to the rate reductions. Between fiscal years 2012-13 and 2014-15, overall demand was virtually flat, with 0.38% growth in fiscal year 2012-13, 0.35% decline in fiscal year 2013-14, 1.08% growth in fiscal year 2014-15, and .24% growth in fiscal year 2016-17. If the current PAC hourly rates are adjusted to the prior rate, there was real growth in the system, although the rate of growth was lower than in many prior years. While growth rates measured by demand and by disposition are predictable over the long term, they remain difficult to predict over the short term because court resources and other volatile factors affect the timing of case dispositions.

As discussed in other sections of this report, IDS has taken a number of steps over recent years to control the cost of indigent representation, such as:

- Continuing the dramatically reduced PAC hourly rates that the IDS Commission adopted in May 2011;
- Setting per unit contract amounts that are designed to be cost effective compared to the reduced PAC rates;
- Lowering the PAC hourly rates that are paid to counsel in potentially capital cases once a case is proceeding non-capitally;
- Requiring appointed counsel to develop pre-trial budgets in the most complicated and expensive potentially capital cases;
- Expanding the use of the specialized statewide defender offices; and
- Continuing to reimburse mileage at a reduced rate.

## **FACTORS DRIVING GROWTH IN DEMAND**

While there have been some modest increases in average per case costs, *see* “PAC Average Hours Studies,” below, over the long term 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 disposed in district and superior court to the total number of court file numbers disposed 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 2016 study revealed that there has been a 15.6% *decrease* in the number of total criminal non-traffic court file numbers between fiscal years 2001-02 and 2016-17. However, during that same time period, there has been a 39% *increase* in the number of criminal non-traffic public defender, PAC, and contractor file numbers that are funded through IDS. After years of rapid growth, the share of cases with court appointed counsel appears to have plateaued in FY 2013-14.

|   | FY02    | FY04    | FY06    | FY08    | FY10    | FY12    | FY14    | FY16    | FY17    |
|---|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Criminal Non-Traffic Court Files                    | 850,541 | 842,488 | 876,555 | 872,486 | 823,737 | 810,894 | 769,822 | 728,096 | 718,149 |
| IDS Criminal Non-Traffic Files                      | 291,954 | 318,460 | 366,294 | 392,011 | 412,970 | 414,594 | 422,411 | 395,414 | 391,358 |
| IDS Disps. as % of Criminal Non-Traffic Court Files | 34.3%   | 37.8%   | 41.8%   | 44.9%   | 50.1%   | 51.1%   | 54.9%   | 54.3%   | 54.5%   |

*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.*

Overall indigent defense expenditures per disposition (for both public defender offices and PAC combined) have fluctuated over the years due to a number of factors, including the increasingly complex nature of criminal defense, changes in the mix of case types funded by IDS, changes in the types of delivery systems, and cost-saving measures implemented by the Commission.

|                       | FY09     | FY10     | FY11     | FY12     | FY13*    | FY14*    | FY16     | FY17     |
|-----------------------|----------|----------|----------|----------|----------|----------|----------|----------|
| Per Disp Expenditures | \$383.01 | \$377.74 | \$387.93 | \$370.15 | \$364.51 | \$365.19 | \$395.67 | \$415.71 |

*\* FY13 and FY14 per disposition expenditures differ from prior annual reports due to an error in FY14's calculation and because IDS now has access to better data about contract attorney dispositions.*

To the extent that there have been modest changes in average per case costs over the past 16 years, 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 are discussed in "PAC Average Hours Studies," below.

## IMPROVED INDIGENCY SCREENING

*Pursuant to Section 18A.3 of Session Law 2017-57 the Administrative Office of the Courts, in conjunction with Indigent Defense Services, studied and developed specific statewide standards for determining indigency for defendants. The study included a review of the practices of other states regarding determination of indigency, analysis of the cost-effectiveness of alternatives to the status quo, and implementation plans for the standards agreed upon. The Administrative Office of the Courts and Indigent Defense Services issued a report to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2018.*

The following implementation plan has been developed:

- IDS will revise the *Affidavit of Indigency* (form number AOC-CR-226) and statewide use will begin January 1, 2019. This task is underway and will be tested in at least one judicial district before a statewide rollout.
- IDS will develop a bench card that includes information judges might find beneficial when reviewing eight factors for each defendant: income and expenses, assets and debts, case factors and costs associated with securing an attorney, current federal poverty guidelines and a local living wage calculator, receipt of need-based government benefits,

recent appointed counsel in another case, residence in a correctional or mental health facility, and inability to post bail or bond. This task is also underway to ensure the new document is complementary to the revised *Affidavit of Indigency*. The bench card will be tested in at least one judicial district before rollout on January 1, 2019.

- Clerks of superior court will receive training and information encouraging them to enter denial of counsel information and the defendant's attorney type into the Criminal Case Indexing System (CCIS). The NCAOC will work with the Clerk Resource Committee to explore strategies for increasing the entry of this data into CCIS-CC by January 1, 2019.

## 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 (payments to private attorneys and experts and costs of local public defender programs) on indigent defense. Total revenues from recoupment during fiscal year 2016-17, including the attorney appointment fee required by G.S. 7A-455.1, amounted to \$10.25 million, which represented an increase of 1.62% compared to the prior fiscal year. In addition to recoupment revenues that go to IDS, the attorney appointment fee required by G.S. 7A-455.1 generated \$121,256 in FY17 for the Technology Fee Fund administered by AOC. During fiscal year 2016-17, there continued to be wide variability in recoupment rates among counties. Recoupment as a percentage of non-capital spending on PAC and public defender offices ranged from a low of 2.1% to a high of 35.9%, with an overall statewide rate of 10.09%. Over 54% of the counties saw an increase in their recoupment rate due to some rebound in collections through set-off debt during FY16. This past fiscal year set-off debt revenues represented 39% of total recoupment, up from 34% the prior year.

IDS recently began looking at recoupment rates among counties calculating total IDS expenditures using only attorney and case related expenditures in public defender programs, rather than full overhead. That is a more comparable comparison with PAC expenditures. With this revised calculation, the recoupment rate statewide is 11.2% and in counties with public defender programs it is estimated as 6.39% instead of the 5.6% under standard method of calculation.

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. Based on prior studies, roughly 36% of attorney fees in criminal cases are 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 closer to 15.8%. 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's 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. IDS's recoupment revenues have historically kept pace with increases in demand on the indigent fund. However, recoupment revenues began to decline in fiscal year 2012-13 due to the May 2011 reductions to the PAC hourly rates. In addition, if IDS continues to shift more cases away from PAC paid by the hour to contract defenders who are paid monthly or public defenders who are paid a salary, an effective recoupment system based on hours claimed will become more difficult to maintain because those service providers have less of a financial incentive to submit prompt and accurate applications. Finally, attorney fees and the attorney appointment fee are last in the statutory priority for the disbursement of costs, fines, and fees collected by clerks offices, so legislative increases in other costs and fees may result in fewer funds available to repay attorney fees and the attorney appointment fee. See G.S. 7A-304(d)(1).

### **HISTORICAL UNDERFUNDING AND CURRENT PROJECTIONS FOR FISCAL YEAR 2016-17**

During the 2009 legislative session, the General Assembly shifted \$3.5 million in funding for IDS from recurring to non-recurring, and reduced IDS's 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 the Office of State Budget and Management 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's 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 effective May 2011, the fiscal year 2011-12 shortfall was again \$9.9 million.

During fiscal year 2012-13, as a result of the depressed PAC hourly rates, IDS was able to chip away slightly at the continuing carry-forward debt and ended the fiscal year with \$7.9 million of unpaid fee awards. During fiscal year 2013-14, due in large part to a \$3.7 million non-recurring appropriation, IDS was able to decrease the continuing carry-forward debt even further and ended that fiscal year with \$3.2 million of unpaid fee awards. That debt grew to almost \$6.2 million in fiscal year 2014-15 as a result of the decline in recoupment revenues that was attributable to the changes in the state tax code. After many years of shortfall, the PAC fund was fully funded in FY17 at current rates. The elimination of the shortfall was due to recurring and non-recurring appropriations over the past 6 years, full funding of personnel costs including longevity, improved recoupment after drop in 2015, and the sharp reduction in compensation to attorneys. Absent unforeseen developments we anticipate no unpaid invoices at year end.

The IDS Commission and Office recognize that reductions in spending were needed to meet the fiscal crisis, and have worked diligently to reduce spending over the past several years.



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. The significant cuts to the hourly rates paid to PAC, both those on local rosters and those who work under contract with IDS, and the continuing inability to pay counsel at the end of each fiscal year are imperiling IDS's ability to ensure effective assistance of counsel. Thus, the Commission and Office respectfully request an additional a recurring increase of \$5.2 million in FY 2018, \$10.6 in FY 2019 and beyond to raise all of the PAC hourly rates by \$10 to be implemented in January 2019.

## **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 AOC's Automated Criminal Infraction System ("ACIS") upon request. With the OSF grant funding for the JSERI initiative that is discussed earlier in this report, IDS hired an Information Technology consultant to build a data warehouse that automates the integration of data from various court information systems into a data depository and facilitates data mining, reporting, and analysis. The data warehouse became operational in July 2014 and minor bugs have been repaired. A module was subsequently added to the warehouse to enable the direct exchange of data between it and the Research Department's statistical analysis program, SPSS, which should help improve the department's productivity.

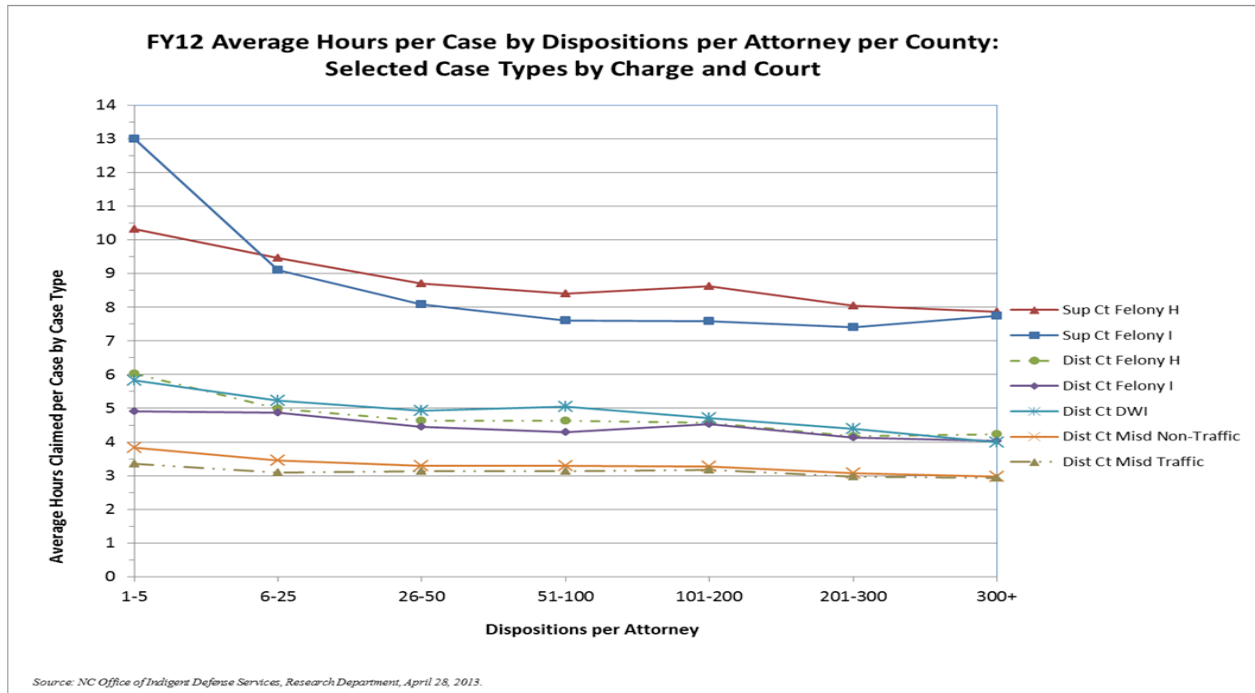
Based on available data, the IDS Commission and Office regularly conduct studies that examine various issues facing indigent defense and the court system. Several key studies, as well as an innovative project that IDS is undertaking, are highlighted below. Detailed reports about all IDS studies are available at [www.ncids.org](http://www.ncids.org) under the "Research & Reports" link.

### **PAC AVERAGE HOURS STUDIES**

In order to assist judges in evaluating fee petitions that are submitted by PAC, the IDS Office completed statewide studies of the hours claimed by attorneys in 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. In June 2013, the Office published an update to both studies. The updated study found that, for most case types, average hours claimed by PAC in fiscal year 2011-12 had increased modestly. The study report articulated a number of factors that could be driving those modest increases, including advances in forensic technologies that have changed the nature of practicing criminal law; the exposure of serious problems with the then-SBI Crime Laboratory; the reduction in PAC hourly rates leading to an increase in hours worked or more accurate documentation of hours worked; the influx of new attorneys to the indigent rosters as a result of the economic downturn; an increase in the number of less experienced attorneys handling indigent cases; an increase in the number of PAC handling cases in multiple counties or districts; and an increase in the number of PAC claiming expenses on their fee applications.

The study then investigated four of the above factors that were susceptible to analysis. First, the study found that the number of attorneys handling indigent cases rose 21% between fiscal years

2007-08 and 2011-12, thereby reducing the average number of appointed criminal cases per PAC by 18%. A regression analysis showed that the changes in caseload inversely impacted average hours per case. In other words, on average, attorneys with higher caseloads claimed fewer hours per case.



Second, the study found that the number of new attorneys joining the indigent rosters had increased between fiscal years 2008-09 and 2011-12. However, less experienced attorneys actually claimed fewer hours per case than more experienced attorneys, most likely due to their lack of familiarity with criminal practice. Third, while the study found that more PAC handled cases in multiple counties or districts, that did not appear to have any significant impact on average hours claimed or cost per case. Fourth, the study tentatively concluded that PAC are claiming expenses more often and that the amount of the expense claims has increased since the hourly rates were reduced.

## CAPITAL CASE STUDIES AND REPORTS

In the fall of 2016, as required by Section 19A.3(a) of S.L. 2016-94, representatives of the Office of Indigent Defense Services and the Conference of District Attorneys met to review the current system under which first degree murder and undesignated murder charges are designated by a prosecutor as either capital or non-capital and to study whether there are steps that can be taken to improve the current system.

- The costs for private counsel and experts for a first-degree murder case that proceeds as a capital case are more than four times the cost of a first-degree murder case that is not capital. [\$93,231 v. \$21,022]
- The costs for private counsel and experts in a first-degree murder case are significantly higher than the cost for a B1/B2 felony prosecution. [\$21,022 v. \$2,847]

- A capital declaration is more likely to produce a first-degree murder conviction and life sentence; however, the cost for the defense in a capital case that results in a plea to a life sentence is almost twice the cost for the defense in a non-capital first-degree trial that results in a life sentence. [\$83,488 v. \$44,480 ]
- A case that is declared capital takes approximately 50% longer to resolve than a non-capital first-degree murder case.
- With the exception of cases in which the prosecution is committed to a capital trial, or to a plea to a life sentence, the designation of a case as capital often does not change the outcome. In cases that proceed as a capital prosecution, 2.2% of defendants are found guilty of second-degree murder at trial and 35% of the defendants plead guilty to second degree murder. In non-capital cases, 2.3% of defendants are found guilty of second-degree murder at trial and 34.9% plead guilty to second degree murder.
- The increased cost of a first-degree murder defense is often incurred in cases in which the defendant pleads guilty to charges of less than second-degree murder. In 11.5% of first-degree murder cases that are declared capital and resolved by plea, the defendant pleads guilty to charges of less than second-degree murder. In non-capital first-degree murder cases the rate is much higher, with 33% of pleas being to a charge of less than second-degree murder.
- Districts that charge homicides as first-degree murder more often do not get different results than districts that charge homicides as first-degree murder less often.

IDS also recently undertook a study of costs in potentially capital cases disposed in FY 14 and FY15. Notable key findings from this study include:

- The average cost of a potentially capital case during FY14 and FY15 was \$36,222 and the median cost was \$19,582.
- The average cost of cases that proceeded capitally at some point was \$122,268, while the average cost of a case that proceeded non-capitally was \$23,231.
- Less than 1% of potentially capital cases resulted in a Death conviction, while 15.2% resulted in Life Without Parole (LWOP) and 84.5% resulted in second degree murder or less.

In December 2008, the IDS Commission and Office finalized a study on IDS's 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. In November 2015, the Commission and Office released an updated study about cases disposed between fiscal year 2006-07 and April 2015.

- While annual attorney expenditures in potentially capital cases at the trial level were relatively flat during the study time period, there has been a shift toward more salaried attorneys handling those cases. The expansion of the Office of the Capital Defender, as well as a renewed focus on using local public defender offices when possible, appears to have led to a corresponding decline in PAC expenditures in potentially capital cases.
- While per case expenditures have risen since the former study time period, the high profile expensive cases remain the exception. Fifty percent of all potentially capital cases had total case costs less than \$18,500 and 90% had total case costs less than \$74,046.

More than 21% of all potentially capital cases had no expert or investigative spending at all, and 53.7% had total expert and investigative spending less than \$5,000.

- Fewer cases are proceeding capitally, which reduces overall costs but increases the average cost of proceeded non-capital cases. Other factors that appeared to contribute to increases in average case costs included changes in the PAC hourly rates, and an increase in the number of PAC hours per case due to changes in forensic technologies and a shift to digital evidence.
- IDS's 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 did not justify the expenditures. More than 83% of the cases in the study ended in convictions of second-degree murder or less, and 45.7% ended in convictions of less than second-degree murder. More than 13% ended in acquittals, dismissals without leave to refile, no true bills, or no probable cause. For cases that actually proceeded capitally, 58.1% ended in second-degree murder or less and 20.1% ended in less than second-degree murder. A mere 2.2% of the cases that actually proceeded capitally ended in a death verdict.

The study also detailed a number of policies that the IDS Commission and Office have implemented to manage costs in potentially capital cases, including the introduction of a two-tiered payment structure for PAC, with the hourly rate decreasing by \$10 after a case has been declared non-capital; pre-trial spending limits and case budgets; the expanded use of salaried attorneys to handle potentially capital cases; a renewed effort to appoint local counsel whenever possible without sacrificing quality representation; and a joint AOC-IDS standardized expert hourly rate schedule.

## **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 would 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. In addition, unlike the Class 3 misdemeanor changes that the General Assembly enacted during the 2013 legislative session, which changed a number of Class 1 and 2 misdemeanors to Class 3 misdemeanors and created a new category of "fine only" Class 3 misdemeanors for defendants with three or fewer prior convictions, reclassification as infractions without regard to the defendants' prior convictions would decrease the burden on our district courts. *See* "Legislative Recommendations: Repeal Class 3 Misdemeanor Changes from 2013 Session and Reclassify Minor Misdemeanors as Infractions," below.

In fiscal year 2010-11, IDS Office staff conducted a misdemeanor reclassification study that 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. Seventeen of the 31 offenses were identified for study because there is a high volume of cases, a high percentage of dismissals or other resolution without conviction, and a lower likelihood of objection to reclassification because, for example, the offense is a victimless crime or reclassification should not have a negative impact on public safety. Additional related statutes were examined to ensure that projected savings could not be eliminated or minimized if law enforcement or 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 (not IDS'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. Those projected savings were based on the prior \$75 hourly rate paid to PAC; based on the current \$55 district court rate, the projected savings from reclassification as infractions should be closer to \$1.65 million. While reclassification of DWLRs would generate additional savings, there are more than 70 ways for a defendant's license to be revoked and the IDS Commission and Office 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 (again, based on the prior PAC hourly rate) in attorney fee savings. Reclassification as infractions would also relieve over-burdened criminal courts and generate additional savings for the prosecutors, courts, jails, corrections, and probation.

As discussed more fully below, § 18B.13.(a) of Session Law 2013-360 amended G.S. 15A-1340.23, to provide that, in most cases, the maximum punishment for a person who is convicted of a Class 3 misdemeanor and who has no more than three prior convictions shall be a \$200 fine. Thus, in most cases, an indigent defendant who is charged with committing a Class 3 misdemeanor on or after December 1, 2013 and who has no more than three prior convictions is not entitled to appointed counsel pursuant to G.S. 7A-451(a)(1). This change lessens potential savings for IDS by reclassifying the 31 statutes proposed since, in most cases, IDS no longer provides counsel for indigent defendants charged with committing these offenses. However, the defendants are still exposed to all of the direct and collateral consequences of a criminal conviction and, if indigent, must navigate the criminal justice system without counsel, resulting in a significant additional strain on the district courts.

## 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 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, and making appropriate adjustments.
- Developing the performance measures and infrastructure to house the data.

The IDS Commission and Office have completed the first three major phases of the project, including developing a blueprint of the performance measures and statistical indicators. 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.

As discussed above, in May 2012, OSF awarded IDS \$225,000 in grant funds to support four aspects of SEP’s work:

- *SEP Pilot Site Project:* SEP hosted a multi-state project to develop nationally comparable Key Performance Indicators (“KPIs”) for indigent defense systems in three areas: case outcomes, access to attorneys, and pretrial release. The multi-state project has developed nationally reviewed KPI measures for client case outcomes and access to attorneys, and is currently working on pretrial release performance measures. Although the grant ended in August 2014, the multi-state project participants continue to work together to develop additional KPIs.
- *Research Toolkits:* SEP developed four toolkits that provide information and instructions to help other indigent defense agencies replicate SEP’s research and products, including a “Building In-House Research Capacity Toolkit,” “Case Outcome Data and KPI Toolkit,” “Access to Attorney Data and KPI Toolkit,” and “Building a Data Warehouse Toolkit.”
- *Data Warehouse:* SEP built the technological infrastructure to house, integrate, and facilitate data mining of more than 20 million data records, with an expected annual growth of more than 2 million records, to sustain SEP’s program evaluation work in the future. The data warehouse became operational in June 2014, and currently houses charge-level and case-level data on all adult criminal cases disposed between January 1,

2008 and December 31, 2014. The program can be shared with other indigent defense agencies around the country upon request.

- *NLADA Research & Data Analysis Advisory Committee*: SEP staff served on the NLADA's Research & Data Analysis Advisory ("RDAA") Committee for over two years. The goal of the RDAA Committee was to expand the research capacity of the defense community nationally.

In February 2016, SEP completed the first analysis of indigent defense system performance for North Carolina. The analysis compared the performance of the various delivery systems that provide indigent defense services in North Carolina, including public defender offices, private appointed counsel, RFP contractors, and the flat per case district court fee systems in Cabarrus and Rowan counties. The case outcomes of over 10 million adult criminal cases disposed between fiscal year 2008-09 and the second quarter of fiscal year 2014-15 were analyzed by attorney type and compensation system using 11 KPIs, including non-conviction rates, how often clients received an alternative to incarceration, and trial and appeal *de novo* rates.

In the long term, the IDS Commission and Office hope this project will enable IDS to begin to identify best practices and to make recommendations for change where needed. The performance measures or KPIs, toolkits, and additional materials about SEP are available at [www.ncids.org](http://www.ncids.org) under the "Research & Reports/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, contractors, and public defenders during fiscal year 2016-17 is attached to this report as Appendix C. The IDS Office is continually working to improve data collection procedures and data reporting capabilities and hopes to continue improving the quality of the data that is reported in future annual reports.

## LEGISLATIVE RECOMMENDATIONS

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

As discussed earlier in this report, as a result of a \$3.4 Million non-recurring appropriation, slightly increased recoupment, and contract savings and slowed demand growth, the Private Assigned Counsel fund is fully funded. Absent unforeseen developments we anticipate no unpaid invoices at year end. The IDS Commission and Office recognize that reductions in spending were needed to meet the fiscal crisis, and have worked diligently to reduce spending over the past several years. However, with the continued 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 an additional appropriation of \$5.2 million in FY 2018, \$10.6 in FY 2019 and beyond to increase the PAC

hourly rates and to make comparable adjustments to contract and flat fee attorney pay. We are recommending a \$10 increase to be implemented beginning January 2019. This funding request assumes that the Office will be permitted to use all recoupment receipts and available lapsed salary funds.

| <b>Type of Case</b>       | <b>Current Hourly Rate</b>                            | <b>Annual Cost of \$10 Increase*</b> |
|---------------------------|---|--------------------------------------|
| Superior Court Criminal   | \$60 for most<br>\$75 for high-level felonies         | \$2.7 million                        |
| District Court Criminal   | \$55 for most<br>\$75 for high-level felonies         | \$3.3 million                        |
| Civil/Other               | \$55  | \$2.6 million                        |
| Juvenile Delinquency      | \$55 for most<br>\$75 for high-level felonies         | \$274,000                            |
| Non-Capital Appeals       | \$60 for most<br>\$70 for high-level felonies         | \$328,500                            |
| Potentially Capital Trial | \$75/\$85/\$90 ( <i>depending on how proceeding</i> ) | \$1.04 million                       |
| <b>Total</b>              |   | <b>\$10.06 million</b>               |

\* Estimated costs based on FY2017 caseloads.

#### **GIVE IDS FLEXIBILITY TO CREATE NEW POSITIONS**

Historically, IDS has had the flexibility to use PAC funds to create new positions in defender offices, following guidelines in a special provision. We have not had that flexibility since FY2015 and will be requesting a special provision in the 2017 Appropriations Act similar to ones in the past that allowed IDS to expand existing offices in response to changing caseloads, increase cost effectiveness, and implement new initiatives. If the age of jurisdiction is raised IDS expects an increase demand on the Office of Juvenile Defender and on public defender offices.

In January of 2017, the North Carolina Commission on the Administration of Law and Justice (“NCCALJ”), (convened by the Chief Justice of the Supreme Court of North Carolina in September of 2015) issued a report entitled “Improving Indigent Defense in North Carolina.” The report recommended retaining IDS’s current commission structure and its accountability to the General Assembly. Additionally, the report made a number of other recommendations about indigent defense, some of which would require legislative action and some of which would not. IDS has begun addressing a number of the recommendations which would not require legislative action, including improving indigency screening and verification processes, developing indigency standards, and developing uniform training standards. Other recommendations which would require legislative action include a general preference for a statewide public defender system including local, district, and regional public defender offices.

The NCCALJ recognized the importance of “robust local supervision.” Specifically, the report states that “an effective indigent defense system requires rigorous supervision and oversight of indigent defense supervisors. To ensure appropriate independence, counsel should be supervised by local system-employed supervisors.” Outside of local public defender offices, this function currently is performed by two IDS employed regional defenders, who provide oversight and support for 218 attorneys working under contracts in 18 counties. An additional regional

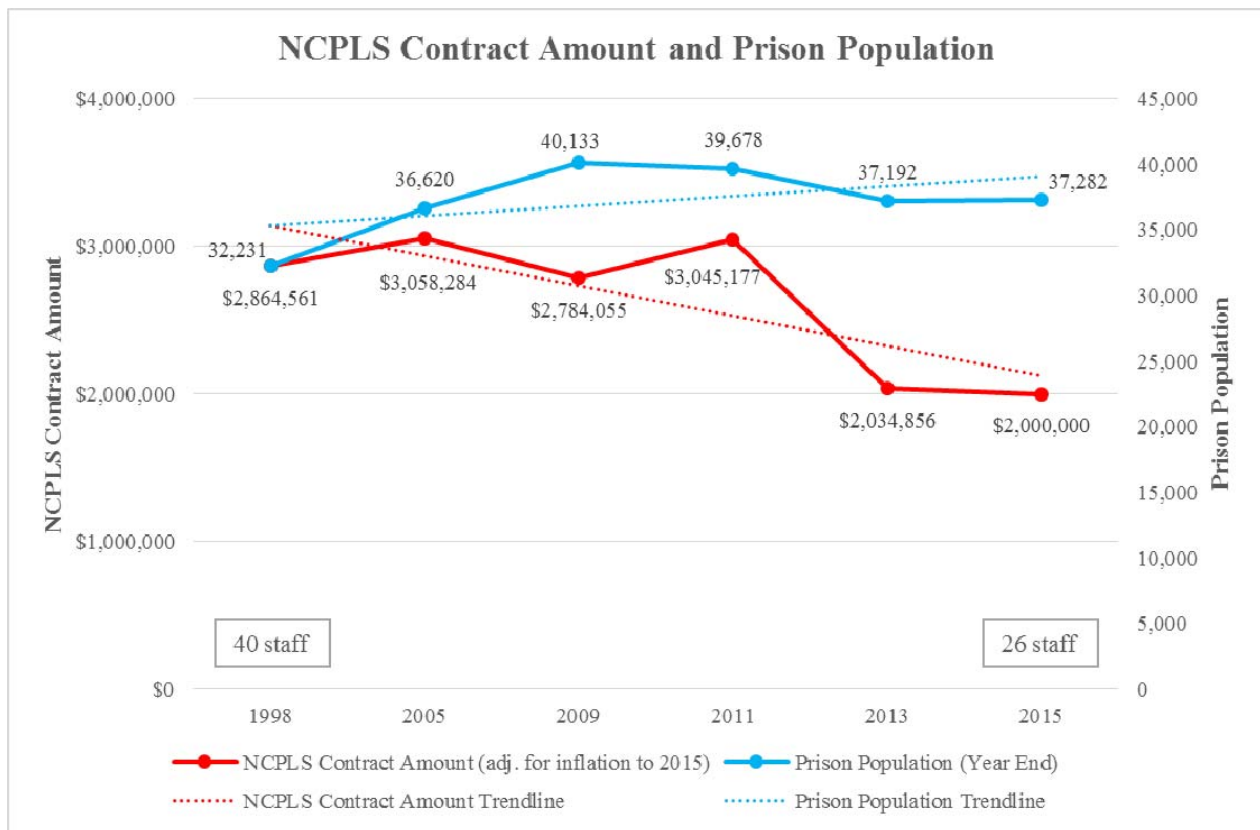


defender will allow IDS to provide oversight and support in other areas of the State, It also will allow IDS to address the need to increase the number and abilities of lawyers accepting appointment to high level felony cases. Therefore, IDS respectfully requests that the General Assembly appropriate an additional \$171,082 in FY2018-19 and \$170,082 in FY2019-20 to support an additional Regional Defender.

IDS further requests that the General Assembly appropriate an additional \$130,115 in FY2018-19 and \$222,788 in FY2019-20 to support an additional Assistant Juvenile Defender in the Office of Juvenile Defender and an additional contracts administration position. As a result of Section 16D of S.L. 2017-57 (“RtA”), there will be an influx of juvenile delinquency cases. Currently there are not enough lawyers trained in this specialized area law. The attorneys who do provide this representation receive oversight and support from the Office of Juvenile Defender, which currently is staffed but the Juvenile Defender, one Assistant Juvenile Defender, and one support staff. Even without the increase in juvenile delinquency cases, this staff level is not enough to provide the needed oversight and support in this important area of the law. The pending increased caseload only heightens the need for an additional position.

### **INCREASE FUNDING FOR NORTH CAROLINA PRISONER LEGAL SERVICES**

In the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets that accompanied the 2013 Appropriations Act, the General Assembly reduced NCPLS’ budget by \$890,000 recurring. Modest contract adjustments have brought that back up to \$2,187,438, which still is not enough to allow North Carolina Prisoner Legal Services to resume cost saving work on jail credit and other issues. The Committee Report stated that the reduction was intended to “reflect the declining number of inmates incarcerated in the state’s prison system.” However, NCPLS’ funding was never increased to match prior increases in the prison population, and the organization now has fewer staff and a significantly lower budget (after adjusting for inflation) than it did in 1998 when the prison population was much smaller.



| Year                        | Prison Population (Year End) | Approx. # of Attorneys and Staff | NCPLS' Contract Amount | NCPLS' Contract Amount (adj. for inflation to 2017 purchasing power) |
|-----------------------------|------------------------------|----------------------------------|------------------------|--|
| 1998                        | 32,231                       | 40                               | \$1.97 million         | \$2.86 million   |
| 2005                        | 36,620                       | 40                               | \$2.52 million         | \$3.06 million   |
| 2009                        | 40,133                       | 40                               | \$2.52 million         | \$2.78 million   |
| 2011                        | 39,678                       | 40                               | \$2.89 million         | \$3.05 million   |
| 2013                        | 37,192                       | 26                               | \$2.00 million         | \$2.03 million   |
| 2015                        | 37,282                       | 26                               | \$2.00 million         | \$2.00 million   |
| 2016                        | 37,000                       | 26                               | \$2.00 million         | \$2.00 million   |
| 2017                        | 37,000                       | 30                               | \$2.20 million         | \$2.20 million   |
| <b>% Change (1998-2017)</b> | <b>12.9%</b>                 | <b>-25.0%</b>                    | <b>+1.5%</b>           | <b>-30.0%</b>  |

In light of the significant funding reduction in the 2013 Appropriations Act, NCPLS had to eliminate a number of attorney and support staff positions, and NCPLS is now working to serve more than 37,000 inmates with only 30 attorneys and support staff. As a result, and as discussed in more detail earlier in this report, NCPLS is no longer able to handle most civil conditions of confinement claims or jail credit issues, and the State is risking a lawsuit on the ground that North Carolina is no longer providing inmates with meaningful access to the courts.

The IDS Commission and Office respectfully request that the General Assembly appropriate an additional \$261,028 in recurring funding to enable NCPLS to continue to provide inmates with its current level of post-conviction services and to resume civil conditions of confinement work and its jail credit program:

- Due to increases in operating expenses, NCPLS would need an additional \$261,028 in recurring funding to continue its current level of post-conviction services by filling two vacant attorney positions.
- NCPLS would need an additional \$69,940 recurring to resume civil conditions of confinement work, with the exclusion of medical malpractice complaints. That funding would enable the organization to hire two new civil attorneys and one paralegal.
- NCPLS would need an additional \$191,088 to resume assisting inmates with receiving proper jail credit for time served. That amount would enable them to fund an additional  $\frac{1}{4}$  of an existing  $\frac{3}{4}$  attorney position, who would supervise four new paralegals. In calendar year 2012, before the funding reductions, NCPLS paralegals, who are considerably less expensive than attorneys, identified and corrected 11,000 days of unapplied jail credit, saving the State more than \$1 million in incarceration costs.

### **REPEAL CLASS 3 MISDEMEANOR CHANGES FROM 2013 SESSION AND RECLASSIFY MINOR MISDEMEANORS AS INFRACTIONS**

For many years, the IDS Commission and Office have advocated that the General Assembly reclassify as infractions certain lower-level traffic or other misdemeanors that rarely or never result in jail sentences when reclassification would not undermine public safety or compromise a defendant's ability to resolve underlying issues, such as a revoked license. If some such offenses are reclassified, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. *See* "Misdemeanor Reclassification Study," above.

Effective for offenses committed on or after December 1, 2013, § 18B.13.(a) of Session Law 2013-360 amended G.S. 15A-1340.23 to provide that, unless otherwise noted, the maximum punishment for a person who is convicted of a Class 3 misdemeanor and who has no more than three prior convictions shall be a \$200 fine. Thus, unless otherwise noted, an indigent defendant who is charged with committing a Class 3 misdemeanor on or after December 1, 2013 and who has no more than three prior convictions is not entitled to appointed counsel pursuant to G.S. 7A-451(a)(1). Section 18B.14 of Session Law 2013-360, as amended by §§ 4, 5, and 6 of Session Law 2013-385, also reclassified a number of Class 1 and Class 2 misdemeanors as Class 3 misdemeanors as of the same effective date. As a result of those changes, the General Assembly reduced IDS's budget by \$2 million.

While the changes that the General Assembly enacted do eliminate the right to counsel for some Class 3 misdemeanants, the defendants are still exposed to all of the direct and collateral consequences of a criminal conviction (other than an active or suspended term of imprisonment). In addition, if the defendant is indigent, he or she now must navigate the criminal justice system without counsel, which is resulting in a significant additional strain on the district courts. Finally, the changes require judges to make findings about prior record levels at the beginning of cases when that information often is not available. As a result, there has been ongoing confusion in the district courts and widespread errors in how appointments are being handled. The IDS Commission and Office urge the General Assembly to reclassify the identified offenses as infractions, without regard to the defendants' prior convictions.

Even if all 31 offenses that IDS recommends for reclassification without regard to prior convictions are reclassified, IDS's appropriation has already been reduced by more than the full projected savings at the current district court PAC rate (\$1.65 million). As a result, any further reclassification should not result in further funding reductions for IDS, but would help IDS meet the \$2 million annual reduction that the General Assembly has already imposed.

### **ALLOW DEFENSE ACCESS TO CRIMINAL JUSTICE LAW ENFORCEMENT AUTOMATED DATA SYSTEM (“CJLEADS”)**

Allowing defense access to CJLEADS, at least for full-time attorneys employed in public and statewide defender offices, would help the offices with a number of tasks, such as: 1) determining clients' criminal, juvenile, and driving records; 2) determining clients' credit for time served; 3) identifying clients' other outstanding charges, including charges in other jurisdictions; 4) receiving notifications of clients' jail bookings; and 5) receiving notifications of new charges brought against clients. Having CJLEADS for these functions would likewise make the court system run more smoothly by reducing delays, because the attorneys could better and earlier in the court process advise their clients about the potential consequences they face, work to limit unintended adverse effects for those clients, find successful interventions to prevent the clients from reentering the system, resolve all charges at once, and keep track of clients who are rearrested and detained.

The current statutes appear to provide that information supplied by the various source agencies does not become a public record by virtue of being included in CJLEADS, that the source agencies remain the custodians of the information, and that information can only be disclosed according to rules adopted by those agencies. Thus, to allow for defense access, all of the source agencies would have to adopt a rule allowing it or the statutes would need to be amended. It is IDS's understanding that the district attorneys are not opposed to state employed defenders having access to CJLEADS as long as the appropriate security precautions are taken, but there would be some programming costs associated with it.

## **ADDITIONAL LEGISLATIVE RECOMMENDATIONS**

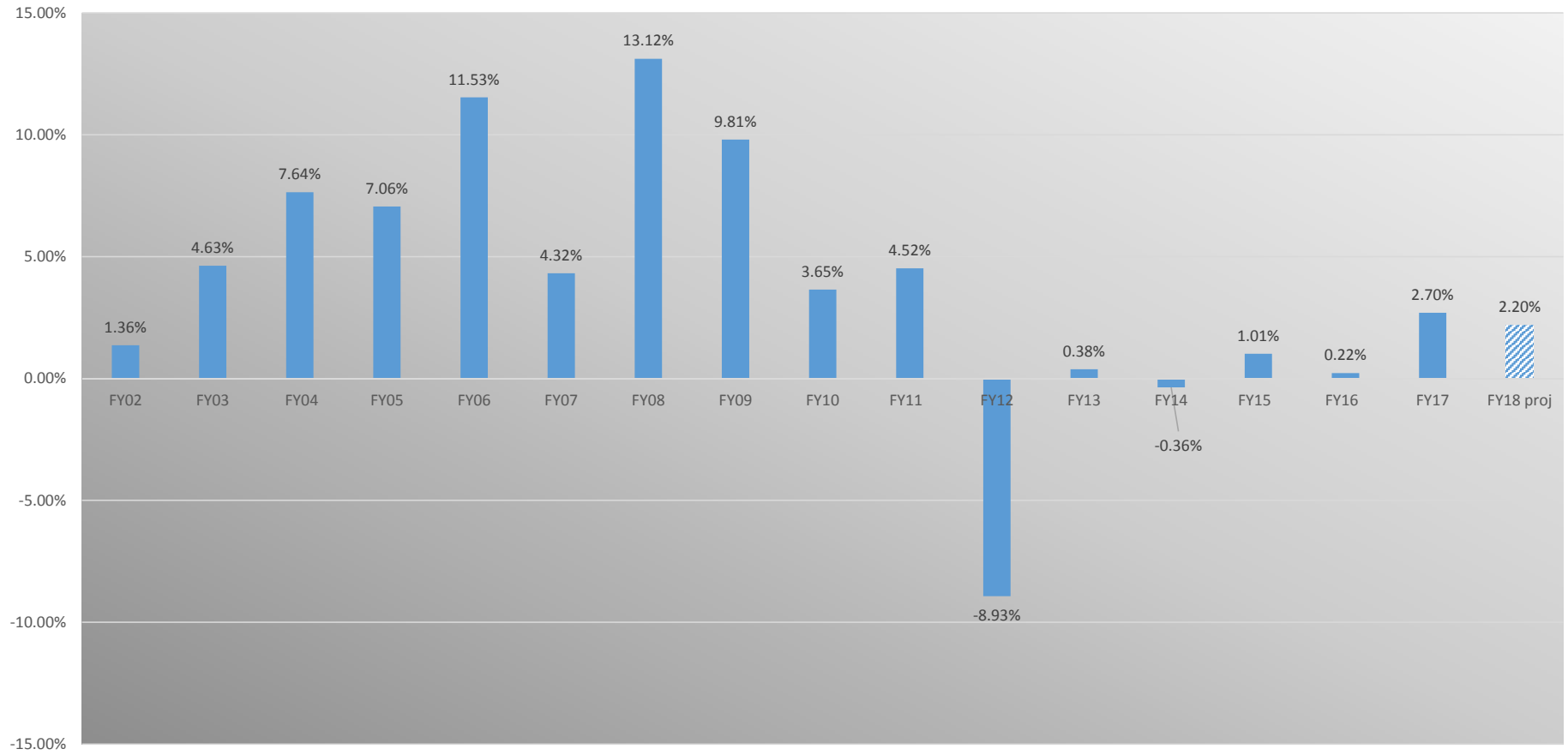
During the 2018 short session, the IDS Commission and Office may recommend additional changes in law or funding that would assist IDS in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

## **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 Percentage Change in Actual Total Indigent Defense Services\* (Demand)



\*excludes prior year obligations and includes current obligations

## **APPENDIX B**



| 2017 RECOUPMENT ANALYSIS |                           |                 |               |                                 |                      |                      |                     |
|--------------------------|---------------------------|-----------------|---------------|---------------------------------|----------------------|----------------------|---------------------|
| County                   | Recoupment Totals by Type |                 |               | Recoupment as Share of Spending |                      |                      |                     |
|                          | Attorneys Fees            | Appointment Fee | Total         | Non Capital Spending            | Recoupment %<br>2017 | Recoupment %<br>2016 | Drop in Recoup<br>% |
| Alamance                 | \$ 208,005.96             | \$ 39,235.59    | \$ 247,241.55 | \$1,135,639                     | 21.8%                | 26.2%                | -4.40%              |
| Alexander                | \$ 60,922.21              | \$ 10,531.53    | \$ 71,453.74  | \$338,668                       | 21.1%                | 17.0%                | 4.12%               |
| Alleghany                | \$ 16,633.84              | \$ 4,585.67     | \$ 21,219.51  | \$84,311                        | 25.2%                | 20.1%                | 5.03%               |
| Anson                    | \$ 62,291.69              | \$ 8,138.93     | \$ 70,430.62  | \$293,947                       | 24.0%                | 20.4%                | 3.55%               |
| Ashe                     | \$ 39,462.20              | \$ 9,032.16     | \$ 48,494.36  | \$209,472                       | 23.2%                | 20.3%                | 2.84%               |
| Avery                    | \$ 29,396.07              | \$ 4,784.95     | \$ 34,181.02  | \$171,594                       | 19.9%                | 23.2%                | -3.29%              |
| Beaufort                 | \$ 68,737.80              | \$ 10,436.51    | \$ 79,174.31  | \$784,879                       | 10.1%                | 12.5%                | -2.37%              |
| Bertie                   | \$ 18,636.52              | \$ 2,104.60     | \$ 20,741.12  | \$131,015                       | 15.8%                | 14.9%                | 0.92%               |
| Bladen                   | \$ 53,348.47              | \$ 5,944.50     | \$ 59,292.97  | \$510,209                       | 11.6%                | 14.4%                | -2.76%              |
| Brunswick                | \$ 102,191.62             | \$ 17,036.87    | \$ 119,228.49 | \$1,458,663                     | 8.2%                 | 10.5%                | -2.30%              |
| Buncombe                 | \$ 130,713.59             | \$ 42,035.58    | \$ 172,749.17 | \$3,439,497                     | 5.0%                 | 5.0%                 | 0.04%               |
| Burke                    | \$ 101,505.82             | \$ 11,168.11    | \$ 112,673.93 | \$814,319                       | 13.8%                | 15.7%                | -1.81%              |
| Cabarrus                 | \$ 254,538.90             | \$ 46,313.54    | \$ 300,852.44 | \$992,807                       | 30.3%                | 27.6%                | 2.75%               |
| Caldwell                 | \$ 117,121.64             | \$ 14,074.03    | \$ 131,195.67 | \$793,177                       | 16.5%                | 18.7%                | -2.13%              |
| Camden                   | \$ 6,797.46               | \$ 1,987.65     | \$ 8,785.11   | \$65,715                        | 13.4%                | 8.8%                 | 4.55%               |
| Carteret                 | \$ 44,724.01              | \$ 7,478.84     | \$ 52,202.85  | \$808,494                       | 6.5%                 | 8.6%                 | -2.18%              |
| Caswell                  | \$ 31,925.63              | \$ 4,835.41     | \$ 36,761.04  | \$180,709                       | 20.3%                | 27.8%                | -7.42%              |
| Catawba                  | \$ 152,938.59             | \$ 13,711.31    | \$ 166,649.90 | \$1,280,017                     | 13.0%                | 15.7%                | -2.67%              |
| Chatham                  | \$ 13,417.19              | \$ 6,233.99     | \$ 19,651.18  | \$592,296                       | 3.3%                 | 3.6%                 | -0.32%              |
| Cherokee                 | \$ 33,233.37              | \$ 6,316.97     | \$ 39,550.34  | \$377,333                       | 10.5%                | 10.7%                | -0.19%              |
| Chowan                   | \$ 13,877.15              | \$ 1,550.91     | \$ 15,428.06  | \$112,676                       | 13.7%                | 10.0%                | 3.71%               |
| Clay                     | \$ 12,760.27              | \$ 2,014.38     | \$ 14,774.65  | \$118,030                       | 12.5%                | 8.9%                 | 3.62%               |
| Cleveland                | \$ 142,648.13             | \$ 40,924.34    | \$ 183,572.47 | \$853,557                       | 21.5%                | 13.6%                | 7.94%               |
| Columbus                 | \$ 79,154.09              | \$ 10,908.14    | \$ 90,062.23  | \$812,115                       | 11.1%                | 9.1%                 | 1.99%               |
| Craven                   | \$ 124,289.32             | \$ 15,556.76    | \$ 139,846.08 | \$685,837                       | 20.4%                | 19.6%                | 0.82%               |
| Cumberland               | \$ 219,715.23             | \$ 32,479.38    | \$ 252,194.61 | \$4,221,721                     | 6.0%                 | 3.2%                 | 2.73%               |
| Currituck                | \$ 22,242.51              | \$ 4,179.30     | \$ 26,421.81  | \$309,678                       | 8.5%                 | 9.2%                 | -0.68%              |
| Dare                     | \$ 56,063.04              | \$ 9,494.72     | \$ 65,557.76  | \$519,383                       | 12.6%                | 10.8%                | 1.86%               |
| Davidson                 | \$ 245,900.10             | \$ 30,911.64    | \$ 276,811.74 | \$1,228,380                     | 22.5%                | 21.5%                | 0.99%               |
| Davie                    | \$ 51,438.88              | \$ 9,066.88     | \$ 60,505.76  | \$306,425                       | 19.7%                | 18.1%                | 1.61%               |
| Duplin                   | \$ 68,568.15              | \$ 10,683.57    | \$ 79,251.72  | \$470,368                       | 16.8%                | 23.4%                | -6.55%              |
| Durham                   | \$ 100,149.60             | \$ 27,457.80    | \$ 127,607.40 | \$4,238,416                     | 3.0%                 | 3.0%                 | -0.01%              |
| Edgecombe                | \$ 74,329.57              | \$ 10,501.89    | \$ 84,831.46  | \$412,090                       | 20.6%                | 19.0%                | 1.61%               |
| Forsyth                  | \$ 268,878.85             | \$ 68,526.79    | \$ 337,405.64 | \$4,008,660                     | 8.4%                 | 8.6%                 | -0.17%              |
| Franklin                 | \$ 51,793.01              | \$ 9,989.97     | \$ 61,782.98  | \$392,586                       | 15.7%                | 18.6%                | -2.91%              |
| Gaston                   | \$ 56,073.55              | \$ 52,514.24    | \$ 108,587.79 | \$2,906,992                     | 3.7%                 | 3.4%                 | 0.37%               |
| Gates                    | \$ 8,833.75               | \$ 1,301.25     | \$ 10,135.00  | \$67,289                        | 15.1%                | 11.1%                | 3.99%               |
| Graham                   | \$ 10,284.43              | \$ 1,477.75     | \$ 11,762.18  | \$113,226                       | 10.4%                | 9.6%                 | 0.75%               |
| Granville                | \$ 49,280.76              | \$ 8,772.50     | \$ 58,053.26  | \$333,830                       | 17.4%                | 17.0%                | 0.36%               |
| Greene                   | \$ 21,460.94              | \$ 1,953.51     | \$ 23,414.45  | \$128,642                       | 18.2%                | 16.7%                | 1.53%               |
| Guilford                 | \$ 252,868.41             | \$ 80,023.18    | \$ 332,891.59 | \$5,568,073                     | 6.0%                 | 6.1%                 | -0.13%              |
| Halifax                  | \$ 95,221.86              | \$ 12,737.96    | \$ 107,959.82 | \$867,656                       | 12.4%                | 12.0%                | 0.44%               |
| Harnett                  | \$ 68,355.45              | \$ 12,935.28    | \$ 81,290.73  | \$964,328                       | 8.4%                 | 8.7%                 | -0.24%              |
| Haywood                  | \$ 107,865.63             | \$ 15,676.18    | \$ 123,541.81 | \$714,051                       | 17.3%                | 13.7%                | 3.62%               |
| Henderson                | \$ 76,638.11              | \$ 19,309.71    | \$ 95,947.82  | \$1,147,944                     | 8.4%                 | 8.1%                 | 0.28%               |
| Hertford                 | \$ 28,249.27              | \$ 4,197.03     | \$ 32,446.30  | \$194,892                       | 16.6%                | 15.1%                | 1.53%               |
| Hoke                     | \$ 24,957.82              | \$ 3,618.63     | \$ 28,576.45  | \$719,827                       | 4.0%                 | 3.7%                 | 0.30%               |
| Hyde                     | \$ 10,783.61              | \$ 1,234.49     | \$ 12,018.10  | \$66,401                        | 18.1%                | 15.3%                | 2.83%               |
| Iredell                  | \$ 206,507.14             | \$ 32,125.29    | \$ 238,632.43 | \$1,313,638                     | 18.2%                | 19.2%                | -1.06%              |
| Jackson                  | \$ 57,050.31              | \$ 8,451.87     | \$ 65,502.18  | \$333,364                       | 19.6%                | 17.2%                | 2.49%               |
| Johnston                 | \$ 118,939.67             | \$ 32,093.11    | \$ 151,032.78 | \$1,182,319                     | 12.8%                | 11.2%                | 1.62%               |
| Jones                    | \$ 19,270.12              | \$ 2,654.31     | \$ 21,924.43  | \$114,264                       | 19.2%                | 25.9%                | -6.67%              |
| Lee                      | \$ 72,006.55              | \$ 19,865.67    | \$ 91,872.22  | \$474,584                       | 19.4%                | 20.5%                | -1.12%              |
| Lenoir                   | \$ 107,351.19             | \$ 16,066.99    | \$ 123,418.18 | \$621,258                       | 19.9%                | 19.8%                | 0.07%               |
| Lincoln                  | \$ 108,881.00             | \$ 21,488.42    | \$ 130,369.42 | \$577,591                       | 22.6%                | 24.7%                | -2.09%              |
| Macon                    | \$ 40,143.21              | \$ 6,301.92     | \$ 46,445.13  | \$387,051                       | 12.0%                | 17.6%                | -5.64%              |
| Madison                  | \$ 42,187.75              | \$ 8,411.21     | \$ 50,598.96  | \$217,395                       | 23.3%                | 24.6%                | -1.29%              |
| Martin                   | \$ 33,516.30              | \$ 6,139.99     | \$ 39,656.29  | \$313,928                       | 12.6%                | 11.7%                | 0.94%               |
| McDowell                 | \$ 91,470.83              | \$ 15,384.50    | \$ 106,855.33 | \$726,391                       | 14.7%                | 13.2%                | 1.54%               |
| Mecklenburg              | \$ 329,214.12             | \$ 56,906.16    | \$ 386,120.28 | \$12,037,207                    | 3.2%                 | 3.0%                 | 0.16%               |
| Mitchell                 | \$ 29,168.25              | \$ 5,311.17     | \$ 34,479.42  | \$232,059                       | 14.9%                | 17.0%                | -2.13%              |
| Montgomery               | \$ 27,683.94              | \$ 6,897.56     | \$ 34,581.50  | \$224,029                       | 15.4%                | 15.2%                | 0.20%               |
| Moore                    | \$ 96,009.70              | \$ 15,912.37    | \$ 111,922.07 | \$807,281                       | 13.9%                | 16.6%                | -2.72%              |
| Nash                     | \$ 129,536.57             | \$ 17,912.07    | \$ 147,448.64 | \$685,050                       | 21.5%                | 20.3%                | 1.20%               |
| New Hanover              | \$ 207,730.60             | \$ 36,264.13    | \$ 243,994.73 | \$3,135,798                     | 7.8%                 | 8.2%                 | -0.38%              |
| Northampton              | \$ 10,518.47              | \$ 1,929.13     | \$ 12,447.60  | \$140,507                       | 8.9%                 | 10.9%                | -2.06%              |
| Onslow                   | \$ 194,212.14             | \$ 30,617.93    | \$ 224,830.07 | \$1,384,775                     | 16.2%                | 21.6%                | -5.35%              |
| Orange                   | \$ 35,427.90              | \$ 10,034.33    | \$ 45,462.23  | \$1,388,622                     | 3.3%                 | 4.5%                 | -1.24%              |
| Pamlico                  | \$ 18,085.85              | \$ 3,227.15     | \$ 21,313.00  | \$102,796                       | 20.7%                | 15.6%                | 5.14%               |
| Pasquotank               | \$ 41,738.04              | \$ 7,878.07     | \$ 49,616.11  | \$529,369                       | 9.4%                 | 12.7%                | -3.29%              |
| Pender                   | \$ 47,884.94              | \$ 10,434.16    | \$ 58,319.10  | \$440,652                       | 13.2%                | 19.6%                | -6.33%              |
| Perquimans               | \$ 16,243.19              | \$ 2,400.31     | \$ 18,643.50  | \$91,795                        | 20.3%                | 9.6%                 | 10.67%              |
| Person                   | \$ 75,410.81              | \$ 7,757.44     | \$ 83,168.25  | \$483,304                       | 17.2%                | 15.5%                | 1.74%               |
| Pitt                     | \$ 143,267.37             | \$ 24,226.07    | \$ 167,493.44 | \$2,603,971                     | 6.4%                 | 6.0%                 | 0.47%               |
| Polk                     | \$ 15,623.68              | \$ 4,214.77     | \$ 19,838.45  | \$229,003                       | 8.7%                 | 6.6%                 | 2.06%               |
| Randolph                 | \$ 145,659.93             | \$ 25,534.70    | \$ 171,194.63 | \$982,936                       | 17.4%                | 16.7%                | 0.69%               |
| Richmond                 | \$ 90,865.43              | \$ 14,555.33    | \$ 105,420.76 | \$828,759                       | 12.7%                | 12.3%                | 0.39%               |
| Robeson                  | \$ 81,021.02              | \$ 9,654.19     | \$ 90,675.21  | \$3,227,647                     | 2.8%                 | 3.4%                 | -0.56%              |

| County       | Recoupment Totals by Type |                 |                  | Recoupment as Share of Spending |                      |                      |                     |
|--------------|---------------------------|-----------------|------------------|---------------------------------|----------------------|----------------------|---------------------|
|              | Attorneys Fees            | Appointment Fee | Total            | Non Capital Spending            | Recoupment %<br>2017 | Recoupment %<br>2016 | Drop in Recoup<br>% |
| Rockingham   | \$ 156,360.97             | \$ 22,894.02    | \$ 179,254.99    | \$869,177                       | 20.6%                | 14.9%                | 5.73%               |
| Rowan        | \$ 257,889.56             | \$ 46,751.59    | \$ 304,641.15    | \$1,403,613                     | 21.7%                | 24.7%                | -3.01%              |
| Rutherford   | \$ 133,002.90             | \$ 29,872.00    | \$ 162,874.90    | \$770,959                       | 21.1%                | 20.5%                | 0.60%               |
| Sampson      | \$ 67,443.40              | \$ 12,224.79    | \$ 79,668.19     | \$381,064                       | 20.9%                | 23.5%                | -2.57%              |
| Scotland     | \$ 17,217.99              | \$ 2,828.59     | \$ 20,046.58     | \$937,863                       | 2.1%                 | 2.6%                 | -0.44%              |
| Stanly       | \$ 65,186.97              | \$ 10,605.88    | \$ 75,792.85     | \$398,057                       | 19.0%                | 19.2%                | -0.17%              |
| Stokes       | \$ 50,719.51              | \$ 6,363.72     | \$ 57,083.23     | \$401,425                       | 14.2%                | 24.1%                | -9.86%              |
| Surry        | \$ 111,743.07             | \$ 17,244.59    | \$ 128,987.66    | \$614,681                       | 21.0%                | 19.9%                | 1.08%               |
| Swain        | \$ 23,602.97              | \$ 4,331.05     | \$ 27,934.02     | \$270,871                       | 10.3%                | 8.5%                 | 1.79%               |
| Transylvania | \$ 25,384.00              | \$ 5,717.84     | \$ 31,101.84     | \$432,662                       | 7.2%                 | 5.6%                 | 1.63%               |
| Tyrrell      | \$ 7,913.05               | \$ 1,654.82     | \$ 9,567.87      | \$64,803                        | 14.8%                | 14.1%                | 0.64%               |
| Union        | \$ 213,884.12             | \$ 36,225.38    | \$ 250,109.50    | \$1,340,073                     | 18.7%                | 18.7%                | -0.05%              |
| Vance        | \$ 73,716.14              | \$ 11,061.37    | \$ 84,777.51     | \$434,711                       | 19.5%                | 37.7%                | -18.18%             |
| Wake         | \$ 286,002.42             | \$ 154,363.88   | \$ 440,366.30    | \$7,438,819                     | 5.9%                 | 5.8%                 | 0.11%               |
| Warren       | \$ 18,636.88              | \$ 2,739.72     | \$ 21,376.60     | \$116,271                       | 18.4%                | 30.5%                | -12.16%             |
| Washington   | \$ 12,468.65              | \$ 2,338.48     | \$ 14,807.13     | \$131,059                       | 11.3%                | 17.0%                | -5.68%              |
| Watauga      | \$ 80,267.58              | \$ 12,691.98    | \$ 92,959.56     | \$348,519                       | 26.7%                | 23.6%                | 3.03%               |
| Wayne        | \$ 135,712.39             | \$ 18,678.36    | \$ 154,390.75    | \$933,223                       | 16.5%                | 12.8%                | 3.74%               |
| Wilkes       | \$ 93,836.39              | \$ 28,911.78    | \$ 122,748.17    | \$488,850                       | 25.1%                | 24.9%                | 0.26%               |
| Wilson       | \$ 90,929.71              | \$ 8,477.32     | \$ 99,407.03     | \$589,931                       | 16.9%                | 15.8%                | 1.02%               |
| Yadkin       | \$ 82,297.63              | \$ 11,374.07    | \$ 93,671.70     | \$302,699                       | 30.9%                | 37.8%                | -6.85%              |
| Yancey       | \$ 43,316.92              | \$ 7,730.56     | \$ 51,047.48     | \$142,121                       | 35.9%                | 26.4%                | 9.56%               |
| Totals       | \$8,569,383               | \$1,681,717     | \$ 10,251,100.34 | \$101,574,630                   | 10.09%               | 10.14%               | -0.05%              |

## **APPENDIX C**

**COST AND CASE DATA ON REPRESENTATION OF INDIGENT DEFENDANTS**

July 1, 2016-June 30, 2017

|  | Number of Cases* | Total Cost**         |
|--|------------------|----------------------|
| <b>Assigned Private Counsel</b>          |                  |                      |
| Potentially Capital Trial                | 1,329            | 7,993,346            |
| Capital appeals/post-conviction          | 117              | 672,439              |
| Adult non-capital cases                  | 146,710          | \$48,009,666         |
| Juvenile cases                           | 4,949            | \$1,375,949          |
| Guardian ad Litem assigned by IDS        | 548              | \$217,326            |
| <b>Total</b>                             | <b>153,653</b>   | <b>\$58,268,726</b>  |
| <b>Individually Negotiated Contracts</b> |                  |                      |
| <b>RFP Contracts</b>                     | 8,924            | \$1,613,632          |
| <b>Legal Services to Inmates</b>         | 26,861           | \$7,805,097          |
|  | 12               | \$2,427,055          |
|  |                  | \$76,108,498         |
| <b>Public Defender Offices</b>           |                  |                      |
| District 1 & 2***                        | 2,486            | \$2,124,693          |
| District 3A                              | 3,375            | \$1,940,437          |
| District 3B (Carteret County)            | 1,310            | \$544,001            |
| District 5 (New Hanover)                 | 5,701            | \$2,186,124          |
| District 10                              | 9,793            | \$4,406,338          |
| District 12                              | 6,344            | \$2,214,899          |
| District 14                              | 10,197           | \$3,101,418          |
| District 15B                             | 2,616            | \$1,573,821          |
| District 16A                             | 2,131            | \$1,266,016          |
| District 16B                             | 3,144            | \$1,623,214          |
| District 18                              | 9,968            | \$3,907,256          |
| District 21                              | 6,752            | \$2,736,176          |
| District 26                              | 19,426           | \$7,885,225          |
| District 27A                             | 6,223            | \$2,312,708          |
| District 28                              | 7,066            | \$1,920,250          |
| District 29B                             | 2,515            | \$1,091,946          |
| <b>Total</b>                             | <b>99,047</b>    | <b>\$40,834,524</b>  |
| <b>Office of the Appellate Defender</b>  | 275              | \$3,110,248          |
| <b>Office of the Capital Defender</b>    | 135              | \$3,733,128          |
| <b>Office of Special Counsel</b>         | 13,411           | \$1,434,969          |
| <b>TOTAL DISPOSITION PAC+PD</b>          | <b>302,306</b>   | <b>119,227,379</b>   |
| <b>Support Services (PAC only)****</b>   |                  |                      |
| Transcripts, records, and briefs         |                  | \$591,750            |
| Expert witness fees                      |                  | \$2,212,774          |
| Investigator fees                        |                  | \$3,089,661          |
| Interpreters & Translators               |                  | \$91,471             |
| Lay Witness Expenses                     |                  | \$8,332              |
| <b>Total</b>                             |                  | <b>\$5,993,988</b>   |
| <b>Set-Off Debt Collection</b>           |                  | <b>\$126,401</b>     |
| <b>Indigent Defense Services</b>         |                  | <b>\$2,427,577</b>   |
| <b>Office of the Juvenile Defender</b>   |                  | <b>\$292,515</b>     |
| <b>TOTAL INDIGENT DEFENSE SERVICES</b>   |                  | <b>\$128,067,860</b> |

\* The number of "cases" shown for private assigned counsel (PAC) 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 FY 17. For contractors, numbers are dispositions reported per contract requirements. For the Office of the Capital Defender, numbers include pending cases but not withdrawals.

\*\* 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. Figures here exclude \$4.5 Million in payments held from FY2016 but include \$800,000 held for FY18. These figures also exclude receipt supported positions in Mecklenburg County and the IDS office and dual employment payments.

\*\*\* The number of cases and total cost for the District 1 Public Defender Office includes expansion into all counties in District 2, effective February 2013. 903 of the reported FY17 dispositions were in District 2.

\*\*\*\* Support service costs for public defender offices and statewide defender offices are included in total office costs.

**Assigned and Contracted Private Counsel and Experts  
Fee Applications and Demand, All Accounts  
July 1, 2016-June 30, 2017**

|                           | <u>Number of Fee Applications<br/>&amp; Contract Dispositions</u> | <u>Demand</u>  |
|---------------------------|---|----------------|
| <b><u>District 1</u></b>  |   |                |
| Camden                    | 37  | \$58,361.12    |
| Chowan                    | 74  | \$39,292.62    |
| Currituck                 | 134   | \$79,166.03    |
| Dare                      | 201   | \$104,888.35   |
| Gates                     | 48  | \$60,359.22    |
| Pasquotank                | 217   | \$150,952.58   |
| Perquimans                | 50  | \$66,804.61    |
| District Total            | 761   | \$559,824.53   |
| <b><u>District 2</u></b>  |   |                |
| Beaufort                  | 1,027   | \$397,446.96   |
| Hyde                      | 41  | \$20,315.38    |
| Martin                    | 444   | \$203,319.19   |
| Tyrrell                   | 58  | \$19,046.30    |
| Washington                | 153   | \$62,623.20    |
| District Total            | 1,723   | \$702,751.03   |
| <b><u>District 3A</u></b> |   |                |
| Pitt                      | 2,124   | \$912,804.12   |
| District Total            | 2,124   | \$912,804.12   |
| <b><u>District 3B</u></b> |   |                |
| Carteret                  | 462   | \$450,630.11   |
| Craven                    | 2,340   | \$930,924.52   |
| Pamlico                   | 281   | \$157,939.90   |
| District Total            | 3,083   | \$1,539,494.53 |
| <b><u>District 4A</u></b> |   |                |
| Duplin                    | 1,819   | \$554,730.87   |
| Jones                     | 315   | \$114,263.63   |
| Sampson                   | 1,465   | \$445,131.25   |
| District Total            | 3,599   | \$1,114,125.75 |
| <b><u>District 4B</u></b> |   |                |
| Onslow                    | 5,518   | \$1,802,958.68 |
| District Total            | 5,518   | \$1,802,958.68 |
| <b><u>District 5</u></b>  |   |                |
| New Hanover               | 2,953   | \$1,145,543.74 |
| Pender                    | 1,316   | \$447,728.53   |
| District Total            | 4,269   | \$1,593,272.27 |
| <b><u>District 6A</u></b> |   |                |
| Halifax                   | 2,808   | \$1,003,883.52 |
| District Total            | 2,808   | \$1,003,883.52 |
| <b><u>District 6B</u></b> |   |                |
| Bertie                    | 413   | \$168,654.35   |
| Hertford                  | 594   | \$220,263.77   |

|                             |       |                |
|-----------------------------|-------|----------------|
| Northampton                 | 475   | \$214,525.82   |
| District Total              | 1,482 | \$603,443.94   |
| <b><u>District 7A</u></b>   |       |                |
| Nash                        | 1,885 | \$819,080.56   |
| District Total              | 1,885 | \$819,080.56   |
| <b><u>District 7B/C</u></b> |       |                |
| Edgecombe                   | 1,360 | \$500,853.05   |
| Wilson                      | 1,665 | \$803,216.89   |
| District Total              | 3,025 | \$1,304,070    |
| <b><u>District 8A</u></b>   |       |                |
| Greene                      | 561   | \$155,980.06   |
| Lenoir                      | 2,096 | \$963,251.44   |
| District Total              | 2,657 | \$1,119,231.50 |
| <b><u>District 8B</u></b>   |       |                |
| Wayne                       | 2,808 | \$1,097,456.46 |
| District Total              | 2,808 | \$1,097,456.46 |
| <b><u>District 9</u></b>    |       |                |
| Franklin                    | 1,251 | \$413,059.98   |
| Granville                   | 1,470 | \$510,859.60   |
| Vance                       | 436   | \$533,238.48   |
| Warren                      | 130   | \$172,988.28   |
| District Total              | 3,287 | \$1,630,146.34 |
| <b><u>District 9A</u></b>   |       |                |
| Caswell                     | 458   | \$256,515.11   |
| Person                      | 1,215 | \$542,982.24   |
| District Total              | 1,673 | \$799,497.35   |
| <b><u>District 10</u></b>   |       |                |
| Wake                        | 9,547 | \$3,593,859.07 |
| District Total              | 9,547 | \$3,593,859.07 |
| <b><u>District 11A</u></b>  |       |                |
| Harnett                     | 2,790 | \$1,262,939.33 |
| Lee                         | 1,826 | \$679,486.60   |
| District Total              | 4,616 | \$1,942,425.93 |
| <b><u>District 11B</u></b>  |       |                |
| Johnston                    | 3,588 | \$1,366,721.39 |
| District Total              | 3,588 | \$1,366,721.39 |
| <b><u>District 12</u></b>   |       |                |
| Cumberland                  | 4,532 | \$2,881,178.38 |
| District Total              | 4,532 | \$2,881,178.38 |
| <b><u>District 13A</u></b>  |       |                |
| Bladen                      | 1,288 | \$712,245.64   |
| Columbus                    | 1,965 | \$1,159,849.03 |

|                            |       |                |
|----------------------------|-------|----------------|
| District Total             | 3,253 | \$1,872,094.67 |
| <b><u>District 13B</u></b> |       |                |
| Brunswick                  | 3,610 | \$1,494,834.03 |
| District Total             | 3,610 | \$1,494,834.03 |
| <b><u>District 14</u></b>  |       |                |
| Durham                     | 3,214 | \$1,642,263.79 |
| District Total             | 3,214 | \$1,642,263.79 |
| <b><u>District 15A</u></b> |       |                |
| Alamance                   | 4,117 | \$1,298,078.06 |
| District Total             | 4,117 | \$1,298,078.06 |
| <b><u>District 15B</u></b> |       |                |
| Chatham                    | 281   | \$155,068.54   |
| Orange                     | 660   | \$402,936.03   |
| District Total             | 941   | \$558,004.57   |
| <b><u>District 16A</u></b> |       |                |
| Hoke                       | 319   | \$257,867.77   |
| Scotland                   | 538   | \$407,321.62   |
| District Total             | 857   | \$665,189.39   |
| <b><u>District 16B</u></b> |       |                |
| Robeson                    | 4,386 | \$2,177,894.36 |
| District Total             | 4,386 | \$2,177,894.36 |
| <b><u>District 17A</u></b> |       |                |
| Rockingham                 | 2,811 | \$984,366.16   |
| District Total             | 2,811 | \$984,366.16   |
| <b><u>District 17B</u></b> |       |                |
| Stokes                     | 1,655 | \$471,887.83   |
| Surry                      | 2,187 | \$680,486.65   |
| District Total             | 3,842 | \$1,152,374.48 |
| <b><u>District 18</u></b>  |       |                |
| Guilford                   | 4,862 | \$2,048,244.08 |
| District Total             | 4,862 | \$2,048,244.08 |
| <b><u>District 19A</u></b> |       |                |
| Cabarrus                   | 3,837 | \$1,124,332.46 |
| District Total             | 3,837 | \$1,124,332.46 |
| <b><u>District 19B</u></b> |       |                |
| Montgomery                 | 956   | \$272,202.20   |
| Randolph                   | 3,828 | \$1,132,556.61 |
| District Total             | 4,784 | \$1,404,758.81 |
| <b><u>District 19C</u></b> |       |                |
| Rowan                      | 4,880 | \$1,658,780.45 |

|                            |       |                |
|----------------------------|-------|----------------|
| District Total             | 4,880 | \$1,658,780.45 |
| <b><u>District 19D</u></b> |       |                |
| Moore                      | 2,923 | \$905,299.79   |
| District Total             | 2,923 | \$905,299.79   |
| <b><u>District 20A</u></b> |       |                |
| Anson                      | 1,178 | \$420,446.25   |
| Richmond                   | 3,029 | \$1,024,144.87 |
| Stanly                     | 1,410 | \$444,816.15   |
| District Total             | 5,617 | \$1,889,407.27 |
| <b><u>District 20B</u></b> |       |                |
| Union                      | 4,215 | \$1,464,398.74 |
| District Total             | 4,215 | \$1,464,398.74 |
| <b><u>District 21</u></b>  |       |                |
| Forsyth                    | 6,281 | \$1,717,780.55 |
| District Total             | 6,281 | \$1,717,780.55 |
| <b><u>District 22A</u></b> |       |                |
| Alexander                  | 1,101 | \$358,802.90   |
| Iredell                    | 4,114 | \$1,499,850.85 |
| District Total             | 5,215 | \$1,858,653.75 |
| <b><u>District 22B</u></b> |       |                |
| Davidson                   | 5,467 | \$1,331,866.48 |
| Davie                      | 1,086 | \$340,909.25   |
| District Total             | 6,553 | \$1,672,776    |
| <b><u>District 23</u></b>  |       |                |
| Alleghany                  | 342   | \$128,523.26   |
| Ashe                       | 687   | \$223,687.07   |
| Wilkes                     | 2,382 | \$518,500.28   |
| Yadkin                     | 870   | \$304,001.57   |
| District Total             | 4,281 | \$1,174,712.18 |
| <b><u>District 24</u></b>  |       |                |
| Avery                      | 580   | \$186,529.99   |
| Madison                    | 856   | \$261,085.69   |
| Mitchell                   | 746   | \$259,142.40   |
| Watauga                    | 1,123 | \$381,167.51   |
| Yancey                     | 579   | \$143,233.74   |
| District Total             | 3,884 | \$1,231,159.33 |
| <b><u>District 25A</u></b> |       |                |
| Burke                      | 2,716 | \$858,827.69   |
| Caldwell                   | 3,370 | \$983,399.58   |
| District Total             | 6,086 | \$1,842,227.27 |
| <b><u>District 25B</u></b> |       |                |
| Catawba                    | 4,527 | \$1,509,117.58 |
| District Total             | 4,527 | \$1,509,117.58 |

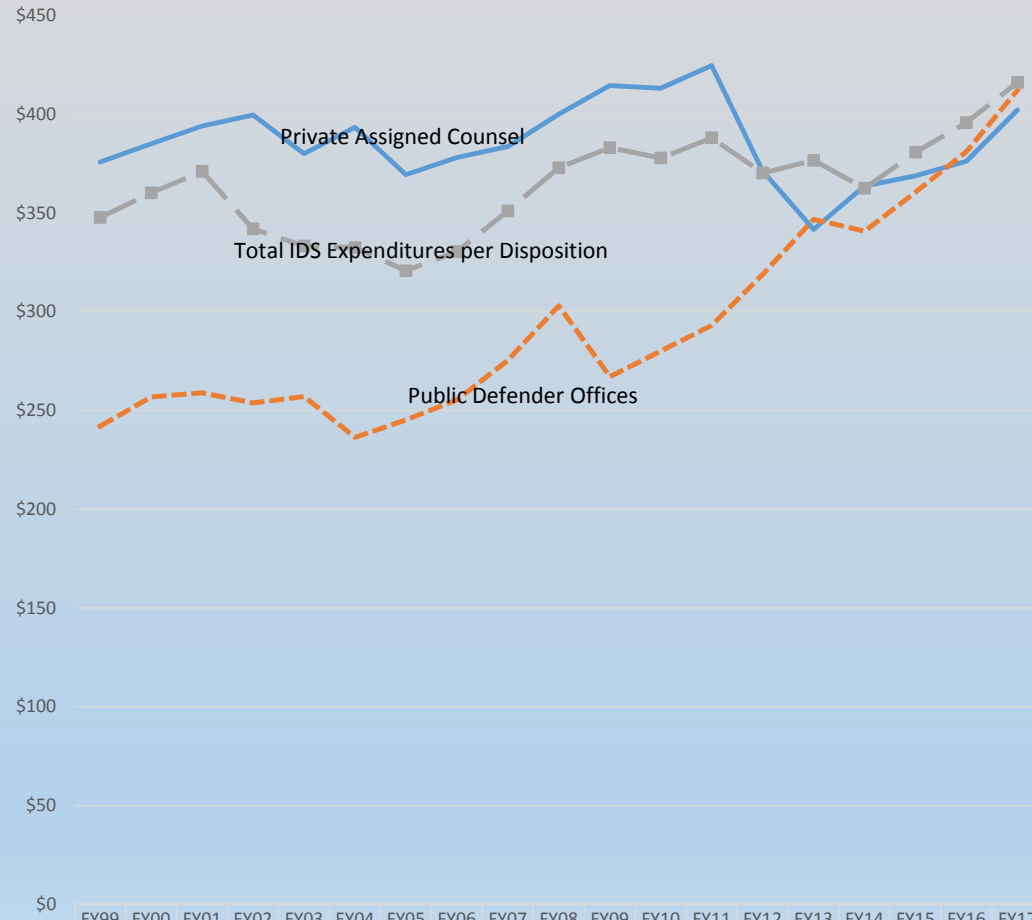


|                            |        |                |
|----------------------------|--------|----------------|
| <b><u>District 26</u></b>  |        |                |
| Mecklenburg                | 10,841 | \$4,867,046.25 |
| District Total             | 10,841 | \$4,867,046.25 |
| <b><u>District 27A</u></b> |        |                |
| Gaston                     | 1,672  | \$799,612.69   |
| District Total             | 1,672  | \$799,612.69   |
| <b><u>District 27B</u></b> |        |                |
| Cleveland                  | 3,540  | \$906,946.76   |
| Lincoln                    | 2,165  | \$579,254.36   |
| District Total             | 5,705  | \$1,486,201.12 |
| <b><u>District 28</u></b>  |        |                |
| Buncombe                   | 4,233  | \$1,741,971.12 |
| District Total             | 4,233  | \$1,741,971.12 |
| <b><u>District 29A</u></b> |        |                |
| McDowell                   | 1,737  | \$791,063.36   |
| Rutherford                 | 2,845  | \$823,973.48   |
| District Total             | 4,582  | \$1,615,036.84 |
| <b><u>District 29B</u></b> |        |                |
| Henderson                  | 955    | \$409,602.58   |
| Polk                       | 252    | \$138,338.82   |
| Transylvania               | 488    | \$229,254.73   |
| District Total             | 1,695  | \$777,196.13   |
| <b><u>District 30A</u></b> |        |                |
| Cherokee                   | 1,046  | \$426,353.53   |
| Clay                       | 307    | \$123,137.31   |
| Graham                     | 259    | \$116,471.60   |
| Macon                      | 863    | \$390,003.45   |
| Swain                      | 736    | \$337,057.73   |
| District Total             | 3,211  | \$1,393,023.62 |
| <b><u>District 30B</u></b> |        |                |
| Haywood                    | 2,028  | \$720,499.78   |
| Jackson                    | 1,065  | \$340,299.17   |
| District Total             | 3,093  | \$1,060,798.95 |

*Notes: Reports through FY07 included only payments to attorneys; FY08 through FY17 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. excludes fee applications received during FY16 but not paid until FY17, but includes those held for payment at end of FY17. Reflects individual negotiated contact dispositions reported during fiscal year*

## **APPENDIX D**

### Indigent Defense Expenditure per Disposition



|  | FY99  | FY00  | FY01  | FY02  | FY03  | FY04  | FY05  | FY06  | FY07  | FY08  | FY09  | FY10  | FY11  | FY12  | FY13  | FY14  | FY15  | FY16  | FY17  |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| PAC Expenditures Per Disposition       | \$376 | \$385 | \$394 | \$399 | \$380 | \$393 | \$369 | \$378 | \$384 | \$400 | \$414 | \$413 | \$424 | \$371 | \$342 | \$364 | \$369 | \$376 | \$402 |
| PD Office Expenditures per Disposition | \$242 | \$257 | \$259 | \$254 | \$257 | \$236 | \$245 | \$255 | \$275 | \$303 | \$267 | \$280 | \$293 | \$319 | \$347 | \$341 | \$360 | \$381 | \$412 |
| Total IDS Expenditures per Disposition | \$348 | \$360 | \$371 | \$342 | \$333 | \$332 | \$321 | \$330 | \$351 | \$373 | \$383 | \$378 | \$388 | \$370 | \$377 | \$362 | \$381 | \$396 | \$416 |