

**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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COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS

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

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

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

Superior Court Judge Robert C. Ervin
District 25A, Morganton
Appointed by Chief Justice of NC Supreme Court

Henderson Hill
Attorney at Law, Charlotte
Appointed by NC Association of Black Lawyers

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

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

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

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

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

Professor Richard A. Rosen
University of North Carolina Law School, Chapel Hill
Appointed by Speaker of the House

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

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

OFFICE OF INDIGENT DEFENSE SERVICES CENTRAL STAFF

123 W. Main St., Suite 400, Durham, NC 27701
(919) 560-3380 www.ncids.org

Thomas K. Maher
Executive Director
Thomas.K.Maher@nccourts.org

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

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

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

Joseph Meskey
Information Technology Director
Joe.Meskey@nccourts.org

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

Daryl V. Atkinson
Systems Evaluation Project Coordinator
Daryl.V.Atkinson@nccourts.org

Emily Martin
Research Associate
Emily.Martin@nccourts.org

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

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

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

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 2007-08, 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 description of IDS’ progress toward statewide implementation of an electronic fee application system and a system for obtaining indigent case information when cases are initiated. The report also describes a number of legislative recommendations for the 2009 session, including recommendations about regional public defender offices. Finally, the report 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 and detailed billing policies in capital and non-capital cases; improved the collection of revenues from recoupment; established higher qualification standards for attorneys seeking appointment to capital cases and appeals; expanded the Office of the Capital Defender and created several new regional capital defender offices; helped establish new public defender offices in Forsyth County, the First Judicial District, Wake County, New Hanover County, and 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; adopted a model indigent appointment plan for non-public defender districts; provided district and superior court judges with studies on the average amount of time and frequency distributions of times claimed by private attorneys by type of case; conducted a study on the cost of attorney time spent waiting in court under North Carolina’s current court scheduling systems; conducted a study of the cost and 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 continue improving legal services for inmates; planning one or more pilot programs of alternative scheduling in criminal district court; conducting a study of misdemeanors that might be appropriate for decriminalization; exploring the development of standards or guidelines to assist judges in making indigency determinations; and continuing to implement 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 seven 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 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 higher growth rate during that fiscal year was 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. The total increase in new demand during fiscal year 2007-08 was 13.1%, with approximately 3.5% of that growth attributable to the increase in the standard hourly rates paid to private counsel. Current projections suggest that the increase in new demand this fiscal year will be approximately 10%. *See* "Indigent Defense Fund Demand and Budget Needs," below.

Indigent defense expenditures per disposition declined significantly over the first four years that IDS was in existence, with modest increases in per disposition costs over the past three 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 2007-08 were only \$17.58 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 stabilizing 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 2007-08 with approximately \$600,000 of debt. Because IDS began the current fiscal year with an

appropriation that was approximately \$2.5 million less than IDS needed to meet the expected demand on the fund, and because the Office of State Budget and Management has required IDS to revert 5% of its appropriation for this fiscal year in light of the State's fiscal crisis, IDS is projected to end the current fiscal year with at least \$7 million of debt. That level of debt will mean that IDS' funding for payments to private counsel will be depleted in late May 2009. *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. 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, 2009 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) of Session Law 2007-323 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, 2009. Finally, § 14.7 of Session Law 2008-107 directs IDS and AOC to consult on developing a statewide system to enable IDS to obtain information about indigent cases when counsel is first appointed and to report on a proposal in this annual report.

The first section of this report (“IDS Initiatives”) addresses the second, third, and fifth issues set forth above, as well as the requirements in § 14.17(a) of Session Law 2007-323 and § 14.7 of Session Law 2008-107, by describing the work of the IDS Commission and IDS Office to date and new and ongoing initiatives that are currently in progress. The first section of the report also describes ongoing efforts to respond to the findings and recommendations in the February 2007 State Auditor’s Report, to implement a statewide electronic fee application system, and to obtain information about indigent cases when counsel is first appointed. 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 2007-08.¹

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

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

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

(www.ncids.org), and are published in North Carolina Rules of Court, State (Thomson-West 2009) and the Annotated Rules of North Carolina (LexisNexis 2009).

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 at the trial level, all appeals, and capital post-conviction cases. 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 for Representation in Capital Cases and Appeals,” and “Capital Case Costs and Dispositions 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). 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) that allows greater and more comprehensive communication with the bar, bench and public, and enhances the resources available to defense attorneys across the State. The website contains news and update links addressing the state of indigent defense funding, timing of attorney payments, IDS’ main accomplishments since July 2001, and any other recent developments or matters of interest. The following materials, among others, are also posted on the website: contact information for the members of the IDS Commission, IDS staff, and all state defender offices; a list of IDS Commission committees and their participants; all approved minutes of IDS Commission meetings; a calendar of upcoming events; IDS rules, policies, and procedures; reports and data generated by Office staff; applications for the capital and appellate attorney rosters; attorney and expert fee application forms; the public defender appointment plans; a model appointment plan for non-public defender districts; performance guidelines for non-capital criminal cases at the trial level, juvenile delinquency cases at the trial level, and abuse, neglect, dependency and termination of parental rights cases at the trial level; materials used in IDS co-sponsored training programs; an index of all posted training materials by topic; legal resources and reference materials; the North Carolina Defender Manual; the North Carolina Civil Commitment Manual; an Immigration Consequences Manual; a Guardianship Manual; a Juvenile Defender Manual; an Innocence Inquiry Proceedings Manual; an orientation manual for new assistant public defenders; a North Carolina appellate brief bank; a capital trial motions index; juvenile delinquency forms, motions, and case notes; abuse/neglect/dependency motions, case notes, and legislative updates; information about IDS’ Systems Evaluation Project; and links to related sites. Since its creation in May 2002, there have been more than 222,000 visits to the IDS website.

Moreover, the Office of the Appellate Defender has established a listserv for attorneys representing indigent criminal defendants on appeal; the Office of the Capital Defender has developed a listserv for attorneys representing indigent capital defendants at the trial level; the Office of the Juvenile Defender has developed a listserv for attorneys representing juveniles in delinquency proceedings; and the parent representation branch of the Office of the Appellate Defender maintains a listserv, which was established by the IDS Office in 2003, for attorneys representing indigent parent respondents in Chapter 7B cases. In addition, the IDS Office maintains listservs for capital post-conviction attorneys, involuntary commitment attorneys, public defenders and assistant public defenders, 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 3, 2009, the Capital Defender appointed 5,572 attorneys in 4,673 potentially capital cases at the trial level:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# attorneys appointed	735	855	741	750	760	754	711	446
# potentially capital cases at the trial level	570	655	599	603	627	618	603	393

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 3, 2009, the Appellate Defender appointed 7,451 private attorneys and assistant appellate defenders to handle capital, non-capital, and non-criminal appeals:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# attorneys appointed in appeals	819	829	1,097	1,047	1,020	1,017	1,006	616

Finally, between July 1, 2001 and February 3, 2009, the IDS Director appointed 303 attorneys in 125 different capital post-conviction proceedings:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# attorneys appointed	61	60	37	23	37	39	36	10
# capital post-conviction cases	35	34	21	17	22	23	23	8

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.

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. Office staff also conduct periodic intensive audits of attorneys who regularly handle potentially capital cases, which involve compiling and comparing all billing by an attorney during a specified time period to ensure there are no errors or duplication across cases.

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

Between July 1, 2001 and February 3, 2009, IDS Office staff set appropriate and uniform fee awards for 18,561 attorney fee applications in capital cases and appeals:²

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# attorney fee awards	1,860	2,281	2,362	2,337	2,568	2,709	2,848	1,610

Also between July 1, 2001 and February 3, 2009, the Office set fee awards for 15,191 expert bills, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# expert fee awards	960	1,421	1,975	2,184	2,044	2,349	2,662	1,604

The Office is currently setting approximately 106 attorney and expert fee awards per week, and generally forwards 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

² See “Capital Case Costs and Dispositions Study,” below, for a discussion of the growing number of pending potentially capital cases each year.

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.

Expert Funding and Miscellaneous Expense Authorizations

Between July 1, 2001 and February 3, 2009, the Capital Defender reviewed and acted on 13,223 requests for expert funding and miscellaneous expenses at the trial level:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# trial level expert and misc. expense requests	482	1,347	1,783	1,947	1,914	2,086	2,282	1,382

During that same time period, the IDS Office reviewed and acted on 1,788 requests for expert funding and miscellaneous expenses in capital post-conviction proceedings:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09 YTD
# post-conviction expert and misc. expense requests	284	252	184	230	215	298	188	137

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.

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 during fiscal year 2007-08, the Commission was able to raise the non-capital rate to \$75 per hour, effective for fees approved on or after February 1, 2008. The IDS Commission and IDS Office are grateful to the General Assembly for the additional appropriation it granted to IDS for this purpose. While the General Assembly based the amount of last 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 last fiscal year would not result in significant debt for IDS at the end of fiscal year 2007-08.

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 central 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 2008, the Consumer Price Index for all Urban Consumers rose by 30.3% (from 161.3 to 210.23). 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 \$56 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 \$19 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 February 2009 and is available at 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.” The North Carolina Bar Association (“NCBA”) agreed to co-sponsor the program and it was filmed at their headquarters in Cary in December 2007. The video contains substantive segments on the journey of a fee application, IDS’ billing policies, the various fee application forms, getting paid, and record keeping. Since May 2008, the video has been posted on the SOG’s and IDS’ websites, where attorneys can access it for free. Since December 2008, it has also been available on the NCBA website for one hour of continuing legal education ethics credit.

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 16 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; Womble was reappointed to a second four-year term effective October 11, 2008. After his initial 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 nine assistant public defenders. One of those assistant public defenders is 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 24 assistant public defenders.

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 get the office operational and to develop a plan for the appointment of counsel in all non-capital cases in New Hanover County. *See* "Development and Approval of Public Defender Plans," above. New Hanover County provided office space in downtown Wilmington and the office began accepting cases in March 2008. The office currently employs 10 assistant public defenders.

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) 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 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 get the office operational and to develop a plan for the appointment of counsel in all non-capital cases in District 29B. *See* "Development and Approval of Public Defender Plans," above. Henderson County provided office space in the courthouse in Hendersonville and Transylvania County rented Welch's prior office space in Brevard. Polk County is currently in the process of opening a small visiting office in Columbus. The District 29B office began accepting cases on February 5, 2008, and currently employs five 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 systems 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 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 "District Court Alternative Scheduling Pilots," below.

Capital Case Costs and Dispositions Study

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

The study generated four primary findings. First, the study demonstrated that IDS' per case spending on potentially capital cases at the trial level is not rising. While there has been some fluctuation in the average cost of cases from year to year, IDS' total annual expenditures on potentially capital cases have grown because the number of pending cases has grown each year. Indeed, the number of open cases on which IDS paid attorney or expert fees has grown 49%, from 746 cases in fiscal year 2001-02 to 1,112 cases in fiscal year 2007-08.

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

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

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

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

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

The full IDS Commission then reviewed and adopted final performance guidelines on November 12, 2004, and the IDS staff officially released the guidelines in February 2005.

³ 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.

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 on the IDS website 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 in June 2007 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. 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. At the time of his selection, Hall represented 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 in June 2007 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. 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 also discussed 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. As of February 3, 2009, the IDS Office has received and processed 230 late fee waiver applications, including 207 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 122 of the applications, and found no good cause and denied payment for 108 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 5.5%.

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 has been 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 had 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 Attorney Fee Coordinator position will be eliminated at the end of the current fiscal year due to the State's budget crisis. However, other staff members in the IDS Financial Services Office hope to absorb some of the functions of the position that have proved to be useful. *See, e.g., "New IDS Auditor Position,"* below.

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 that include tracing a fee application and award back to the clerk's office to ensure that procedures were followed along the way, developing a written policy and procedures manual to govern the processing of attorney fee applications, and investigating individual vendor billing at the direction of IDS management.

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 pay rates of \$35, \$45, and \$60 per hour. (The standards are available on the IDS website 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, 2009, 61 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, then-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 defense 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 formed a committee to develop indigency standards pursuant to G.S. 7A-498.5(c)(8). *See* "Committees of the IDS Commission" and "Development of Indigency Standards," below. The IDS Commission and Office continue to support these legislative recommendations, and some of them are discussed again in other sections 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, 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; since 2007, 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: Improved 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 manage the imaging system that is used to store electronic copies of fee petitions; IDS currently pays a portion of the maintenance costs for the imaging system.

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 years 2006-07 and 2007-08, 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 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, 2007-09, and 2009-11 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, e.g.*, "Compensation for Representation in Capital Cases and Appeals" and "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. In late 2007, a new Juvenile Committee composed of members of the IDS Commission was 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. Since that time, Office staff have been working with various non-public

defender districts around the State to implement some version of the model plan. *See* “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 formed in December 2007 to begin the process of developing standards to guide judges in making indigency determinations. *See* “Development of Indigency Standards,” below.

In Session Law 2005-276, § 14.9(b), the General Assembly transferred North Carolina Prisoner Legal Services’ (“NCPLS”) contract from the Department of Correction 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.

Finally, in December 2007, the Commission formed a Long-Term Planning Committee to address a number of transition issues that faced the Commission and staff during 2008, including the term expirations of three founding Commissioners in September 2008 and the planned retirement of the founding IDS Director in December 2008. That committee met a number of times during 2008 to address the recruitment of potential new Commissioners, to formulate a plan for advertising for a new Executive Director, and to screen the applications that were received and identify finalists for the Director position. Effective September 2008, three new Commissioners were appointed by the Governor, the House of Representatives, and the Chief Justice of the Supreme Court of North Carolina. At the September 2008 Commission meeting, the Commission interviewed five finalists for the Executive Director position and then appointed attorney Thomas K. Maher to serve a four-year term, effective January 1, 2009.

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. Since IDS assumed 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 is now in a position to provide complete case reporting and time data for fiscal year 2007-08 and beyond. The Appellate Defender regularly uses the database to assess caseloads and for other management purposes. The information in the database will also be critical to any cost-effectiveness study of the office that IDS may conduct in the future. In the coming years, IDS staff may make some version of the database available to the Office of the Capital Defender and the 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. While the fiscal year 2007-08 study is not yet complete, the fiscal year 2006-07 study found that the 14 public defender offices in existence that 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 fiscal year 2006-07 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 has enabled the cost-effectiveness analyses of the offices since fiscal year 2005-06 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.

During early 2008, IDS Office staff also conducted an analysis of the impact on district-wide indigent defense costs from the creation of new public defender offices. First, the study examined why the statewide percentage of cases being handled by public defender offices has remained fairly stable (about 31%) since fiscal year 2003-04, despite the continuing expansion of the public defender system. The study showed that, since fiscal year 2003-04, statewide private assigned counsel dispositions have increased more than public defender dispositions, despite the fact that public defender dispositions grew by 25% during that time period. In other words, the total number of indigent dispositions has been increasing at a faster rate than the public defender expansion. Second, the study looked at average costs per disposition in three of the new public defender districts—Forsyth County, the First District, and Wake County—both before and after the offices were created. While there was some variation across those districts, the study concluded that per case costs did not appear to be negatively impacted by public defender expansion. Third, the study attempted to determine whether the mere existence of a public defender office causes judges to appoint counsel more often. While the study looked at a series of different measures in an attempt to answer that question, Office staff were unable to identify any definitive patterns. The IDS Office will continue to monitor these trends in new public defender districts in the years to come.

Expansion of Existing Public Defender Offices

In the 2007 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 2007-08 the IDS Director allotted 18 of the 20 new attorney positions as follows: 1) five new assistant public defenders in the Mecklenburg County Public Defender Office; 2) two new assistant public defenders in the Wake County Public Defender Office; 3) one new assistant public defender in the Orange/Chatham Public Defender Office; 4) one new assistant public defender in the Forsyth County Public Defender Office; 5) one new assistant

public defender in the Hoke/Scotland Public Defender Office; 6) one new assistant public defender in the Guilford County Public Defender Office; 7) one new assistant public defender in the Carteret County Public Defender Office; 8) one new assistant public defender in the First District Public Defender Office; 9) two new assistant capital defenders; 10) one new assistant appellate defender to focus on representation of respondent parents; 11) one new assistant juvenile defender; and 12) one new special counsel.

During fiscal year 2007-08, the IDS Director also allotted all of the 10 new support staff positions as follows: 1) one new investigator in the Forsyth County Public Defender Office; 2) one new legal assistant in the Mecklenburg County Public Defender Office; 3) one new legal assistant in the Forsyth County Public Defender Office; 4) one new legal assistant in the Pitt County Public Defender Office; 5) two new administrative assistants in the Office of the Appellate Defender, one of which is supporting the parent representation project; and 6) one new legal assistant in the Office of Special Counsel at John Umstead Hospital. In addition, one administrative assistant in the Mecklenburg County Public Defender Office was converted from a county-funded position to a permanent state position, and two accounting specialist positions in the IDS Office were converted to permanent positions.

In the 2008 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 during fiscal year 2008-09. IDS' March 2010 report to the General Assembly will include details on the placements during fiscal year 2008-09.

Repealed Authority to Create New Public Defender Offices During the 2007-09 Biennium

Section 14.4(b) of Session Law 2007-323 provided that the IDS Commission “may establish additional district public defender offices during the 2007-2009 fiscal biennium” and allowed the IDS Office to use up to \$1,570,057 in appropriated funds during fiscal year 2008-09 to establish those offices, including recurring and non-recurring personnel and operating costs. The special provision also 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. Based on some of the comments that were received from District 25A, Office staff reanalyzed the data on child support contempt cases in that district and determined that the original projected savings were artificially inflated as the result of a fee schedule for those case types in the 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 with possible new public defender offices in Districts 20A and 25A. After additional review and discussion at its March 2008 meeting, the Commission also voted not to proceed with possible new offices in Districts 22 and 27B. However, based on a request from some local actors, the Commission voted to initiate a comment period about a possible new office in District 15A (Alamance County). After more review and discussion at its June 2008 meeting, the Commission voted not to proceed with expanding the existing Carteret office into the rest of District 3B or creating a new office in District 15A. In Session Law 2008-107, the General Assembly repealed § 14.4(b) of Session Law 2007-323. Thus, any future expansion of the public defender system will require a legislative act.

The IDS Commission and Office will continue to investigate the potential cost savings from and advisability of creating new public defender offices in other districts or regions, and will report any recommendations to the General Assembly. *See* “Initiatives in Response to 2007 Performance Audit by the State Auditor’s Office: Regionalization of the Public Defender System,” below.

Study of Indigent Dispositions Compared to Total Court Dispositions

In January 2009, IDS Office staff updated a prior study comparing the total number of indigent case dispositions in district and superior court to the total number of court dispositions in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support.⁴ That study revealed that there has been relatively little growth (2.6%) in the number of total

⁴ The updated study was based on total criminal non-traffic and indigent case disposition numbers provided by AOC in its annual report for fiscal year 2007-08, which counts every closed CR or CRS file number as a disposition. In other studies, IDS staff calculate dispositions differently, counting all file numbers disposed of on the same day before the same presiding judge as one disposition.

criminal non-traffic court dispositions between fiscal years 2001-02 and 2007-08. However, during that same time period, there has been significant growth (33.6%) in the number of criminal non-traffic public defender and private appointed counsel dispositions that are funded through IDS:

	FY02	FY03	FY04	FY05	FY06	FY07	FY08
Total Criminal Non-Traffic Court Dispositions	774,795	761,665	767,483	786,134	798,622	784,298	795,323
Total IDS Criminal Non-Traffic Dispositions	270,295	280,636	294,054	317,854	337,578	342,329	361,000
IDS Dispositions as % of Total Criminal Non-Traffic Court Dispositions	34.9%	36.8%	38.3%	40.4%	42.3%	43.6%	45.4%

The greatest increase in indigent case dispositions has been in criminal district court, where IDS dispositions as a percentage of total court dispositions have increased 40.5% between fiscal years 2001-02 and 2007-08—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, another 3.6% between fiscal years 2005-06 and 2006-07, and another 5.3% between fiscal years 2006-07 and 2007-08.

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 any findings to the General Assembly. In addition, as discussed later in this report, the IDS Commission is working to develop 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, only 5.1% of that increase represented real growth in demand on the private counsel fund, with the largest increase occurring in adult district court. The remaining growth was attributable to a number of factors, including 4.1% from expansion and increased personnel and equipment costs in state defender offices and 2.3% from the January 2006 deadline for submission of older fee applications. See “Private Attorney Fee Application Deadlines,” above.

The increase in new demand during fiscal year 2006-07 was a more modest 4.3% above fiscal year 2005-06. The total increase in new demand during fiscal year 2007-08 was 13.1%, with approximately 3.5% of that growth attributable to the increase in the standard hourly rates.

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 three 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. There were modest increases in expenditures per disposition in fiscal years 2005-06 and 2006-07, but both were still significantly lower than expenditures per disposition in the two years prior to IDS’ creation. While expenditures per disposition during fiscal year 2007-08 rose to slightly below expenditures per disposition in fiscal year 1999-2000, they were still significantly lower than expenditures per disposition in fiscal year 2000-01 despite the increase in the hourly rates. Moreover, expenditures per disposition in fiscal year 2007-08 were only \$17.58 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 costs.

Despite the comparatively lower increases in new demand during the past seven fiscal years, as well as the overall trend of stabilized 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), 2006-07 (slightly more than \$600,000), and 2007-08 (again 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. Since fiscal year 2005-06, the IDS Commission has been in an increasingly stronger position to manage the indigent defense fund in an efficient and equitable manner, and the Commission and 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 approximately 10%, part of which continues to represent the increases in the standard hourly rates paid to private appointed counsel. Because IDS began the current fiscal year with an appropriation that was approximately \$2.5 million less than IDS needed to meet the expected demand on the fund, and because the Office of State Budget and Management (“OSBM”) has required IDS to revert 5% of its appropriation for this fiscal year in light of the State’s budget crisis, Office staff project that IDS will end the current fiscal year with at least \$7 million of

debt. That level of debt will mean that IDS' funding for payments to private counsel will be depleted in late May 2009.

The IDS Commission and Office understand that the State is facing a severe fiscal crisis and are committed to doing everything we can to reduce spending and increase revenues. However, the United States Constitution requires States to provide and pay for competent legal representation for indigent defendants who are accused of a crime and facing a possible deprivation of liberty. Various North Carolina General Statutes also require IDS to provide legal representation to indigent persons in a number of additional proceedings. Moreover, the Commission and Office expect that the indigency rate in North Carolina will increase as a result of the poor economy, thus increasing the demand on the fund more than the historical average growth rate of 5.5% per year. Thus, the Commission and Office request that the General Assembly appropriate non-recurring funds during fiscal year 2009-10 to cover IDS' deficit at the end of the current fiscal year. The Commission and Office also request recurring funding during fiscal year 2009-10 in an amount sufficient to maintain the current level of services and to cover the projected demand on the fund next year. 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 2007-08, including the \$50 attorney appointment fee required by G.S. 7A-455.1, amounted to \$9.87 million, which represented an increase of 8.9% over the prior fiscal year. In fiscal year 2007-08, 68 of North Carolina's 100 counties collected more recoupment revenues than they had in fiscal year 2006-07. Payments collected through clerks' offices at the time of conviction or while the defendant was under probationary supervision accounted for 60.4% of the total collected last fiscal year, with an additional 32.5% collected through the interception of state income tax refunds. While the \$50 attorney appointment fee only accounted for the remaining 7%, collections from the appointment fee have grown 95% since fiscal year 2004-05.

During fiscal year 2007-08, 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 2% to a high of 38.7%, with an overall statewide rate of 11.4%. 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 2007-08, recoupment in the 20 counties with the highest amount of spending averaged 10.1%, while recoupment in the remaining 80 counties averaged 18.3%. 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 2007-08, 11 counties reported collections of \$500 or less. However, 72 counties collected more in appointment fees in fiscal year 2007-08 than they did in fiscal year 2006-07. For a county-by-county comparison of recoupment rates, see Appendix B.

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.

District Court Alternative Scheduling Pilots

In its March 2007 annual report, IDS recommended 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 systems in North Carolina adds significant costs to indigent defense, particularly in criminal district court, and the IDS Commission and staff believe a modernized approach to scheduling cases would generate substantial savings in taxpayer money. As a result of that study, the IDS Commission recommended 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. *See* “Consultation with Other Actors and Recommended Cost-Saving Measures,” above.

While this recommendation was not implemented in 2007, during the 2008 session, the General Assembly enacted §14.1 of Session Law 2008-107, which provides: “Of the funds appropriated to [IDS] in this act, [IDS] may spend up to the sum of twenty-five thousand dollars (\$25,000) to support one or more pilot programs of alternative scheduling in district or superior court that would reduce defense attorney wait time and State expense. The establishment of any pilot program under this section would require the prior agreement of the district attorney, chief district court judge, and senior resident superior court judge for the district.” The IDS Commission and staff believe that any pilot tests under § 14.1 should focus on district court, because the current scheduling systems in that court lead to greater inefficiencies than in superior court.

Before proceeding with any specific pilots in district court, however, Office staff plan to take a series of steps to ensure that any changes will lead to meaningful results and real improvements. First, Office staff have designed an on-line survey for distribution to the criminal defense bar, district attorneys, judges, and clerks that requests information on the current district

court scheduling practices in their districts, as well as their suggestions about systemic changes that would improve efficiency. The staff currently plans to conduct that survey period between mid-March and mid-April 2009. Second, based on the feedback and suggestions the Office receives from the survey, the Commission and staff will develop a more specific proposal for a pilot test. For example, now that IDS has an in-house Information Technology Director, *see* “Electronic Case Reporting and Fee Filing,” below, IDS could work with one or more districts to develop a simple web-based notification system for attorneys appointed to district court cases. Such a system could allow appointed attorneys to notify the prosecutor in advance of a court date whether a case will be pled or tried, or whether a continuance will be sought. That information would then put the prosecutor in a better position to, *e.g.*, docket all pleas for the morning session and all trials for the afternoon session. Third, once the IDS Commission has a better idea of the type of alternative system it would like to suggest, the staff will approach one or more districts and determine if the local actors would be willing to participate. Finally, because one main goal of a pilot test would be to increase efficiency and, thus, save costs, IDS will identify ways to compare data on local costs per case by case type before the pilot test is implemented to local costs per case by case type after the pilot test is implemented.

While Office staff hope to implement a pilot project before the end of the current fiscal year, it is possible that preliminary steps will not be complete in time to do so. In addition, the IDS Commission and IDS Office believe that any pilot programs will need to last at least one full year before IDS will be in a position to make more wide-ranging recommendations about scheduling. Thus, IDS requests that the 2009 Appropriations Act again allow IDS to spend up to \$25,000 of its appropriated funds to continue supporting one or more pilot programs of alternative scheduling. *See* “Legislative Recommendations,” below.

Study on Decriminalization of Certain Misdemeanors

IDS spends a significant amount of money on appointed attorneys in lower-level traffic and other offenses in district court that carry the theoretical possibility of imprisonment, and the IDS Commission and staff believe that decriminalization of some of those offenses could save a significant amount of 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). During the 2007 and 2008 legislative sessions, the IDS Commission recommended that the General Assembly appropriate a modest amount of money to fund a study by IDS, the North Carolina Sentencing and Policy Advisory Commission, or some other group to identify misdemeanors that would be most appropriate for decriminalization because they rarely or 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.

While the General Assembly did not appropriate funding for a study, the IDS Commission and staff believed it was important to examine this issue during the current legislative session in light of the State’s current budget crisis. In addition, based on discussions with representatives of the Conference of District Attorneys, IDS Office staff believe prosecutors would support decriminalization of some offenses because it would help relieve overburdened dockets in criminal district court. Thus, during February 2009, Office staff conducted a study of the potential cost savings that would be associated with decriminalizing 18 different misdemeanor offenses. For seven of the studied offenses, it is currently permissible for the defendant to waive

appearance and enter a plea—no operators license (G.S. 20-7(a)), license not in possession (G.S. 20-7(a)), allowing an unlicensed person to drive (G.S. 20-34), failing to notify the Division of Motor Vehicles of an address change (G.S. 20-7.1), window tinting violation (G.S. 20-127(d)), failing to comply with license restrictions (G.S. 20-7(e)), and fishing without a license (G.S. 113-270.1B(a)). The additional 11 offenses studied were driving while license revoked (“DWLR”) based on a failure to appear or comply (excluding DWLRs based on a prior driving while impaired conviction) (G.S. 20-28(a)), driving more than 15 miles per hour over the speed limit or over 80 miles per hour (G.S. 20-141(j1)), operating a vehicle with no insurance (G.S. 20-313(a)), simple worthless checks (G.S. 14-107(d)), expired registration card or tag (G.S. 20-111(2)), fictitious, canceled, or revoked registration card or tag (G.S. 20-111(2)), driving a motor vehicle with no registration (G.S. 20-111(1)), no registration card (G.S. 20-57(c)), failing to sign registration card (G.S. 20-57(c)), failing to return rental property (G.S. 14-168.4), and noise ordinance violations.

The study was only able to generate rough estimates of savings because of limitations inherent in the data available through the AOC’s Automated Criminal Information System (“ACIS”). ACIS data represents unique file numbers per defendant, which may encompass one or more actual charges. In contrast, most IDS studies define one indigent case as all charges disposed on behalf of the same defendant on the same day before the same judge. In addition, because it is difficult to identify individual cases in ACIS by highest charge, there may be some duplication in the case counts used in the study. While the study attempted to adjust for ACIS limitations whenever possible, the precise number of cases of the above types that are funded through IDS is unknown. Despite those data limitations, the study estimated that decriminalization of all of the identified offenses would generate significant savings for IDS and, thus, the State—\$6.54 million in average savings per fiscal year and \$6.19 million in median savings per fiscal year. The largest savings would be generated by decriminalizing DWLRs based on a failure to appear or comply (\$3.66 million in average savings per fiscal year and \$3.5 million in median savings per fiscal year).

At its February 27, 2009 meeting, the IDS Commission reviewed the study and discussed the staff’s findings. The Commission then voted to support further examination of decriminalizing all of the identified offenses, as well as other potential offenses that were not examined in the study, if decriminalization would not have a negative impact on public safety. Based on the Commission’s discussion, IDS staff will continue to explore this issue with the Conference of District Attorneys and the General Assembly. See “Legislative Recommendations,” below.

Sentencing Services Program

In the 2002 Appropriations Act, the General Assembly reduced the overall budget for the Office of Sentencing Services (“OSS”) by almost 40% and transferred the program to IDS, with directions to reconfigure the program as necessary to implement the budget reduction. IDS assumed responsibility for OSS 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 was substantially reorganized pursuant to those two budget reductions, including the elimination in 2005 of 10 programs after consultation with the senior

resident superior court judges in those districts. During 2005, OSS also eliminated other state positions and reduced the non-profit programs' grants to meet the new budget amount.

After the first funding reduction in 2002, the programs significantly decreased their services of screening defendants, opening cases, and presenting sentencing plans. During fiscal years 2003-04 and 2004-05, the programs became more efficient with their time and steadily increased the number of plans they presented. After the second funding reduction in 2005, which resulted in fewer programs providing services and less money for the remaining programs, during fiscal year 2005-06, the programs screened 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 again in fiscal year 2006-07 by screening 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). Programs experienced slight decreases in their case-opening and plan productivity in fiscal year 2007-08, screening 6,248 offenders (a 2% increase from the prior fiscal year), opening 1,886 cases (a 9% decrease from the prior fiscal year), and presenting 1,490 plans (a 7% decrease from the prior fiscal year). These decreases were due partly to the reorganizations of certain programs and to a preponderance in one district of court reports (information provided at a court's request that is similar to a sentencing plan but that does not contain one or more of the statutory elements of a plan). 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 39 different attorneys in Alexander, Avery, Brunswick, Buncombe, Catawba, Currituck, Dare, Davie, Durham, Forsyth, Guilford, Iredell, Madison, Martin, Mitchell, Stanly, Watauga, Yadkin, and Yancey counties, 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 contracts in Brunswick, Durham, and Forsyth Counties for youth and drug treatment courts, which are reported under a different system, all of the IDS contracts combined saved over \$400,000 during fiscal year 2007-08 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.

Development of Indigency Standards

G.S. 7A-498.5(c)(8) directs the IDS Commission to develop standards governing the provision of services under the IDS Act, including “[s]tandards for determining indigency.” Office staff have conducted extensive research on indigency standards in other jurisdictions, as well as model standards promulgated by other state and national organizations. As discussed in “Committees of the IDS Commission” and “Consultation with Other Actors and Recommended Cost-Saving Measures,” above, the IDS Commission has also 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 the State.

The Indigency Standards Committee held its first meeting in August 2008, at which committee members discussed the staff's initial research and brainstormed ways to improve indigency screening in North Carolina. Also during August 2008, the staff discussed potential indigency standards and improvements to the current systems for indigency screening with the chief public defenders and a group of district court judges. The Indigency Standards Committee will resume meetings in 2009, and the IDS Office hopes to be in a better position to address this area further in its March 2010 report to the General Assembly.

Improved Training and Resources

The IDS Office continues to provide funding for 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 2009. 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 next in July 2009.

With the assistance of SOG faculty, the IDS Office 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, 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, 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 (now called the North Carolina Advocates for Justice) 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, one-day conferences for parent attorneys were held in August 2007 and August 2008. A similar one-day conference is scheduled for August 2009. A two-day program for new attorneys representing indigent parent respondents is scheduled for March 2009.

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, 2007, and 2008, and another is planned for August 2009. 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, IDS 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 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 was held jointly with the Annual Public Defender Conference, which will be repeated again in May 2009. In addition, in April 2005, IDS and 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, 2007, and 2008. The 2009 management program has been cancelled due to budget constraints. Also due to budget constraints, the Fall Public Defender Conference is being converted to a smaller program on advanced advocacy, with a focus on jury selection in 2009.

Again with the assistance of SOG, IDS will be sponsoring a number of training programs during the rest of the 2009 calendar year. A current calendar of all IDS co-sponsored training programs is available at 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 in other sections of this report, IDS has also provided funding for the development of new specialized manuals, including an Immigration Consequences Manual that is designed to help appointed defense attorneys 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 on 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 would be working full-time on needed reform initiatives and to develop and offer comprehensive training programs for juvenile defense attorneys. The General Assembly subsequently authorized the creation of a new statewide Juvenile Defender position, and the IDS Commission appointed attorney Eric J. Zogry for a four-year term in November 2004. Zogry began work in January 2005, and was reappointed by the Commission for a second four-year term in November 2008.

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

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 267 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, summaries of newly enacted legislation impacting juveniles, notes about juvenile delinquency case law

since the current Juvenile Code went into effect in 1999, information about and materials from juvenile defender training programs, and links to related sites.

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 all of the public defender districts. As of the date of this report, 14 public defender districts have incorporated some version of the model standards into their local appointment plans; IDS Office staff expect the remaining two public defender districts (Carteret and New Hanover counties) to adopt some version of the model standards in the future.

The IDS Office 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 reviewed drafts and the Juvenile Defender served as the managing editor. The manual contains information about the law and procedure in juvenile delinquency court, practice tips and strategy, and copies of relevant motions and forms. The manual was published in August 2008, and is posted on the IDS website where attorneys can access it for free. The Juvenile Defender 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 also undertook a new project reviewing a sample of 147 cases from 11 counties that ended in commitments to youth development centers during 2007. The project involved reviewing the commitments for potential errors and, if errors were found and the juvenile wanted to pursue relief, filing a motion for review or asking the attorney who was appointed in district court to file such a motion. The Juvenile Defender’s goals for this project were to cure defective commitments if possible, to determine how often commitments are defective, to identify the reasons for any errors, and to improve training for juvenile defense attorneys. The study found that at least 16.4% of the files reviewed contained one or more “actionable errors,” which were defined as errors that, if corrected, would have resulted in the release of the juvenile or a reduction in the juvenile’s maximum term of commitment. Because it was unclear from the face of the files in many cases whether an identified error was actionable, and based on additional investigation of a sample of the files that were reviewed, the study estimated that the true “actionable error” rate could have been as high as 43.8%. A report on the study’s findings is currently being finalized and will be published in the near future.

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 position has been 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 261 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 also worked with IDS Office staff to develop a special page on the IDS website that is dedicated to representation of parent respondents. That webpage includes, among other things, a specialized appellate brief bank, trial and appellate forms, case summaries, legislative updates, and training and reference materials for abuse, neglect, dependency, and termination of parental rights cases.

In addition, 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 2007-08, the IDS Office continued to work with Whiteside to make the existing special counsel programs around the State, which

represent indigent respondents in civil commitment proceedings, more effective. Currently, there are special counsel offices at Cherry Hospital in Wayne County, Broughton Hospital in Burke County, and both the Raleigh and Butner campuses of Central Regional Hospital.

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 to serve the combined and realigned Dix and Umstead catchment areas. After some delay, the new Central Regional facility opened in June 2008. Throughout June and July, former Umstead staff and the majority of the Umstead patients were moved to the new facility, which is now referred to as Central Regional Hospital-Butner Campus (“CRH-Butner”). While most of the old Umstead campus closed, the child and adolescent programs, and the substance abuse treatment program, remained at the old Umstead. Dorothea Dix began transferring patients to the new CRH-Butner facility, but the move was stopped pending the filing of legal proceedings by North Carolina Disability Rights in the fall of 2008. The Special Counsel office at CRH-Butner currently serves clients at both the new CRH-Butner facility and the old Umstead campus. The Special Counsel office at the old Dix campus continues to serve the clients in the renamed CRH-Raleigh facility, as well as the clients at Holly Hill Hospital.

Plans for new inpatient treatment facilities in Wake County moved forward. Holly Hill Hospital kept construction on track for a new 44 bed inpatient unit due for completion in early 2009. In January 2009, the first 24 beds were opened and filled. By mid-February, an additional 11 beds were filled. The Department of Health and Human Services (“DHHS”) continues to plan that part of the old Dorothea Dix Hospital (now called CRH-Raleigh) will be kept open as a regional arm of the new CRH, with a bed capacity of approximately 60, primarily for acute admissions. This transition has not occurred as of the date of this report, however, due to the lawsuit mentioned above and various issues with licensing and certification. Wake County still plans 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 inpatient facilities at Cherry in 2010 and Broughton in 2012. IDS and Whiteside will continue to track 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 and Whiteside are also reviewing payments to appointed counsel in both civil commitment and guardianship cases to identify additional areas for potential improvement and cost savings.

Whiteside continues to maintain a listserv for attorneys practicing in the civil commitment area. In late January 2009, a civil commitment and guardianship webpage was launched on the IDS website, which contains resources and training materials for those two substantive areas.

Whiteside will also continue to serve as a resource for counsel representing indigent clients in these proceedings.

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. In January 2009, the manual was also used as a tool in a civil commitment training program for appointed attorneys, assistant public defenders, and special counsel, which was jointly sponsored by IDS and SOG.

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. In February 2008, IDS and SOG held a jointly sponsored training program for appointed attorneys and assistant public defenders, at which the new Guardianship Manual was used as a primary training tool.

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 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 agreed to handle these cases at the initial stages and IDS assigned every prison facility in North Carolina to the nearest public defender office. Because 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.

During fiscal year 2007-08, IDS appointed counsel in five Innocence Inquiry Commission proceedings, including four cases before the Commission itself and one case that had been referred by the Commission to a special three-judge panel. In two of the cases before the Commission itself, IDS appointed public defender offices to advise the convicted person. In the other two cases before the Commission, IDS appointed private counsel who had previously represented the convicted persons in other proceedings and, thus, were already familiar with the cases. Of those four cases, IDS has received a statement of time from one of the public defender offices (eight hours) and has paid one of the private counsel for 42 hours of work. In the one case in which an evidentiary hearing was conducted before a three-judge panel, IDS spent a total of \$57,473 for attorney and expert services during fiscal year 2008-09.

Evaluation and Oversight of North Carolina Prisoner Legal Services

Pursuant to *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491 (1977), and a contract with the State of North Carolina, 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 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.

In May 2008, IDS entered into a new 13-month contract with NCPLS for the provision of legal services to inmates, effective June 1, 2008 through June 30, 2009. That contract required a substantial reorganization of the NCPLS Board, with new bylaws to be adopted by June 1, 2008 and new appointments to be accomplished by June 30, 2008 or as soon thereafter as possible. The Board was subsequently reorganized and, in December 2008, the new Board hired attorney Mary S. Pollard as NCPLS' new Executive Director, effective January 5, 2009. IDS Office staff will continue to work closely with Pollard to ensure that the organization is delivering high quality and cost-effective services and to negotiate a new contract.

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 on an ongoing basis at the county, district, and statewide levels. Such a tool could utilize data assessment, surveys, interviewing, on-site observations, and other methods of collecting information. It also should enable the IDS Commission and 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. With the assistance of the IDS Systems Evaluation Project Coordinator, Daryl V. Atkinson, and a professional facilitator from AOC Human Resources, IDS has undertaken a number of steps to define the mission and goals of indigent defense in North Carolina and to articulate what an evaluation tool should measure. First, 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 10 focus groups around the State to interview representatives of groups or populations with different perspectives in the criminal justice system and community, including defense attorneys, judges, prosecutors, clerks, clients, law enforcement, investigators, corrections, advocacy groups, and government and business representatives. A summary report on those focus groups is available on the IDS website.

Third, Office staff have drafted a research report that examines what a model indigent defense system would look like. The report summarizes new developments in criminal justice research and what those developments mean for the practice of indigent criminal defense. It also looks in-depth at innovative strategies used by indigent defense agencies across the country to better serve their clients and communities while increasing efficiency and saving taxpayer money. The draft report has been circulated to a number of criminal justice experts around the country for their review and feedback, and IDS hopes to publish a final report in the coming months.

Fourth, Office staff will soon be assembling a Project Advisory Board of practitioners, criminal justice social scientists, and other stakeholders to help IDS define the elements and desired outcomes of a high quality indigent defense system. The IDS Office will then be in a position to assemble the statistical indicators that will evaluate the quality and performance of indigent defense systems and to develop a meaningful tool. IDS staff also 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 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 were submitted to the General Assembly, and are posted on the Office of the State Auditor’s website (www.ncauditor.net). The auditors’ main findings were as follows: 1) the existing attorney selection and appointment procedures do not ensure adequate independence; 2) attorney selection and performance are not adequately monitored to ensure competent representation; 3) attorney fee payment processes lack adequate controls; 4) attorney fee payment processes are inefficient and labor intensive; and 5) the IDS Office lacks sufficient resources. On February 8, 2008, the Office of the State Auditor released a follow up to its 2007 report, which summarized the steps IDS had taken to date to implement their recommendations. The follow-up report is also available at www.ncauditor.net.

The IDS Commission and staff remain 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 resolve 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 IDS 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 its 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, and "Legislative Recommendations," below.

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

Under one model of a regionalized system, a regional public defender could oversee an office in one or more counties and also oversee appointed lists, contracts, and/or part-time state employed defenders in the more rural areas within the region. The regional public defender office could be responsible for managing the regional rosters, appointing private attorneys in non-conflict cases, documenting the reasons for any deviations from the systematic rotation, reviewing attorney fee applications in non-conflict cases, and resolving client complaints within the region. In other words, the regional office 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 regional 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.

At its quarterly meetings in June and September 2008, the IDS Commission discussed a different model of regionalization, which would involve creating a new Regional Resource Counsel position in a region. The position could be part- or full-time, either as a State employee or through a contract with a private attorney in the region. The position's responsibilities could include visiting each county within the region and observing court proceedings, developing contracts with local attorneys for some types of cases, identifying training and resource needs in the region, and working with IDS to implement some version of the Commission's model appointment plan in each district in the region. See "Model Appointment Plan for Non-Public Defender Districts," below.

The Commission discussed the possibility of creating such a position in the Sixth Judicial Division, which encompasses District 19A (Cabarrus County), District 19C (Rowan County), District 20A (Anson, Richmond, and Stanly counties), District 20B (Union County), and District 22 (Alexander, Davidson, Davie, and Iredell counties). The Sixth Division is the only division in North Carolina with no public defender offices, and the IDS Commission and Office believe it would be helpful to have someone closer to the districts serving as a support and resource for the local bars, and helping IDS to identify any best practices and/or developing initiatives to improve the quality and cost-effectiveness of representation if necessary. However, before moving forward with such a position, the Commission directed Office staff to consult with the bar and bench in the region about their needs. At this time, the Office has not proceeded with those consultations because of the State's current budget crisis. The Commission and staff will continue to discuss and analyze the possibility of regional resource counsel positions and regional defender offices, and hope to develop more specific proposals 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. The model plan, as well as a model application form for the indigent appointment lists, is available on the IDS website.

After the model plan was approved by the IDS Commission, Office staff began working with a number of local districts across the State to implement some version of the plan at the local level. In July 2008, the staff mailed packets of materials—including the new model plan, the district’s current approved plan, and the model application form—to the local Bar Presidents in Districts 7A, 7B/C, 23, 24, 29A, 30A, and 30B. The staff subsequently mailed a similar packet of materials to local actors in District 5 (Pender County only). In addition, in September 2008, an IDS staff member attended a bar meeting in District 23 to discuss the new model plan and answer any questions that arose. At the request of local actors in District 29A, IDS Office staff also developed a list of resources for new attorneys accepting indigent cases.

The Office is currently in discussions with the various Bar Presidents in the districts named above, as well as the Chairs of any local indigent committees that were already in existence or have been reformed to address this issue. While the implementation process is taking longer than the staff had expected, local actors in the districts identified above are in various stages of preparing new plans for IDS’ review. Once the Office has approved new plans in at least some of the districts named above, the staff will begin contacting other districts across the State. As part of this process, IDS 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 or resource counsel 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 had hoped to pilot-test a web-based system in all capital and appellate cases statewide, and then expand the system to allow electronic receipt and processing of private attorney fee applications in all indigent cases throughout North Carolina—currently more than 190,000 cases annually.

In 2003 and 2006, IDS staff submitted grant applications to the Governor’s Crime Commission seeking funds to develop a pilot system. Neither of those applications was selected for grant funding. In addition, the IDS Office asked the General Assembly for funds to pilot test an automated system during the 2006 legislative session; while 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 the 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 and directed IDS to consult with AOC and develop a proposal for statewide implementation.

During fiscal year 2007-08, Office staff researched electronic fee application systems that were 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. Office staff 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. Finally, IDS contracted with a programmer to restructure the existing Access database that IDS uses to process capital and appellate fee applications in a way that would facilitate on-line fee processing.

Because the existing IDS Office staff did not have the in-house technical expertise to proceed further with designing the pilot project or developing a proposal for statewide implementation, and because of competing demands on IDS’ staff time, the Office was unable to utilize the full \$175,000 in non-recurring funds last fiscal year and did not begin a pilot program. However, in August 2008, IDS hired Joseph Meskey as its new Information Technology Director, so that the Office would be better equipped to manage the project with appropriate in-house expertise. Meskey started work in October 2008. At IDS’ request, OSBM allowed IDS to transfer the balance of fiscal year 2007-08’s non-recurring appropriation to its budget for fiscal year 2008-09 so that Meskey could continue the process of designing and implementing the pilot program, as well as planning for statewide implementation.

After reviewing IDS’ current system for processing capital and appellate fee applications, as well as the parallel system for processing fee applications in non-capital and non-criminal cases at the trial level where judges remain responsible for setting fees, Meskey determined that it would be best to proceed with a pilot program for electronic submission of non-capital and non-criminal fee applications in selected counties around the State. Meskey further determined that, after a pilot period, IDS would be in a position to identify and remedy any problems with the system and then proceed with statewide implementation.

In October 2008, Meskey used a small portion of the non-recurring funds (\$450) to pay for the services of a local information technology and web consultant, who provided advice on general system design and technical issues relating to electronic data interchange with other agencies. He subsequently contacted several providers of software products designed for the legal community to investigate whether any of their products (or components thereof) could be used in the construction of a website for fee application submission. Meskey’s research confirmed that there are no commercial off-the-shelf components that could be used in this project and that it will require a specialized application based on custom programming and database development. Based on Meskey’s advice, IDS then decided to develop a Request for Proposals (“RFP”) with the goal of employing the services of a software development firm to create a pilot web application system.

The IDS Office has now created a general draft design for the system, which will incorporate features such as the web-based submission of case and billing information by private attorneys, automated generation of bar-coded fee approval forms, and improved review capabilities for IDS Financial Services staff. The system will also enable IDS to obtain more timely information about indigent caseload, to complete faster review and approval of payments to private counsel, and to access more complete case information for use in research and program evaluation projects. Key components of the proposed pilot system will be a daily electronic data interchange (“EDI”) of financial information with the North Carolina Accounting System (“NCAS”), and importation of court data about defendants and charges from AOC’s Automated Criminal Information System (“ACIS”). Because of the EDI requirements, in December 2008, IDS staff initiated discussions with representatives of AOC and the State Controller’s Office to identify technical and logistical issues associated with these data transfers. The staff also investigated the possibility of using the State’s e-Procurement website as a first step in having attorneys enter their tax and company information on-line.

From meetings with AOC’s Technical Services Division and the Controller’s Office, IDS has confirmed that the types of electronic data transfers that are inherent in the design of the pilot fee application system are technologically feasible. While there are still many technical details to resolve with respect to data content, logistics, and timing, both agencies have agreed to work with the software development firm that IDS ultimately employs to provide the needed EDI functionality. Meskey is currently working with the AOC to finalize the RFP for the project, and IDS expects to post it on the AOC’s website by the end of March 2009. The IDS Office hopes to select a vendor and develop a contract, including specific project timelines and deliverables, during May 2009.

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. Finally, 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 believe that AOC must continue to be an active partner in this endeavor.

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 hundreds of attorneys since the audit. The percentage of payments that IDS issues electronically has risen from 21% in fiscal year 2005-06 to 28.5% so far this fiscal year.

System for Obtaining Indigent Case Information when Counsel is Appointed

In its report, the Office of the State Auditor also recommended that IDS should obtain indigent case information when cases are initiated and before a fee application is received. Based on that recommendation, § 14.7 of Session Law 2008-107 directed IDS, in consultation with AOC, to develop a proposed statewide system for obtaining information about indigent cases when counsel is first appointed and to report on that proposal in this annual report.

The IDS Commission and staff agree with the Auditor's recommendation in this area, and Office staff have been consulting regularly with AOC staff about this matter since November 2008. However, there continue to be technological and resource barriers to implementing this recommendation for the more than 190,000 private appointed counsel cases that IDS oversees annually. While all criminal cases in North Carolina are entered into ACIS, that system is not capable of directly communicating with NCAS. AOC has been 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 IDS 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.

However, IDS is currently exploring the possibility of getting AOC to provide regular exports of ACIS data on all new indigent criminal cases, which would put the Office in a better position to know the number of indigent criminal cases that are pending at any given time and to verify the case information associated with fee applications. IDS Office staff had an initial meeting with AOC staff in November 2008 to explore possible ways of obtaining this information, and have had several follow up meetings and discussions since that date. In addition to some outstanding technical issues, the primary potential barrier to obtaining meaningful data from ACIS appears to be that there may not be any statewide standard for when the various clerks' offices enter into ACIS whether the defendant is represented by a retained attorney, appointed attorney, or public defender, or whether he or she has waived his or her right to counsel. The ACIS manual does not contain any direction about the timing of completing those data fields in ACIS, and IDS staff members suspect that at least some clerks' offices do not enter that data until the time of disposition, rather than the time of appointment. If that is true, a data export from ACIS prior to case disposition would not convey complete and accurate data on the number of pending criminal cases involving an indigent defendant. Thus, IDS staff have asked AOC to run an "events history" report from ACIS that will show how quickly certain data fields are initially completed and how frequently they are updated. Once IDS has that information, the staff will be in a better position to determine how accurate data exports of new indigent criminal cases will be and, thus, whether IDS will need to work with the clerks' offices

to ensure more timely data entry before any system can be put into place. If IDS determines that the ACIS data exports will be accurate, based on fiscal year 2006-07 data, those exports will give IDS timely data about the 66.5% of IDS' total indigent caseload that involves non-capital criminal cases at the trial level. Since IDS already knows about pending potentially capital cases, appeals, and capital post-conviction proceedings (1.6% of IDS' total indigent caseload), this system would leave an additional 31.9% of IDS' total pending caseload unknown.

The IDS Office hopes to have resolved the outstanding technological and data entry issues with these data exports by the end of the current fiscal year. However, because of the continuing complications associated with establishing these procedures, IDS suggests that the General Assembly direct AOC and IDS to continue consulting about a system for IDS Office staff to obtain indigent case information when cases are initiated.

Improved 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. IDS' new in-house Auditor, *see* "New IDS Auditor Position," above, has also developed a draft of a written policy and procedures manual to govern the processing of attorney fee applications. Office management also began reviewing any invoices that raise concerns for the processing staff, as well as reviewing batches of invoices after they are keyed and before checks are issued. In addition, Office staff met with clerk's offices staff in Durham, Mecklenburg, Pitt, and Wake counties to clarify their procedures with respect to attorney fee applications. Moreover, in January 2009, IDS Office staff mailed a survey to representatives of all 100 clerks' offices to solicit additional information about their procedures; as of the date of this report, 78 offices have returned a completed survey.

Since the audit report was issued, IDS Financial Services staff have also been given access to 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 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, such as current addresses and tax identification numbers, which has reduced the risk of payment errors. Those staff members also check for any duplicate vendor setups on an annual basis.

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. Once a suspected duplicate was found, IDS Office staff investigated it and determined whether there was sufficient evidence that payment was issued twice for the same services to justify writing the attorney and asking for repayment.

Because of the labor and inefficiencies associated with identifying and collecting duplicate payments after they had been issued, as well as the tax consequences for the attorneys, IDS Office staff worked with the Office of 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, and also helps Office staff identify any billing that deviates from IDS policies. 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. During most of fiscal year 2007-08, IDS Financial Services staff processed and paid attorney fees within seven business days of receiving the fee award. Staff also monitor the timeliness of submissions from clerks' offices and discuss any delays with those offices.

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); and "Legislative Recommendations: Expand and Regionalize the Public Defender System and Improve IDS' Ability to Oversee 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).

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 2007-08 is attached to this report as Appendix C. 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 2007-08, 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 \$517,711. Also during fiscal year 2007-08, 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 not to exceed \$59,310.

IV. LEGISLATIVE RECOMMENDATIONS

A. Increased Funding for the Private Appointed Counsel Fund:

IDS' appropriation for fiscal year 2008-09 was approximately \$2.5 million below the projected demand on the fund for the current fiscal year. In addition, due to the State's budget crisis, the Office of State Budget and Management is now requiring the IDS Office to revert 5%

of its appropriation for fiscal year 2008-09. Thus, Office staff are currently projecting a shortfall of at least \$7 million for this fiscal year, which will mean that IDS' funding for payments to private counsel will be depleted in late May 2009. The IDS Commission and Office request that the General Assembly appropriate non-recurring funds during fiscal year 2009-10 to cover IDS' deficit at the end of the current fiscal year. The Commission and Office also request recurring funding during fiscal year 2009-10 in an amount sufficient to maintain the current level of services and to cover the projected demand on the fund next year. While the demand on IDS' funds has historically grown at an average rate of 5.5% per year, the IDS Office expects the growth rate next year to be higher than normal because of the likely impact of the poor economy on the indigency rate in North Carolina.

B. 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.

C. Continue Funding for One or More District Court Alternative Scheduling Pilots:

As discussed in "District Court Alternative Scheduling Pilots," above, IDS is in the process of developing a district court alternative scheduling pilot and hopes to have one or more pilot programs in place before the end of the current fiscal year. However, the IDS Commission and IDS Office believe that any pilot programs will need to last at least one full year before IDS will be in a position to make more wide-ranging recommendations about scheduling. Thus, IDS requests that the 2009 Appropriations Act again allow IDS to spend up to \$25,000 of its appropriated funds to continue supporting one or more pilot programs of alternative scheduling.

D. Consider Decriminalizing Some Misdemeanors that Rarely or Never Result in an Active Sentence:

Particularly in light of the State's current fiscal crisis, the IDS Commission recommends that the General Assembly consider decriminalization of certain lower-level traffic or other misdemeanors that rarely or never result in jail sentences when decriminalization would not undermine public safety or compromise a defendant's ability to resolve underlying issues, such as a revoked license. If some such offenses are decriminalized, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. Based on a study conducted by Office staff, decriminalization of a fairly small number of offenses would generate significant savings for IDS and, thus, the State of North Carolina. *See* "Study on Decriminalization of Certain Misdemeanors," above.

E. Expand and Regionalize the Public Defender System and Improve IDS' Ability to Oversee 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.

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.

F. Direct AOC and IDS to Continue Consulting About a System for Providing IDS with Indigent Case Information when Cases are Initiated:

As discussed above, *see* "System for Obtaining Indigent Case Information when Counsel is Appointed," 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 Office staff have been working with AOC to develop such a system. Because there continue to be technological and data entry barriers to obtaining accurate and complete data, IDS suggests that the General Assembly direct AOC and IDS to continue consulting about this issue.

G. Consider Long-Term Savings in Prison Costs when Evaluating Programs like Sentencing Services:

The IDS Commission and staff understand that the State is facing a serious fiscal crisis and may need to reduce or eliminate some programs. However, in evaluating programs like Sentencing Services, IDS recommends that the General Assembly consider the long-term savings in prison costs that such programs generate.

H. 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 IDS' spending on transcripts during fiscal year 2007-08, each \$.25 increase in the per page rate paid to court reporters would cost IDS an additional \$103,000 annually.

I. Additional Legislative Recommendations:

During the 2009 session, the IDS Commission and Office may recommend additional changes in law or funding that would assist the Office in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

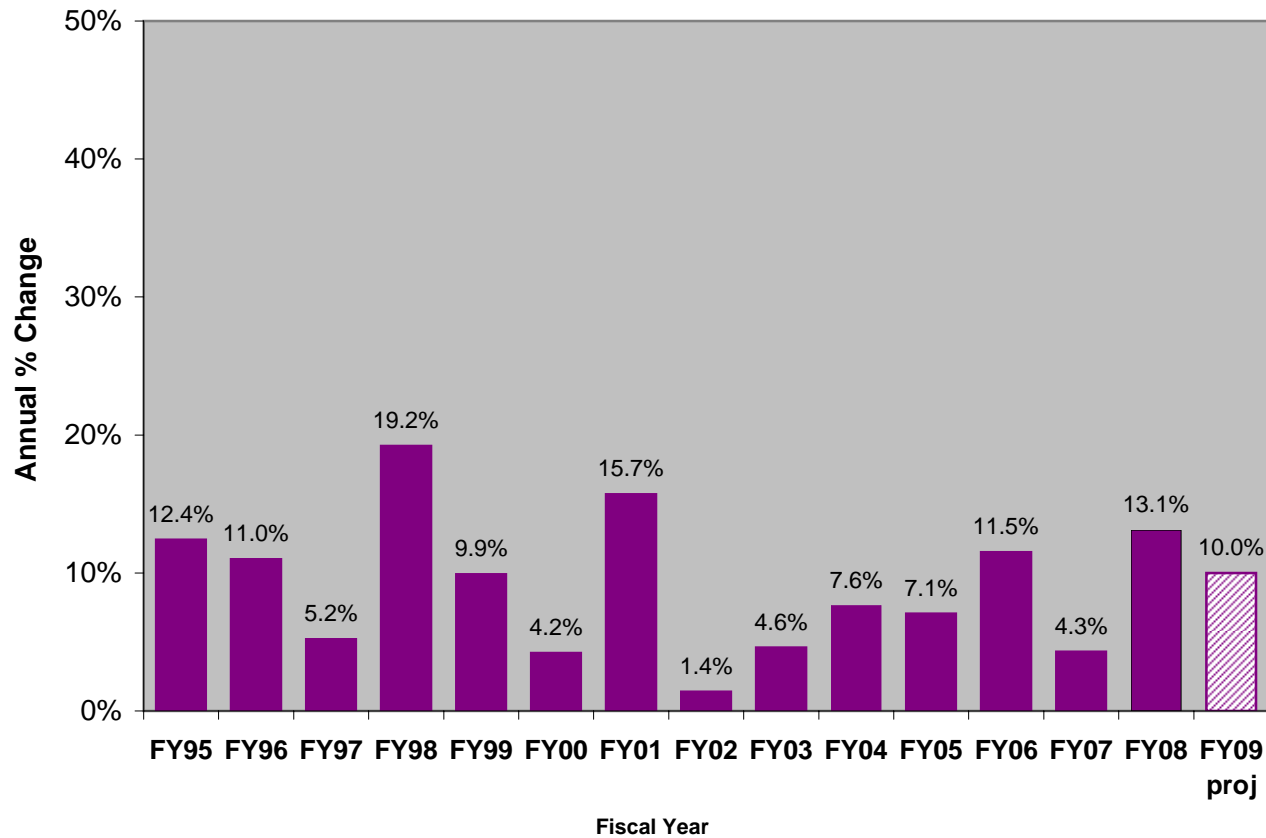
V. CONCLUSION

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

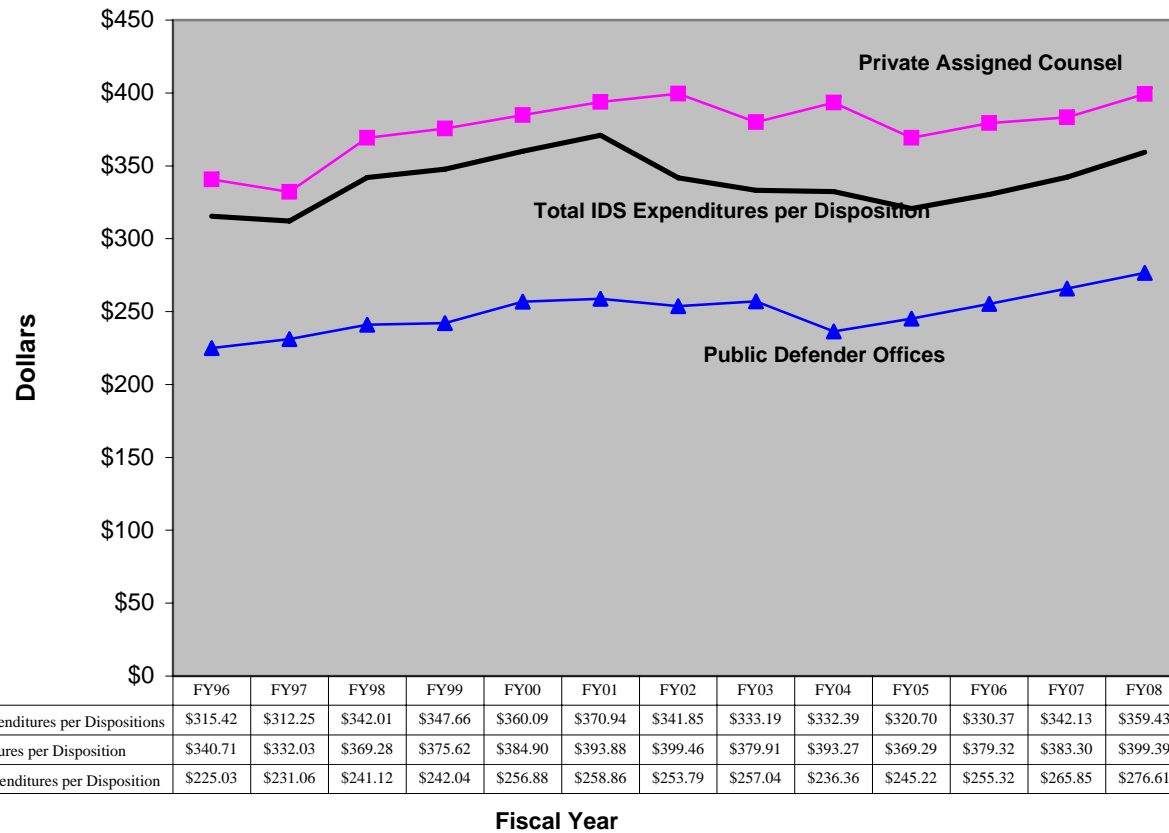
APPENDIX A

Annual Percent Change in Actual Total Indigent Defense Expenditures

(excludes prior year obligations and includes current obligations)



Indigent Defense Expenditure History per Disposition (Prior Year Obligations Removed FY94 to FY08)



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 FY08**

Type of Expenditure	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08
<i>Private Assigned Counsel (PAC)</i>													
Capital	6,950,613	6,453,782	9,589,186	9,176,899	10,079,534	11,272,810	10,876,856	10,005,808	10,714,595	10,993,138	12,258,524	12,413,506	12,866,708
Adult	19,932,141	22,322,081	25,540,251	27,428,944	29,283,471	35,536,744	32,226,789	37,847,981	37,879,960	45,380,760	52,028,772	50,596,736	54,200,075
Juvenile	2,314,826	2,560,702	2,787,998	2,966,086	3,138,127	3,828,369	2,932,196	3,195,779	2,927,609	3,763,905	3,899,309	3,348,486	3,774,949
GAL	77,089	115,313	123,838	159,776	208,031	298,241	278,687	180,819	188,468	554,855	637,750	1,282,133	1,507,538
Support Services	\$ 1,886,392	\$ 2,431,457	\$ 2,591,432	\$ 2,970,751	\$ 3,218,862	\$ 3,475,239	\$ 3,932,832	\$ 4,566,156	\$ 5,468,911	5,735,608	6,733,847	6,639,085	7,819,519
Obligated at Year-End	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	637,939
Total PAC	\$ 32,161,061	\$ 33,883,335	\$ 40,632,705	\$ 44,551,915	\$ 48,110,724	\$ 56,863,403	\$ 57,654,279	\$ 64,500,229	\$ 68,909,747	\$ 75,400,236	\$ 79,595,169	\$ 75,107,393	\$ 80,806,728
Total PAC with prior year obligations removed	\$ 31,313,370	\$ 32,883,335	\$ 40,632,705	\$ 44,551,915	\$ 46,261,265	\$ 54,680,704	\$ 55,202,279	\$ 57,093,310	\$ 60,206,061	\$ 63,670,032	\$ 70,623,199	\$ 71,070,426	\$ 79,979,281
Annual % Change excluding prior year oblig. Including current oblig.	19.24%	5.01%	23.57%	9.65%	3.84%	18.20%	0.95%	3.43%	5.45%	5.75%	10.92%	0.63%	12.54%
<i>Public Defender Offices & Special Counsel</i>													
IDS Office						\$ 179,459	\$ 472,471	\$ 499,977	\$ 580,360	\$ 663,219	\$ 749,008	1,066,697	1,355,032
Public Defender	\$ 9,364,670	\$ 9,895,547	\$ 10,708,729	\$ 11,708,864	\$ 12,260,820	\$ 12,877,539	\$ 13,024,014	\$ 13,917,622	\$ 15,987,985	\$ 17,225,616	\$ 19,980,044	22,536,032	25,976,578
Appellate Defender	\$ 930,474	\$ 977,043	\$ 919,279	\$ 1,025,609	\$ 1,068,893	\$ 1,091,839	\$ 972,713	\$ 1,021,943	\$ 1,048,528	\$ 1,109,151	\$ 1,228,353	1,436,188	1,657,699
Capital Defender				\$ 183,896	\$ 278,065	\$ 352,240	\$ 392,940	\$ 777,491	\$ 1,115,204	\$ 1,796,881	\$ 1,540,186	1,929,257	1,976,974
Juvenile Defender										\$ 79,776	\$ 154,617	88,542	192,209
Set-Off Debt	\$ 91,109	\$ 86,152	\$ 83,085	\$ 82,489	\$ 84,414	\$ 92,402	\$ 65,519	\$ 71,373	\$ 68,900	\$ 72,913	\$ 79,930	163,719	92,084
Special Counsel	\$ 415,995	\$ 455,201	\$ 476,500	\$ 502,067	\$ 512,718	\$ 674,721	\$ 773,292	\$ 802,022	\$ 845,239	\$ 871,096	\$ 993,071	1,176,841	1,284,282
Total State Offices	\$ 10,802,248	\$ 11,413,943	\$ 12,187,593	\$ 13,502,925	\$ 14,204,910	\$ 15,268,200	\$ 15,700,949	\$ 17,090,428	\$ 19,646,216	\$ 21,818,652	\$ 24,725,209	\$ 28,397,276	\$ 32,534,858
Annual Percent Change	4.4%	5.7%	6.8%	10.8%	5.2%	7.5%	2.8%	8.8%	15.0%	11.1%	13.3%	14.9%	14.6%
Total IDS Expenditures	\$ 42,963,309	\$ 45,297,278	\$ 52,820,298	\$ 58,054,840	\$ 62,315,634	\$ 72,131,603	\$ 73,355,228	\$ 81,590,657	\$ 88,555,963	\$ 97,218,888	\$ 104,320,378	\$ 103,504,669	\$ 113,341,586
Annual Percent Change	8.4%	5.4%	16.6%	9.9%	7.3%	15.8%	1.7%	11.2%	8.5%	9.8%	7.3%	-0.8%	9.5%
Total IDS Expenditures with prior year obligations removed	\$ 42,115,618	\$ 44,297,278	\$ 52,820,298	\$ 58,054,840	\$ 60,466,175	\$ 69,948,904	\$ 70,903,228	\$ 74,183,738	\$ 79,852,277	\$ 85,488,684	\$ 95,348,408	\$ 99,467,702	\$ 112,514,139
Percent Change in Total Expenditures (exclude prior yr oblig.)	11.0%	5.2%	19.2%	9.9%	4.2%	15.7%	1.36%	4.63%	7.64%	7.06%	11.53%	4.32%	13.12%
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

Recoupment by County
 Compared to Combined Non-Capital PAC and Public Defender Expenditures

County	FY 2008 Recoupment	FY08 Total Spending	FY08 % of Spending Recouped	FY07 % of Spending Recouped	Appointment Fee Collected
Alamance	\$ 223,166.06	\$ 1,118,697.21	19.95%	19.8%	\$ 12,104.81
Alexander	\$ 58,419.50	\$ 310,406.36	18.82%	15.1%	\$ 5,917.75
Alleghany	\$ 18,607.63	\$ 83,659.80	22.24%	34.3%	\$ 3,576.00
Anson	\$ 55,317.84	\$ 344,874.45	16.04%	15.1%	\$ 1,105.00
Ashe	\$ 50,472.88	\$ 144,735.88	34.87%	27.2%	\$ 6,825.00
Avery	\$ 28,699.28	\$ 130,984.54	21.91%	25.1%	\$ 225.59
Beaufort	\$ 83,271.88	\$ 460,645.35	18.08%	15.9%	\$ 4,723.49
Bertie	\$ 30,188.60	\$ 155,820.34	19.37%	18.6%	\$ 1,896.46
Bladen	\$ 47,382.10	\$ 377,396.47	12.55%	12.0%	\$ 3,631.14
Brunswick	\$ 130,137.71	\$ 974,558.39	13.35%	12.7%	\$ 8,789.00
Buncombe	\$ 169,122.68	\$ 2,294,275.42	7.37%	8.8%	\$ 1,340.00
Burke	\$ 142,916.19	\$ 821,711.50	17.39%	23.1%	\$ 11,892.50
Cabarrus	\$ 314,435.97	\$ 1,065,608.88	29.51%	26.1%	\$ 34,481.03
Caldwell	\$ 133,466.80	\$ 693,176.11	19.25%	23.1%	\$ 12,340.63
Camden	\$ 5,700.78	\$ 145,262.42	3.92%	7.9%	\$ 936.64
Carteret	\$ 39,890.14	\$ 472,178.03	8.45%	6.2%	\$ 6,501.31
Caswell	\$ 43,261.36	\$ 201,912.95	21.43%	28.8%	\$ 4,403.33
Catawba	\$ 208,601.25	\$ 1,251,055.38	16.67%	15.2%	\$ 7,384.50
Chatham	\$ 21,423.76	\$ 579,599.45	3.70%	3.6%	\$ 1,680.00
Cherokee	\$ 65,575.49	\$ 354,282.18	18.51%	11.6%	\$ 871.93
Chowan	\$ 13,912.17	\$ 166,866.55	8.34%	13.9%	\$ 1,089.18
Clay	\$ 13,699.71	\$ 128,460.94	10.66%	12.1%	\$ 1,310.82
Cleveland	\$ 137,230.02	\$ 814,371.66	16.85%	16.7%	\$ 17,503.53
Columbus	\$ 81,057.93	\$ 477,773.40	16.97%	13.4%	\$ 5,092.30
Craven	\$ 112,133.24	\$ 537,757.71	20.85%	16.7%	\$ 10,616.31
Cumberland	\$ 127,246.94	\$ 3,487,975.13	3.65%	2.8%	\$ -
Currituck	\$ 27,063.62	\$ 254,149.69	10.65%	17.7%	\$ 1,644.32
Dare	\$ 47,898.73	\$ 379,113.86	12.63%	12.5%	\$ 1,808.95
Davidson	\$ 277,662.56	\$ 1,584,857.43	17.52%	19.5%	\$ 20,908.81
Davie	\$ 52,563.30	\$ 358,104.72	14.68%	16.0%	\$ 5,451.05
Duplin	\$ 81,665.02	\$ 385,136.32	21.20%	18.4%	\$ 3,513.34
Durham	\$ 171,186.88	\$ 4,292,370.72	3.99%	4.9%	\$ 45.00
Edgecombe	\$ 92,624.95	\$ 531,685.02	17.42%	16.2%	\$ 3,285.00
Forsyth	\$ 307,964.22	\$ 3,119,145.13	9.87%	10.8%	\$ 44,428.52
Franklin	\$ 75,492.82	\$ 349,021.52	21.63%	25.1%	\$ 6,127.89
Gaston	\$ 47,490.38	\$ 2,324,833.66	2.04%	1.6%	\$ 1,530.00
Gates	\$ 5,857.47	\$ 53,209.04	11.01%	10.1%	\$ 553.35
Graham	\$ 16,644.09	\$ 120,486.43	13.81%	19.5%	\$ 1,466.64
Granville	\$ 74,321.39	\$ 356,356.53	20.86%	25.0%	\$ 6,150.40
Greene	\$ 24,683.78	\$ 127,260.32	19.40%	28.0%	\$ 1,964.41
Guilford	\$ 243,617.56	\$ 4,667,379.49	5.22%	5.1%	\$ 20,559.87
Halifax	\$ 119,718.10	\$ 726,017.21	16.49%	15.7%	\$ 6,322.58
Harnett	\$ 104,853.14	\$ 879,954.38	11.92%	11.1%	\$ 9,310.94
Haywood	\$ 133,559.62	\$ 695,402.15	19.21%	17.9%	\$ 8,841.09
Henderson	\$ 189,813.35	\$ 1,079,955.57	17.58%	19.3%	\$ 19,196.88
Hertford	\$ 34,216.13	\$ 213,164.56	16.05%	14.2%	\$ -
Hoke	\$ 44,240.42	\$ 448,730.36	9.86%	8.7%	\$ 1,715.36
Hyde	\$ 12,042.45	\$ 31,148.39	38.66%	25.0%	\$ 931.54
Iredell	\$ 262,160.90	\$ 1,266,457.76	20.70%	18.8%	\$ 23,439.93

Recoupment by County
 Compared to Combined Non-Capital PAC and Public Defender Expenditures

County	FY 2008 Recoupment	FY08 Total Spending	FY08 % of Spending Recouped	FY07 % of Spending Recouped	Appointment Fee Collected
Jackson	\$ 65,977.04	\$ 316,671.52	20.83%	18.2%	\$ 4,767.17
Johnston	\$ 115,218.32	\$ 926,278.11	12.44%	10.4%	\$ 14,288.48
Jones	\$ 13,237.27	\$ 58,396.00	22.67%	27.5%	\$ 1,273.07
Lee	\$ 93,729.23	\$ 427,535.58	21.92%	19.8%	\$ 10,121.08
Lenoir	\$ 123,064.44	\$ 579,373.56	21.24%	26.3%	\$ 9,397.00
Lincoln	\$ 85,917.71	\$ 398,703.21	21.55%	19.6%	\$ 8,671.61
Macon	\$ 54,832.26	\$ 381,473.87	14.37%	23.9%	\$ -
Madison	\$ 28,189.65	\$ 128,247.80	21.98%	25.5%	\$ 181.61
Martin	\$ 38,471.65	\$ 190,398.76	20.21%	16.2%	\$ 2,800.08
McDowell	\$ 93,755.41	\$ 517,567.26	18.11%	16.3%	\$ 10,867.27
Mecklenburg	\$ 369,892.54	\$ 9,097,010.94	4.07%	4.3%	\$ 562.25
Mitchell	\$ 38,594.03	\$ 106,958.00	36.08%	35.2%	\$ 3,584.07
Montgomery	\$ 18,300.78	\$ 217,722.66	8.41%	9.4%	\$ 800.30
Moore	\$ 94,401.16	\$ 747,154.38	12.63%	12.1%	\$ 1,760.00
Nash	\$ 122,155.50	\$ 616,528.64	19.81%	17.9%	\$ 7,297.20
New Hanover	\$ 330,633.96	\$ 2,602,337.54	12.71%	13.7%	\$ 13,568.51
Northampton	\$ 22,481.70	\$ 145,545.55	15.45%	18.5%	\$ 1,257.07
Onslow	\$ 213,598.92	\$ 1,062,944.06	20.10%	21.4%	\$ 16,081.82
Orange	\$ 43,133.73	\$ 1,330,141.76	3.24%	3.7%	\$ 5,448.93
Pamlico	\$ 13,164.06	\$ 65,489.85	20.10%	15.7%	\$ 799.34
Pasquotank	\$ 64,853.46	\$ 409,891.31	15.82%	15.3%	\$ 5,968.90
Pender	\$ 63,991.01	\$ 291,408.44	21.96%	21.8%	\$ 5,240.58
Perquimans	\$ 15,604.54	\$ 112,812.58	13.83%	16.2%	\$ 1,047.13
Person	\$ 90,183.12	\$ 475,107.87	18.98%	18.4%	\$ 6,504.50
Pitt	\$ 95,868.03	\$ 2,185,879.54	4.39%	4.6%	\$ 315.00
Polk	\$ 33,678.93	\$ 185,789.32	18.13%	17.8%	\$ 2,880.55
Randolph	\$ 140,227.92	\$ 1,029,323.04	13.62%	15.4%	\$ 808.65
Richmond	\$ 147,017.18	\$ 1,121,993.94	13.10%	11.1%	\$ 3,054.39
Robeson	\$ 95,517.85	\$ 2,365,428.80	4.04%	3.4%	\$ 1,739.02
Rockingham	\$ 184,219.02	\$ 859,529.15	21.43%	24.9%	\$ 12,104.25
Rowan	\$ 236,264.63	\$ 1,435,021.74	16.46%	20.5%	\$ 24,163.22
Rutherford	\$ 163,375.21	\$ 741,066.78	22.05%	25.2%	\$ 27,422.58
Sampson	\$ 100,011.73	\$ 525,642.21	19.03%	19.8%	\$ 10,084.02
Scotland	\$ 64,048.46	\$ 743,672.37	8.61%	7.8%	\$ 452.58
Stanly	\$ 52,463.95	\$ 455,452.23	11.52%	11.9%	\$ 1,619.95
Stokes	\$ 91,789.02	\$ 363,029.28	25.28%	30.9%	\$ 5,956.98
Surry	\$ 166,225.21	\$ 564,571.53	29.44%	30.9%	\$ 13,988.39
Swain	\$ 21,631.38	\$ 150,010.27	14.42%	16.6%	\$ 6.75
Transylvania	\$ 62,534.83	\$ 400,084.49	15.63%	16.2%	\$ 5,490.00
Tyrrell	\$ 11,815.75	\$ 34,406.00	34.34%	14.4%	\$ 1,135.58
Union	\$ 168,413.65	\$ 1,218,334.21	13.82%	15.8%	\$ 16,253.50
Vance	\$ 79,903.99	\$ 527,038.14	15.16%	17.1%	\$ 2,949.50
Wake	\$ 367,434.49	\$ 6,056,166.71	6.07%	7.6%	\$ 32,913.97
Warren	\$ 20,641.52	\$ 128,058.66	16.12%	21.7%	\$ 1,864.00
Washington	\$ 23,343.77	\$ 68,969.89	33.85%	24.7%	\$ 1,815.65
Watauga	\$ 74,563.05	\$ 343,277.93	21.72%	24.4%	\$ 6,379.50
Wayne	\$ 176,738.96	\$ 760,121.24	23.25%	26.0%	\$ 11,341.24
Wilkes	\$ 103,638.11	\$ 470,766.43	22.01%	19.9%	\$ 14,465.60

Recoupment by County
 Compared to Combined Non-Capital PAC and Public Defender Expenditures

County	FY 2008 Recoupment	FY08 Total Spending	FY08 % of Spending Recouped	FY07 % of Spending Recouped	Appointment Fee Collected
Wilson	\$ 91,457.91	\$ 529,918.49	17.26%	17.0%	\$ 275.00
Yadkin	\$ 53,219.86	\$ 292,715.85	18.18%	26.6%	\$ 6,422.84
Yancey	\$ 24,900.13	\$ 141,025.75	17.66%	21.5%	\$ 169.87
TOTALS	\$ 9,867,004.82	\$ 86,740,980.00	11.38%	11.7%	\$ 693,794.67
Minimum	Recoupment Percentage		2.04%		
Maximum	Recoupment Percentage		38.66%		
Average	Recoupment Percentage		16.68%		
<i>total recoupment includes attorney fees & appointment fee collected by csc and set off debt revenues</i>					
<i>total spending excludes capital PAC but includes all PD expenses, prorated by county if necessary</i>					

APPENDIX C

COST AND CASE DATA ON REPRESENTATION OF INDIGENTS

July 1, 2007-June 30, 2008

	Number of Cases*	Total Cost***
Assigned Private Counsel		
Capital cases	2,117	12,866,708
Adult cases (other than capital)	169,758	53,781,631
Juvenile cases	12,291	3,046,514
Guardian ad Litem assigned to IDS	4,412	1,507,538
Total	188,578	71,202,391
Private Counsel Contracts	7,677	1,130,392
Legal Services to Inmates		2,187,132
Public Defender Offices	**	
District 1	**	1,083,915
District 3A	**	1,094,998
District 3B (Carteret County)	**	296,622
District 5 (New Hanover)	**	376,577
District 10	**	2,553,436
District 12	**	1,548,019
District 14	**	2,073,414
District 15B	**	1,209,176
District 16A	**	840,038
District 16B	**	1,301,371
District 18	**	3,021,867
District 21	**	1,881,728
District 26	**	5,291,403
District 27A	**	1,839,191
District 28	**	1,307,177
District 29B	**	257,645
Total	**	25,976,578
Office of the Appellate Defender		1,657,699
Special Counsel at State Mental Health Hospitals		1,284,282
Support Services		
Transcripts, records, and briefs		813,450
Expert witness fees		2,639,225
Investigator fees		4,234,947
Interpreters (pac & pd)		131,898
Total		7,819,519
Set-Off Debt Collection		92,084
Indigent Defense Services		1,355,032
Office of the Capital Defender		1,976,974
Office of the Juvenile Defender		192,209
TOTAL INDIGENT DEFENSE SERVICES		\$114,874,292
Sentencing Services Program		2,816,942
GRAND TOTAL		\$117,691,234

* 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 persons whose cases were disposed by public defenders during fiscal year 2007-08.

** The number of cases disposed by public defenders during fiscal year 2007-08 is not yet reportable. Once that data is final, IDS will prepare a supplemental report for the General Assembly.

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

**Assigned and Contracted Private Counsel and Experts
Fee Applications and Expenditures
All Accounts
July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 1</u>		
Camden	31	\$47,520
Chowan	115	\$112,869
Currituck	161	\$72,862
Dare	302	\$109,921
Gates	42	\$46,587
Pasquotank	359	\$320,686
Perquimans	76	\$63,841
District Total	1,086	\$774,286
<u>District 2</u>		
Beaufort	1,543	\$505,398
Hyde	107	\$31,209
Martin	667	\$243,392
Tyrrell	139	\$34,354
Washington	265	\$156,055
District Total	2,721	\$970,407
<u>District 3A</u>		
Pitt	3,395	\$1,485,802
District Total	3,395	\$1,485,802
<u>District 3B</u>		
Carteret	324	\$277,699
Craven	1,630	\$762,014
Pamlico	197	\$99,494
District Total	2,151	\$1,139,207
<u>District 4A</u>		
Duplin	1,308	\$536,900
Jones	203	\$59,534
Sampson	1,903	\$976,365
District Total	3,414	\$1,572,799
<u>District 4B</u>		
Onslow	4,057	\$1,391,703
District Total	4,057	\$1,391,703

**Assigned and Contracted Private Counsel and Experts
 Fee Applications and Expenditures
 All Accounts
 July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 5</u>		
New Hanover	7,444	\$2,570,069
Pender	879	\$381,126
District total	8,323	\$2,951,196
<u>District 6A</u>		
Halifax	2,459	\$846,956
District Total	2,459	\$846,956
<u>District 6B</u>		
Bertie	465	\$196,959
Hertford	716	\$437,709
Northampton	456	\$203,954
District Total	1,637	\$838,622
<u>District 7A</u>		
Nash	1,751	\$1,075,506
Wilson	1,613	\$817,171
District Total	3,364	\$1,892,677
<u>District 7B</u>		
Edgecombe	1,643	\$762,260
District Total	1,643	\$762,260
<u>District 8A</u>		
Greene	434	\$172,903
Lenoir	2,246	\$897,517
District Total	2,680	\$1,070,420
<u>District 8B</u>		
Wayne	2,811	\$1,107,937
District Total	2,811	\$1,107,937

**Assigned and Contracted Private Counsel and Experts
 Fee Applications and Expenditures
 All Accounts
 July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 9</u>		
Franklin	1,058	\$387,331
Granville	1,084	\$394,417
Vance	1,331	\$597,596
Warren	390	\$173,529
District Total	3,863	\$1,552,873
<u>District 9A</u>		
Caswell	513	\$269,230
Person	1,324	\$535,135
District Total	1,837	\$804,366
<u>District 10</u>		
Wake	10,997	\$4,451,840
District Total	10,997	\$4,451,840
<u>District 11A</u>		
Harnett	2,493	\$1,035,579
Lee	1,677	\$539,782
District Total	4,170	\$1,575,362
<u>District 11B</u>		
Johnston	3,498	\$1,310,554
District Total	3,498	\$1,310,554
<u>District 12</u>		
Cumberland	3,842	\$2,989,509
District Total	3,842	\$2,989,509
<u>District 13</u>		
Bladen	1,186	\$430,608
Brunswick	3,059	\$1,016,745
Columbus	1,279	\$617,896
District Total	5,524	\$2,065,249
<u>District 14</u>		
Durham	5,538	\$3,064,049
District Total	5,538	\$3,064,049

**Assigned and Contracted Private Counsel and Experts
 Fee Applications and Expenditures
 All Accounts
 July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 15A</u>		
Alamance	3,915	\$1,345,857
District Total	3,915	\$1,345,857
<u>District 15B</u>		
Chatham	509	\$249,917
Orange	1,086	\$527,506
District Total	1,595	\$777,423
<u>District 16A</u>		
Hoke	333	\$429,331
Scotland	350	\$341,466
District Total	683	\$770,798
<u>District 16B</u>		
Robeson	3,382	\$1,744,054
District Total	3,382	\$1,744,054
<u>District 17A</u>		
Rockingham	2,919	\$1,018,974
District Total	2,919	\$1,018,974
<u>District 17B</u>		
Stokes	1,165	\$421,174
Surry	2,050	\$666,599
District Total	3,215	\$1,087,773
<u>District 18</u>		
Guilford	4,632	\$2,280,484
District Total	4,632	\$2,280,484
<u>District 19A</u>		
Cabarrus	4,258	\$2,027,156
District Total	4,258	\$2,027,156

**Assigned and Contracted Private Counsel and Experts
 Fee Applications and Expenditures
 All Accounts
 July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 19B</u>		
Montgomery	901	\$338,064
Randolph	3,794	\$1,608,719
District Total	4,695	\$1,946,783
<u>District 19C</u>		
Rowan	4,790	\$1,908,344
District Total	4,790	\$1,908,344
<u>District 19D</u>		
Moore	2,832	\$1,090,483
District Total	2,832	\$1,090,483
<u>District 20A</u>		
Anson	1,261	\$710,199
Richmond	3,800	\$1,217,034
Stanly	1,267	\$595,189
District Total	6,328	\$2,522,422
<u>District 20B</u>		
Union	3,952	\$1,520,130
District Total	3,952	\$1,520,130
<u>District 21</u>		
Forsyth	6,057	\$1,832,335
District Total	6,057	\$1,832,335
<u>District 22</u>		
Alexander	1,088	\$429,042
Davidson	5,939	\$1,609,098
Davie	1,168	\$401,117
Iredell	4,374	\$1,466,618
District Total	12,569	\$3,905,875

**Assigned and Contracted Private Counsel and Experts
Fee Applications and Expenditures
All Accounts
July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 23</u>		
Alleghany	316	\$112,370
Ashe	591	\$199,675
Wilkes	2,074	\$585,932
Yadkin	947	\$298,174
District Total	3,928	\$1,196,150
<u>District 24</u>		
Avery	398	\$130,548
Madison	489	\$133,533
Mitchell	350	\$110,352
Watauga	808	\$529,563
Yancey	493	\$150,273
District Total	2,538	\$1,054,268
<u>District 25A</u>		
Burke	2,740	\$1,090,607
Caldwell	3,032	\$829,901
District Total	5,772	\$1,920,509
<u>District 25B</u>		
Catawba	5,059	\$1,763,338
District Total	5,059	\$1,763,338
<u>District 26</u>		
Mecklenburg	11,087	\$4,850,482
District Total	11,087	\$4,850,482
<u>District 27A</u>		
Gaston	1,611	\$1,011,772
District Total	1,611	\$1,011,772
<u>District 27B</u>		
Cleveland	4,055	\$982,043
Lincoln	1,389	\$461,243
District Total	5,444	\$1,443,286
<u>District 28</u>		
Buncombe	3,953	\$1,193,957
District Total	3,953	\$1,193,957

**Assigned and Contracted Private Counsel and Experts
Fee Applications and Expenditures
All Accounts
July 1, 2007-June 30, 2008**

	Number of Payments	Expenditures
<u>District 29A</u>		
McDowell	1,624	\$539,019
Rutherford	2,834	\$885,595
District Total	4,458	\$1,424,614
<u>District 29B</u>		
Henderson	3,169	\$961,411
Polk	525	\$167,863
Transylvania	812	\$368,238
District Total	4,506	\$1,497,512
<u>District 30A</u>		
Cherokee	892	\$374,404
Clay	294	\$128,916
Graham	326	\$136,689
Macon	889	\$410,589
Swain	441	\$158,012
District Total	2,842	\$1,208,609
<u>District 30B</u>		
Haywood	1,730	\$731,285
Jackson	1,011	\$327,656
District Total	2,741	\$1,058,940

Notes: Data include payments to private counsel, as well as experts and investigators; count of payments is not identical to number of cases but is a count of number of fee applications paid plus number of cases closed as reported by contractors. Interpreters not included.