

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

Submitted to the North Carolina General Assembly  
Pursuant to Session Law 2007-323 § 14.5

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## EXECUTIVE SUMMARY

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

As required by Session Law 2007-323, § 14.5, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2006-07, as well as new and ongoing initiatives in progress. The report also contains a summary of changes that the IDS Office has implemented and plans to implement in response to the findings and recommendations in the 2007 State Auditor’s Report, as well as a number of legislative recommendations for the 2008 session, including recommendations about regional public defender offices. The report also presents last fiscal year’s data on indigent caseloads and case costs across the State.

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

In addition, the IDS Commission and IDS Office have taken steps to improve data collection and analysis capabilities within the IDS Office and Administrative Office of the Courts; established a website and a number of specialized listservs to enhance communication and resource-sharing with public defenders and private defense attorneys; worked with the School of Government and other groups to develop and offer a number of new and innovative training programs; created a new statewide Office of the Juvenile Defender as recommended by the American Bar Association Juvenile Justice Center in its 2003 report on access to and quality of

legal representation in North Carolina delinquency proceedings; taken significant steps to improve and support representation of parent respondents; and adopted performance guidelines for indigent representation in non-capital criminal cases, juvenile delinquency cases, and abuse, neglect, dependency and termination of parental rights cases at the trial level.

The IDS Commission and IDS Office are also in the process of working on a number of other initiatives, including conducting analyses of budget trends and current indigent defense spending; developing additional specialized training programs and resources for attorneys representing indigent persons; working with North Carolina Prisoner Legal Services to improve legal services for inmates; and making a series of improvements in response to the 2007 performance audit by the Office of the State Auditor. The Commission and Office are also working to develop an objective tool to measure the quality and efficiency of indigent defense systems at the county, regional, and statewide levels.

In its first six years of operations, the IDS Commission has already taken significant steps to control increases in the cost of indigent representation. The increase in new demand (spending and current-year obligations) during fiscal year 2001-02 was 1.36% above fiscal year 2000-01; the increase in new demand during fiscal year 2002-03 was 4.63% above fiscal year 2001-02; the increase in new demand during fiscal year 2003-04 was 7.6% above fiscal year 2002-03; and the increase in new demand during fiscal year 2004-05 was 7.1% above fiscal year 2003-04, all of which were still significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. While the increase in new demand during fiscal year 2005-06 was 11.5% above fiscal year 2004-05, the IDS Commission and staff believe the higher growth rate during that fiscal year was an anomaly due in part to a new deadline for the submission of older fee applications. Indeed, the increase in new demand during fiscal year 2006-07 was a more modest 4.3% above fiscal year 2005-06. While current projections suggest the increase during fiscal year 2007-08 will be 11.5%, a projected 4.6% of that growth will be attributable to the recent increases in the standard hourly rates paid to private appointed counsel. Thus, without the increase in the hourly rates, the projected growth in new demand during fiscal year 2007-08 would be 6.9%. *See* "Indigent Defense Fund Demand and Budget Needs" below.

Moreover, indigent defense expenditures per disposition declined over the first four years that IDS was in existence, with modest increases in per disposition costs over the past two fiscal years, which demonstrates that the overall increases in demand on the fund are due to an expanding indigent caseload, not a rise in per case costs. Indeed, expenditures per disposition in fiscal year 2006-07 were only \$0.28 higher than expenditures per disposition in fiscal year 2001-02, IDS' first year in existence. *See* Appendix A. Despite the comparatively lower increases in demand on the fund and the trend of declining per disposition expenditures, indigent defense has been under-funded. However, due to the General Assembly's support of quality indigent defense services, the indigent defense fund ended fiscal year 2006-07 with approximately \$600,000 of debt and is currently projected to end fiscal year 2007-08 with a similarly modest debt of approximately \$700,000. That level of debt will represent less than three days of payments to private appointed counsel. *See* "Indigent Defense Fund Demand and Budget Needs" below.

The IDS Commission is continuing to work on initiatives to control expenditures in the coming years, such as the creation of new public defender offices in some additional districts

and/or regionalization of the public defender system in North Carolina. Any projections for the future, however, will be affected by other changes in the criminal justice system. For example, significant changes in sentencing, criminal law or procedure, or in the conduct of district attorney offices, might increase or decrease the funds needed for indigent defense. Similarly, some changes that could control costs for indigent defense will necessarily be systemic and involve not just defense counsel, but prosecutors, judges, clerks, and other system actors.

## REPORT

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

As required by Session Law 2007-323, § 14.5, the IDS Office must report to the General Assembly by March 1, 2008 about the following matters:

- (1) The volume and cost of cases handled in each district by assigned counsel or public defenders;
- (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
- (3) Plans for changes in rules, standards, or regulations in the upcoming year;
- (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices; and
- (5) The changes in operations implemented in response to the following findings and recommendations contained in the [February] 2007 State Audit Report:
  - (a) Attorney fee payment process lacks adequate controls. Measures should be implemented to ensure that attorneys are paid the correct amount and to minimize the incidence of overpayment resulting from accident, fraud, or other cause.
  - (b) Attorney fee payment process is inefficient and labor-intensive.
  - (c) The Office should automate the attorney fee payment process and require attorneys to register for electronic fund transfer.

In addition, § 14.17(a) directs IDS, in consultation with the Administrative Office of the Courts (“AOC”), to develop a proposal for statewide implementation of an electronic fee application system and to report on this proposal by March 1, 2008.



The first section of this report (“IDS Initiatives”) addresses the second, third, and fifth issues set forth above by describing the work of the IDS Commission and IDS Office to date, new and ongoing initiatives that are currently in progress, and ongoing efforts to respond to the findings and recommendations in the February 2007 State Auditor’s Report and to implement a statewide electronic fee application system. The second section of this report (“District Case Volume and Cost Statistics”) addresses the first issue set forth above. The third section (“Contracts with Local Governments for Assistant Public Defenders”) is included in this report pursuant to G.S. 7A-346.2(a), which directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions. The fourth section of this report (“Legislative Recommendations”) addresses the fourth issue set forth above.

## I. IDS INITIATIVES

### A. Initiatives Implemented to Date:

This section describes the main initiatives the IDS Commission and IDS Office have implemented since July 1, 2001, with a particular emphasis on fiscal year 2006-07.<sup>1</sup>

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

To ensure that appropriate procedures were in place by July 1, 2001, the IDS Commission developed rules to govern the continued delivery of services in cases under its oversight. The rules deal with non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); and non-capital and non-criminal appeals. The original IDS Rules were adopted on May 18, 2001 and became effective on July 1, 2001. Since the initial rules took effect, the IDS Commission has adopted a number of revisions in light of experience and to address new issues as they have arisen; the most recent revisions became effective in February 2008. 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 2008) and the Annotated Rules of North Carolina (LexisNexis 2008).

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

One of the IDS Office’s first tasks was to develop an infrastructure to accomplish the many responsibilities assigned to it by the IDS Act. With the assistance of an outside company specializing in computer programming and software development, Office staff designed a detailed internal database to document and track attorney appointments, expert authorizations, attorney and expert payments, and case information in all cases under its direct oversight—namely, potentially capital cases and appeals. The database has significantly improved the Office’s ability to collect, analyze, and report data concerning the cases under IDS’ direct oversight. *See, e.g.*, “Appointment of Attorneys in Capital Cases and Appeals,” “Compensation

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

for Representation in Capital Cases and Appeals,” and “Updated Capital Case Disposition Study” below.

### ***Expansion of Rosters of Qualified Attorneys***

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

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

With the assistance of faculty from the School of Government (“SOG”), the IDS Office worked with each individual public defender office to develop a plan for the appointment of counsel in all non-capital cases in that district. *See* Rules of the Commission on Indigent Defense Services, Rule 1.5(b) (Rev. Nov. 16, 2001). The plans also contain qualification and performance standards for attorneys on the district indigent lists. By February 2002, the IDS Director had approved and certified appointment plans in all 11 public defender districts in existence at that time. In March 2003, the IDS Director approved and certified a public defender appointment plan in Forsyth County. *See* “Creation of Forsyth County Public Defender Office” below. In December 2004, the IDS Director approved and certified a public defender appointment plan in the First Judicial District. *See* “Creation of First District Public Defender Office” below. In July 2005, the IDS Director approved and certified a public defender appointment plan in Wake County. *See* “Creation of Wake County Public Defender Office” below. In March 2008, the IDS Director approved and certified public defender appointment plans in District 5 (New Hanover County) and District 29B (Henderson, Polk, and Transylvania counties). *See* “Creation of New Hanover County Public Defender Office” and “Creation of District 29B Public Defender Office” below.

The IDS Director continues to review any proposed amendments to the public defender plans and to approve them if they are appropriate. These plans were also used as templates for a new model appointment plan for non-public defender districts, which was developed by an Indigent Appointment Plan Committee of the Commission and approved by the full Commission on March 7, 2008. *See* “Committees of the IDS Commission” and “Initiatives in Response to 2007 Performance Audit by the State Auditor’s Office: Model Appointment Plan for Non-Public Defender Districts” below.

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

The IDS Office has developed an independent website ([www.ncids.org](http://www.ncids.org)) that allows greater and more comprehensive communication with the bar, bench and public, and enhances the resources available to defense attorneys across the State. The website contains news and update

links addressing the state of indigent defense funding, timing of attorney payments, IDS' main accomplishments since July 2001, and any other recent developments or matters of interest. The following materials, among others, are also posted on the website: contact information for the members of the IDS Commission, IDS staff, and all state defender offices; a list of IDS Commission committees and their participants; all approved minutes of IDS Commission meetings; a calendar of upcoming events; IDS rules, policies, and procedures; reports and data generated by Office staff; applications for the capital and appellate attorney rosters; attorney fee application forms; the public defender appointment plans; performance guidelines for non-capital criminal cases at the trial level, juvenile delinquency cases at the trial level, and abuse, neglect, dependency and termination of parental rights cases at the trial level; all materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; legal resources and reference materials; the North Carolina Defender Manual; the North Carolina Civil Commitment Manual; an Innocence Inquiry Proceedings Manual; a Guardianship Manual; an orientation manual for new assistant public defenders; a North Carolina appellate brief bank; a capital trial motions index; juvenile delinquency motions, forms, and case notes; information about IDS' Systems Evaluation Project; and links to related sites. Since its creation in May 2002, there have been more than 174,000 visits to the IDS website.

Moreover, the Office of the Appellate Defender has established a listserv for attorneys representing indigent persons on appeal; the Office of the Capital Defender has developed a listserv for attorneys representing indigent capital defendants at the trial level; and the Office of the Juvenile Defender has developed a listserv for attorneys representing juveniles in delinquency proceedings. In addition, the IDS Office has established listservs for capital post-conviction attorneys, involuntary commitment attorneys, public defenders and assistant public defenders, attorneys representing parent respondents in Chapter 7B cases, investigators and support staff in public defender offices, and mitigation specialists. Those listservs have been extremely effective tools for improving communication, sharing information, and providing resources and support to attorneys and others who work in these specialized areas across the State.

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

On July 1, 2001, the IDS Office assumed direct responsibility for the appointment of counsel in all potentially capital cases at the trial level, all appeals, and all capital post-conviction proceedings. To ensure that appointments are made in an appropriate and timely fashion, the IDS Office utilizes pre-existing resources in the Office of the Capital Defender and Office of the Appellate Defender. Thus, trial level appointments are the responsibility of the Capital Defender and appellate appointments are the responsibility of the Appellate Defender; the IDS Director makes appointments in capital post-conviction proceedings.

Between July 1, 2001 and February 4, 2008, the Capital Defender appointed 5,008 attorneys in 4,052 potentially capital cases at the trial level, including 735 attorneys in 570 cases during fiscal year 2001-02, 855 attorneys in 655 cases during fiscal year 2002-03, 741 attorneys in 599 cases during fiscal year 2003-04, 750 attorneys in 603 cases during fiscal year 2004-05, 760 attorneys in 627 cases during fiscal year 2005-06, 754 attorneys in 618 cases during fiscal year 2006-07, and 413 attorneys in 375 cases so far this fiscal year. If there is a delay in a defendant's

first appearance or the determination of indigency, the IDS Office has standby attorneys in every county in the State (called “provisional counsel”) to ensure that a defendant’s rights are protected in the interim.

Between July 1, 2001 and February 7, 2008, the Appellate Defender appointed 6,368 private attorneys and assistant appellate defenders to handle capital, non-capital, and non-criminal appeals, including 819 attorneys during fiscal year 2001-02, 829 attorneys during fiscal year 2002-03, 1,097 attorneys during fiscal year 2003-04, 1,047 attorneys during fiscal year 2004-05, 1,020 attorneys during fiscal year 2005-06, 1,017 attorneys during fiscal year 2006-07, and 539 attorneys so far this fiscal year. Finally, between July 1, 2001 and February 1, 2008, the IDS Director appointed 277 attorneys in 117 different capital post-conviction proceedings, including 61 attorneys in 35 cases during fiscal year 2001-02, 60 attorneys in 34 cases during fiscal year 2002-03, 37 attorneys in 21 cases during fiscal year 2003-04, 23 attorneys in 17 cases during fiscal year 2004-05, 37 attorneys in 22 cases during fiscal year 2005-06, 39 attorneys in 23 cases during fiscal year 2006-07, and 16 attorneys in 11 cases so far this fiscal year.

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

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

Between July 1, 2001 and February 4, 2008, the Capital Defender reviewed 10,899 requests for expert funding and miscellaneous expenses at the trial level, including 482 requests during fiscal year 2001-02, 1,347 requests during fiscal year 2002-03, 1,783 requests during fiscal year 2003-04, 1,947 requests during fiscal year 2004-05, 1,914 requests during fiscal year 2005-06, 2,086 requests during fiscal year 2006-07, and 1,340 requests so far this fiscal year. During that same time period, the IDS Office reviewed 1,552 requests for expert funding and miscellaneous expenses in capital post-conviction proceedings, including 284 requests during fiscal year 2001-02, 252 requests during fiscal year 2002-03, 184 requests during fiscal year 2003-04, 230 requests during fiscal year 2004-05, 215 requests during fiscal year 2005-06, 298 requests during fiscal year 2006-07, and 89 requests so far this fiscal year. The IDS Office has established procedures to approve or deny those requests, often with the assistance of a case consultant, and to assist attorneys in focusing on the experts and support services that are necessary for an effective defense.

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

On July 1, 2001, the IDS Office also assumed direct responsibility for compensating attorneys and experts in all potentially capital cases at the trial level, all appeals, and all capital post-conviction proceedings. The IDS Office is committed to reducing the rate of increase in expenditures in those cases without causing any decline in the quality of representation. To that end, the IDS Commission and Office adopted uniform rates of attorney compensation for all cases under its direct oversight, and developed detailed financial auditing procedures that Office staff apply to every fee petition IDS receives. For instance, Office staff ensure that time sheets correctly support the total amount claimed; that receipts or detailed documentation support all

major expenditures; and that attorneys properly obtained prior authorization for expert services and major miscellaneous expenses. Memoranda about those procedures are posted on the IDS website.

Between July 1, 2001 and February 4, 2008, IDS Office staff set appropriate and uniform fee awards for 15,785 attorney fee applications in capital cases and appeals, including 1,860 attorney fee applications during fiscal year 2001-02, 2,281 attorney fee applications during fiscal year 2002-03, 2,362 attorney fee applications during fiscal year 2003-04, 2,337 attorney fee applications during fiscal year 2004-05, 2,568 attorney fee applications during fiscal year 2005-06, 2,709 attorney fee applications during fiscal year 2006-07, and 1,668 attorney fee applications so far this fiscal year. Also between July 1, 2001 and February 4, 2008, the Office set fee awards for 12,407 expert bills, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts. 960 of those awards were set during fiscal year 2001-02, 1,421 were set during fiscal year 2002-03, 1,975 were set during fiscal year 2003-04, 2,184 were set during fiscal year 2004-05, 2,044 were set during fiscal year 2005-06, 2,349 were set during fiscal year 2006-07, and 1,474 have been set so far this fiscal year. The Office is currently setting approximately 100 attorney and expert fee awards per week, and forwarding those awards to Financial Services for payment within one to two weeks of receiving each fee petition. In potentially capital cases that have been resolved by plea or trial, the IDS Director routinely asks the presiding judge for his or her opinion on the attorney's fee application before awarding final fees.

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

### *Uniform Rates of Compensation*

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

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

or after February 1, 2008. The IDS Commission and IDS Office are grateful to the General Assembly for the additional appropriations it granted to IDS for this purpose. While the General Assembly based the amount of this year's appropriation on an expected implementation date of January 1, 2008, the IDS Commission approved a slightly delayed implementation date of February 1, 2008 so that an unanticipated increase in demand on the indigent defense fund during the first half of this fiscal year would not result in significant year-end debt for IDS.

The IDS Commission and staff believe that standard rates have the advantages of increasing the stability and predictability of payments to private assigned counsel, improving pay equity and fairness across the State, and enhancing the independence of defense counsel. The standard rates have also helped IDS control increases in indigent defense expenditures and make more accurate projections about future demands on the fund.

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

Even with the recent increase in the rates, both of the standard rates are significantly below what attorneys can earn in retained cases, as well as in appointed cases in federal court, and will need to be increased over time to keep pace with increases in the costs of living and operating a law practice. According to the North Carolina Bar Association's ("NCBA") most recent Economic Survey, the total annual operating expenses of one to four person law firms in North Carolina during 1997 averaged more than \$43 per hour per lawyer (based on a 48-week work year at 40 hours per week). Between December 1997 and December 2007, the Consumer Price Index for all Urban Consumers rose by 23.2% (from 161.3 to 210.04). Based on that measure and the 1998 Economic Survey, the total annual operating expenses of one to four person law firms in North Carolina currently average almost \$53 per hour. Thus, even after the recent non-capital increase to \$75 per hour, appointed attorneys in North Carolina are actually netting an average of \$22 per hour for their work in non-capital cases.

The attorneys who represent indigent persons in North Carolina provide those professional services at a very low cost compared to the "market" cost of private legal services. While IDS' new \$75 hourly rate is still less than half the average hourly rate an attorney would charge in most areas of North Carolina, most private defense attorneys charge a flat fee depending on the nature of the case. For a typical DWI case, private lawyers in North Carolina charge between \$1,000 and \$3,000. By comparison, based on the new \$75 rate, IDS pays an average of \$280 for representation in an indigent DWI case. The IDS Commission and staff are not aware of any other professional service offered by private practitioners to the State at such a steep discount.

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

In April 2006, IDS Office staff worked with the AOC Forms Committee to revise all of the attorney fee application forms, effective August 1, 2006. In July 2006, in anticipation of releasing the new forms, the IDS Office also adopted a number of new policies and procedures to govern fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level. Those policies address general billing principles, reimbursable expenses, recoupment of attorney fees, and expert and support services, and contain detailed instructions on completing the various fee application forms. In July 2006, the policies were mailed to every attorney who had been paid by IDS in the prior 18 months, circulated to judges and other system actors via email, and posted on the IDS website. The policies have been updated since that time to reflect additional issues; the most recent version is dated January 2008 and is available at [www.ncids.org](http://www.ncids.org).

During the summer of 2007 and with the assistance of SOG faculty, IDS Office staff also began developing 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.” NCBA agreed to co-sponsor the program and it was filmed at their headquarters in Cary in December 2007. The video will be posted on the NCBA website for continuing legal education credit and will be available on the IDS website for free. IDS Office staff anticipate that the video will be finalized and released in the coming weeks.

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

Based on the IDS Commission’s recommendation, the 2002 Appropriations Act established a new Public Defender Office in Forsyth County. In late 2002, the Senior Resident Superior Court Judge in District 21 appointed attorney George R. Clary to begin a four-year term as the Chief Public Defender effective January 1, 2003; Clary was reappointed to a second four-year term effective January 1, 2007. After his initial appointment, IDS Office staff members met with Clary on numerous occasions to assist him in establishing the new office and developing a plan for the appointment of counsel in all non-capital cases in Forsyth County. That plan was approved and certified by the IDS Director in March 2003. See “Development and Approval of Public Defender Plans” above. Forsyth County provided space for the new public defender office in a building across the street from the courthouse. The office was fully staffed and disposing of cases on a regular basis by May 2003, and now employs 14 assistant public defenders.

### ***Creation of First District Public Defender Office***

Based on the IDS Commission’s recommendation, the 2004 Appropriations Act established a new First District Public Defender Office, which is responsible for providing representation in indigent cases in Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties. The Senior Resident Superior Court Judge in District 1 appointed attorney R. Andrew Womble to begin a four-year term as the Chief Public Defender effective October 11, 2004. After his appointment, IDS Office staff worked with Womble to get the office operational and to develop a plan for the appointment of counsel in all non-capital cases in District 1. That plan

was approved and certified by the IDS Director in December 2004. *See* “Development and Approval of Public Defender Plans” above. Pasquotank County provided space for the main public defender office in Elizabeth City, and Dare County provided space for a satellite office in Manteo. The office began accepting cases on December 1, 2004, and now employs 10 assistant public defenders. Two of those assistant public defenders are responsible for handling indigent cases in the Second Judicial District pursuant to § 14.15 of Session Law 2006-66. *See* “Expansion of Existing Public Defender Offices” below.

While the First District office was never projected to generate savings, the IDS Commission believes that it has improved the quality of representation in that district. Previously, an insufficient number of attorneys were willing to handle appointed indigent cases in the district, and the judiciary was forced to mandate service on the appointed lists. As a result, the bar and bench in the First District asked IDS and the General Assembly to create a new public defender office, and were extremely helpful and cooperative in the process of establishing that office.

### ***Creation of Wake County Public Defender Office***

The 2004 Appropriations Act also established a new Wake County Public Defender Office effective July 1, 2005. IDS Office staff subsequently worked with the bar and bench in Wake County to develop procedures for selecting the Chief Public Defender. On October 1, 2004, the IDS Director issued regulations for the nomination of candidates for the public defender position. In response to requests from the bar and bench in Wake County, those regulations directed the Senior Resident Superior Court Judge to appoint a committee of attorneys to evaluate and rank the qualifications of all applicants. The Senior Resident Judge appointed 13 local attorneys to that committee on October 4, 2004. While the bar was originally supposed to meet and nominate three final candidates in December 2004, the committee needed more time to perform its evaluation of the applicants. At the request of the committee and the Senior Resident Judge, the IDS Director issued amended regulations on October 25, 2004. In accordance with those regulations, the bar met on February 24, 2005 and nominated three candidates.

On March 17, 2005, the Senior Resident Superior Court Judge in Wake County appointed attorney G. Bryan Collins to begin a four-year term as the Chief Public Defender effective July 1, 2005. The IDS Office subsequently entered into a contract with Collins to begin preparations for the office prior to the start of his term on July 1, 2005. IDS Office staff then worked with Collins to get the office operational and to develop a plan for the appointment of counsel in all non-capital cases in Wake County. That plan was approved and certified by the IDS Director on July 1, 2005, the same day the office began accepting cases. *See* “Development and Approval of Public Defender Plans” above. While the office had to use temporary quarters for its first seven months of operations, Wake County now provides permanent office space in downtown Raleigh. The office currently employs 25 assistant public defenders.

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

In order to assist judges in evaluating fee petitions that are submitted by private appointed attorneys, the IDS Office has completed statewide studies of the hours claimed by attorneys in district and superior court. In the district court hours study, IDS Office staff analyzed all 71,666



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

In the non-capital superior court hours study, IDS Office staff analyzed two different data sets. For the ten felony classes, the staff analyzed a three-month sample of 4,994 felony fee applications that were paid between August 1, 2004 and October 31, 2004. For the remaining superior court charge types—felony probation violation, DWI, misdemeanor non-traffic, misdemeanor traffic, and misdemeanor probation violation—the staff analyzed all 28,829 superior court fee applications that were received by Financial Services during fiscal year 2004-05. The study found that, while private appointed counsel reported an average of 8.2 hours to handle a superior court case, individual cases varied widely in the number of hours claimed. The study further found that 90% of all non-capital superior court cases were resolved in 15 hours or less, and that 90% of all non-capital superior court felony cases were resolved in less than 18 hours. The study then provided the average hours claimed by private counsel and frequency distributions by charge type. For the ten felony classes, the study also provided frequency distributions that identified cases resolved by trial and non-trial, the average number of hours claimed for non-trial cases, and the range of hours claimed for cases resolved by trials. The superior court study report was mailed to all superior court judges in January 2006 and was attached as an appendix to IDS’ March 2006 annual report. The report is also posted on the IDS website under the “Reports & Data” link.

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

In August 2005, IDS Office staff completed a study of the costs associated with paying private appointed counsel to wait in court for their cases to be called. The staff analyzed the time claimed for waiting in court on 40,792 non-capital private attorney fee applications that were paid between August 1, 2004 and October 31, 2004. The study found that 68.9% of attorney fee applications reported some waiting-in-court time and that, on average, private attorneys reported spending 4.55 hours per case and 57 minutes (or 21%) of that time waiting in court. Annualized for fiscal year 2004-05, the reported wait time cost the State \$9.8 million. In addition, the study found that district court criminal cases were the most costly in terms of wait time (\$5.25 million in fiscal year 2004-05). Because it is unlikely that over 30% of all fee applications actually involved no waiting-in-court time, the IDS staff believes that attorney wait time may be significantly under-reported on fee applications and that the true cost of private attorney waiting-in-court time during fiscal year 2004-05 may have been as high as \$14.2 million. The study also attempted to quantify the additional costs to the State associated with public defender waiting-in-court time, which the IDS staff estimates amounted to between \$3.7 and \$5.1 million in fiscal year 2004-05. The study demonstrates that defense attorney wait time attributable to the current

scheduling system in North Carolina adds significant costs to indigent defense. The private appointed counsel waiting-in-court study report was attached as an appendix to IDS' March 2007 annual report. The report is also posted on the IDS website under the "Reports & Data" link. The IDS Commission and IDS staff hope to continue working with other actors in the court system to identify ways to reduce those costs in future years. *See* "Consultation with Other Actors and Recommended Cost-Saving Measures" and "Legislative Recommendations" below.

### ***Updated Capital Case Disposition Study***

In December 2007, IDS Office staff updated a prior study of the dispositions of all potentially capital cases at the trial level that were initiated after G.S. 15A-2004 was revised effective July 1, 2001; those revisions gave prosecutors discretion to proceed non-capitally even if there is evidence of an aggravating factor. The study showed that, of all potentially capital cases that had closed as of November 15, 2007, 82.4% ended in second-degree murder or less and 14.8% ended in acquittals, dismissals without leave, no true bills, or no probable cause.<sup>2</sup> For cases that actually proceeded capitally, 59.4% ended in second-degree murder or less and 6.4% ended in acquittals, dismissals without leave, no true bills, or no probable cause. The data also showed that only 17.3% of all cases that were originally identified as potentially capital (including capital cases that were remanded to the trial court for resentencing) were actually resolved with convictions of first-degree murder and sentences of either death or life imprisonment without parole. The results of the updated capital case disposition study are attached to this report as Appendix B.

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

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

Initial proposed guidelines were sent to 70 public and private defense attorneys representing every district around the State, with a request that they provide comments. Based on the responses, the committee made a number of changes to the initial draft. In August 2004, the

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<sup>2</sup> These percentages exclude cases resolved by voluntary dismissals with leave, not guilty by reason of insanity, and not competent to proceed, as well as cases in which the defendant died of natural causes before the case was resolved.

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

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

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

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

In April 2006, the statewide Juvenile Defender began working with a committee composed of delinquency attorneys, a law school clinic professor, a district court judge, and the Vice-Chair of the IDS Commission to develop specialized performance guidelines for attorneys who represent juveniles in delinquency proceedings. *See* "Improved Juvenile Delinquency Representation" below. The initial draft guidelines were based largely on the IDS Commission's non-capital criminal guidelines discussed above, as well as a review of standards and guidelines in Georgia and Kentucky and the Juvenile Defender Delinquency Notebook published by the National Juvenile Defender Center. Between April 2006 and May 2007, the committee met a number of times to review and refine the initial draft and to tailor it to fit the nuances of North Carolina delinquency law and practice.

The committee completed a final draft of proposed guidelines in May 2007, which were presented to the IDS Commission at its June 2007 meeting for approval to start a comment period with the bar, bench, and other system actors. The guidelines were then distributed to more than 1,000 defense attorneys, all of the district court judges, the elected district attorneys, and representatives of the Department of Juvenile Justice and Delinquency Prevention, along with an invitation to comment. After the comment period was complete in September 2007, the

committee reviewed all of the comments that were received and made improvements to the draft. (A report on all of the comments that were received and the changes that the committee made in response is available at [www.ncids.org](http://www.ncids.org).) Final guidelines were approved by the IDS Commission in December 2007 and are available on the IDS website.

As with the non-capital criminal guidelines, the delinquency representation guidelines are intended to serve as a guide for attorney performance in the covered cases, to contain a set of considerations and recommendations to assist counsel in providing quality representation, and to be a training tool and resource. In the coming years, the IDS Commission hopes to develop performance guidelines for additional specialized areas of representation.

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

In May 2005, the IDS Office submitted a grant application to the North Carolina Court Improvement Project for Children and Families (“NC-CIP”), which is an organization that is dedicated to improving the quality of North Carolina’s family courts and is funded by a grant from the United States Department of Health and Human Services’ Administration for Children and Families. The grant application requested \$30,700 over a two-year period to cover staff time and expenses associated with developing specialized performance guidelines for attorneys who represent indigent parent respondents at the trial level. In September 2005, the AOC Director notified the IDS Office that the grant proposal had been approved in full. In January 2006, the IDS Director selected attorney Douglas L. Hall to serve as the Performance Guidelines Project Coordinator. Hall represents parent respondents at the trial level in Burke County, as well as the Department of Social Services (“DSS”) in Avery County.

With assistance from IDS Office staff, Hall developed an initial draft of performance guidelines for parent attorneys. The initial draft was based on a review of standards and guidelines for parent attorneys that have been adopted in several other jurisdictions—including California, Maryland, Oregon, South Carolina, and the District of Columbia—as well as resources published by the American Bar Association, the National Council of Juvenile and Family Court Judges, and Texas Lawyers for Children. In March 2006, Hall began working with a committee composed of IDS Office staff, parent attorneys, SOG faculty, a chief district court judge, a DSS Attorney, and a Guardian ad Litem Attorney Advocate. As discussed in “Improved Parent Representation” below, the IDS Commission subsequently established a new position in the Office of the Appellate Defender called the Parent Representation Coordinator, which was filled by attorney Wendy Sotolongo in November 2006; Sotolongo joined the committee after her hire. Between March 2006 and May 2007, the committee met a number of times to review and refine the initial draft and to tailor it to fit the nuances of North Carolina law and practice in this area.

The committee completed a final draft of proposed guidelines in May 2007, which were presented to the IDS Commission at its June 2007 meeting for approval to start a comment period with the bar, bench, and other system actors. The guidelines were then distributed to more than 1,000 attorneys, all of the district court judges, and representatives of DSS and the

Guardian ad Litem (“GAL”) program, along with an invitation to comment. After the comment period was complete in September 2007, the committee reviewed all of the comments that were received and made improvements to the draft. (A report on all of the comments that were received and the changes that the committee made in response is available at [www.ncids.org](http://www.ncids.org).) Final guidelines were approved by the IDS Commission in December 2007 and are available on the IDS website.

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

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

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

On August 13, 2007, based on the hardship that the deadlines had created for some appointed attorneys around the State, the IDS Commission adopted revisions to the IDS Rules and an accompanying policy that allowed attorneys an additional three months to apply to the IDS Director for a reduced fee based on a showing of good cause for failing to submit a timely fee application. To date, the IDS Office has received and processed 200 late fee waiver applications, including 177 in non-capital and non-criminal cases where the fee application normally would have gone to the judge, 12 in potentially capital cases at the trial level, and 11 in appeals. The IDS Director found good cause and authorized partial payment for 115 of the applications, and found no good cause and denied payment for 85 of the applications.

The January 1, 2006 deadline for submission of older fee applications caused a significant one-time increase in spending during fiscal year 2005-06, and the one-year deadline for all other cases appears to be causing a quickening of submissions for same-year dispositions. *See* “Indigent Defense Fund Demand and Budget Needs” below. However, the deadlines have enabled IDS staff to obtain more accurate data about the current demand on the indigent defense fund. For example, IDS Office staff are now able to analyze demand on the fund by case disposition dates, rather than the date a fee application was submitted. Office staff can also now analyze how much a given year of work has cost IDS, and can use past year spending trends to predict how much more remains to be paid of a given fiscal year’s dispositions. Thus, the

deadlines have given Office staff a new way to predict future annual growth rates in the private counsel fund based on dispositions each fiscal year, which have historically averaged 5.8%.

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

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

IDS Office staff then worked with the Capital Defender to develop a comprehensive application form for mitigation specialists to seek placement on the various rosters, with an initial March 3, 2006 deadline for applications to be submitted. Effective April 17, 2006, only individuals who have been approved for one of the rosters are eligible to work as mitigation specialists on capital cases in North Carolina. As of February 1, 2008, 49 individuals had been approved for one of the mitigation specialist rosters.

### ***Consultation with Other Actors and Recommended Cost-Saving Measures***

Session Law 2005-276, § 14.12 directed the IDS Office to consult with the Conference of District Attorneys, the Conference of District Court Judges, and the Conference of Superior Court Judges to formulate proposals aimed at reducing future costs, such as decriminalizing minor traffic offenses, changing the way criminal district court is scheduled, and reevaluating the handling of capital cases. Section 14.12 further directed the IDS Office to include any proposals in its March 2007 annual report.

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

The IDS Commission then discussed the feedback that was received from the actors listed above, and identified a number of systemic changes that would save taxpayer money and

enhance the efficiency of North Carolina's courts. Pursuant to § 14.12, in its March 2007 annual report, the IDS Commission made the following recommendations to the General Assembly:

- 1) Appropriate a modest amount of money to staff one or more pilot tests of alternative scheduling systems in district and/or superior court that would minimize attorney wait time;
- 2) Fund a joint study by IDS and the North Carolina Sentencing and Policy Advisory Commission to identify misdemeanors that would be most appropriate for decriminalization because they never result in jail sentences;
- 3) Expand and regionalize the public defender system, and improve IDS' ability to supervise the chief public defenders;
- 4) Improve the procedures for recouping attorney fees from clients who have been ordered to repay the State; and
- 5) Amend G.S. 14-17 to eliminate felony murder as a possible basis for a death sentence.

In addition, the Commission identified improved indigency screening as an area of concern and decided to form a committee to develop indigency standards pursuant to G.S. 7A-498.5(c)(8). See "Development of Indigency Standards" below. The IDS Commission and Office continue to support these legislative recommendations, and many of them are discussed again in Section IV. of this report.

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

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

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

Effective July 1, 2006, the AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including four accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and one full-time employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. In order to maintain timely data entry and payments to private attorneys, IDS added a fifth accounting specialist position to the new IDS Financial Services division in January 2007; during 2007 and 2008, IDS has also utilized the assistance of some temporary accounting positions. In addition, two employees in IDS' central office have assumed responsibility for establishing new attorney and expert vendors in the accounting system, see "Initiatives in Response to 2007 Performance Audit by the State Auditor's Office: New Fiscal Controls on Attorney Fee Payments" below, and IDS Financial Services staff have assumed responsibility for processing non-attorney payments that are confined to IDS' budget. AOC personnel continue to print checks for legal services and to maintain the imaging system that is used to store electronic copies of fee petitions.

In August 2006, AOC and IDS entered into a memorandum of agreement concerning the allocation of foreign language interpreter costs for cases where the State bears the cost of representation. The memorandum provides that IDS will bear the cost of out-of-court interpretation that is performed solely for the defense function. Pursuant to that memorandum, during fiscal year 2006-07, AOC retroactively transferred to IDS money from their interpreter fund to reimburse IDS for payments made for out-of-court defense interpretation. That arrangement has continued during the current fiscal year. In addition, effective September 1, 2006, IDS began employing a full-time attorney as the Special Counsel Supervising Attorney to perform tasks that were previously performed by AOC's legal department. *See* "Special Counsel Program" below.

### *Committees of the IDS Commission*

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

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

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

The Juvenile Committee worked with a group of outside juvenile experts to evaluate the findings and recommendations in the American Bar Association's 2003 report—"North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency



Proceedings”—and to develop recommendations for reform initiatives. *See* “Improved Juvenile Delinquency Representation” below. A new Juvenile Committee composed of members of the IDS Commission was recently reformed to guide and assist the statewide Juvenile Defender’s work. The Indigent Appointment Plan Committee has developed a model indigent appointment plan for non-public defender districts, which was approved by the full Commission on March 7, 2008. Now that the model plan is complete, Office staff will be working with the various non-public defender districts around the State to implement some version of the model plan. *See* “Initiatives in Response to 2007 Performance Audit by the State Auditor’s Office: Model Appointment Plan for Non-Public Defender Districts” below. Pursuant to G.S. 7A-498.5(c)(8), an Indigency Standards Committee was recently formed to begin the process of developing standards to guide judges in making indigency determinations. *See* “Development of Indigency Standards” below.

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

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

IDS Office staff have continued to work with AOC and IDS Financial Services staff to develop better and more comprehensive data collection systems for the indigent defense program. During the spring of 2002, the IDS Office asked then-AOC Financial Services to collect additional data from all non-capital fee applications that are signed by judges and submitted for payment. AOC previously collected the following data for each fee application: county, case number, defendant’s name, attorney’s name, judge’s name, disposition date, and total fee. In addition to continuing to collect that data, the AOC began collecting the total hours claimed by counsel in each case on August 1, 2003, and had refined the accuracy of that data collection by December 1, 2003.

At IDS’ request, the AOC and Office of State Controller (“OSC”) subsequently agreed to reprogram the accounting system to allow the collection of much more detailed information about cases by account code and type of charge or proceeding. The OSC did that reprogramming at no charge to AOC or IDS. Financial Services staff previously only entered data on adult non-capital cases that was broken down into the following categories: felony, felony plus another charge, driving while impaired, misdemeanor, involuntary commitment, and other. After the system was reprogrammed, staff began entering data broken down into adult superior court and adult district court. In turn, the adult superior and district court data is now broken down into the following case types: felony, felony probation violation, misdemeanor (non-traffic), misdemeanor probation violation, driving while impaired, other traffic, criminal contempt, child support contempt, and other. Financial Services began data collection under the new scheme on July 1, 2004. Thus, since fiscal year 2004-05, IDS has had access to much better

data about cases and attorney time than it has ever had in the past. *See, e.g.*, “District and Superior Court Average Hours Studies” above.

As noted in “Ongoing Division of Administrative and Budgetary Responsibilities” above, effective July 1, 2006, AOC transferred to IDS several accounting specialist positions to process fee petitions for appointed counsel. Now that IDS has responsibility for and supervision of the data collection system and personnel, IDS Office staff have continued working with them to expand and enhance the collection and reporting of available data. For example, since July 1, 2007, IDS Financial Services staff have been collecting data on the case dispositions that are reported on all non-capital criminal case fee applications.

The IDS Office has also worked with the Appellate Defender and an outside contractor to design case-reporting and time-keeping software in Microsoft Access. During fiscal year 2006-07, attorneys in the Office of the Appellate Defender tracked their time on case-related and office activities manually by hand. The Office of the Appellate Defender began using the new database on July 1, 2007 and should be in a position to provide complete case reporting and time data at the conclusion of fiscal year 2007-08. Once IDS has a complete year of data from the Office of the Appellate Defender and can assess the usefulness of that data, IDS staff may make the database available to the Office of the Capital Defender and all public defender offices.

### ***Public Defender Cost-Effectiveness Studies***

IDS Office staff conduct annual studies of the cost-effectiveness of all public defender offices in the State. In those studies, Office staff build caseload models for the public defender offices, and examine and quantify efficiencies of scale. The studies also quantify the system costs involved with using private counsel by including in the analysis the administrative time involved with making appointments, setting fee awards, and processing and issuing fee payments. The fiscal year 2006-07 study found that the 14 public defender offices in existence last fiscal year handled 31.7% of the cases assigned to public defenders and private counsel combined, and accounted for 31.1% of IDS’ combined expenditures on counsel. The study further concluded that all of the public defender offices together cost the State approximately \$1.6 million less than what it would have cost to pay private attorneys to handle the same cases.

During the second half of fiscal year 2004-05, IDS Office staff worked with a committee of public defenders and SOG faculty to design a much more detailed disposition reporting system for the public defender offices. The reporting system gives IDS Office staff access to the same expanded data that is now available with private appointed counsel fee applications, *see* “Improved Data Collection and Reporting” above, and also gives IDS staff data on public defender felony dispositions by felony class. Under the system, public defender offices report dispositions by case type, including felony class, and provide IDS with additional workload measures for the offices, such as the number of trials and review hearings for certain types of cases. Moreover, IDS office staff are now auditing public defender disposition reports to ensure their accuracy. The new procedures also replaced the previous paper-based system with an electronic system, which has led to enhanced efficiencies. The new reporting system went into effect on July 1, 2005, and enabled the fiscal year 2005-06 and fiscal year 2006-07 cost-effectiveness analyses of the offices to include a significant amount of additional information. In

addition, while prior IDS studies have not compared the relative quality of representation in public defender and private counsel systems, IDS staff have developed a list of value-added activities that are performed by public defender offices and private counsel, and hope to incorporate them into future analyses. *See also* “Systems Evaluation Project” below.

The IDS Commission and Office will continue to investigate the advisability of new public defender offices in other districts or regions. *See* “Possible Expansion of the Public Defender System During Fiscal Year 2008-09” and “Initiatives in Response to 2007 Performance Audit by the State Auditor’s Office: Regionalization of the Public Defender System” below.

### ***Expansion of Existing Public Defender Offices***

In the 2006 Appropriations Act, the General Assembly authorized the IDS Office to create up to 20 new attorney positions and 10 new support staff positions within existing IDS defender programs. The head of each defender office was then given the opportunity to submit a request and justification for additional staff to the IDS Director. IDS Office staff subsequently reviewed those requests and made decisions about whether adding new personnel would help expand the work each office is doing and/or relieve overburdened offices.

During fiscal year 2006-07, the IDS Director allotted 19 of the 20 new attorney positions as follows: 1) two new assistant public defenders in the Guilford County Public Defender Office; 2) two new assistant public defenders in the Mecklenburg County Public Defender Office; 3) two new assistant public defenders in the Wake County Public Defender Office; 4) one new assistant public defender in the Buncombe County Public Defender Office; 5) one new assistant public defender in the Forsyth County Public Defender Office; 6) one new assistant public defender in the Pitt County Public Defender Office; 7) one new assistant capital defender in the Durham Office of the Capital Defender; 8) one new special counsel supervising attorney at Dorothea Dix Hospital in Wake County; 9) one new special counsel attorney at Cherry Hospital in Wayne County; and 10) one new parent representation coordinator in the Office of the Appellate Defender. In addition, two temporary attorneys in the Mecklenburg County Public Defender Office were converted to permanent assistant public defender positions and four temporary attorneys in the Durham County Public Defender Office were converted to permanent assistant public defender positions.

During fiscal year 2006-07, the IDS Director also allotted all of the 10 new support staff positions as follows: 1) one new administrative assistant in the Guilford County Public Defender Office (High Point); 2) one new administrative assistant in the Mecklenburg County Public Defender Office; 3) two new legal assistants in the Durham County Public Defender Office; 4) one new legal assistant in the Wake County Public Defender Office; 5) one new legal assistant in the Durham Office of the Capital Defender; 6) one new social worker in the Durham County Public Defender Office; 6) one new technology position to support public defender offices in the central IDS Office; and 7) one new accounting specialist in the IDS Financial Services Office. In addition, one temporary legal assistant in the Mecklenburg County Public Defender Office was converted to a permanent position.

The 2006 Appropriations Act also gave the IDS Office authority to create up to two new assistant public defender positions and one new support staff position in the First District Public Defender Office and up to one new assistant public defender position in the Pitt County Public Defender Office for the purpose of representing indigent persons eligible for the appointment of counsel in the Second Judicial District. During fiscal year 2006-07, the IDS Director allotted all three of the new positions that were authorized for this purpose in the First District Public Defender Office. The additional authorized assistant public defender position in the Pitt County Public Defender Office was not created.

In the 2007 Appropriations Act, the General Assembly again gave the IDS Office authority to create up to 20 new attorney positions and 10 new support staff positions within existing IDS defender programs. The head of each defender office has been given the opportunity to submit a request and justification for additional staff to the IDS Director. IDS Office staff have reviewed those requests and placed some of the new positions where they would be most beneficial. IDS' March 2009 report to the General Assembly will include details on the placements during fiscal year 2007-08.

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

In September 2006, IDS Office staff analyzed the costs expended on private assigned counsel in a number of non-public defender districts compared to the costs of potential new public defender offices in those districts. The results indicated that the State could save money by creating new public defender offices in a number of areas of North Carolina, including projected annual savings of \$165,000 from a fully staffed and operational office in the Fifth District (New Hanover and Pender counties) at the former private assigned counsel rate of \$65 per hour. In accordance with G.S. 7A-498.5(e), the IDS Commission then solicited comments from the bar and bench in the Fifth District and, in February 2007, recommended that the General Assembly create a new public defender office there.

Based on the IDS Commission's recommendation, in the 2007 Appropriations Act, the General Assembly established a new Fifth District Public Defender Office, which is responsible for providing representation in indigent cases in New Hanover County only. The Senior Resident Superior Court Judge in District 5 appointed attorney Jennifer Harjo to begin a four-year term as the Chief Public Defender, effective February 15, 2008. IDS Office staff then worked with Harjo to develop a plan for the appointment of counsel in all non-capital cases in New Hanover County and continue to assist her in getting the new office operational. *See* "Development and Approval of Public Defender Plans" above. New Hanover County has provided office space in downtown Wilmington and the office is tentatively scheduled to begin accepting cases in March 2008.

### ***Creation of District 29B Public Defender Office***

As discussed above, in September 2006, IDS Office staff analyzed the costs expended on private assigned counsel in a number of non-public defender districts compared to the costs of potential new public defender offices in those districts. The initial results indicated that there would be projected annual savings of \$182,000 from a fully staffed and operational office in

District 29B (Henderson, Polk, and Transylvania counties). In accordance with G.S. 7A-498.5(e), the IDS Commission then solicited comments from the bar and bench in District 29B. During the course of that comment period, an error was discovered in the Excel spreadsheet that IDS staff used to calculate costs savings in District 29B. After correcting the error and reanalyzing the data, IDS staff informed the bar and bench that the actual projected annual savings would be lower—\$39,000 at the former private assigned counsel rate of \$65 per hour and almost \$163,000 at the new private assigned counsel rate of \$75 per hour. While the revised data showed more modest savings from a District 29B office, the local bar and bench was uniformly supportive of a public defender office, and two District 29B Legislators introduced bills to create a new office there.

In the 2007 Appropriations Act, the General Assembly established a new District 29B Public Defender Office. The Senior Resident Superior Court Judge in District 29B appointed attorney Paul B. Welch, III to begin a four-year term as the Chief Public Defender, effective February 1, 2008. IDS Office staff then worked with Welch to develop a plan for the appointment of counsel in all non-capital cases in District 29B and continue to assist him in getting the new office operational. See “Development and Approval of Public Defender Plans” above. Henderson County has provided office space in the courthouse in Hendersonville and Transylvania County has rented Welch’s prior office space in Brevard. At this time, there is no space available for a visiting office in Polk County. The District 29B office began accepting cases on February 5, 2008.

#### ***Possible Expansion of the Public Defender System During Fiscal Year 2008-09***

Section 14.4(b) of Session Law 2007-323 provides that, “[n]otwithstanding the provisions of G.S. 7A-498.7(a),” the IDS Commission “may establish additional district public defender offices during the 2007-2009 fiscal biennium.” Section 14.4(b) also allows the IDS Office to use up to \$1,570,057 in appropriated funds during fiscal year 2008-09 to establish these offices, including recurring and non-recurring personnel and operating costs. Section 14.4(b) further directed the IDS Office to report on the location and establishment of the new offices to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division by October 1, 2007. The IDS Office submitted that report on September 26, 2007.

The special provision conferred on the IDS Commission authority to create new offices “[n]otwithstanding the provisions of G.S. 7A-498.7(a),” which require notice to and consultation with the local bar and bench, as well as a legislative act. However, G.S. 7A-498.5(e) continues to require that, “[i]n determining the method of services to be provided in a particular district, the Director shall consult with the district bar . . . and the judges of the district . . . under consideration.” That section also continues to require IDS to follow “procedures ensuring that affected local bars have the opportunity to be significantly involved in determining the method or methods for delivering services in their districts,” and directs IDS to “solicit written comments from the affected local district bar, senior resident superior court judge, and chief district court judge,” which “shall be forwarded to the members of the General Assembly who represent the affected district and to other interested parties.”

In August 2007, IDS Office staff again analyzed the costs expended on private assigned counsel in a number of non-public defender districts compared to the costs of potential new public defender offices in those districts. The results indicated that the State could save money by creating new public defender offices in a number of areas of North Carolina. Pursuant to those findings, § 14.4(b) of Session Law 2007-323, G.S. 7A-498.5(e), and the IDS Commission's adopted "Procedures for Determining the Methods of Indigent Legal Service Delivery in a Judicial District," the Commission voted at its September 2007 meeting to initiate comment periods about possible new public defender offices in the following districts: 1) District 20A (Anson, Stanly, and Richmond counties); 2) District 22 (Alexander, Davie, Davidson, and Iredell counties); 3) District 25A (Burke and Caldwell counties); and 4) District 27B (Cleveland and Lincoln counties). In addition, the Commission voted to initiate a comment period about a possible expansion of the existing Carteret County Public Defender Office into the rest of District 3B, including Craven and Pamlico counties.

Comment periods were initiated in all of the above districts on October 22, 2007, with a comment deadline of November 28, 2007. At the request of the local bars, IDS Office staff subsequently extended the deadline to December 5, 2007 in Districts 3B and 25A. In addition, IDS Office staff subsequently reanalyzed the data on child support contempt cases in District 25A and determined that the original projected savings from District 25A were artificially inflated as the result of a fee schedule for those case types in that district. The revised projections demonstrated little savings from a public defender office in District 25A.

After reviewing the comments that were received and extensive discussion at its December 2007 meeting, the IDS Commission voted not to proceed further with possible new public defender offices in Districts 20A and 25A. After additional discussion at its March 2008 meeting, the Commission also voted not to proceed further with possible new offices in Districts 22 and 27B. Because the comments expressed some local support for expanding the existing Carteret County Public Defender Office into the rest of District 3B (Craven and Pamlico counties), the Commission directed the IDS staff to continue consulting with local actors about the possibility of expanding that office. In addition, based on a request from some local actors, the IDS Commission voted to initiate a comment period about a possible new public defender office in District 15A (Alamance County). IDS Office staff will continue to apprise the General Assembly of any plans to expand the public defender system pursuant to this special provision. In addition, if the Commission decides to create any new offices pursuant to § 14.4(b) of Session Law 2007-323, the IDS Office will forward all comments received from local actors to the members of the General Assembly who represent the affected district or districts.

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

In February 2008, IDS Office staff updated a prior study comparing the total number of indigent case dispositions to the total number of court dispositions in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support.<sup>3</sup> That study revealed

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<sup>3</sup> The updated study was based on total criminal non-traffic and indigent case disposition numbers provided by AOC in its preliminary annual report for fiscal year 2006-07, which counts every closed CR or CRS file number

that the number of total criminal non-traffic court dispositions declined between fiscal years 2001-02 and 2003-04, then increased modestly in fiscal years 2004-05 and 2005-06, and then declined again in fiscal year 2006-07. However, the number of criminal non-traffic public defender and private appointed counsel dispositions that are funded through IDS has risen steadily over that same time period.

	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>
Total Criminal Non-Traffic Court Dispositions	774,795	761,665	767,483	786,134	798,622	784,298
Total IDS Criminal Non-Traffic Dispositions	270,295	280,636	294,054	317,854	337,578	342,329
IDS Dispositions as % of Total Criminal Non-Traffic Court Dispositions	34.9%	36.8%	38.3%	40.4%	42.3%	43.6%

The greatest increase in indigent case dispositions has been in criminal district court, where IDS dispositions as a percentage of total court dispositions increased 7.9% between fiscal years 2001-02 and 2002-03, another 5.5% between fiscal years 2002-03 and 2003-04, another 7.3% between fiscal years 2003-04 and 2004-05, another 5.6% between fiscal years 2004-05 and 2005-06, and another 3.6% between fiscal years 2005-06 and 2006-07.

Based on this study, the IDS Office believes that the increases in demand on the indigent defense fund over the past several years are largely attributable to more people being found indigent and entitled to court-appointed counsel. The IDS Commission and staff will continue to monitor this trend and to report our findings to the General Assembly. In addition, as discussed later in this report, the IDS Commission will be developing standards to guide judges in making indigency determinations pursuant to G.S. 7A-498.5(c)(8). See “Development of Indigency Standards” below.

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

The IDS Commission has taken significant steps to control increases in the cost of indigent representation and to analyze the factors driving growth in the fund. The increase in new demand (spending and current-year obligations) during fiscal year 2001-02 was only 1.36% above fiscal year 2000-01, which was the lowest increase in at least a decade. The increase in new demand during fiscal year 2002-03 was 4.63% above fiscal year 2001-02, the increase in new demand during fiscal year 2003-04 was 7.6% above fiscal year 2002-03, and the increase in new demand during fiscal year 2004-05 was 7.1% above fiscal year 2003-04, all of which were significantly below the average annual increase (more than 11%) during the seven years prior to IDS’ creation.

While the increase in new demand during fiscal year 2005-06 was 11.5% above fiscal year 2004-05, the IDS Commission and staff believe the higher growth rate that fiscal year was an anomaly. According to staff analyses, only 5.1% of that increase represented real growth in

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as a disposition. In other studies, IDS staff calculate dispositions differently, counting all file numbers disposed of on the same day before the same presiding judge as one disposition.

demand on the private counsel fund, with the largest increase occurring in adult district court. The remaining growth was attributable to a number of factors, including 4.1% from expansion and increased personnel and equipment costs in state defender offices and 2.3% from the January 2006 deadline for submission of older fee applications. *See* “Private Attorney Fee Application Deadlines” above. The increase in new demand during fiscal year 2006-07 was a more modest 4.3% above fiscal year 2005-06.

Moreover, indigent defense expenditures per disposition declined significantly over the first four years after IDS was established, with a modest increase in per disposition costs over the past two fiscal years, demonstrating that the overall increases in demand on the fund are attributable to an expanding indigent caseload rather than a rise in per case costs. As shown in the chart in Appendix A labeled “Indigent Defense Expenditure History per Disposition,” there were spikes in total expenditures per disposition in fiscal years 1999-2000 and 2000-01, the two years before IDS assumed responsibility for the fund. Total expenditures per disposition then declined significantly over the next four fiscal years. While there was a modest increase in expenditures per disposition in fiscal year 2005-06 and another modest increase in fiscal year 2006-07, both were still significantly lower than expenditures per disposition in the two years prior to IDS’ creation. Moreover, expenditures per disposition in fiscal year 2006-07 were only \$0.28 higher than expenditures per disposition in fiscal year 2001-02, IDS’ first year in existence. Expenditures per disposition on private counsel have been somewhat volatile, but expenditures per disposition on public defenders have been more stable. IDS Office staff believe that IDS’ expansion of the public defender system has contributed to its ability to stabilize overall per disposition expenditures.

Despite the comparatively lower increases in new demand during the past six fiscal years, as well as the overall trend of declining per disposition expenditures since IDS was established, indigent defense has been under-funded. IDS staff analyses suggest that IDS’ historical cycle of debt was largely due to insufficient available funds to meet new demand. Indeed, as a result of prior year encumbrances, reversions, and revenue shortfalls, IDS had fewer funds available for new demand in fiscal years 2001-02, 2002-03, and 2003-04 than the actual new demand on the fund in fiscal year 2000-01, the year before IDS was established. However, as can be seen from IDS’ comparatively lower debt for fiscal years 2005-06 (\$4.1 million) and 2006-07 (slightly more than \$600,000), the General Assembly’s increased appropriations to indigent defense since fiscal year 2005-06 have finally enabled IDS to begin combating an historical cycle of debt. The IDS Commission and IDS Office are grateful for the General Assembly’s support of quality indigent defense programs.

Current projections suggest there will be an increase in new demand this fiscal year of 11.5%. However, IDS staff estimate that 4.6% of that projected growth will be attributable to the recent increases in the standard hourly rates paid to private appointed counsel. Thus, without the increase in the hourly rates, the projected growth in new demand during fiscal year 2007-08 would be 6.9%. *See* Appendix A. Unless there is a significant and unexpected increase in demand during the remaining months of this fiscal year, IDS should end the current year with approximately \$700,000 of debt. Now that the appropriation to IDS is closer to meeting the real demands on the fund and supporting timely payments to private counsel throughout the fiscal



year, the IDS Commission is in a stronger position to manage the indigent defense fund in an efficient and equitable manner.

The IDS Commission will be submitting a proposed expansion budget for fiscal year 2008-09, which will ask the General Assembly to appropriate a \$3.8 million recurring increase to cover the anticipated growth in demand on the Indigent Defense Fund, plus \$700,000 in non-recurring funds to cover IDS' projected debt at the end of fiscal year 2007-08. See "Legislative Recommendations" below.

### *Improved Revenue Collection*

IDS Office staff have worked with AOC staff to gather data on the amount each county collected in recoupment (through probationary collections and civil judgments) during each fiscal year since 2001-02. Staff then analyze that data annually to determine the amount recouped by each county as a percentage of that county's expenditures on indigent defense. Total revenues from recoupment during fiscal year 2006-07, including the \$50 attorney appointment fee required by G.S. 7A-455.1, amounted to \$9.06 million, which represented an increase of 5.3% over fiscal year 2005-06. In fiscal year 2006-07, 57 of North Carolina's 100 counties collected more recoupment revenues than they had in fiscal year 2005-06. Payments collected through Clerks' Offices at the time of conviction or while the defendant is under probationary supervision accounted for 63% of the total collected last fiscal year, with an additional 30.5% collected through the interception of state income tax refunds. While the \$50 attorney appointment fee only accounts for the remaining 6.5% (\$588,257 in fiscal year 2006-07), collections from the appointment fee have grown 65% over the past two fiscal years.

During fiscal year 2006-07, there continued to be wide variability in recoupment among counties. Recoupment as a percentage of non-capital spending on private attorneys and public defender offices ranged from a low of 1.6% to a high of 35.2%, with an overall statewide rate of 11.7%. In addition, there appears to be a strong negative correlation between the size of the indigent caseload in a county and recoupment as a percentage of spending. For example, during fiscal year 2006-07, recoupment in the 20 counties with the highest amount of spending averaged 10.9%, while recoupment in the remaining 80 counties averaged 18.6%. As with regular attorney fee recoupment, there also continues to be great variation in the rate of collection of the \$50 fee from county to county. During fiscal year 2006-07, four counties reported no \$50 fee collections and 15 other counties reported collections of \$500 or less. By contrast, 19 counties reported collections of more than \$10,000, with the highest collections in Forsyth County (\$48,015). For a county-by-county comparison of recoupment rates, see Appendix C.

The IDS Office has undertaken 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. In addition, IDS Office staff worked with the AOC Forms Committee to revise the fee applications and facilitate easier entry of judgments for attorney fees.

For purposes of verifying taxpayer identity to collect outstanding judgments for attorney fees, the Division of Motor Vehicles (“DMV”) previously allowed AOC and IDS staff to access social security numbers in their automated system. However, in 2005, the DMV revoked that access pursuant to G.S. 20-7(b2), which negatively impacted IDS’ ability to collect attorney fee judgments through the set-off debt program. During the 2007 legislative session, the General Assembly amended G.S. 20-7(b2) to allow DMV to disclose social security numbers to IDS staff for the purpose of verifying taxpayer identity and collecting outstanding attorney fee judgments. That change has restored IDS’ ability to enforce court orders directing former indigent clients to repay the State for the legal services they received.

### *Sentencing Services Program*

In the 2002 Appropriations Act, the General Assembly reduced the overall budget for the Office of Sentencing Services (“OSS”) by almost 40% and transferred that program to IDS, with directions to reconfigure the program as necessary to implement the budget reduction. IDS assumed responsibility for OSS on September 20, 2002 and hired SOG Professor John Rubin as Interim Administrator. In November 2003, the IDS Director hired Susan Brooks as the permanent half-time Administrator of OSS. In the 2005 Appropriations Act, the General Assembly further reduced OSS’ budget by an additional 30% and directed IDS to close low-performing programs. OSS has been substantially reorganized pursuant to these two budget reductions, including the elimination in 2005 of 10 programs after consultation with the senior resident superior court judges in those districts. During 2005, OSS also eliminated other state positions and reduced the non-profit programs’ grants to meet the new budget amount.

Despite these reductions, OSS programs are continuing to provide quality services. During fiscal year 2001-02, OSS programs across the State contacted 14,539 offenders through referrals and targeting, opened 3,474 cases, and presented 2,228 plans to courts. During fiscal year 2002-03, after the first funding reduction discussed above, OSS programs contacted 9,692 offenders (a decrease of 33% from the prior fiscal year), opened 2,120 cases (a decrease of 39% from the prior fiscal year), and presented 1,732 plans to courts (a decrease of only 22% from the prior fiscal year). During fiscal year 2003-04, OSS programs contacted 11,459 offenders (an increase of 18% from the prior fiscal year), opened 2,520 cases (an increase of 19% from the prior fiscal year), and presented 1,830 plans to courts (an increase of 6% from the prior fiscal year).

In fiscal year 2004-05, the programs became more efficient with their time, contacting 9,536 offenders (a decrease of 17% from the prior fiscal year) and opening 2,319 cases (a decrease of 8% from the prior fiscal year), but presenting 1,963 plans (an increase of 8% from the prior fiscal year). Consequent to the second funding reduction, which resulted in fewer programs providing services and less money for the remaining programs, during fiscal year 2005-06, the programs contacted 5,904 offenders (a decrease of 38% from the prior fiscal year), opened 1,835 cases (a decrease of 21% from the prior fiscal year), and presented 1,451 plans (a decrease of 26% from the prior fiscal year). The programs expanded their services in fiscal year 2006-07 by contacting 6,119 offenders (an increase of 4% from the prior fiscal year), opening 2,070 cases (an increase of 13% from the prior fiscal year), and presenting 1,610 plans (an increase of 11% from the prior fiscal year). In addition, the programs continue to report that the majority of cases are attributable to referrals from attorneys and judges.

### *Contracts with Attorneys*

Since the Spring of 2003, the IDS Office has been exploring the use of contracts with attorneys as an alternative method of delivering legal services to indigent persons in various districts in North Carolina. Currently, the IDS Office has contracts with 29 different attorneys in Avery, Buncombe, Catawba, Dare, Forsyth, Guilford, Madison, Martin, Mitchell, Stanly, and Yancey counties, with two attorneys in District 22 (Alexander, Davie, and Iredell counties only), with the Center for Children's Defense in Charlotte, and with the Elder Law Clinic of the Wake Forest School of Law in Winston-Salem. The IDS contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, civil commitment, guardianship, and drug treatment court proceedings.

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

IDS Office staff believe that carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered. Excluding the current Buncombe County misdemeanor contract and the Forsyth County youth treatment court contract, which are reported under a different system, all of the IDS contracts combined saved over \$90,000 during fiscal year 2006-07 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments. Office staff will continue to evaluate the existing contracts from both a cost and quality perspective, and hope to expand IDS' use of contracts in the years to come.

### *Mecklenburg County Attorney Fee Coordinator Position*

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

Fee Coordinator is responsible for reviewing private attorney fee applications, identifying ways to improve recoupment in Mecklenburg County, and doing indigency screening upon referral.

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

### ***New IDS Auditor Position***

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

The new auditor position is housed within IDS' Financial Services division in Raleigh, and is overseeing efforts to audit and analyze payments to appointed attorneys and defense experts. The auditor has also been responsible for developing and implementing policies and procedures to prevent duplicate payments and inappropriate billing, conducting spot audits of fee applications, and investigating individual vendor billing at the direction of IDS management.

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

The IDS Office continues to provide funding for public defender training and has sponsored new training programs in areas of representation that traditionally have not had adequate continuing legal education. IDS Office staff worked with the Office of the Appellate Defender and SOG faculty to develop a new hands-on training program for private appellate attorneys who accept appointments in indigent cases. That training has been held annually since 2002 and has been extremely successful; the program will be offered next in October 2008. Annually since 2003, the IDS Office and SOG have also offered five-day trial advocacy programs for public defenders, which are intensive hands-on training programs in which participants develop trial skills by working on their own cases. That program will be offered again in July 2008.

With the assistance of SOG faculty, the IDS Office has planned new training programs for private counsel and assistant public defenders, and for full-time State employees who serve as

Special Counsel for persons committed to mental health facilities. Those programs, which were held in February 2003 and January 2004, were the first of their kind in North Carolina. In addition, the 2005 Fall Public Defender Conference focused on mental health issues in criminal cases. In lieu of holding additional commitment trainings during 2005 and 2006, the IDS Office provided funding for the development of a North Carolina Civil Commitment Manual, which was published jointly by IDS and SOG during the summer of 2006. In addition, in late January 2008, SOG released a new North Carolina Guardianship Manual, which was prepared by SOG Professor John Saxon with funding from IDS. And, in February 2008, IDS and SOG planned and conducted the first training for appointed counsel in Chapter 35A guardianship proceedings. *See* “Special Counsel Program” below.

Also with the assistance of AOC, the SOG, and the Guardian ad Litem program, the IDS Office planned a training program for attorneys who represent parent respondents in Chapter 7B cases, including abuse, neglect, or dependency and termination of parental rights proceedings. That program was held twice in 2003, and also was the first of its kind in North Carolina. In April 2004 and December 2005, IDS and the North Carolina Academy of Trial Lawyers co-sponsored additional trainings for attorneys who represent parent respondents in these proceedings. With the help of SOG, the North Carolina Court Improvement Project, and the Parent Representation Coordinator, *see* “Improved Parent Representation” below, a one-day conference for parent attorneys was held in August 2007. A similar one-day conference is scheduled for August 2008.

With the assistance of the statewide Juvenile Defender and SOG, *see* “Improved Juvenile Delinquency Representation” below, IDS co-sponsored its first annual conference on representing children in juvenile delinquency proceedings in June 2005. Subsequent annual conferences were held in August 2006 and 2007, and another is being planned for August 2008. Also with the assistance of the Juvenile Defender and SOG, IDS sponsored four regional workshops for attorneys who handle juvenile delinquency cases in February, March, April, and May 2006. In addition, in February 2007 and 2008, IDS sponsored an intensive hands-on training for new juvenile delinquency attorneys.

For many years now, IDS has sponsored an investigators conference for public defender staff investigators and private investigators who do a significant amount of appointed work. In March 2006, IDS and the SOG worked with the South Carolina Commission on Indigent Defense to co-sponsor a joint North and South Carolina public defender investigators conference. A second joint training was held in March 2007. In May 2008, the investigator conference will be held jointly with the Annual Public Defender Conference. Finally, in April 2005, IDS and the SOG co-sponsored the first management training program for the chief public defenders and their administrative assistants; subsequent management programs were held in April 2006 and 2007. Another management program is scheduled for April 2008.

Again with the assistance of the SOG, IDS will be sponsoring a number of training programs during the rest of the 2008 calendar year. A current calendar of all IDS co-sponsored training programs is available at [www.ncids.org](http://www.ncids.org) under the “Training Opportunities” link. The IDS Office also 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.

The IDS Office has provided funding for improvements to the SOG's North Carolina Defender Manual, and has made that manual available to more attorneys by posting it on the IDS website. Attorneys around the State can now access or download the manual for free. As discussed above and in "Special Counsel Program" below, IDS has provided funding for new Civil Commitment and Guardianship Manuals, which are also available on the IDS website. The IDS Office is currently funding the development of a juvenile delinquency manual, *see* "Improved Juvenile Delinquency Representation" below, and is funding the development of an immigration manual, so that appointed defense attorneys are in a better position to understand and advise their clients about the collateral immigration consequences of criminal convictions.

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

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

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

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

juvenile appeals were rare; and 10) community-based treatment and mental health programs were inadequate.

The report also contained a number of ABA recommendations, such as: 1) ensure that juveniles have the assistance of counsel at the earliest possible stage; 2) consistently allocate sufficient resources to support the meaningful representation of juveniles; 3) designate a statewide Juvenile Defender to bring together resources and expertise, continue the evaluation process, and implement specific policies and programs; 4) work to stop the misuse and overuse of secure detention; 5) develop appropriate strategies to reduce disproportionate minority representation in the juvenile justice system; 6) develop specialized qualification standards and performance guidelines for juvenile defenders; 7) create and support programs to elevate the status of indigent juvenile defense practice; 8) conduct an examination of juvenile caseloads to ensure that they are consistent with quality expectations; 9) develop and offer comprehensive training programs for juvenile defenders; 10) support pilot projects in more counties to increase the availability of diversion opportunities and treatment alternatives; and 11) develop procedures for expediting appeals in juvenile delinquency cases.

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

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

Since January 2005, the Juvenile Defender has identified approximately 800 attorneys who are handling appointed juvenile delinquency cases throughout North Carolina, and created a listserv for those attorneys that currently has 265 members. During his first two years in office, the Juvenile Defender also worked with an advisory board composed of juvenile defense attorneys and other juvenile justice experts who helped him focus the goals and tasks of the office. With the assistance of that advisory board, the Juvenile Defender developed a statement on the role of defense counsel in juvenile delinquency proceedings, which was adopted by the IDS Commission on November 4, 2005. That role statement was attached as an appendix to IDS' March 2006 report to the General Assembly. The Juvenile Defender has also developed a

special page on the IDS website that is dedicated to juvenile delinquency representation and includes, among other things, an index of juvenile defender trial motions and forms, notes about juvenile delinquency case law since the current Juvenile Code went into effect in 1999, information about juvenile defender training programs, and links to related sites.

With the assistance of the Juvenile Defender Advisory Board, the Juvenile Defender developed model qualification standards for attorneys who represent juveniles, which were then circulated for comments in the 14 public defender districts. As of the date of this report, ten public defender districts have incorporated some version of the model standards into their local appointment plans; IDS Office staff expect the remaining four public defender districts to adopt some version of the model standards in the coming months. The IDS Office has also provided funding for the development of a new juvenile delinquency manual and contracted with an author to draft that manual. An editorial board of practitioners and law school clinic faculty has been reviewing drafts and the Juvenile Defender has served as the managing editor. The manual will contain information about the law and procedure in juvenile delinquency court, practice tips and strategy, and copies of relevant motions and forms. The manual is currently in the final stages of development and IDS hopes to publish it and post it on the IDS website during the spring of 2008. The Juvenile Defender also served as staff to the committee that developed the performance guidelines for juvenile defense counsel discussed above. *See* “Performance Guidelines for Appointed Attorneys Representing Juveniles in Delinquency Proceedings at the Trial Level” above. In the future, the Juvenile Defender hopes to develop caseload standards for juvenile defense attorneys.

During calendar year 2008, the Juvenile Defender will be undertaking a new project reviewing cases that ended in commitment to a youth development center during 2007. At this time, 17 counties across North Carolina have agreed to participate. The project will involve reviewing the commitments for potential errors and, if errors are found and the juvenile wants to pursue the matter, asking the attorney who was appointed in district court to file a motion for review. The Juvenile Defender’s goals for this project are to cure defective commitments if possible, to determine how often commitments are defective, to identify the reasons for any errors, and to improve training for juvenile defense attorneys.

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

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

The IDS Office has taken significant steps to assess and improve the representation of parent respondents in abuse, neglect, or dependency and termination of parental rights cases. During the fall of 2003, IDS Office staff set up a listserv for attorneys representing parent respondents in Chapter 7B cases across the State, which currently has almost 200 members. The IDS Office has also added attorney positions in the Durham County Public Defender Office and the Hoke/Scotland Public Defender Office to represent parent respondents in these proceedings.



Since August 2003, the Assistant Director of the IDS Office has served as a parent attorney representative on the Advisory Committee to the North Carolina Court Improvement Project for Children and Families (“NC-CIP”), which is an organization dedicated to improving the quality of North Carolina’s family courts. In the fall of 2006, the IDS Commission established a new position in the Office of the Appellate Defender called the Parent Representation Coordinator. Attorney Wendy Sotolongo was hired to fill that position in November 2006, and has also served as a parent attorney representative on the Advisory Committee to NC-CIP since that time.

Among other things, the Parent Representation Coordinator is responsible for coordinating appellate representation of indigent parent respondents in Chapter 7B cases; appointing counsel in all indigent Chapter 7B appeals statewide; helping ensure that appellate counsel are able to comply with the expedited deadlines in Rule 3A of the Rules of Appellate Procedure; evaluating appellate briefs in Chapter 7B cases for inclusion in a statewide on-line brief bank; and performing case consultations with trial and appellate attorneys who represent parent respondents. Sotolongo is also working with IDS Office staff to develop a special page on the IDS website that will be dedicated to representation of parent respondents. In addition, as shown in “Improved Training and Resources” above, Sotolongo has been working with SOG faculty, NC-CIP, and other system actors to develop new training programs for trial and appellate attorneys who represent parent respondents, and will be overseeing the development of a practice manual for parent attorneys sometime in the future. Finally, the Parent Representation Coordinator served as a primary staff member to the committee that developed the performance guidelines for parent attorneys discussed above. *See* “Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency and Termination of Parent Rights Proceedings at the Trial Level” above. With Sotolongo’s leadership and guidance, the IDS Commission and staff intend to devote more attention to improving parent representation in the future.

### *Special Counsel Program*

Effective September 1, 2006, IDS hired former AOC attorney Dolly Whiteside as the Special Counsel Supervising Attorney and she began working in the Office of Special Counsel at Dorothea Dix Hospital in Wake County. During fiscal year 2006-07, the IDS Office continued to work with Whiteside to make the existing special counsel programs around the State, which represent indigent respondents in involuntary commitment proceedings, more effective. Currently, there are special counsel offices at Dorothea Dix, Cherry Hospital in Wayne County, Umstead Hospital in Granville County, and Broughton Hospital in Burke County.

Pursuant to the State Mental Health Reform Plan, it was originally anticipated that Dorothea Dix and John Umstead Hospitals would close sometime in late 2007 or early 2008, and the new Central Regional Hospital would open in Butner, North Carolina to serve the combined and realigned Dix and Umstead catchment areas. However, that plan has been delayed by the Department of Health and Human Services (“DHHS”). There are also on-going discussions of new inpatient treatment facilities opening in Wake County. Holly Hill Hospital, which is currently served by the Dix Special Counsel office, is moving forward with the construction of a new 44 bed inpatient unit due for completion in early 2009. DHHS has announced that part of

Dorothea Dix Hospital will be kept open as a regional arm of the new Central Regional Hospital, with a bed capacity of approximately 60, primarily for acute admissions. Wake County is also planning the construction of additional inpatient beds, with completion targeted for 2010 or 2011. The implementation of the reform plan continues to change to accommodate the new facilities in Wake County and the anticipated construction of new state inpatient facilities at Cherry in 2010 and Broughton in 2012. IDS and Whiteside will continue to monitor all of these changes and to work with DHHS, court officials, and the Attorney General's Office to make adjustments to Special Counsel Office staffing to ensure continuing cost-effective and quality representation of indigent clients involved in the civil commitment process.

IDS and Whiteside continue to monitor modified appointment and compensation systems for private appointed counsel handling civil commitment cases in several counties, including Orange/Chatham, Cumberland, and Forsyth. These plans have generated significant annual savings since implementation several years ago, and will continue to be monitored for cost-effectiveness and quality of representation. IDS staff are also exploring arrangements in other counties to identify additional areas for potential improvement and cost savings.

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

In the summer of 2007, IDS and SOG began planning for the production of a manual for appointed counsel in Chapter 35A guardianship cases. SOG Professor John Saxon agreed to write the manual and IDS provided funding. The North Carolina Guardianship Manual went to print in late January 2008 and is available for free on the IDS website. As above, the manual will be used as a tool in training programs for appointed attorneys and assistant public defenders.

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

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

review, an evidentiary hearing before a special panel of superior court judges to be appointed by the Chief Justice.

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

For the initial rights waiver and formal inquiry, IDS is relying on the public defender offices to supply counsel. All of the chief public defenders have agreed to handle these cases at the initial stages and IDS has assigned every prison facility in North Carolina to the nearest public defender office. Because the Innocence Commission and IDS Office expect there to be relatively few cases that reach a three-judge panel each year, IDS plans to recruit qualified counsel for that stage of the proceedings on a case-by-case basis. IDS Office staff have developed a specialized form for the appointment of counsel in these cases, as well as a form for public defenders to report their time associated with these cases and for private attorneys to seek compensation at the standard rates of \$75 per hour in non-capital cases and \$95 per hour in capital cases. IDS has also prepared a short on-line reference manual for the attorneys who will be handling these cases, which is available at [www.ncids.org](http://www.ncids.org). The IDS Office will be in a position to include additional details about attorney appointments and compensation in Innocence Inquiry proceedings in its March 2009 report to the General Assembly.

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

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

Effective October 1, 2005, the General Assembly transferred NCPLS' contract from DOC to IDS, and directed IDS to evaluate the program and report its findings. IDS in turn enlisted the assistance of a SOG Professor who specializes in program evaluation. The evaluation consisted of documenting NCPLS' case-management process in work-flow format, recruiting 16 specialists in one or more of the areas covered by the contract to review a random sample of case files, and interviewing NCPLS staff. Pursuant to § 14.9(b) of Session Law 2005-276, the IDS

Office reported to the General Assembly on the findings of that evaluation in a separate report dated April 27, 2007.

After the evaluation was complete, IDS Office staff and the Prisoner Access to the Courts Committee of the IDS Commission began working with NCPLS' Board and staff to make improvements to their existing services. In late 2007, NCPLS began a consulting contract with an experienced post-conviction attorney to assess their existing services and to recommend and implement improvements. Around the same time, the NCPLS Board accepted the resignation of the prior Executive Director. The NCPLS Board is currently in the process of advertising for and recruiting a new Executive Director, and the IDS Office staff are negotiating a new contract with NCPLS for the provision of legal services to inmates.

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

G.S. 7A-498.5(c)(8) directs the IDS Commission to develop standards governing the provision of services under the IDS Act, including “[s]tandards for determining indigency.” Office staff have conducted preliminary research on indigency standards in other jurisdictions, as well as model standards promulgated by other state and national organizations. As discussed in “Committees of the IDS Commission” and “Consultation with Other Actors and Recommended Cost-Saving Measures” above, the IDS Commission has formed a committee to begin developing standards to guide North Carolina judicial actors in making indigency determinations and to consider other methods of improving indigency screening in this State. The IDS Office will address this area further in its March 2009 report to the General Assembly.

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

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

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

The Systems Evaluation Committee and staff are currently working on the first major phase of this project. On May 31, 2005, the IDS Office hired Anna Levinsohn to be the Systems Evaluation Project Coordinator. Levinsohn resigned effective September 13, 2007, and Daryl Atkinson was hired as her replacement effective November 1, 2007. With the assistance of Levinsohn, Atkinson, and a professional facilitator from AOC Human Resources, the Committee and staff have undertaken a number of steps to define the mission and goals of indigent defense in North Carolina and to articulate what an evaluation tool should measure. First, on March 18, 2005, IDS hosted a one-day conference for organizations that focus on criminal justice issues, innovative indigent defense programs around the country, and indigent defense service organizations from other states. IDS' out-of-pocket expenses for this conference were reimbursed by the Z. Smith Reynolds Foundation. The conference created, for the first time, a national forum where practitioners and criminal justice social scientists gathered to discuss approaches and strategies for evaluating indigent defense. Participants examined the role indigent defense should play and considered strategies for how best to meet clients' short and long-term interests, overall court system obligations, and community interests. In addition, participants began to identify ways to measure and communicate about the benefits to the public from quality indigent defense services. A report on the March 2005 conference is available on the IDS website.

Second, between March and October 2006, IDS Office staff conducted a series of focus groups around the State to interview representatives of groups or populations with different perspectives in the criminal justice system and community, including defense attorneys, judges, prosecutors, court clerks, clients, law enforcement, investigators, corrections, advocacy groups, and government and business representatives. A summary report of those focus groups is currently being finalized; the report should be posted on the IDS website in the near future. Third, Office staff are compiling a report on background research concerning innovative defense practices, past and current approaches to evaluating indigent defense systems, and new trends and findings in other criminal justice systems. Fourth, Office staff plan to assemble a Project Advisory Board of practitioners, criminal justice social scientists, and other stakeholders to work with IDS in developing a meaningful tool. Fifth, IDS staff plan to conduct periodic surveys to obtain critical input and feedback from the indigent defense community, the criminal justice system, and the public.

Once an evaluation tool is developed and tested, IDS intends to begin assessing the performance of existing systems in various North Carolina counties and districts, identifying best practices, and making recommendations for change where needed. However, before making any significant changes to the method of delivering services in a particular district, the IDS Act requires the IDS Office to consult with the bar and bench in the district or districts under consideration. In addition, the IDS Office must obtain legislative approval before establishing or abolishing a district or regional public defender office. In accordance with the IDS Act, the IDS Commission and IDS Office plan to obtain input from all of the State's superior court districts during the evaluation process. (Additional materials about the Systems Evaluation Project are available at [www.ncids.org](http://www.ncids.org) under the "Systems Eval. Project" link.)

### **C. Initiatives in Response to 2007 Performance Audit by the State Auditor's Office:**

In Session Law 2006-66, § 14.16, the General Assembly directed the Office of the State Auditor to “conduct an analysis of the fee payment practices of the Office of Indigent Defense Services and make recommendations for process improvements of fee applications, including recommendations regarding automation.” Because the auditors believed that any service acquisition process should ensure that purchased services meet established service criteria, they included an examination of independence and competence policies to ensure that IDS only pays for legal services that comply with the purposes of the IDS Act. The auditors conducted their field work between November 2006 and February 2007, and focused on IDS’ operations between November 1, 2005 and October 31, 2006.

On February 28, 2007, the Office of the State Auditor released its report on the performance audit of IDS, which included detailed responses from the IDS Commission and staff at the end of the report. The audit report and IDS’ responses have been submitted to the General Assembly, and are posted on the Office of the State Auditor’s website ([www.ncauditor.net](http://www.ncauditor.net)). The auditors’ main findings were as follows: 1) the existing attorney selection and appointment procedures do not ensure adequate independence; 2) attorney selection and performance are not adequately monitored to ensure competent representation; 3) attorney fee payment processes lack adequate controls; 4) attorney fee payment processes are inefficient and labor intensive; and 5) the IDS Office lacks sufficient resources. On February 8, 2008, the Office of the State Auditor released a follow up to its 2007 report, which summarizes the steps IDS has taken to date to implement their recommendations. The follow-up report is also available at [www.ncauditor.net](http://www.ncauditor.net).

The IDS Commission and staff are committed to ensuring that North Carolina’s indigent defense system is as strong as possible, to providing high quality legal services to indigent defendants and respondents across the State, and to maintaining the confidence of the taxpayers who fund this system. The Commission and staff were already aware of and concerned about most of the issues contained in the auditors’ 2007 report. The Commission and staff have devoted time and energy to solving many of the problems the auditors identified—both before and after the report was released—and have not yet been able to reach other problems in light of the competing demands on IDS’ staff and resources. IDS will continue taking steps to address all of the issues and recommendations contained in the audit report, including discussing the problems and potential solutions within the IDS Commission and Office, consulting with other system actors as appropriate, and making recommendations to and requests of the General Assembly.

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

### *Regionalization of the Public Defender System*

One of the IDS Office's key functions is to determine the most appropriate method of providing legal representation in each judicial district, from both a cost and quality perspective. The IDS Act authorizes the IDS Office to use appointed counsel on a case-by-case basis, to enter into contracts with attorneys to handle a number of cases over a specified period of time, to employ full-time or part-time public defenders to represent indigent defendants in a particular district or region with legislative approval, or to use any combination of these or other methods. This flexibility allows the IDS Office to tailor indigent defense services to the needs in different parts of the State and in different types of cases.

As noted by the auditors, the IDS Commission and staff believe that the current systems in many areas of North Carolina do not lend themselves to extensive management and oversight by IDS. Indeed, IDS' efforts to oversee the delivery of legal services to indigent defendants and respondents are frustrated by our reliance on public defenders who are not accountable to IDS and on local bar committees that are composed of volunteers. The IDS Commission and staff believe that an expansion and regionalization of the existing public defender system would vastly improve IDS' ability to fulfill its statutory mission, and would address many of the problems identified by the performance audit. However, the Commission and staff also strongly believe that a regional system must be coupled with a more appropriate and effective management and oversight relationship between IDS and the chief public defenders, which can best be accomplished if IDS has hiring authority, as it does with the Appellate, Capital, and Juvenile Defenders. *See* "Consultation with Other Actors and Recommended Cost-Saving Measures" above.

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

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

administrative responsibilities of regional offices would necessitate some additional administrative staff in those offices, regionalization could also generate savings, particularly if some of the existing defender offices are consolidated.

This model of a defender office with full-time assistant defenders and oversight responsibility for appointed attorneys in other counties is similar to the model IDS has already successfully established in the statewide Offices of the Appellate Defender and Capital Defender. In addition, regionalized public defender systems are successfully used in other states, such as Minnesota. The IDS Commission and IDS Office are continuing to discuss and analyze the possibility of regional defender offices and may develop more specific proposals for implementation of such a system in North Carolina in the future.

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

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

As discussed above, the IDS Commission formed an Indigent Appointment Plan Committee to develop a model indigent appointment plan for non-public defender districts. *See* “Committees of the IDS Commission” above. The Committee met several times, and the full Commission approved the Committee’s proposed model plan at its March 2008 Commission meeting. The plan is modeled after the public defender appointment plans discussed above, *see* “Development and Approval of Public Defender Plans,” and includes qualification standards for the various indigent lists, provides for more oversight by a local committee appointed by the President of the District Bar, and includes some basic reporting requirements to the IDS Office.

Now that the model plan has been approved by the IDS Commission, Office staff will begin working with local districts across the State to implement some version of the model plan at the local level. As part of that process, IDS also hopes to establish or strengthen mechanisms for responding to client complaints about their appointed attorneys. In the long run, however, the IDS Commission and staff believe these tasks may be better undertaken by the appropriate regional defender with IDS’ assistance and oversight. *See* “Regionalization of the Public Defender System” above.

### ***Electronic Case Reporting and Fee Filing***

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



In 2003 and 2006, IDS staff submitted grant applications to the Governor's Crime Commission seeking funds to develop a pilot system. Neither of those applications was selected for grant funding. In addition, the IDS Office asked the General Assembly for funds to pilot test an automated system during the 2006 legislative session; while the request was not granted at that time, the General Assembly directed the Office of the State Auditor to conduct the performance audit described above and to include recommendations on automation. In its February 2007 report, the Office of the State Auditor found that the existing attorney fee payment process is inefficient and labor-intensive and recommended that IDS automate that process. In fiscal year 2007-08, the General Assembly appropriated \$175,000 in non-recurring funds for IDS to create a pilot web-based system for electronic submission of fee applications.

The IDS staff has drafted a work plan for the pilot project, which has been approved by the IDS Commission. The Commission has also formed an ad hoc technology working group to guide the staff on this project. Office staff have researched electronic fee application systems that are in place in four other states—Colorado, Massachusetts, Ohio, and South Carolina—and compiled a chart summarizing the primary components of those systems. Staff members also conducted a site visit to South Carolina to see that state's system and to interview the programmer, developer, and administrative processing staff. The same staff members are planning a site visit to the office of the Federal Defenders of Western North Carolina to see their paperless office system. Office staff have also held meetings with a technology consultant, who has provided services to UNC-Greensboro Information Technology Services, and with AOC Technology Services Division to begin identifying equipment and software protocols and technical specifications. The staff are now in the process of developing a job description for an Information Technology Manager position to oversee this project, and will soon begin the recruiting and hiring process. With respect to software development, IDS has also contracted with a programmer to restructure the existing Access database that IDS uses to process capital and appellate fee applications in a way that will facilitate on-line fee processing.

At this time, the IDS Office has identified the desired features and components of an electronic system, as well as the necessary equipment and software. However, because of competing demands on IDS' staff time, the Office will not be able to utilize the full \$175,000 in non-recurring funds during the current fiscal year and does not anticipate being in a position to begin a pilot program for electronic fee submission until fiscal year 2008-09. As discussed in "Legislative Recommendations" below, IDS will be asking the General Assembly to transfer the balance of this year's \$175,000 non-recurring appropriation to our budget for fiscal year 2008-09 so that we can continue the process of implementing the planned pilot program. While additional funds would be necessary later to expand the system, the IDS Commission and staff believe the long-term efficiency savings to the State from reduced labor and automation of routine tasks would significantly outweigh the initial costs for development and implementation. It would also greatly improve the ability of IDS staff to collect and analyze data that is currently inaccessible, thereby enhancing the IDS Commission's ability to make informed decisions about resource allocation.

### *Electronic Funds Transfer*

In its February 2007 report, the Office of the State Auditor also recommended that IDS require attorneys to register for electronic deposit of all payments for indigent cases. While IDS has not yet required attorneys to register for electronic payment, the Office has been encouraging attorneys to take advantage of e-pay and has mailed e-pay forms to approximately 400 attorneys since the audit. The percentage of payments that IDS issues electronically has risen from 21% in fiscal year 2005-06 to 25% so far this fiscal year.

### *New Fiscal Controls on Attorney Fee Payments*

In its February 2007 report, the Office of the State Auditor also found that the current attorney fee payment process lacks adequate controls and recommended that IDS implement additional measures to ensure that attorneys are paid the correct amount and to minimize the incidence of overpayment resulting from accident, fraud, or other cause. The IDS Commission and staff believe that automation of the attorney fee application and payment systems, as discussed above, would eliminate or minimize many of the deficiencies in internal payment controls that were identified by the auditors. There would also be a number of other benefits from implementing the auditors' recommendations in this area, including minimizing the susceptibility to fraud and the potential for duplicate payments, an ability to flag high time claims for additional review and auditing, and improved budgeting capabilities. Until IDS is able to develop and implement the needed technology, however, Office staff have taken significant steps to improve IDS' current processes and systems.

As IDS noted in its response to the performance audit, all of the accounts payable staff who key and process attorney fee applications were AOC employees for the first eight months of the audit period. Thus, while IDS had input into and shared responsibility for internal controls, IDS staff did not have authority to implement system or procedural changes. As discussed in "Ongoing Division of Administrative and Budgetary Responsibilities" above, IDS assumed responsibility for and supervision of the Financial Services division on July 1, 2006. Since assuming responsibility for this function, IDS has taken a number of steps to improve the training, support, and supervision of the accounts payable staff. For instance, Office staff reviewed and reformulated procedures for the processing staff to minimize keying errors, and began having management review any invoices that raise concerns for the processing staff. IDS' new in-house Auditor, *see* "New IDS Auditor Position" above, has also been developing a written policy and procedures manual to govern the processing of attorney fee applications. In addition, Office staff have been meeting with various clerk's offices around the State to clarify their procedures with respect to attorney fee applications; so far, such meetings have been held in Durham, Mecklenburg, Pitt, and Wake counties.

Since the audit report was issued, IDS Financial Services staff have also been given access to the automated criminal information system (ACIS) to verify the case numbers and disposition dates that attorneys report on fee applications. While this is not being done in all cases because of the additional staff and resources that such a routine system would require, it is being done whenever there are questions about a fee application and in spot audits. In addition, the responsibility for establishing new vendors and maintaining up-to-date vendor information in the

North Carolina Accounting System (“NCAS”) has been transferred to two staff members in the central IDS Office in Durham who do not process fee applications or enter fee awards into NCAS, which has resolved the segregation of duties problem identified by the auditors. Moreover, a staff member in the central IDS Office and a staff member in IDS Financial Services have been assigned to clean up vendor information in NCAS. As part of that effort, more than 360 private appointed attorneys around the State have been contacted to clarify current addresses, tax identification numbers, and other information.

IDS Office staff began looking into problems with duplicate payments during the Spring of 2005, before the performance audit discussed above. Using an FTP data download that the Office receives from NCAS, IDS staff developed a procedure for manipulating the data in SPSS to identify suspected duplicates based on overlap among certain fields in NCAS. That procedure allows staff to identify potential duplicates that may have slipped through the safeguards in NCAS. Once a suspected duplicate is found, IDS Office staff investigate it and determine whether there is sufficient evidence that payment was issued twice for the same services to justify writing the attorney and asking for repayment. Since January 2007, IDS has collected approximately \$75,000 from attorneys who erroneously received duplicate payments in the past.

Because of the labor and inefficiencies associated with identifying and collecting duplicate payments after they have been issued, as well as the tax consequences for the attorneys, IDS Office staff worked with the Office of the State Controller to develop a program that can be run before each payment date to identify potential duplicates in SPSS and to intercept them before payment is issued. The procedure involves: 1) capturing the mainframe data on the current day’s check run to compare to a history file and to identify suspected duplicates; 2) holding the checks in question while researching prior payments; and 3) canceling payment before the check is mailed if appropriate. This system is less time consuming than recovering duplicate payments after the fact. To aid in the prevention of duplicate payments, IDS also began requiring attorneys to report the beginning and ending date of services rendered on the fee application forms and has made efforts to standardize the way that key pieces of data—such as case numbers, disposition dates, client names, and judge names—are entered into NCAS by the Financial Services staff.

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

### ***Other Initiatives and Recommendations***

For additional initiatives and recommendations that are consistent with the auditors’ findings, see also “New IDS Auditor Position” above (discussing the new auditor position within the IDS Office); “Systems Evaluation Project” above (discussing a long-term project to develop a tool to evaluate the quality and performance of indigent defense systems); “Expand and Regionalize the Public Defender System and Improve IDS’ Ability to Supervise the Chief Public Defenders” below (recommending that the General Assembly expand and regionalize the public defender

system and establish a more appropriate management and supervisory relationship between IDS and the chief public defenders); and “Direct AOC and IDS to Conduct a Feasibility Study of Providing IDS with Indigent Case Information when Cases are Initiated” below (discussing the technological barriers to implementing the auditors’ recommendation that IDS obtain case information when cases are initiated, and suggesting that the General Assembly direct AOC and IDS to consult and develop a proposal).

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

The existing data on the volume and cost of cases handled in each district by private assigned counsel and public defenders during fiscal year 2006-07 is attached to this report as Appendix D. While the reported data continues to be limited in scope, the IDS Office is continually working with AOC and IDS Financial Services division to improve data collection procedures and data reporting capabilities for cases handled by private appointed attorneys, *see* “Improved Data Collection and Reporting” above, and has worked with the public defenders to improve disposition reporting from the public defender offices, *see* “Public Defender Cost-Effectiveness Studies” above. The IDS Office hopes to continue improving the quality of the data that is reported in future annual reports.

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

G.S. 7A-346.2(a) directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions, including the number of such contracts, the number of attorney positions, and the dollar amount of each contract. During fiscal year 2006-07, as part of a broader “court set” grant from Mecklenburg County, the IDS Office had a contract with the county to fund two assistant public defender positions and six legal assistant positions in the Mecklenburg County Office of the Public Defender; the contractual amount for those positions was \$441,951. Also during fiscal year 2006-07, the IDS Office had a contract with Durham County to fund one assistant public defender position in the Durham County Office of the Public Defender for a bond hearing project; the contractual amount for that position was \$45,402. In addition, the University of North Carolina (“UNC”) School of Law paid IDS \$20,000 during the Fall 2006 and \$20,000 during the Spring 2007 semesters for one Orange/Chatham County assistant public defender to spend a portion of her time supervising law students in the UNC Criminal Law Clinic, which represents juveniles in delinquency proceedings in Orange and Durham County district court.

## **IV. LEGISLATIVE RECOMMENDATIONS**

### **A. Increased Funding for the Private Appointed Counsel Fund:**

The IDS Commission has developed a proposed budget for fiscal year 2008-09, which asks the General Assembly to appropriate a recurring increase of \$3.8 million to maintain the current level of services at the 5.8% historical annual growth rate by case disposition year. In addition,

the proposed budget requests \$700,000 in non-recurring funds to cover IDS' projected debt at the end of fiscal year 2007-08.

### **B. Increased Funding for the Office of Sentencing Services:**

The IDS Commission's proposed budget for fiscal year 2008-09 also asks the General Assembly for a \$200,000 recurring increase for the Office of Sentencing Services ("OSS"), which would make this year's non-recurring funding recurring. In addition the Commission recommends that OSS be given flexibility to use some funds for position expansion in the central office and in state programs or to increase grants to local programs.

### **C. Transfer Funding to Develop a Pilot System for Electronic Fee Filing to Fiscal Year 2008-09:**

In fiscal year 2007-08, the General Assembly appropriated \$175,000 in non-recurring funds for IDS to develop a pilot web-based system for electronic submission of fee applications in capital cases and appeals. As noted in "Initiatives in Response to 2007 Performance Audit by the State Auditor's Office: Electronic Case Reporting and Fee Filing" above, IDS Office staff have completed a great deal of initial work in preparation for piloting an electronic system. However, because of competing demands on IDS' staff time, the Office will not be able to utilize the full \$175,000 in non-recurring funds during the current fiscal year and does not anticipate being in a position to begin a pilot program for electronic fee submission until fiscal year 2008-09. Thus, the IDS Commission and Office request that the General Assembly transfer the balance of this year's \$175,000 non-recurring appropriation to our budget for fiscal year 2008-09 so that we can continue the process of implementing the planned pilot program.

Because IDS' ability to improve and automate the processing of fee applications statewide is dependent on the technology available to other court system actors, the IDS Commission and staff also believe AOC must be an active partner in this endeavor. In addition to the transfer of funding for the pilot program requested above, IDS requests that the General Assembly direct AOC and IDS to continue consulting about a statewide system of electronic fee submission.

### **D. Possible Increased Appropriation for Transcript Production:**

The AOC Court Reporter Coordinator has previously asked IDS and AOC to increase the per page rates that the State pays for transcription in indigent cases. Currently, IDS pays court reporters \$1.75 per page for an original transcript, which has been the rate since 1999. The court reporters have asked IDS to increase the rate to \$3.00 per page for an original, either all at once or incrementally over a period of several years. The IDS Commission believes that IDS is not in a position to evaluate the merits of that request or to increase the per page rates without a specific legislative appropriation for that purpose. Thus, the IDS Office wanted to notify the General Assembly of the court reporters' request and to inform the Legislature that, based on fiscal year 2006-07 spending on transcripts, each \$.25 increase in the per page rate paid to court reporters would cost IDS an additional \$90,000 annually.

#### **E. Additional Staff for Existing Public Defender Offices:**

During the 2008 legislative session, the IDS Office will again ask the General Assembly for authority to add attorney and support staff positions to existing defender offices where IDS determines that the additions will be cost-effective and/or enhance the quality of representation in a district. *See* “Expansion of Existing Public Defender Offices” above.

#### **F. Implement the Judicial Council’s Recommended Salary Increases and Maintain Pay Parity Between District Attorneys and Public Defenders:**

The Judicial Council has prepared proposed legislation for the 2008 session that would raise the salaries of a number of Judicial Branch actors, including judges, district attorneys, and public defenders. The proposal would also maintain the traditional pay parity between district attorneys and public defenders, by providing that the annual salaries of both would be the midpoint between the salary of a senior resident superior court judge and the salary of a chief district court judge. The IDS Commission and IDS Office support the Judicial Council’s recommendations in this area, and request the funding to implement the recommended salary increases for public defenders, assistant public defenders, and other full-time defenders employed by IDS (\$3.5 million annually).

#### **G. Expand and Regionalize the Public Defender System and Improve IDS’ Ability to Supervise the Chief Public Defenders:**

The IDS Commission believes that expansion and regionalization of the public defender system would generate savings and improve IDS’ ability to fulfill its statutory mission. *See* “Initiatives in Response to 2007 Performance Audit by the State Auditor’s Office: Regionalization of the Public Defender System” above. However, for the reasons described below, the IDS Commission also strongly believes that a regional public defender system must be coupled with a more effective management and oversight relationship between IDS and the chief public defenders.

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

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

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

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

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

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

Sixth, because the population and caseload in many rural areas of North Carolina would be insufficient to support a traditional public defender office, the IDS Commission believes that a regionalized public defender system would be most suited to this State. See "Initiatives in Response to 2007 Performance Audit by the State Auditor's Office: Regionalization of the

Public Defender System” above. If IDS’ vision of regionalized public defender offices is implemented, most public defender regions would encompass more than one superior court district, which would also necessitate changes to the current system of appointment by the local senior resident superior court judge.

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

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

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

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

#### **I. Fund Pilot Tests of More Efficient Scheduling Practices:**

As reported in IDS’ March 2007 annual report, the IDS Commission recommends that the General Assembly appropriate a modest amount of money to staff one or more pilot tests of alternative scheduling systems in district and/or superior court that would minimize attorney wait time. As discussed in “Private Appointed Counsel Waiting-in-Court Study” above, IDS Office staff have completed a study demonstrating that defense attorney wait time attributable to the current scheduling system in North Carolina adds significant costs to indigent defense, particularly in criminal district court. That study was attached as an appendix to IDS’ March 2007 report and is available at [www.ncids.org](http://www.ncids.org). The IDS Commission and staff believe a



modernized approach to scheduling cases would generate substantial savings in taxpayer money. The IDS Commission recommends that, as a first step toward minimizing some of those unnecessary costs, IDS should work with one or more districts on a voluntary basis to pilot test alternative systems. The Commission believes that any pilot programs would need to last at least one full year before IDS will be in a position to make more wide-ranging recommendations about scheduling.

#### **J. Fund a Study to Identify Misdemeanors that Should be Decriminalized:**

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

#### **K. Additional Legislative Recommendations:**

During the 2008 short session, the IDS Commission and Office may recommend additional changes in law or funding that would assist the Office in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

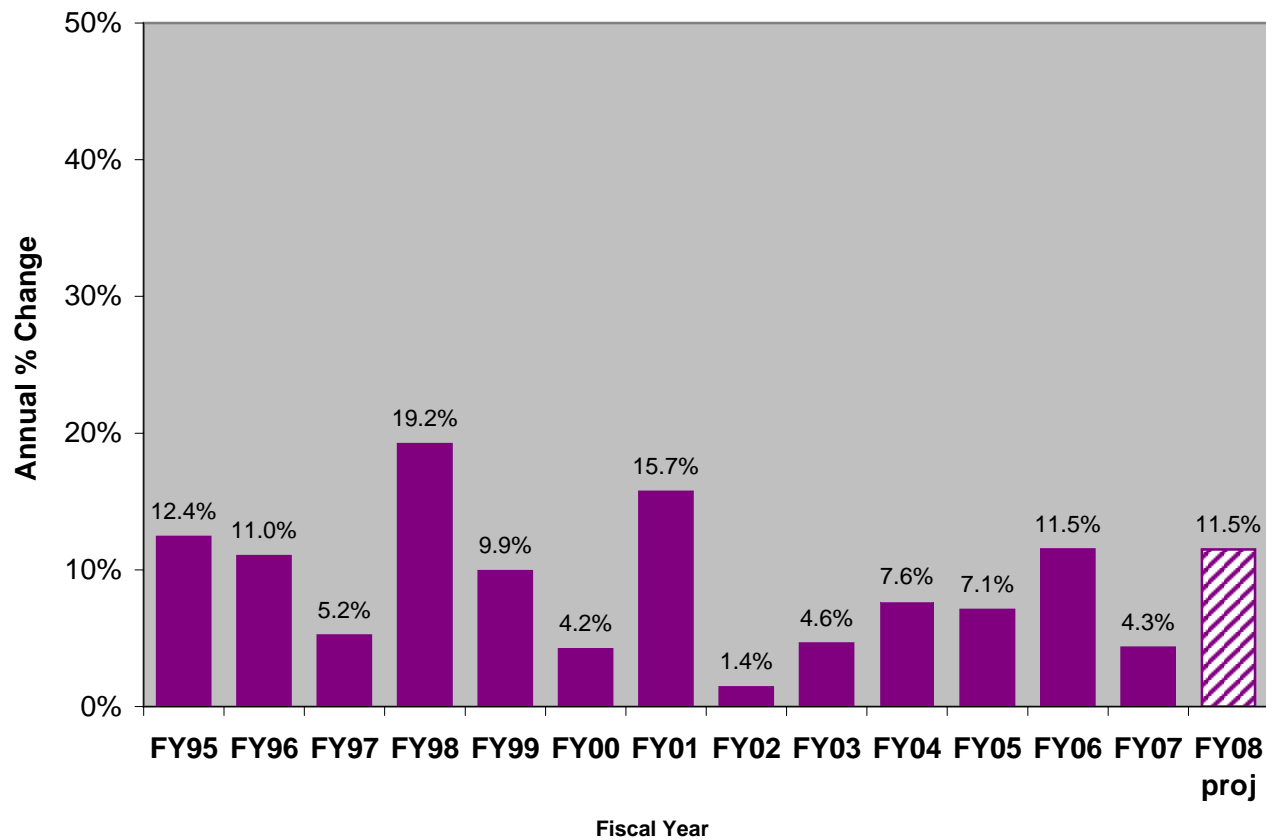
### **V. CONCLUSION**

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

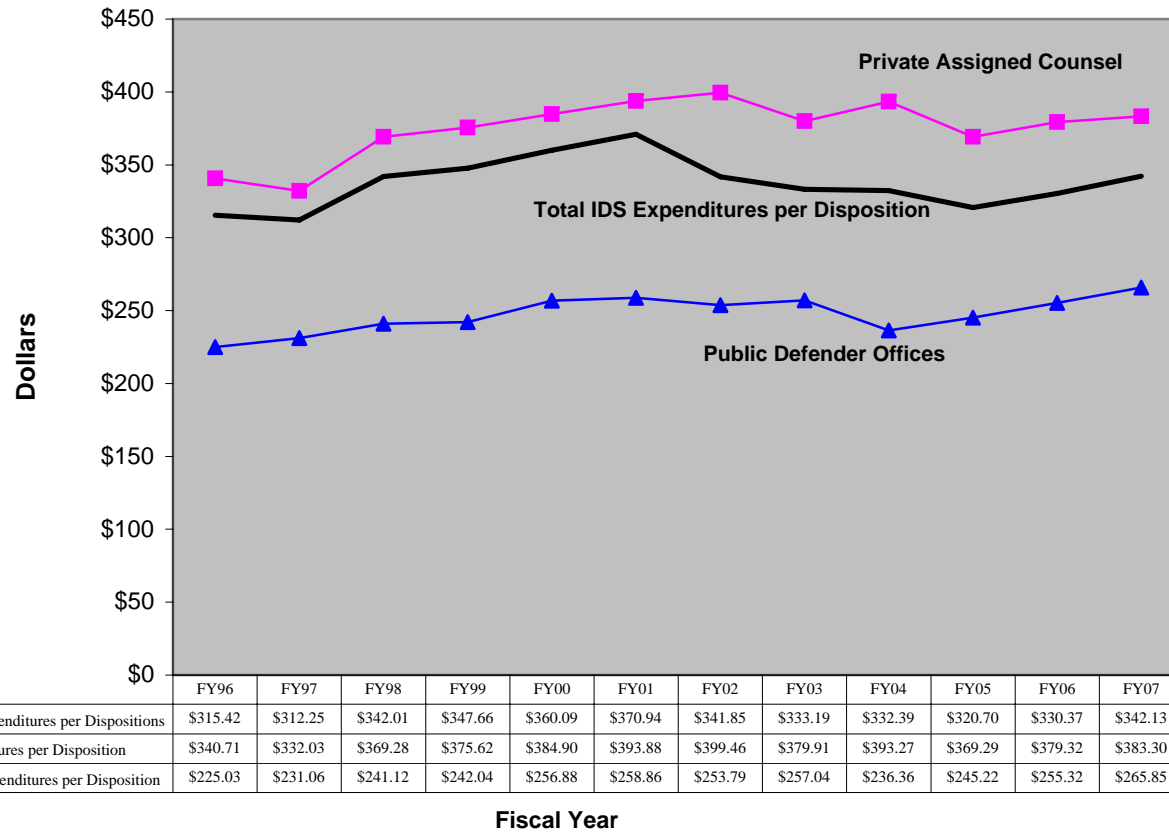
## **APPENDIX A**

## Annual Percent Change in Actual Total Indigent Defense Expenditures

(excludes prior year obligations and includes current obligations)



## Indigent Defense Expenditure History per Disposition (Prior Year Obligations Removed FY94 to FY07)



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

**Indigent Defense Expenditure History  
FY89 to FY07**

Type of Expenditure	FY89	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07
<i>Private Assigned Counsel (PAC)</i>															
Capital	2,095,675	5,189,722	4,605,960	6,950,613	6,453,782	9,589,186	9,176,899	10,079,534	11,272,810	10,876,856	10,005,808	10,714,595	10,993,138	12,258,524	12,413,506
Adult	11,724,097	16,309,410	18,597,507	19,932,141	22,322,081	25,540,251	27,428,944	29,283,471	35,536,744	32,226,789	37,847,981	37,879,960	45,380,760	52,028,772	50,596,736
Juvenile	1,045,401	1,712,647	2,268,305	2,314,826	2,560,702	2,787,998	2,966,086	3,138,127	3,828,369	2,932,196	3,195,779	2,927,609	3,763,905	3,899,309	3,348,486
GAL	102,770	71,827	71,630	77,089	115,313	123,838	159,776	208,031	298,241	278,687	180,819	188,468	554,855	637,750	1,282,133
Support Services	\$ 629,266	\$ 1,245,241	\$ 1,565,817	\$ 1,886,392	\$ 2,431,457	\$ 2,591,432	\$ 2,970,751	\$ 3,218,862	\$ 3,475,239	\$ 3,932,832	\$ 4,566,156	\$ 5,468,911	\$ 5,735,608	\$ 6,733,847	\$ 6,639,085
Obligated at Year-End	2,532,297	1,695,381	847,691	1,000,000	-	-	1,849,459	2,182,699	2,452,000	7,406,919	8,703,686	11,730,204	8,971,970	4,036,967	827,447
<b>Total PAC</b>	<b>\$ 17,500,240</b>	<b>\$ 26,224,228</b>	<b>\$ 27,956,909</b>	<b>\$ 32,181,061</b>	<b>\$ 33,883,335</b>	<b>\$ 40,632,705</b>	<b>\$ 44,551,915</b>	<b>\$ 48,110,724</b>	<b>\$ 56,863,403</b>	<b>\$ 57,654,279</b>	<b>\$ 64,500,229</b>	<b>\$ 68,909,747</b>	<b>\$ 75,400,236</b>	<b>\$ 79,595,169</b>	<b>\$ 75,107,393</b>
Total PAC with prior year obligations removed	\$ 23,691,931	\$ 26,261,528	\$ 31,313,370	\$ 32,883,335	\$ 40,632,705	\$ 44,551,915	\$ 46,261,265	\$ 54,680,704	\$ 55,202,279	\$ 57,093,310	\$ 60,206,061	\$ 63,670,032	\$ 70,623,199	\$ 71,070,426	
Annual % Change excluding prior year oblig. Including current oblig.		10.85%	19.24%	5.01%	23.57%	9.65%	3.84%	18.20%	0.95%	3.43%	5.45%	5.75%	10.92%	0.63%	
<i>Public Defender Offices &amp; Special Counsel</i>															
IDS Office									\$ 179,459	\$ 472,471	\$ 499,977	\$ 580,360	\$ 663,219	\$ 749,008	1,066,697
Public Defender	\$ 4,717,451	\$ 8,877,852	\$ 9,026,180	\$ 9,364,670	\$ 9,895,547	\$ 10,708,729	\$ 11,708,864	\$ 12,260,820	\$ 12,877,539	\$ 13,024,014	\$ 13,917,622	\$ 15,987,985	\$ 17,225,616	\$ 19,980,044	22,536,032
Appellate Defender	\$ 575,534	\$ 811,277	\$ 832,381	\$ 930,474	\$ 977,043	\$ 919,279	\$ 1,025,609	\$ 1,068,893	\$ 1,091,839	\$ 972,713	\$ 1,021,943	\$ 1,048,528	\$ 1,109,151	\$ 1,228,353	1,436,188
Capital Defender							\$ 183,896	\$ 278,065	\$ 352,240	\$ 392,940	\$ 777,491	\$ 1,115,204	\$ 1,796,881	\$ 1,540,186	1,929,257
Juvenile Defender													\$ 79,776	\$ 154,617	88,542
Set-Off Debt			\$ 91,109	\$ 91,109	\$ 86,152	\$ 83,085	\$ 82,489	\$ 84,414	\$ 92,402	\$ 65,519	\$ 71,373	\$ 68,900	\$ 72,913	\$ 79,930	163,719
Special Counsel	\$ 264,601	\$ 378,859	\$ 397,427	\$ 415,995	\$ 455,201	\$ 476,500	\$ 502,067	\$ 512,718	\$ 674,721	\$ 773,292	\$ 802,022	\$ 845,239	\$ 871,096	\$ 993,071	1,176,841
<b>Total State Offices</b>	<b>\$ 5,557,586</b>	<b>\$ 10,067,988</b>	<b>\$ 10,347,097</b>	<b>\$ 10,802,248</b>	<b>\$ 11,413,943</b>	<b>\$ 12,187,593</b>	<b>\$ 13,502,925</b>	<b>\$ 14,204,910</b>	<b>\$ 15,268,200</b>	<b>\$ 15,700,949</b>	<b>\$ 17,090,428</b>	<b>\$ 19,646,216</b>	<b>\$ 21,818,652</b>	<b>\$ 24,725,209</b>	<b>\$ 28,397,276</b>
Annual Percent Change			2.8%	4.4%	5.7%	6.8%	10.8%	5.2%	7.5%	2.8%	8.8%	15.0%	11.1%	13.3%	14.9%
<b>Total IDS Expenditures</b>	<b>\$ 23,057,826</b>	<b>\$ 36,292,216</b>	<b>\$ 39,627,762</b>	<b>\$ 42,963,309</b>	<b>\$ 45,297,278</b>	<b>\$ 52,820,298</b>	<b>\$ 58,054,840</b>	<b>\$ 62,315,634</b>	<b>\$ 72,131,603</b>	<b>\$ 73,355,228</b>	<b>\$ 81,590,657</b>	<b>\$ 88,555,963</b>	<b>\$ 97,218,888</b>	<b>\$ 104,320,378</b>	<b>\$ 103,504,669</b>
Annual Percent Change			9.2%	8.4%	5.4%	16.6%	9.9%	7.3%	15.8%	1.7%	11.2%	8.5%	9.8%	7.3%	-0.8%
Total IDS Expenditures with prior year obligations removed	\$ 33,759,919	\$ 37,932,381	\$ 42,115,618	\$ 44,297,278	\$ 52,820,298	\$ 58,054,840	\$ 60,466,175	\$ 69,948,904	\$ 70,903,228	\$ 74,183,738	\$ 79,852,277	\$ 85,488,684	\$ 95,348,408	\$ 99,467,702	
Percent Change in Total Expenditures (exclude prior yr oblig.)		12.4%	11.0%	5.2%	19.2%	9.9%	4.2%	15.7%	1.36%	4.63%	7.64%	7.06%	11.53%	4.32%	
Sources: Administrative Office of the Courts, Annual Reports 1988-99 through 2000-04 and IDS Office Chief Financial Officer.															
Following financial information not included for comparison reasons:															
Programs no longer in operation - Death Penalty Resource Center, Indigency Screening Program															
Programs not under Indigent Defense Services - Guardian ad Litem Program															
Pass through grants - NC State Bar Grant, Center for Death Penalty Litigation Grant															
Sentencing Services, Prisoner Access to Courts															

## **APPENDIX B**

	A	B	C	D	K	L	M
1	<b>Post June 30, 2001 Potentially Capital Cases at the Trial Level by Dispositon</b>						
	(As of 11/15/2007, Based on Warrant Served Date)						
2			<b>Total Disposed Cases</b>	<b>% of Disp.</b>			
3	Capital	Resen - Death	2	0.3%			
4		Resen - Life	4	0.6%			
5		Trial - SH, Death	19	3.0%			
6		Trial - Guilty Life	92	14.5%			
7		Trial - Guilty, 2nd Murder	13	2.1%			
8		Trial - Guilty, Vol. Mans	7	1.1%			
9		Trial - Not Guilty	19	3.0%			
10		Mistrial	7	1.1%			
11		Plea - SH, Death	1	0.2%			
12		Plea - 1st Degree, Life	137	21.6%			
13		Plea - 2nd Degree Murder	219	34.5%			
14		Plea - Access After Murder	21	3.3%			
15		Plea - Vol. Mans	20	3.2%			
16		Plea - Invol. Mans	4	0.6%			
17		Plea - Other Felony	40	6.3%			
18		Vol. Dismissal	21	3.3%			
19		Not competent to proceed	1	0.2%			
20		Abated	5	0.8%			
21		Other	2	0.3%			
22		<b>Total</b>	<b>634</b>	<b>100.0%</b>			
23	Non-Capital	Resen - Life	1	0.1%			
24		Resen - Other	1	0.1%			
25		Trial - Guilty Life	78	5.6%			
26		Trial - Guilty, 2nd Murder	46	3.3%			
27		Trial - Guilty, Vol. Mans	21	1.5%			
28		Trial - Guilty, Other Felony	12	0.9%			
29		Trial - Not Guilty	42	3.0%			
30		Mistrial	8	0.6%			
31		Plea - 1st Degree, Life	26	1.9%			
32		Plea - 2nd Degree Murder	451	32.4%			
33		Plea - Access After Murder	35	2.5%			
34		Plea - Conspiracy Commit Murder	1	0.1%			
35		Plea - Vol. Mans	195	14.0%			
36		Plea - Invol. Mans	106	7.6%			
37		Plea - Other Felony	143	10.3%			
38		Plea - Misdemeanor or Other Non-felony	5	0.4%			
39		No Probable Cause Found	27	1.9%			
40		No True Bill Found	8	0.6%			
41		Vol. Dismissal	169	12.1%			
42		Voluntary Dismissal with Leave	2	0.1%			
43		Not competent to proceed	3	0.2%			
44		Not Guilty by reason of insanity	3	0.2%			
45		Abated	9	0.6%			
46		Other	2	0.1%			
47		<b>Total</b>	<b>1,394</b>	<b>100.0%</b>			
48	Unknown	Resen - Life	1	1.1%			
49		Trial - Guilty Life	3	3.4%			
50		Trial - Guilty, 2nd Murder	6	6.9%			
51		Trial - Guilty, Vol. Mans	3	3.4%			
52		Trial - Not Guilty	6	6.9%			
53		Plea - 1st Degree, Life	3	3.4%			
54		Plea - 2nd Degree Murder	19	21.8%			
55		Plea - Access After Murder	1	1.1%			
56		Plea - Vol. Mans	12	13.8%			
57		Plea - Invol. Mans	6	6.9%			
58		Plea - Other Felony	5	5.7%			
59		No Probable Cause Found	8	9.2%			
60		Vol. Dismissal	9	10.3%			
61		Voluntary Dismissal with Leave	1	1.1%			
62		Abated	2	2.3%			
63		Other	2	2.3%			
64		<b>Total</b>	<b>87</b>	<b>100.0%</b>			
65	All Potentially Capital Cases	Resen - Death	2	0.1%			
66		Resen - Life	7	0.3%			
67		Resen - Other	1	0.0%			
68		Trial - SH, Death	19	0.9%			
69		Trial - Guilty Life	174	8.2%			
70		Trial - Guilty, 2nd Murder	65	3.1%			
71		Trial - Guilty, Vol. Mans	31	1.5%			
72		Trial - Guilty, Other Felony	12	0.6%			
73		Trial - Not Guilty	67	3.2%			
74		Mistrial	15	0.7%			
75		Plea - SH, Death	1	0.0%			
76		Plea - 1st Degree, Life	166	7.8%			
77		Plea - 2nd Degree Murder	689	32.5%			
78		Plea - Access After Murder	57	2.7%			
79		Plea - Conspiracy Commit Murder	1	0.0%			
80		Plea - Vol. Mans	227	10.7%			
81		Plea - Invol. Mans	116	5.5%			
82		Plea - Other Felony	188	8.9%			
83		Plea - Misdemeanor or Other Non-felony	5	0.2%			
84		No Probable Cause Found	35	1.7%			
85		No True Bill Found	8	0.4%			
86		Vol. Dismissal	200	9.4%			
87		Voluntary Dismissal with Leave	3	0.1%			
88		Not competent to proceed	4	0.2%			
89		Not Guilty by reason of insanity	3	0.1%			
90		Abated	16	0.8%			
91		Other	8	0.4%			
92		<b>Total</b>	<b>2,120</b>	<b>100.0%</b>			
93		% All Cases 2nd Degree or Less	1,725	82.4%			
94		% All Cases Dismissed, No True Bill, No Probable Cause	243	11.6%			
95		% All Cases Acquitted, Dismissed, No True Bill, No Probable Cause	310	14.8%			
96	Source: North Carolina Office	% Proceeded Capital Cases 2nd Degree or Less	373	59.4%			
97	of Indigent Defense Services,	% Proceeded Capital Cases Less 2nd Degree	141	22.5%			
98	FY07 Capital Trial Case	% Proceeded Capital Dismissed, No True Bill, No Probable Cause	21	3.3%			
99	Study (Draft), February 2008.	% Proceeded Capital Acquitted, Dismissed, No True Bill, No Probable Cause	40	6.4%			

Note: Figures to the left exclude Abated, Not Competent to Proceed, Not Guilty By Reason of Insanity, and Voluntary Dismissals with Leave Dispositions.

## **APPENDIX C**



<b>TOTAL RECOUPMENT BY COUNTY (Includes Clerk Collections, Set-Off Debt, and \$50 Appointment Fee)</b>				<b>\$50 APPOINTMENT FEE BY COUNTY</b>
<b>Fiscal Year 2006-07</b>				
	<b>Total Recoupment*</b>	<b>Total Spending**</b>	<b>Total Recoup as % of Total Spending</b>	<b>\$50 Fee Collections</b>
Alamance	\$205,439	\$1,035,608	19.8%	\$12,195
Alexander	\$43,614	\$289,449	15.1%	\$3,344
Allegany	\$18,096	\$52,793	34.3%	\$3,444
Anson	\$45,900	\$303,716	15.1%	\$615
Ashe	\$34,529	\$127,104	27.2%	\$4,296
Avery	\$29,945	\$119,196	25.1%	\$0
Beaufort	\$63,349	\$397,748	15.9%	\$2,462
Bertie	\$27,810	\$149,389	18.6%	\$1,772
Bladen	\$40,702	\$340,104	12.0%	\$2,087
Brunswick	\$112,416	\$883,769	12.7%	\$6,810
Buncombe	\$186,129	\$2,134,788	8.7%	\$1,916
Burke	\$142,384	\$615,504	23.1%	\$12,667
Cabarrus	\$305,900	\$1,172,141	26.1%	\$29,062
Caldwell	\$158,257	\$683,992	23.1%	\$12,739
Camden	\$5,764	\$74,736	7.7%	\$500
Carteret	\$29,819	\$487,193	6.1%	\$4,058
Caswell	\$45,476	\$157,954	28.8%	\$3,863
Catawba	\$181,516	\$1,193,215	15.2%	\$6,015
Chatham	\$21,244	\$576,248	3.7%	\$1,640
Cherokee	\$50,879	\$437,865	11.6%	\$45
Chowan	\$14,953	\$109,877	13.6%	\$1,124
Clay	\$7,867	\$65,273	12.1%	\$668
Cleveland	\$118,111	\$705,598	16.7%	\$13,223
Columbus	\$70,954	\$529,063	13.4%	\$5,139
Craven	\$89,586	\$536,438	16.7%	\$6,927
Cumberland	\$84,793	\$3,011,172	2.8%	\$45
Currituck	\$25,683	\$148,421	17.3%	\$1,024
Dare	\$52,941	\$433,743	12.2%	\$1,381
Davidson	\$249,392	\$1,277,236	19.5%	\$17,771
Davie	\$46,505	\$290,677	16.0%	\$5,081
Duplin	\$60,537	\$328,151	18.4%	\$2,049
Durham	\$176,688	\$3,603,621	4.9%	\$45
Edgecombe	\$72,928	\$451,265	16.2%	\$2,469
Forsyth	\$315,300	\$2,929,465	10.8%	\$48,015
Franklin	\$76,440	\$304,515	25.1%	\$6,782
Gaston	\$34,236	\$2,211,359	1.5%	\$295
Gates	\$6,902	\$69,578	9.9%	\$360
Graham	\$15,865	\$81,289	19.5%	\$1,525
Granville	\$73,966	\$295,992	25.0%	\$5,566

	<b>Total Recoupment*</b>	<b>Total Spending**</b>	<b>Total Recoup as % of Total Spending</b>	<b>\$50 Fee Collections</b>
Greene	\$27,865	\$99,372	28.0%	\$2,742
Guilford	\$215,249	\$4,283,589	5.0%	\$13,481
Halifax	\$110,481	\$703,251	15.7%	\$6,535
Harnett	\$93,316	\$839,898	11.1%	\$8,743
Haywood	\$112,137	\$625,636	17.9%	\$7,084
Henderson	\$166,842	\$863,979	19.3%	\$15,369
Hertford	\$29,307	\$206,238	14.2%	\$0
Hoke	\$37,043	\$428,746	8.6%	\$766
Hyde	\$7,472	\$29,856	25.0%	\$544
Iredell	\$229,673	\$1,220,706	18.8%	\$16,505
Jackson	\$48,735	\$268,270	18.2%	\$2,761
Johnston	\$94,272	\$903,049	10.4%	\$9,151
Jones	\$15,672	\$56,943	27.5%	\$1,700
Lee	\$89,414	\$451,231	19.8%	\$9,891
Lenoir	\$107,985	\$410,018	26.3%	\$9,481
Lincoln	\$70,976	\$362,838	19.6%	\$8,404
Macon	\$59,525	\$248,644	23.9%	\$845
Madison	\$31,737	\$124,411	25.5%	\$0
Martin	\$27,700	\$171,328	16.2%	\$1,155
McDowell	\$75,467	\$464,187	16.3%	\$8,324
Mecklenburg	\$350,201	\$8,140,921	4.3%	\$153
Mitchell	\$26,459	\$75,066	35.2%	\$2,518
Montgomery	\$17,889	\$191,196	9.4%	\$831
Moore	\$78,780	\$652,411	12.1%	\$948
Nash	\$105,808	\$591,849	17.9%	\$6,400
New Hanover	\$279,450	\$2,044,894	13.7%	\$12,230
Northampton	\$32,887	\$177,792	18.5%	\$1,130
Onslow	\$187,136	\$875,767	21.4%	\$17,174
Orange	\$41,084	\$1,102,851	3.7%	\$3,617
Pamlico	\$18,191	\$115,926	15.7%	\$1,084
Pasquotank	\$57,530	\$383,763	15.0%	\$5,366
Pender	\$59,396	\$271,869	21.8%	\$5,259
Perquimans	\$12,397	\$78,391	15.8%	\$660
Person	\$85,426	\$463,100	18.4%	\$5,220
Pitt	\$97,082	\$2,135,069	4.5%	\$340
Polk	\$24,741	\$139,247	17.8%	\$1,908
Randolph	\$126,092	\$820,619	15.4%	\$180
Richmond	\$114,439	\$1,028,260	11.1%	\$225
Robeson	\$77,001	\$2,262,519	3.4%	\$0
Rockingham	\$171,955	\$690,022	24.9%	\$7,200
Rowan	\$248,623	\$1,211,876	20.5%	\$22,299
Rutherford	\$166,261	\$659,620	25.2%	\$26,003
Sampson	\$91,770	\$462,842	19.8%	\$7,544
Scotland	\$51,069	\$661,785	7.7%	\$276
Stanly	\$42,076	\$352,422	11.9%	\$90

	<b>Total Recoupment*</b>	<b>Total Spending**</b>	<b>Total Recoup as % of Total Spending</b>	<b>\$50 Fee Collections</b>
Stokes	\$77,524	\$250,926	30.9%	\$4,281
Surry	\$162,127	\$525,191	30.9%	\$13,167
Swain	\$18,583	\$112,177	16.6%	\$17
Transylvania	\$54,083	\$334,088	16.2%	\$4,470
Tyrrell	\$6,213	\$43,078	14.4%	\$535
Union	\$151,407	\$956,226	15.8%	\$11,710
Vance	\$81,511	\$477,534	17.1%	\$3,661
Wake	\$395,097	\$5,206,346	7.6%	\$29,721
Warren	\$26,016	\$119,859	21.7%	\$2,480
Washington	\$17,563	\$71,226	24.7%	\$1,467
Watauga	\$59,749	\$244,894	24.4%	\$5,479
Wayne	\$174,634	\$672,936	26.0%	\$12,271
Wilkes	\$86,407	\$434,832	19.9%	\$11,807
Wilson	\$80,907	\$476,619	17.0%	\$310
Yadkin	\$51,409	\$193,167	26.6%	\$5,546
Yancey	\$30,870	\$143,638	21.5%	\$180
<b>Total</b>	<b>\$9,031,526</b>	<b>\$77,230,250</b>	<b>11.7%</b>	<b>\$588,257</b>
<i>recoupment figures per uarattfb report (NCAS discrepancy due to set-off debt refunds)</i>				
<i>* total recoupment includes judgments and appointment fees collected by Clerks plus set-off debt intercepts</i>				
<i>**total spending represents non-capital private counsel and support services plus all public defender expenses</i>				

## **APPENDIX D**

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

July 1, 2006 – June 30, 2007

	<b>Number of Cases*</b>	<b>Total Cost</b>
<b>Assigned Private Counsel</b>		
Capital offense cases	1,450	12,413,506
Adult cases (other than capital)	165,267	49,756,081
Juvenile cases	13,893	3,262,628
Guardian ad Litem assigned to IDS	4,210	1,282,133
<b>Totals</b>	<b>184,820</b>	<b>66,714,348</b>
<b>Private Counsel Contracts</b>	5,332	926,513
<b>Legal Services to Inmates</b>		3,262,213
<b>Public Defender Offices</b>		
District 1	1,659	915,324
District 3A	2,836	1,006,592
District 3B (Carteret County)	1,390	310,039
District 10	7,835	1,909,933
District 12	5,007	1,511,091
District 14	9,276	1,855,445
District 15B	3,066	1,055,411
District 16A	2,186	736,349
District 16B	2,843	1,238,883
District 18	10,480	2,742,727
District 21	6,248	1,619,811
District 26	21,221	4,792,152
District 27A	5,330	1,649,503
District 28	5,394	1,192,772
<b>Totals</b>	<b>84,771</b>	<b>22,536,032</b>
<b>Office of the Appellate Defender</b>		1,436,188
<b>Special Counsel at State Mental Health Hospitals</b>		1,176,841
<b>Support Services</b>		
Transcripts, records, and briefs		621,305
Expert witness fees		2,272,827
Investigator fees		3,706,348
Interpreters		38,605
<b>Total</b>		<b>6,639,085</b>
<b>Set-Off Debt Collection</b>		88,542
<b>Indigent Defense Services</b>		1,066,697
<b>Office of the Capital Defender</b>		1,929,257
<b>Office of the Juvenile Defender</b>		163,719
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$105,939,435</b>
<b>Sentencing Services Program</b>		2,683,930
<b>GRAND TOTAL</b>		<b>\$108,623,365</b>

\* The number of "cases" shown for private assigned counsel is the number of payments (fee apps) made by IDS for appointed attorneys. For public defender offices, the number of "cases" is the number of indigent whose cases were disposed of by public defenders during the 2006-07 year.

Cost figures are net of receipts from other agencies and transfer to subsequent year

**Assigned and Contracted Private Counsel  
 Fee Applications and Expenditures  
 All Accounts  
 July 1, 2006-June 30, 2007**

	<b>Number of Payments</b>	<b>Expenditures</b>
<b><u>District 1</u></b>		
Camden	30	\$22,745
Chowan	142	\$159,769
Currituck	125	\$39,967
Dare	304	\$136,430
Gates	48	\$56,997
Pasquotank	348	\$413,528
Perquimans	62	\$91,931
District Total	1,059	\$921,367
<b><u>District 2</u></b>		
Beaufort	1,499	\$440,938
Hyde	82	\$35,250
Martin	700	\$291,194
Tyrrell	137	\$45,241
Washington	307	\$183,177
District Total	2,725	\$995,800
<b><u>District 3A</u></b>		
Pitt	3,509	\$1,459,416
District Total	3,509	\$1,459,416
<b><u>District 3B</u></b>		
Carteret	369	\$330,136
Craven	1,798	\$656,213
Pamlico	301	\$261,723
District Total	2,468	\$1,248,072
<b><u>District 4A</u></b>		
Duplin	1,064	\$390,764
Jones	208	\$76,681
Sampson	1,849	\$701,104
District Total	3,121	\$1,168,549
<b><u>District 4B</u></b>		
Onslow	3,543	\$1,107,392
District Total	3,543	\$1,107,392

	Number of Payments	Expenditures
<b><u>District 5</u></b>		
New Hanover	7,705	\$2,387,060
Pender	1,011	\$507,251
District total	8,716	\$2,894,311
<b><u>District 6A</u></b>		
Halifax	2,401	\$920,233
District Total	2,401	\$920,233
<b><u>District 6B</u></b>		
Bertie	455	\$173,336
Hertford	786	\$408,074
Northampton	515	\$268,464
District Total	1,756	\$849,874
<b><u>District 7A</u></b>		
Nash	1,731	\$1,080,190
Wilson	1,579	\$843,188
District Total	3,310	\$1,923,378
<b><u>District 7B</u></b>		
Edgecombe	1,397	\$718,311
District Total	1,397	\$718,311
<b><u>District 8A</u></b>		
Greene	424	\$153,621
Lenoir	1,848	\$648,651
District Total	2,272	\$802,272
<b><u>District 8B</u></b>		
Wayne	2,778	\$924,439
District Total	2,778	\$924,439
<b><u>District 9</u></b>		
Franklin	1,062	\$353,281
Granville	997	\$372,347
Vance	1,268	\$535,052
Warren	361	\$205,253
District Total	3,688	\$1,465,933
<b><u>District 9A</u></b>		
Caswell	488	\$160,386
Person	1,358	\$519,950

	Number of Payments	Expenditures
District Total	1,846	\$680,336
<b><u>District 10</u></b>		
Wake	11,924	\$4,292,771
District Total	11,924	\$4,292,771
<b><u>District 11A</u></b>		
Harnett	2,784	\$1,011,219
Lee	1,702	\$633,542
District Total	4,486	\$1,644,761
<b><u>District 11B</u></b>		
Johnston	3,527	\$1,397,285
District Total	3,527	\$1,397,285
<b><u>District 12</u></b>		
Cumberland	3,390	\$2,640,804
District Total	3,390	\$2,640,804
<b><u>District 13</u></b>		
Bladen	1,112	\$413,382
Brunswick	2,564	\$978,057
Columbus	1,421	\$663,199
District Total	5,097	\$2,054,638
<b><u>District 14</u></b>		
Durham	5,007	\$2,389,483
District Total	5,007	\$2,389,483
<b><u>District 15A</u></b>		
Alamance	3,415	\$1,188,733
District Total	3,415	\$1,188,733
<b><u>District 15B</u></b>		
Chatham	526	\$238,425
Orange	1,022	\$458,933
District Total	1,548	\$697,358
<b><u>District 16A</u></b>		
Hoke	340	\$281,601
Scotland	593	\$470,516



	<b>Number of Payments</b>	<b>Expenditures</b>
District Total	933	\$752,117
<b><u>District 16B</u></b>		
Robeson	3,554	\$2,058,344
District Total	3,554	\$2,058,344
<b><u>District 17A</u></b>		
Rockingham	2,855	\$792,125
District Total	2,855	\$792,125
<b><u>District 17B</u></b>		
Stokes	1,013	\$338,291
Surry	1,993	\$549,428
District Total	3,006	\$887,720
<b><u>District 18</u></b>		
Guilford	4,922	\$2,521,630
District Total	4,922	\$2,521,630
<b><u>District 19A</u></b>		
Cabarrus	4,882	\$1,769,594
District Total	4,882	\$1,769,594
<b><u>District 19B</u></b>		
Montgomery	897	\$376,104
Randolph	3,199	\$1,257,997
District Total	4,096	\$1,634,101
<b><u>District 19C</u></b>		
Rowan	4,735	\$1,542,991
District Total	4,735	\$1,542,991
<b><u>District 19D</u></b>		
Moore	3,104	\$889,350
District Total	3,104	\$889,350
<b><u>District 20A</u></b>		
Richmond	3,443	\$1,083,769
Stanly	1,280	\$518,102
District Total	5,970	\$2,114,779
<b><u>District 20B</u></b>		

	<b>Number of Payments</b>	<b>Expenditures</b>
Union	3,387	\$1,202,436
District Total	3,387	\$1,202,436
<b><u>District 21</u></b>		
Forsyth	3,523	\$1,539,715
District Total	3,523	\$1,539,715
<b><u>District 22</u></b>		
Alexander	1,213	\$524,136
Davidson	4,954	\$1,369,629
Davie	1,088	\$487,852
Iredell	4,113	\$1,322,893
District Total	11,368	\$3,704,510
<b><u>District 23</u></b>		
Alleghany	253	\$53,703
Ashe	628	\$177,193
Wilkes	2,287	\$595,651
Yadkin	896	\$212,767
District Total	4,064	\$1,039,315
<b><u>District 24</u></b>		
Avery	404	\$147,118
Madison	428	\$122,955
Mitchell	301	\$85,750
Watauga	731	\$373,367
Yancey	417	\$146,319
District Total	2,281	\$875,508
<b><u>District 25A</u></b>		
Burke	2,964	\$817,126
Caldwell	3,529	\$882,108
District Total	6,493	\$1,699,234
<b><u>District 25B</u></b>		
Catawba	5,158	\$1,706,271
District Total	5,158	\$1,706,271
<b><u>District 26</u></b>		
Mecklenburg	11,543	\$4,328,940
District Total	11,543	\$4,328,940
<b><u>District 27A</u></b>		

	<b>Number of Payments</b>	<b>Expenditures</b>
Gaston	1,907	\$1,425,853
District Total	1,907	\$1,425,853
<b><u>District 27B</u></b>		
Cleveland	3,423	\$861,495
Lincoln	1,403	\$435,940
District Total	4,826	\$1,297,435
<b><u>District 28</u></b>		
Buncombe	3,551	\$1,193,177
District Total	3,551	\$1,193,177
<b><u>District 29A</u></b>		
McDowell	1,733	\$508,119
Rutherford	2,747	\$796,694
District Total	4,480	\$1,304,813
<b><u>District 29B</u></b>		
Henderson	3,144	\$1,093,110
Polk	575	\$175,616
Transylvania	783	\$329,005
District Total	4,502	\$1,597,730
<b><u>District 30A</u></b>		
Cherokee	1,164	\$446,861
Clay	238	\$67,764
Graham	266	\$103,097
Macon	745	\$284,766
Swain	325	\$111,095
District Total	2,738	\$1,013,582
<b><u>District 30B</u></b>		
Haywood	1,639	\$651,646
Jackson	857	\$302,219
District Total	2,496	\$953,865
<b>STATE TOTAL</b>	<b>193,357</b>	<b>\$74,230,652</b>

*Notes: Prior year reports included only payments to attorneys; this year's data include payments to experts, investigators and transcripts costs 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. Does not include payments to interpreters or appellate court copying charges*