

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

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

March 15, 2017

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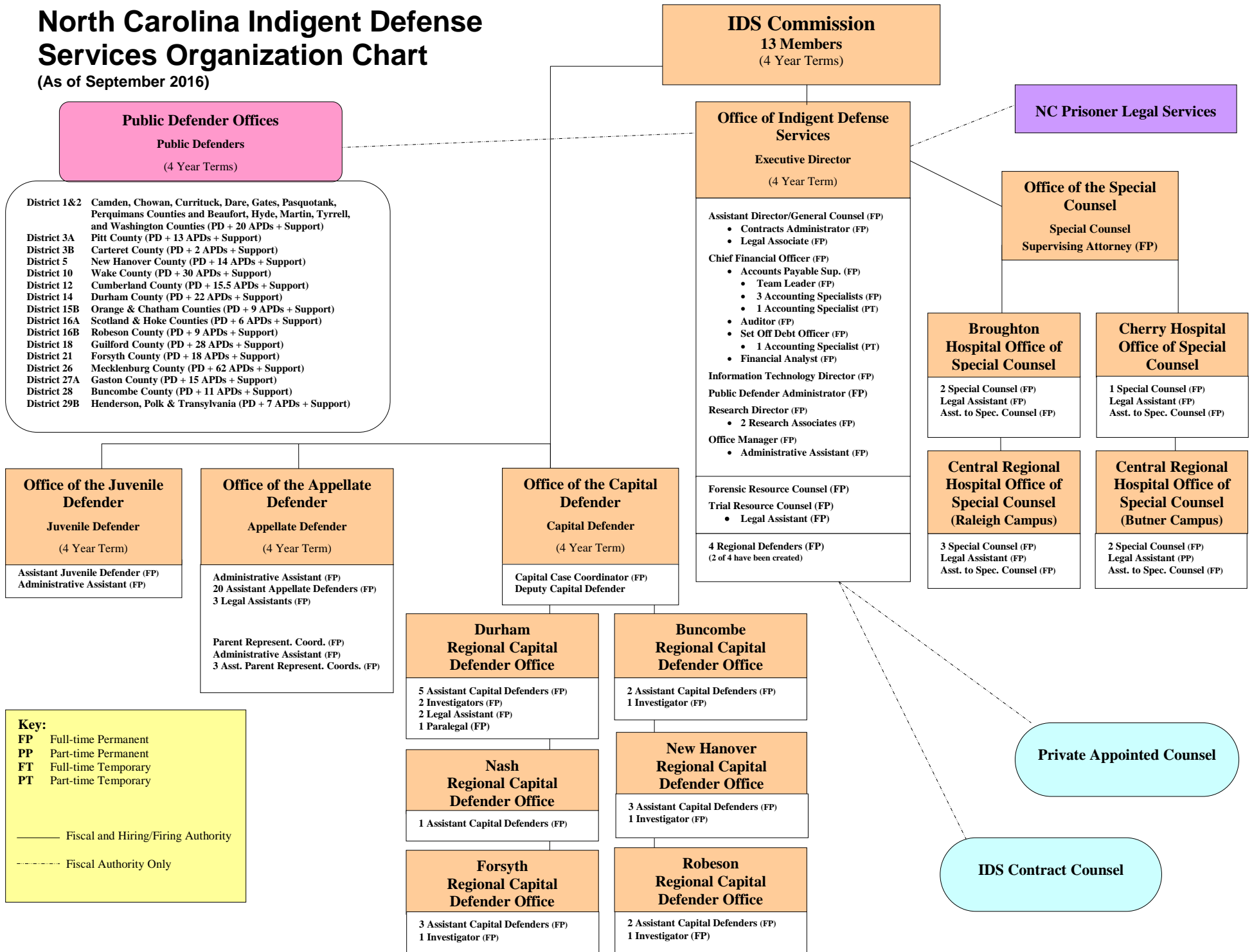
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# North Carolina Indigent Defense Services Organization Chart

(As of September 2016)



## EXECUTIVE SUMMARY

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

As required by G.S. 7A-498.9, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2015-16. The report also contains a number of legislative recommendations for the 2017 legislative session, as well as last fiscal year’s data on indigent caseloads and case costs across the State. More information about the work and accomplishments of the IDS Commission and Office, including a series of focused fact sheets on various topics, is available at [www.ncids.org](http://www.ncids.org).

The IDS Commission and Office have accomplished a great deal since their formation and are preparing to accomplish even more in the years to come. The Commission and Office have implemented a number of initiatives to improve the efficiency, cost-effectiveness, and quality of the State’s indigent defense program, including measures to slow the rate of increase in spending. The Commission and Office have also taken significant steps to enhance communication and resource-sharing with the defense bar and other system actors; to provide specialized training and support to the attorneys handling indigent cases; and to improve data collection and analysis capabilities.

Since it was established in 2001, IDS has taken steps to control increases in the cost of indigent representation. The increase in overall IDS demand (spending and current-year obligations) since IDS was created has averaged 4.3%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS’s creation. The increase in overall demand over the past six fiscal years (between fiscal years 2009-10 and 2015-16) has averaged a mere 0.06%. Largely due to the dramatic reductions to the hourly rates paid to private assigned counsel (“PAC”) in May 2011, overall IDS demand decreased by 8.9% in fiscal year 2011-12, increased by 0.38% in fiscal year 2012-13, decreased by 0.35% in fiscal year 2013-14, increased by 1.08% in fiscal year 2014-15, and increased by .24% in 2105-16. Overall demand is projected to increase slightly this fiscal year. *See Appendix A.* Indigent defense per disposition expenditures fluctuate from year to year, but overall per disposition costs during fiscal year 2015-16 were only \$24.73 more than per disposition costs the year before IDS was established (fiscal year 2000-01). While there have been modest increases in average per case costs for some case types over the past 16 years, the overall increases in demand are primarily due to an expanding indigent caseload and changes in the mix of case types that are funded by IDS.

The IDS Office is currently projecting that IDS will end this fiscal year without carry forward debt. As a result of a \$3.4 Million non-recurring appropriation, slightly increased recoupment, contract savings, and slowed demand growth, the Private Assigned Counsel fund is fully funded. Absent unforeseen developments we anticipate no unpaid invoices at year end. The \$4.6 million

left unpaid in June 2016 were paid in early July. The current depressed PAC hourly rates and contract attorney pay are unsustainable and will need to be restored over time to ensure that the attorneys handling indigent cases have adequate resources to provide constitutionally effective representation. As a first step, Commission and Office respectfully request an additional recurring increase of \$2.9 million in FY 2018, \$8.73 in FY 2019, and \$11.6 in FY 2020 to raise all of the PAC hourly rates by \$10 in \$5 increments.

## REPORT

In 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (Session Law 2000-144; G.S. 7A-498 *et seq.*) (“IDS Act”), creating a new statewide Office of Indigent Defense Services (“IDS Office”) governed by the 13-member Commission on Indigent Defense Services (“IDS Commission”). The IDS Act charges the IDS Office with the responsibility of overseeing the provision of legal representation to indigent defendants and respondents who are entitled to counsel under North Carolina law. In accordance with that Act, the IDS Office assumed responsibility for overseeing indigent defense services on July 1, 2001. In the 2015 Appropriations Act, Session Law 2015-241, the IDS Office was transferred from the Judicial Department to the Administrative Office of the Courts (“AOC”) and its budget was made part of AOC’s budget. In addition, the Session Law gave the AOC Director authority to modify IDS’s budget or use funds appropriated to IDS without the approval of the Commission or Office, and directed AOC to conduct an annual audit of IDS.

As required by G.S. 7A-498.9, as amended by § 18B.1 of Session Law 2015-241, the IDS Office must report to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House of Representatives and Senate Committees on Justice and Public Safety by March 15, 2017 about the following matters:

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

In addition, G.S. 7A-346.2(a) directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions.

## IDS ORGANIZATIONAL STRUCTURE AND FUNCTIONS

### IDS COMMISSION AND COMMITTEES

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

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

<b>Committee</b>	<b>Duties</b>
Budget	Prepares proposed budgets, analyzes non-capital case costs and budgetary trends, and develops initiatives to enhance IDS's oversight of spending
Capital	Addresses issues such as the quality of capital representation, recruitment of attorneys and experts, regional capital defender offices, compensation of capital attorneys and experts, and ways to provide cost-effective consulting services
Client Advisory	Discusses ways to obtain feedback from indigent clients about the services they receive, and identifies and promotes innovative projects that serve clients and communities
Contracts	Developed and continues to enhance a Request for Proposals and contract system for delivering legal services to indigent persons, which the Legislature originally mandated during the 2011 long session
Indigency Standards	Working to develop standards to guide judges in making indigency determinations and other ways to improve indigency screening and verification
Juvenile	Guides the statewide Juvenile Defender's work in recommending initiatives and reviewing proposed policies and best practices
Legislative Relations/ Executive	Addresses IDS's relationships with legislators and issues that arise during legislative sessions
Long-Term Planning	Addresses transition issues that arise, including Commissioner term expirations; and long term goal planning including the development of a strategic plan for the Agency.
Personnel	Evaluates the performance of Commission appointees, including the Executive Director, Appellate Defender, Capital Defender, and Juvenile Defender
Public Defender	Worked with the public defenders to develop plans to govern the qualifications and appointment of counsel in each public defender district, and previously made recommendations to the full IDS Commission about the appointment of chief public defenders around the State
Review	Addresses all requests for review of the IDS Director's fee and roster decisions
Senior Advisory	Comprised of former leaders on the Commission, helps maintain institutional knowledge and experience and advises the IDS Commission and staff
Systems Evaluation	Working with staff and outside participants to develop an objective tool to measure the quality and performance of indigent defense systems at the county, regional, and statewide levels

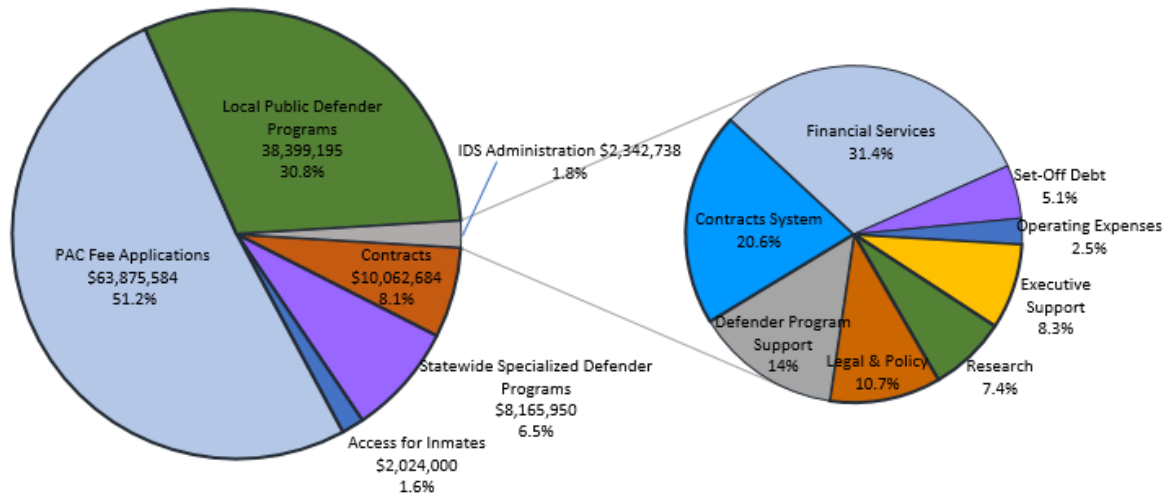
In addition to the current committees, an Indigent Appointment Plan Committee developed a model indigent appointment plan for non-public defender districts; a Performance Guidelines Committee developed guidelines for indigent defense representation in non-capital criminal cases; and a Prisoner Access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

## **IDS ADMINISTRATIVE OFFICES**

The IDS administrative offices are comprised of a central office in Durham and a financial services office in Raleigh. The central office staffs the IDS Commission and is responsible for administration and implementation of policy as directed by the Commission. The financial services office is responsible for processing and paying appointed attorney fee applications, issuing monthly payments to contract attorneys, and performing other accounts payable

functions. Both offices combined accounted for 1.8% of IDS’s overall budget in fiscal year 2015-16.

### IDS MAJOR SPENDING CATEGORIES AND ADMINISTRATIVE EXPENSES



The IDS Commission and Office developed rules to govern the continued delivery of services in cases under IDS’s oversight. The rules address non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); non-capital and non-criminal appeals; and inmate access to the courts. The current rules are available on the IDS website ([www.ncids.org](http://www.ncids.org)), and are published in North Carolina Rules of Court, State (Thomson-West) and the Annotated Rules of North Carolina (LexisNexis).

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

- *Indigent Appointment Plans for Public Defender Districts:* The Commission and Office worked with the chief public defenders to develop plans for the appointment of counsel in non-capital criminal and non-criminal cases in all public defender districts, which provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation and contain qualification and performance standards for attorneys on the district indigent lists. As IDS has implemented contracts in districts pursuant to the Requests for Proposals that were required by § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, § 18A.4 of Session Law 2013-360, and § 18B.1(k) of Session Law 2014-100, these local appointment plans have been supplemented by contractor appointment instructions that IDS has issued in consultation with local court system actors.
- *Model Appointment Plan for Non-Public Defender Districts:* The Commission and Office developed a model indigent appointment plan for non-public defender districts, which is modeled after the public defender appointment plans, includes qualification standards for the various indigent lists, provides for more oversight by a local indigent

committee, and includes some basic reporting requirements to the IDS Office. While Office staff are continuing to work with local actors in a variety of counties and districts to implement some version of the model plan, as above, these local plans will be supplemented or superseded by contractor appointment instructions if IDS continues to expand the new contract system throughout the State.

- *Billing Policies Governing Non-Capital and Non-Criminal Cases at the Trial Level:* The IDS Office developed policies and procedures governing fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level. The policies address general billing principles, reimbursable expenses, recoupment of attorney fees, and expert and support services, and contain detailed instructions on completing the various fee application forms.
- *Non-Capital and Non-Criminal Billing Education:* With the assistance of School of Government (“SOG”) faculty and the North Carolina Bar Association (“NCBA”), the IDS Office developed a video training program for appointed attorneys in non-capital and non-criminal cases at the trial level entitled “Ethics and Practice—Billing in Appointed Indigent Cases.” The video contains segments on the journey of a fee application, IDS’s billing policies, the various fee application forms, getting paid, and record keeping. The video is posted on the SOG and IDS websites, where attorneys can access it for free. It is also available on the NCBA website for one hour of continuing legal education ethics credit.
- *Billing and Compensation in Capital Cases and Appeals:* On July 1, 2001, the IDS Office assumed direct responsibility for compensating attorneys and experts in all potentially capital cases at the trial level, all appeals, and all capital post-conviction proceedings. IDS is committed to reducing the rate of increase in expenditures in those cases without causing any decline in the quality of representation. To that end, the IDS Commission and Office adopted uniform rates of attorney compensation, and developed detailed billing policies governing these case types, as well as financial auditing procedures that Office staff apply to every fee petition IDS receives.

For cases with warrant dates on or after January 2009, the IDS Commission approved an “exceptional case” policy that is designed to help IDS better monitor and control spending in the most complex and expensive potentially capital cases. The policy sets limits on the amount of compensation that an attorney can receive for services rendered pre-trial, unless the IDS Director has declared a case exceptional based on the presence of certain enumerated criteria. The policy also sets limits on the amount of pre-trial funding that can be authorized for investigator and mitigation specialist services absent an exceptional designation. In addition, since September 2012, IDS has been requiring attorneys to develop pre-trial budgets in some cases.

- *Standardized Expert Rate Schedule:* In conjunction with AOC, the IDS Office developed an hourly rate schedule for experts for the courts, prosecution, and defense. The rate schedule is based on a combination of education and expertise, and addresses 17 different categories of experts. Both AOC and IDS policies allow prosecutors and defense attorneys to apply to the respective agency director for a deviation from the standardized rate schedule based on extraordinary case-specific needs.

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

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

- *Improved Indigency Screening:* G.S. 7A-498.5(c)(8) directs the IDS Commission to develop standards governing the provision of services under the IDS Act, including "[s]tandards for determining indigency." Currently, the court system relies on affidavits of indigency that are submitted to judges. While no additional data is collected about the information that is self-reported, it is a Class I felony to make a false material statement about one's indigency and attorneys have a statutory obligation to inform the court if they believe an assigned client has the resources to hire an attorney.

IDS has conducted extensive research on indigency standards in other jurisdictions, as well as model standards promulgated by other state and national organizations. The IDS Office has also held meetings with the IDS Commission's Indigency Standards Committee and other system actors, including the chief public defenders and a representative group of district court judges, to discuss methods of improving indigency screening in the State. The research and meetings revealed that it will be very challenging to develop indigency standards that would be both meaningful and flexible enough to take into account the wide variety of financial situations facing defendants and respondents. Indeed, the North Carolina court system employed indigency screening staff in the 1990s and found that they were not cost effective. In addition, a 2007 study of indigency verification in Nebraska found that the process detected inaccurate information in approximately 5% of applications for court appointed counsel. However, only 4% of the 5% that included misstatements (or only 1 in every 500 applications) led to the appointment of counsel in cases in which counsel otherwise would not have been provided. A more significant percentage of the inaccurate applications overstated the applicants' financial resources. If the same holds true in North Carolina, it is highly unlikely that additional screening or verification of financial information in affidavits of indigency would pay for itself.

The IDS Office had planned to investigate potential improvements to the current system now that technological advances in access to financial data may streamline the process. Specifically, the Office planned to analyze a small retrospective sample of cases where IDS paid for representation in one county to determine:

- ✓ If affidavits of indigency were completed as required by the IDS Rules.

- ✓ What information was provided on the affidavits about income, assets, and debts.
- ✓ If counsel was appointed or denied.
- ✓ If recoupment of attorney fees and the attorney appointment fee was ordered and if any funds were collected.

IDS then planned to ascertain what data sources are available to verify information on the affidavits and if any of the defendants' income and assets were substantially higher than reported. Based on this sample data, IDS intended to determine if a broader effort would generate enough savings to justify the cost to the taxpayers of hiring staff needed to implement more concrete indigency standards and/or income verification. However, given the 20% reduction to IDS's administrative funding in the 2014 Appropriations Act, the planned study has not been possible. However, IDS is in the process of convening a meeting of its Indecency Standards Committee and intends to revisit the planned study and determine what within its limited capacity it can do to facilitate more effective indigency screening.

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

- *Attorney and Expert Compensation in Capital Cases and Appeals:*
  - ✓ During fiscal year 2015-16, the IDS Office set uniform fee awards for 2,494 attorney fee applications in potentially capital cases and appeals, including interim and final fees. During fiscal year 2016-17 to date (through January 18, 2017), the Office set an additional 1,223 attorney fee awards.
  - ✓ During fiscal year 2015-16, the IDS Office set fee awards for 2,282 expert bills in capital cases and appeals, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts, again including interim and final fees. During fiscal year 2016-17 to date (through January 18, 2017), the Office set an additional 1,086 expert fee awards.
  - ✓ The Office is currently processing more than 85 attorney and expert fee applications per week, and generally forwards those awards to IDS Financial Services for payment within one to two weeks of receiving each fee petition. In potentially capital cases, the IDS Director routinely asks the presiding judge for his or her opinion about the attorney's fee application before awarding final fees.
  - ✓ In October 2014, the North Carolina Office of the State Auditor issued a report on a performance audit of IDS's payments to private assigned counsel ("PAC") in potentially capital cases at the trial level that opened between January 1, 2006 and June 30, 2013. The auditors reviewed a sample of 940 fee applications and found that all but four were paid at the correct rate pursuant to published IDS policies. The four errors, which represented an error rate of 0.4%, all occurred shortly after the date on which the IDS Commission reduced the applicable hourly rates due to budget reductions. The audit report is available at <http://www.ncauditor.net/EPSSWeb/Reports/Performance/PER-2013-2000.pdf>.
- *Appointment of Qualified Counsel in Capital Post-Conviction Cases:* During fiscal year 2015-16, the IDS Office made 22 attorney appointments in 13 different capital post-conviction cases. During fiscal year 2016-17 to date (through December 31, 2016), the

Office made 2 additional attorney appointments in eight different capital post-conviction cases.

- *Expert and Miscellaneous Expense Funding Authorizations in Appeals and Capital Post-Conviction Cases:* During fiscal year 2015-16, the IDS Office reviewed and acted on 162 requests for expert funding and miscellaneous expenses in appeals and capital post-conviction cases. During fiscal year 2016-17 to date (through January 18, 2017), the Office acted on an additional 16 such requests. The IDS Office has established procedures to approve or deny those requests, sometimes with the assistance of a case consultant, and to assist attorneys in focusing on the experts and support services that are necessary for an effective defense.
- *Fee Transparency Special Provision:* Section 18A.1 of Session Law 2014-100 required IDS to post online certain information from attorney fee applications, including the name of the attorney filing the application, the case number and the county, the class of the highest charge against the defendant, an indication as to whether there were multiple charges against the defendant, the name of the judge who approved the fee application, the amount paid to the attorney, and the date of the payment. The special provision further provided that the data should be searchable and updated at least biweekly. The IDS Office worked with the Office of State Controller to develop a program to extract the required data from the North Carolina Accounting System (“NCAS”) and send it to a web-based Systemware application. IDS staff then download the data from Systemware and generate an Excel spreadsheet that can be searched and sorted. The posted data is limited to criminal case fee applications submitted by PAC for three reasons: 1) the data has to be generated from NCAS; 2) the special provision referred to “charges” and “defendants;” and 3) the provision stated that it did not require disclosure of information otherwise protected as confidential.
- *Internal Control Audits:* In the fall of 2016 AOC conducted an Internal Controls Audit of IDS pursuant to G.S. 7A-498.2(d), which requires AOC to audit IDS annually. The internal controls tested included a periodic analysis of case and cost data to identify potential for public defender expansion; approval of attorney fee applications; submission of attorney fee applications by public defenders; authorizations of judges to appoint attorneys to indigent defendants; authorizations of judges or IDS to use expert witnesses; identification and investigation of attorney fee applications that have characteristics of a duplicate nature; and public defender compliance with the travel policy. All internal controls tested AOC were determined to be “Effective,” the highest rating possible under the system.
- *Trial Judges’ Perceptions of North Carolina’s Office of Indigent Defense Services: A Report on Survey Results:* On September 30, 2015, SOG sent a survey about IDS to all Superior and District Court Judges in North Carolina. Responses were received from 54 Superior Court Judges (a 48% response rate) and 81 District Court Judges (a 30% response rate). The survey results demonstrated that the vast majority of judges are very satisfied with, satisfied with, or neutral about IDS’s performance, with only a small percentage of judges expressing dissatisfaction. The full report may be found at [www.ids.org](http://www.ids.org).

## RELATIONSHIP BETWEEN IDS AND AOC

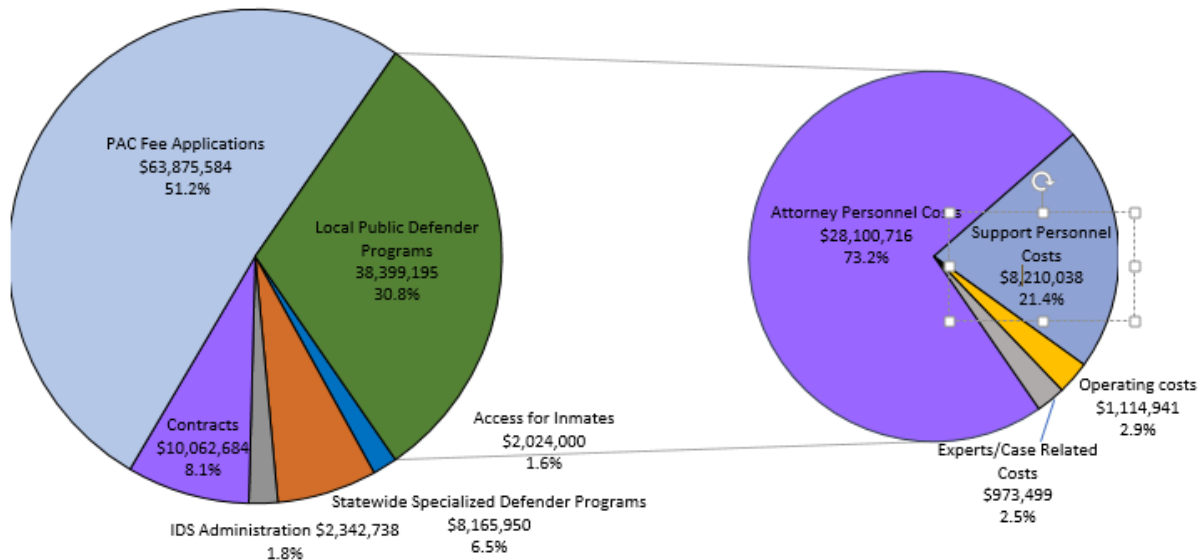
The IDS Act has always required the AOC to provide general administrative support to the IDS Office. *See* G.S. 7A-498.2(c). As it does for the rest of the Judicial Branch, AOC continues to perform purchasing and personnel functions for the IDS Office and to provide technological and telecommunications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

- *Accounts Payable:* In fiscal year 2005-06, AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including a number of accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and an employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. In addition, employees in IDS's central office have assumed responsibility for establishing new attorney and expert vendors in the accounting system, and IDS Financial Services staff have assumed responsibility for processing non-attorney payments that are confined to IDS's budget. AOC personnel continue to print checks for legal services, but IDS Office staff now manage the imaging system that is used to store electronic copies of fee petitions.
- *Defense Interpreting and Translation Costs:* In fiscal year 2005-06, AOC and IDS entered into a memorandum of agreement concerning the allocation of foreign language interpreter and translator costs. The memorandum provides that IDS will bear the cost of out-of-court interpretation and translation that is performed solely for the defense function. During fiscal year 2015-16, IDS spent \$124,014 on out-of-court interpretation and translation services for PAC, contract attorneys, and defender offices. In light of the United States Department of Justice's March 2012 report finding significant deficiencies in the North Carolina court system's policies and procedures with respect to access to interpreters and translators, as well as AOC's subsequent commitment to expand language access services in compliance with federal law, IDS expects these out-of-court defense costs to increase in coming years.
- *Defense Lay Witness Costs:* Effective July 1, 2011, § 64 of Session Law 2011-391 amended G.S. 7A-314 to transfer funding responsibility for defense-requested lay witnesses from AOC to IDS. AOC remains responsible for funding lay witnesses acting on behalf of the court or prosecution. During fiscal year 2015-16, IDS spent \$8,566 on defense lay witness fees and expenses in indigent cases handled by PAC, contract attorneys, and defender offices.

## PROGRAM OVERSIGHT AND ADMINISTRATION

### COUNTY AND DISTRICT PUBLIC DEFENDER OFFICES

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



There are currently 16 county- and district-based public defender offices in North Carolina, which cover 17 judicial districts and 31 counties. The General Assembly has created five of those offices—in Forsyth County, Judicial District 1 (Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans Counties), Wake County, New Hanover County, and Judicial District 29B (Henderson, Polk, and Transylvania Counties)—since IDS was established in 2001. At the request of local actors and pursuant to § 16.8 of Session Law 2012-142, the IDS Commission voted in June 2012 to expand the Judicial District 1 Public Defender Office into Judicial District 2 (Beaufort, Hyde, Martin, Tyrrell, and Washington Counties). The IDS Commission and Office regularly investigate the potential cost savings from and advisability of creating new public defender offices in other districts or regions, as well as expanding existing offices, and report any recommendations to the General Assembly. During fiscal year 2015-16, all of the county and district public defender offices combined reported 100,767 dispositions and withdrawals, which represented approximately 34.5% of the indigent caseload in North Carolina, including criminal and non-criminal cases.<sup>1</sup>

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

- *Balloting Regulations and Plans for the Appointment of Counsel:* After consultation with the local bar and bench, the IDS Director adopts rules to govern the balloting and

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

nomination process for the chief public defenders pursuant to G.S. 7A-498.7(b). For each new office, IDS Office staff also met with the chief public defenders on numerous occasions to assist them in establishing the new offices and developing plans for the appointment of counsel in all non-capital cases in their districts.

- *Appointment of Chief Public Defenders:* In accordance with numerous national recommendations stressing the importance of an independent defense function, effective July 1, 2011, § 15.16(b) of Session Law 2011-145 amended G.S. 7A-498.7(b) to transfer responsibility for appointing chief public defenders to the IDS Commission. The appointment still had to be made from a list of two or three attorneys nominated by written ballot of the local bar. After that provision was enacted, the Commission developed procedures to govern the appointment of chief public defenders, as well as an end-of-term evaluation form. The adopted procedures required the IDS Director to conduct a mid-term evaluation and an end-of-term evaluation, with the latter including personal contact with the local senior resident superior court judge and chief district court judge to solicit their comments, as well as the electronic solicitation of comments from other local court system actors. Whenever possible, the end-of-term evaluation also included a site visit to the public defender office. Based on the evaluations and any materials received from non-incumbent nominees, the IDS Director developed an appointment recommendation for the Public Defender Committee, which in turn developed a recommendation for the full Commission. After assuming this responsibility, the IDS Commission evaluated and reappointed eight incumbent chief public defenders, and appointed a new chief public defender in Wake County after the former chief public defender was elected to be a superior court judge. Effective August 1, 2013, § 18A.5(a) of Session Law 2013-360 again amended G.S. 7A-498.7(b) to transfer responsibility for appointing chief public defenders back to the local senior resident superior court judges.
- *Public Defender Disposition Reporting and Cost-Effectiveness Studies:* All public defender offices report their case closings to IDS via an online system that allows IDS Office staff to analyze data on case closings by office, by attorney, and by selected time periods. Based on that data, IDS has traditionally conducted annual studies of the cost-effectiveness of public defender offices, which compared the costs of those offices to the costs that IDS would have incurred if PAC had handled the same cases. Some of those studies also examined the impact on district-wide indigent defense expenditures and per case costs from the creation of new public defender offices. In addition, the 2011 study attempted to quantify the county jail savings that are generated by the existence of a public defender office, which often far outweigh the county costs for providing office space and facilities. Due to the significant changes in the rate structure for PAC that the IDS Commission implemented during fiscal year 2010-11 and the shift toward a large-scale contract system, IDS has not conducted a cost-effectiveness study since fiscal year 2010-11.
- *Tracking Public Defender Office Conflict Assignments:* Section 18A.6(a) of Session Law 2013-360 created new G.S. 7A-498.7(f1), which provides that, whenever practical, public defender offices should seek to assign conflict cases to another office in the region, rather than to PAC. The Session Law also directs IDS to submit annual reports on the number of public defender conflict cases that arose during the prior year and the associated PAC

costs to resolve them, as well as the number of conflict cases assigned to neighboring offices pursuant to subsection (f1) and the associated PAC savings. The IDS Office submitted its first three annual reports pursuant to this provision on October 1, 2013, October 1, 2014, and October 21, 2015. To implement the provision, IDS Office staff revised the public defender offices' online disposition reporting system to enable those offices to enter data about the reasons for outside assignments, including case-specific conflicts and overload conflicts, and whether the cases were assigned to PAC or a neighboring public defender office. As explained in IDS's reports, with the possible exception of very serious felony cases and excluding the Gaston County conflict attorney who is housed in the Mecklenburg County office, it is rare for an assignment to a neighboring office to be practical because of the additional time it would take assistant public defenders to travel to a neighboring county and because of the disruption to their regular in-county caseloads.

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

Historically, the General Assembly has authorized IDS to create new attorneys positions and has appropriated funds for this purpose; however neither the 2015 nor the 2016 Appropriations Act (Session Law 2015-241 and Session Law 2016-94, respectively) authorized IDS to create new positions. With this flexibility IDS has used PAC funds to create new positions in defender offices, following statutory guidelines typically located in a special provision. This flexibility is important for developing satellite offices and responding to changing caseloads in existing programs. For example, caseloads in the Office of Special Counsel have increased but IDS does not have the means to expand the office. If the age of jurisdiction is raised IDS expects an increase demand on the Office of Juvenile Defender and on public defender offices.

- *Public Defender Case Management System:* Section 18B.10 of Session Law 2013-360 directed both IDS and AOC to contribute up to \$350,000 during the 2013-2015 fiscal biennium to develop or acquire a case management system for the public defender offices by February 1, 2015. Section 18A.2 of Session Law 2014-100 extended the deadline for AOC to submit a final report on the implementation of the system to July 1, 2015. Section 18B.3(a) of Session Law 2015-241 extended the deadline for developing or acquiring a system to February 1, 2016 and again extended the deadline for AOC to submit a final report on completed implementation to July 1, 2016. The new system is intended to replace the offices' current case management system, which was developed by AOC in the 1990s and will soon be obsolete.

To meet this directive, IDS and AOC first engaged in an extensive information-gathering phase, including gathering input from the offices about their workflows and their requirements for any new system. In October 2013, AOC used the information that had

been gathered to develop a Request for Information (“RFI”) from software vendors. AOC and IDS staff reviewed the vendor submissions in response to the RFI and determined that none of the responses were acceptable. As a result, AOC withdrew the RFI and agreed to adapt the Criminal Court Information System—District Attorney (“CCIS-DA”) and create a Criminal Court Information System—Public Defender (“CCIS-PD”).

IDS funded two new information technology positions to implement and maintain the system and to add new features over time that will meet the requirements of the public defender offices and IDS. Those positions were filled in April 2015, and they worked closely with AOC staff to complete Version 1.0 of CCIS-PD by July 1, 2015.

Key CCIS-PD milestones that were completed during calendar year 2016 include the following:

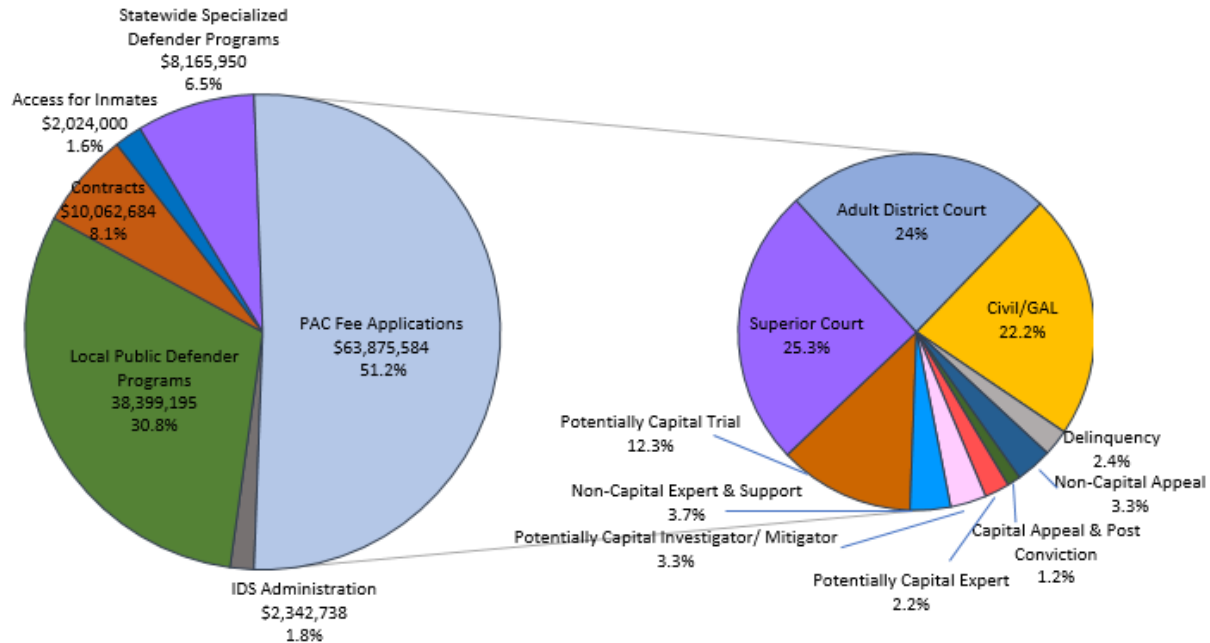
- ✓ CCIS-PD was implemented in ten public defender districts (Cumberland, Robeson, Guilford, New Hanover, Carteret, Pitt, Dare, Beaufort, Hoke and Mecklenburg). This completed the CCIS-PD implementation across a total of seventeen public defender districts.
- ✓ New releases (Versions 3.0 and 4.0) were implemented, in addition to several maintenance releases, to provide new features and system modifications that better tailor the application to the users’ needs. Examples of new features include the Conflict Check feature and New Attorney Pending Case Summary Report.

In addition, a number of forms were enhanced or added to CCIS-PD to assist public defenders and other users.

- *Survey of Salaried Defenders:* During the spring of 2015, the IDS Commission and Office conducted a survey of attorneys in public defender and statewide defender offices about the impact of budget constraints on them and their work. IDS released a report on the survey results in November 2015, which is available at [www.ncids.org](http://www.ncids.org). One hundred and thirty six defenders from across the State answered some or all of the survey questions. The results showed that defenders are significantly stressed by financial hardships, making them unable to resolve debt and causing them to take on additional debt, delay life decisions, work other jobs, and rely on family for monetary aid. Of the respondents, 87.6% indicated that their financial situations cause them stress, with 33.6% responding that it worries them a lot, 15% responding that it worries them constantly, and 13.1% responding that it worries them to the point that it affects them physically and/or in their relationships. Almost 25% of respondents reported having to take on secondary employment. More than a third of respondents indicated that they are likely to leave their offices in the next two years, with a majority citing salary issues as the reason. The survey results also showed that many defenders believe they could serve their clients better with reduced workloads and increased support.

## PRIVATE ASSIGNED COUNSEL

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



Almost 2,600 PAC around the State handled approximately 52.25% of the indigent cases that were disposed during fiscal year 2015-16, including criminal and non-criminal cases.<sup>2</sup> IDS values the contributions and talent of the private appointed bar and is committed to maintaining private bar participation in North Carolina’s indigent defense programs when it is cost effective and ensures quality. In its standards for administering indigent defense services, the American Bar Association (“ABA”) recommends that indigent defense programs utilize a mix of service delivery systems, concluding that substantial private bar involvement is crucial to an effective program. PAC bring expertise and skills developed in their private practices to the representation of indigent clients. The PAC system also offers IDS the greatest flexibility to match capacity to demand because attorneys are assigned as cases arise and are paid for actual time spent on cases, which allows the cost of cases to be determined by their complexity. The benefits of this flexibility are particularly salient in rural areas with smaller and less predictable caseloads.

In light of the State’s fiscal crisis, the 2011 Appropriations Act reduced IDS’s budget by \$10.5 million on top of an existing shortfall of almost \$10 million, and directed IDS to reduce the PAC hourly rates to minimize the shortfall. Effective May 2011, the IDS Commission dramatically reduced the hourly rates that are paid to PAC, with estimated annual reductions in PAC payments of approximately \$18.2 million once the cuts were fully implemented. The following chart sets forth the current hourly rates for cases at the trial level compared to the rates in 2002, shortly after IDS was created:

<sup>2</sup> Excludes cases handled by the Office of the Appellate Defender, Office of the Capital Defender, and Office of Special Counsel.

Case Type	Original PAC Rates (set in 2002)	Original PAC Rates Adjusted for Inflation to 2016 *	Current PAC Rates (set in May 2011)	Current PAC Rate as % of CPI Adjusted
Potentially Capital Cases	\$85	\$114.74	\$85 (\$75 after a non-capital declaration)	75.9%
High-Level Felonies (Class A-D)	\$65	\$87.74	\$70	81.7%
All Other Superior Court Cases	\$65	\$87.74	\$60	70.0%
All Other District Court Cases	\$65	\$87.74	\$55	64.2%

\* Based on CPI Inflation Calculator.

The May 2011 rate reductions were the deepest for the vast majority of cases in district court, where the rate was reduced by almost 27% to \$55 per hour, which is less than the hourly overhead of many small law firms in North Carolina. The hourly rates that are paid to PAC must cover reasonable overhead costs and a living wage to ensure that a sufficient number of competent attorneys are available to represent indigent defendants and respondents and that indigent persons receive quality representation. Further, an insufficient number of qualified attorneys to cover the caseload causes additional delays in the court system, and could lead to spiraling costs later as errors and ineffective assistance of counsel claims need to be addressed through more costly appellate and post-conviction litigation. With the exception of the serious felony rate, the current standard rates are below the original rates that IDS established more than a decade ago; all of the current rates are significantly below what attorneys can earn in retained cases and appointed cases in federal court.

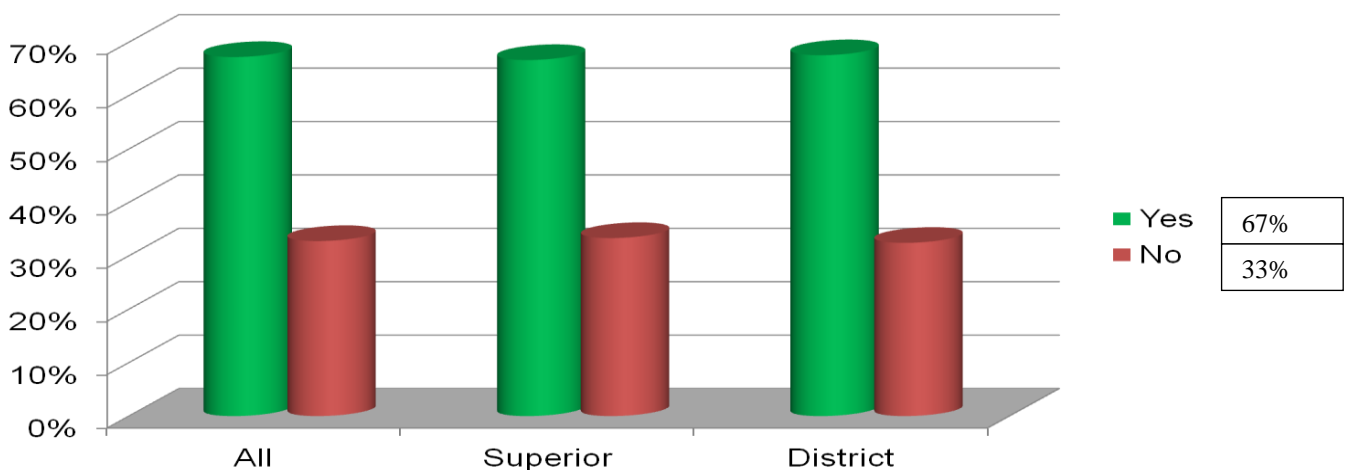
The impact on IDS's ability to recruit and retain qualified counsel due to the current depressed hourly rates is not limited to district court. IDS recently has been contacted by local officials in judicial districts throughout the state with concerns about the number of attorneys willing to accept court appointments in serious felony cases. The complexity and length of cases arising from serious felonies coupled with the low rate of compensation, make the work unattractive to more experienced attorneys. This pattern of attrition is untenable and will need to be addressed in order to assure that the attorneys handling indigent cases have adequate resources to provide constitutionally effective representation.

The private attorneys who represent indigent persons in North Carolina provide those professional services at an extremely low cost compared to the "market" cost of private legal services. For a typical DWI case, most private lawyers in North Carolina charge between \$1,500 and \$3,000. By comparison, based on the current hourly rates, IDS pays an average of less than \$310 for an indigent DWI case that is resolved in district court and an average of less than \$750 for an indigent DWI case that is resolved in superior court. The IDS Commission and staff are not aware of any other professional services offered by private practitioners to the State at such a steep discount.

In January 2015, the IDS Commission and Office released a survey of PAC to help determine the impact of the May 2011 rate cuts. The Office published a report on the survey results in March 2015, which is available at [www.ncids.org](http://www.ncids.org). Four hundred and twenty three PAC from all over the State responded to the survey, and 41.8% said the rate cuts were the primary cause of changes in their state court practice since May 2011. The responses demonstrated that a lot of

attorneys, especially the most experienced and skilled ones, have stopped handling indigent cases as a result of the reduction in compensation, leaving less experienced counsel to handle the indigent caseload. They further demonstrated that there is a growing mismatch between the caseloads in many districts and the number of qualified attorneys available to accept indigent appointments. In addition, attorneys have had to cut back significantly on basic operating expenditures, including but not limited to office space, support staff, compensation and benefits, legal research tools, and training. When asked if they will stop accepting appointments to state court indigent cases in the next two years if the rates remain at current levels, 41.7% said they either definitely will or there is a strong possibility that they will; an additional 39.5% said they are considering that change. More than 80% of respondents indicated that the rate reductions have caused a decline in the quality of representation provided to indigent defendants and respondents.

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



In addition to the rate reductions, IDS’s historical underfunding has often led to payment delays for PAC. In fiscal year 2015-16, as a result of underfunding from prior years, carry-forward debt that had to be paid out of IDS’s appropriation for last fiscal year, IDS ended the fiscal year with \$4.5 million of debt. Historically this carry forward debt has created a significant hardship for PAC, most of whom are solo practitioners or members of small law firms. It also makes it difficult for IDS to recruit and retain qualified counsel to represent indigent persons. No other actors in the criminal justice system have their pay delayed as a result of the State’s budget problems.

<b>FY</b>	<b>Official Shortfall</b>	<b>Last Mail Date Paid</b>	<b>Date Paid held from prior year*</b>	<b>Elapsed Days</b>
2016	\$4.5 Million	June 3rd	July 6th	33
2015	\$6.14 Million	May 20th	July 7th	48
2014	\$3.2 Million	June 17th	July 3rd	16
2013	\$7.9 Million	May 9th	July 6th	57
2012	\$9.97 Million	April 30th	July 9th	70
2011	\$9.94 Million	May 12th	July 8th	56
2010	\$664,752	June 28th	July 7th	9
2009	\$6.42 Million	May 29th	July 6-August 5th**	66

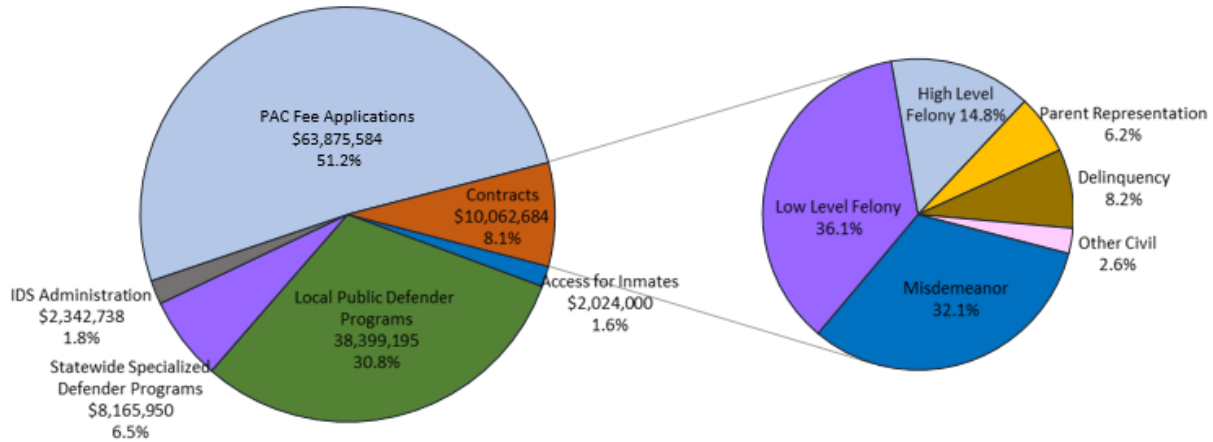
\*the date IDS was able to pay fee applications held over from prior year

\*\*IDS was restricted to smaller monthly allotments and carry forward debt was not paid immediately

IDS does not anticipate ending fiscal year 2016-17 with carry forward debt and the payment delays it causes. To some degree this is the result of the Commission's guidance and IDS's careful money management including the diversion of lapsed salary from the defender programs to the fund; however, the extremely low hour fee currently paid PAC is probably the single greatest contributing factor to IDS's ability to reduce and eventually eliminate its carry forward debt.

## REQUESTS FOR PROPOSALS AND CONTRACTS

### IDS SPENDING MAJOR CATEGORIES AND DETAILS ON CONTRACTS



- *Individually Negotiated Contracts:* Since the spring of 2003, the IDS Office has been exploring the use of contracts with attorneys as an alternative method of delivering quality and cost-effective legal services to indigent persons in various districts in North Carolina. As of June 30, 2016, IDS had individually negotiated contracts with 36 different attorneys in Avery, Brunswick, Buncombe, Catawba, Davie, Forsyth, Guilford, Harnett, Iredell, Johnston, Mitchell, Robeson, Rowan, Wake, Watauga, Yadkin, and Yancey Counties, with the Center for Children’s Defense and the Neighborhood Advocacy Center in Charlotte, and with the Elder Law Clinic of the Wake Forest School of Law in Winston-Salem. During fiscal year 2015-16, IDS had contracts with 39 attorneys, some of which terminated mid-fiscal year, and the listed organizations to cover the above jurisdictions, as well as Martin and Madison County. IDS’s negotiated contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, adult and juvenile civil commitment, guardianship, Industrial Commission contempt, and treatment court proceedings.

IDS believes that carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered. Excluding the Buncombe County misdemeanor contracts and the contracts in Brunswick, Forsyth, Guilford, and Robeson Counties for youth and drug treatment courts, which were reported under a different system, all of the individually negotiated contracts combined saved 7% (over \$108,000) during fiscal year 2015-16 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments.

- *Requests for Proposals (“RFPs”) and Contracts:* Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, § 18A.4 of Session Law 2013-360,

and § 18B.1(k) of Session Law 2014-100 directed IDS to issue RFPs for the provision of legal representation in all classes of indigent cases in all judicial districts. In cases where the proposed contract could provide representation more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards, the special provisions directed IDS to use PAC funds to enter into contracts. In selecting contractors, the special provisions further directed IDS to consider the cost-effectiveness of the proposed contract. The 2014 special provision also provided that disputes about the ability of a potential contractor to provide effective representation shall be determined by the senior resident superior court judge for the district.

A large-scale contract system represents a fundamental shift in the way that indigent defense services are provided in North Carolina. Because of the sheer volume of indigent cases handled by PAC and limitations on the IDS staff and resources that could be devoted to this process, IDS has staggered the issuance of RFPs geographically and by case type, with the initial RFPs limited to adult non-capital criminal cases and some per session courts. If the contract system continues, future RFPs could expand into additional case types, including delinquency, parent representation, child support contempt, and special proceedings.

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

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

In addition, IDS designed and is continuing to refine a specialized web-based Contractor Case Reporting System that contractors use to report data about pending and disposed contract cases, including actual time spent on each contract case. The system gives IDS access to more complete and timely case information than is currently obtained through the paper-based PAC fee application process, which is crucial to IDS's ability to monitor contractors' caseloads and dispositions and which will allow for more in-depth research and program evaluation.

The current contracts are for two-year terms with an option to renew for one additional two-year term. In most case types, upon receipt of all required monthly data reporting, IDS pays contractors set and cost-effective monthly payments that are based on an

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

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

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

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

While IDS designed the contract system to be cost effective, it has the potential to have a negative impact on IDS's recoupment revenues. Contractors are required to print recoupment applications from the web-based reporting system and to submit them to the presiding judge for entry of civil judgments for attorney fees in all recoupment-eligible cases. However, contractors who are paid to handle a bundle of cases, rather than on a per-case hourly basis, do not have a financial incentive to submit individual case-specific recoupment applications to the courts. IDS has taken some steps to ensure that contractors comply with this requirement, such as flagging cases in the online system that

are recoupment-eligible and marking whether they have been printed, but IDS's ability to enforce that contractual requirement is limited.

As of January 24, 2017, RFP-based contract attorneys had entered data into the online reporting system ~~about~~ more than 121,000 adult criminal cases, including pending and disposed cases:

<b>Contract Category</b>	<b># Pending Cases in Online System (as of 1/24/17)</b>	<b># Disposed Cases in Online System (as of 1/24/17) *</b>
Misdemeanor	14,345	57,089
Low-Level Felony	10,514	34,295
High-Level Felony	1,877	3,171
<b>Totals</b>	<b>26,736</b>	<b>94,555</b>

\* Disposed case numbers include withdrawals after substantive work.

The contract system has generated significant savings, particularly in the misdemeanor contract category. For more details about the RFPs and contracts, see IDS's Report to the Chairs of the House Appropriations Committee on Justice and Public Safety, the Senate Appropriations Committee on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety: Requests for Proposals and Contracts for Legal Services (Oct. 01, 2016), available at [www.ncids.org](http://www.ncids.org).

- *Contractor Dispositions During Fiscal Year 2015-16:* During fiscal year 2015-16, non-RFP contractors reported 8,382 dispositions and withdrawals and RFP contractors reported 30,488 dispositions and withdrawals, for a total of 38,870 contractor dispositions, which represented approximately 13% of the indigent caseload in North Carolina, including criminal and non-criminal cases.<sup>3</sup>

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

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

- (Large): Iredell County in District 22A and Davidson County in District 22B
- (Medium): Lincoln County in District 27B and Burke County in District 25
- (Small): Watauga County in District 24 and Macon County in District 30

IDS and AOC worked together using existing flat fee schedules, and IDS's average hour and average fee data to develop a model fee schedule which IDS sent to the selected districts on February 23, 2017. IDS is currently in the process of scheduling meetings with the Chief District Judges and interested bar members. IDS anticipates rolling out the flat fee for service project in April 2017.

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

## **STATEWIDE SPECIALIZED DEFENDER OFFICES**

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

In addition to the Capital Defender, the Office of the Capital Defender currently employs 16 staff attorneys in six regional offices around the State who represent indigent defendants charged with potentially capital cases at the trial level. In order to meet needs with locally placed attorneys, the Office of the Capital Defender opened two satellite offices. These offices were created with existing positions being relocated from the Durham office. OCD now has regional offices in Asheville, Durham, Lumberton, Rocky Mount, Wilmington, and Winston-Salem. During fiscal year 2015-16, all of the regional offices combined handled 112 unique potentially capital cases at the trial level, including pending and disposed cases but excluding withdrawals. Because two assistant capital defenders are assigned to some cases that are proceeding capitally, the offices' workload last fiscal year (again excluding withdrawals) probably is higher than 112.

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

- During fiscal year 2015-16, OCD made 744 attorney appointments in 649 potentially capital cases at the trial level. During fiscal year 2016-2017 to date (through January 18, 2017), the office made an additional 422 attorney appointments in potentially capital cases.<sup>4</sup>
- During fiscal year 2015-16, OCD reviewed and acted on 1699 requests for expert funding and miscellaneous expenses at the trial level. During fiscal year 2016-17 to date (through January 18, 2017), the office reviewed and acted on an additional 954 requests.

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

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

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

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

In addition to the Appellate Defender, the Office of the Appellate Defender currently has 20 staff attorneys who represent indigent persons on direct appeal in the Appellate Division. In addition to the Parent Representation Coordinator, the Office of Parent Representation Coordinator, which is technically housed within the Office of the Appellate Defender but specializes in abuse/neglect/dependency, termination of parental rights, and contempt appeals, has three staff

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<sup>4</sup> Based on a review of appointments in a sample of 217 cases, a 2014 Office of the State Auditor's performance audit report concluded that the Office of the Capital Defender assigned second counsel to cases in accordance with IDS's published policies 100% of the time.

attorneys who represent indigent persons on direct appeal. During fiscal year 2015-16, both offices combined disposed of 238 direct appeals.

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

- During fiscal year 2015-16, the offices made 1037 attorney appointments in capital, non-capital criminal, and non-criminal appeals. During fiscal year 2016-17 to date (through January 18, 2017), the offices made an additional 371 attorney appointments.

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

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

The Office of Parent Representation Coordinator also maintains a special parent representation page on the IDS website, and worked with an SOG committee that developed a manual for parent attorneys, which was produced by SOG in 2011. In addition, the Parent Representation Coordinator serves as a parent attorney representative on the Advisory Committee to the North Carolina Court Improvement Project for Children and Families (“NC-CIP”), which is an organization dedicated to improving the quality of North Carolina’s family courts. The work of both offices has significantly improved the quality and cost-effectiveness of appellate representation.

#### **OFFICE OF SPECIAL COUNSEL**

The Office of Special Counsel represents indigent respondents in civil commitment proceedings around the State through regional offices at Cherry Hospital in Wayne County, Broughton Hospital in Burke County, Central Regional Hospital in Granville County, and on the campus of the former Dorothea Dix Hospital in Wake County. In fiscal year 2015-16, in addition to the Special Counsel Supervising Attorney, the four Offices of Special Counsel employed seven attorneys and 7.5 support staff and disposed of a total of 12,948 cases.

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

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

- Works with SOG to develop and sponsor training programs for commitment and guardianship attorneys.

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

### **OFFICE OF THE JUVENILE DEFENDER**

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

- Serves as a central resource and contact for individual juvenile defenders and juvenile associations statewide.
- Fields questions from practitioners and performs case consultations as requested.
- Develops ways to connect and support juvenile defense attorneys across the State, including maintaining a special delinquency page on the IDS website, a listserv for juvenile defenders, and a blog. The office also supports juvenile defenders through Twitter at @NCOJD.
- Evaluates the existing systems and practices, and the current quality of representation, in various areas of the State.
- Provides on-site monitoring of juvenile delinquency contractors;
- Identifies training needs and works with SOG and other groups to develop and sponsor training programs.
- Develops and maintains a clearinghouse of materials on North Carolina and national juvenile law and practice.
- Since June 2015, provides limited direct representation in delinquency proceedings in Wake County.

The Office of the Juvenile Defender has also developed a statement on the role of defense counsel in juvenile delinquency proceedings; developed model qualification standards for attorneys who represent juveniles; worked with SOG to develop, publish, and update a juvenile delinquency manual; developed and published a series of guides for attorneys representing special populations of youth, such as girls and Hispanic youth; and developed an expunction toolkit for juvenile defenders. In addition, the Juvenile Defender served on the Juvenile Jurisdiction Subcommittee on the Chief Justice's Commission on the Administration of Law and Justice, which was created by the General Assembly and charged with examining the issues that would be associated with raising the age of juvenile jurisdiction. Since its creation, the Office of the Juvenile Defender has taken significant strides toward elevating the quality of legal services provided to North Carolina's children.

## INMATE ACCESS TO THE COURTS

Pursuant to a contract with IDS, North Carolina Prisoner Legal Services (“NCPLS”) provides legal advice and assistance to more than 37,000 prisoners in the custody of the Division of Adult Correction (“DAC”) in some cases in which they have a statutory or constitutional right of access to the courts. The State began contracting with NCPLS in 1989 as part of a settlement to enforce *Bounds v. Smith*, 430 U.S. 817 (1977), in which the United States Supreme Court held that inmates have a constitutional right to meaningful access to the courts. In addition to reviewing inmates’ cases for potential post-conviction claims and providing representation in criminal post-conviction proceedings, NCPLS previously provided representation in civil proceedings challenging conditions of confinement or the actions of government officials (*e.g.*, the provision of inadequate medical care, cases involving sexual abuse by prison guards and negligent failure to protect, and the application of gain time credits for disabled inmates). NCPLS also previously had a jail credit program, through which the organization identified and corrected unapplied jail credit.

Due to a significant reduction to NCPLS’ funding in the 2013 Appropriations Act, NCPLS can no longer review and evaluate individual inmate claims relating to their conditions of confinement and is unable to explain why some claims are frivolous to the extent that they previously did. Thus, inmates with legitimate grievances lack representation, and other inmates wrongly believe that litigation is warranted and proceed with frivolous *pro se* lawsuits. During fiscal year 2015-16, NCPLS responded to 4,200 complaints about conditions of confinement by sending inmates a form letter explaining that NCPLS can no longer handle most conditions of confinement issues and providing a brief summary of the law applicable to different types of claims. Included in that figure are a number of serious conditions concerns that should be investigated and litigated to ensure safe prisons in North Carolina, such as complaints of sexual assaults, excessive use of force, inappropriate use of solitary confinement, failure to protect, and failure to provide necessary physical and mental health care.

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

IDS Office staff continue to work closely with NCPLS to ensure that the organization delivers high quality and cost-effective post-conviction services. Because of the complexity of the State’s structured sentencing scheme, NCPLS often identifies sentencing errors that, once corrected, save months or years of incarceration for persons whose prior record levels were miscalculated. In cases where an inmate’s conviction and sentence are lawful and correct, NCPLS explains to the inmate why litigation would be fruitless, avoiding frivolous *pro se* filings.

## INNOCENCE INQUIRY COMMISSION PROCEEDINGS

In Session Law 2006-184, the General Assembly created the Innocence Inquiry Commission and Office and charged them with the responsibility of investigating and reviewing claims of factual innocence by persons who have been convicted of felonies in North Carolina. The Innocence Inquiry Act, G.S. 15A-1460 *et seq.*, establishes a right to appointed counsel during three phases of the proceedings:

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

The Innocence Inquiry Commission's rules and procedures contemplate two separate appointments of counsel by IDS—at the execution of the rights waiver and in proceedings before a three-judge panel—after an indigency determination by the Innocence Commission's Chair or the senior judge on the panel. For the initial rights waiver and formal inquiry, IDS relies primarily on the public defender offices to supply counsel and has assigned every prison facility in North Carolina to the nearest public defender office. Because only a small number of cases reach a three-judge panel, IDS recruits qualified counsel for that stage of the proceedings on a case-by-case basis.

## TRAINING, RESOURCES, AND SUPPORT

### IDS WEBSITE

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

- News and update links addressing the state of indigent defense funding, timing of attorney payments, and any other recent developments or matters of interest.
- Contact information for IDS staff members and all state defender offices.
- All approved minutes of IDS Commission meetings, and a list of IDS Commission committees and their participants.
- IDS rules, policies, and procedures.
- Focused fact sheets about various aspects of IDS's work.
- Forms and applications, including applications for the capital and appellate attorney rosters and attorney and expert fee application forms.
- All approved indigent appointment plans.
- Performance guidelines for non-capital criminal cases, juvenile delinquency cases, and abuse, neglect, dependency and termination of parental rights cases at the trial level.
- Materials used in IDS co-sponsored training programs and an index of all posted training materials by topic.
- Legal resources and reference materials, including all of the North Carolina indigent defense manuals.

- A North Carolina appellate brief bank, as well as capital and non-capital trial motions banks.
- Forensic science resources, including an expert database and North Carolina State Crime Laboratory protocols and procedures.
- Dedicated pages for specialized areas of the law, including juvenile delinquency; abuse, neglect, dependency; child support contempt; and civil commitment and guardianship.
- A page devoted to the RFPs and contracts that the General Assembly mandated.
- Reports and data generated by Office staff, including searchable data about PAC payments in indigent criminal cases.

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

### **IDS LISTSERVS AND EBLASTS**

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

In addition, IDS has created a system for sending one-way "EBlasts" to attorneys across the State so they can be more informed about matters that impact them, such as IDS's funding, the timing of PAC payments, issued RFPs, and training opportunities. Attorneys can register to receive EBlasts by completing a simple form on the IDS website. As of December 2015, more than 1,400 people had registered to receive EBlasts.

### **GRANT FUNDING FOR SPECIAL PROJECTS**

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

- During calendar years 2010 and 2011, IDS and SOG received a total of \$95,000 in grant funding from Z. Smith Reynolds (with a \$30,000 match) to support the development of the Collateral Consequences Assessment Tool ("C-CAT"). C-CAT is an electronic database that compiles all of the civil consequences of criminal convictions in North Carolina. The database became available during the spring of 2012 and is a resource for defense attorneys, prosecutors, judges, social service agencies, legal aid attorneys, and others. There is only one other jurisdiction in the country that currently has a resource similar to C-CAT. C-CAT can be accessed at <http://ccat.sog.unc.edu/>.
- In March 2010, the Governor's Crime Commission ("GCC") notified IDS that its application for funds for a capital and serious violent felony training initiative had been approved, at the level of \$39,132 spread over a two-year period (with a 25% match). The GCC grant funded four training programs around the State between December 2010 and February 2012.
- In September 2010, the Bureau of Justice Assistance ("BJA") notified IDS and the Conference of District Attorneys that a joint application for training funds for a capital

case litigation initiative had been approved, at a level of \$198,564 spread over a two-year period. Those funds were split equally between the prosecution and defense. For the defense, the BJA grant funded four primary programs around the State between May 2011 and September 2012, as well as a supplemental DNA program during the summer of 2012.

- In May 2012, the Open Society Foundations (“OSF”) awarded IDS \$225,000 in grant funds as part of a larger grant to the National Legal Aid and Defender Association (“NLADA”) to work on a project called the Justice Standards, Evaluation and Research Initiatives (“JSERI”). JSERI’s mission is to expand the research capacity of the indigent defense community nationally in order to more effectively advocate for funding and sensible criminal justice policies. \$225,000 of the grant funds was used to support the Systems Evaluation Project and data warehouse that is described later in this report, as well as the development of a variety of research toolkits. The grant expired in August 2014, although the work of the project has continued.
- In September 2013, BJA notified IDS and the Conference of District Attorneys that a second joint application for training funds for another capital case litigation initiative had been approved, at a level of \$169,714 spread over a two-year period. Those funds were again split equally between the prosecution and defense. The defense funds were used for four bring-your-own-case programs during 2014 and 2015.
- During fiscal year 2015-16, Gideon’s Promise in conjunction with American University – Washington College of Law and University of Pennsylvania Law School funded an attorney in each of our Robeson County and Mecklenburg County offices. Combined, we received \$28,991 for those two positions. Each were hired into fulltime APD positions in the spring.

## **IMPROVED TRAINING**

IDS continues to provide funding for defender training, and has sponsored a number of new training programs, many of which cover areas of representation that traditionally have not had adequate continuing legal education. In order to increase access to training, IDS allocates 2-3 scholarships to cover the registration fee for some of the multi-day programs for contract attorneys. During fiscal year 2015-16, in addition to the grant-funded training programs described above, IDS and SOG co-sponsored the following in-person programs and live webinars, which allow attendees to send questions electronically and get responses in real time:

- An annual one-day conference for contract attorneys in June 2016.
- An evening at the School of Government training on arson investigations for attorneys and investigators in June 2016.
- A criminal law webinar in June 2016.
- The annual three-day conference for public defenders and investigators in May 2016.
- The annual three-day New Felony Defender Training in February 2016.
- A biennial half-day program for attorneys who represent contemnors in child support enforcement proceedings in April 2016.

- Management and leadership training for managing attorneys in defender offices in April 2016.
- An annual one-day conference for attorneys on forensic evidence in March 2016.
- A biennial multi-day intensive training for attorneys representing juveniles in delinquency proceedings in March 2016.
- A criminal law webinar in December 2015.
- An evening at the School of Government training for attorneys and investigators on methamphetamine in October 2015.
- The annual four-day New Misdemeanor Defender Training in September 2015.
- A half day training on DNA evidence for defense attorneys in September 2015.
- An annual one-day conference for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings in August 2015.
- An annual one-day juvenile defender conference in August 2015.
- A two-day boot camp program for appellate attorneys called the “Boot Camp for Non-Capital Criminal Appeals” in August 2015.
- The annual hands-on five-day Defender Trial School in July 2015, which is an intensive program in which participants develop trial skills by working on their own cases.
- A program in August 2015 for the members of the North Carolina Forensic Consultant Network, which is described below.

In addition to these programs, IDS and SOG have sponsored a number of other innovative programs during recent years. The IDS Office posts on its website materials that are used in IDS co-sponsored training programs, as well as a comprehensive training materials index, so that attorneys around the State can benefit from programs they were unable to attend in person. As a cost-saving measure and a way of reaching more attorneys, IDS and SOG also sponsor a number of online training programs, including the webinars mentioned above and self-paced virtual programs. Those programs can be accessed for free or purchased for continuing legal education credit.

## **PERFORMANCE GUIDELINES AND REFERENCE MANUALS**

One of the IDS Commission’s primary goals is to ensure that indigent defendants and respondents in North Carolina are afforded high quality legal representation. *See* G.S. 7A-498.1(2). To further that goal, the IDS Act directed the Commission to establish “[s]tandards for the performance of public defenders and appointed counsel.” G.S. 7A-498.5(c)(4). Since its creation in 2001, the IDS Commission has developed and published performance guidelines for attorneys representing indigent defendants in non-capital criminal cases at the trial level, juveniles in delinquency proceedings, and indigent parent respondents in abuse, neglect, and dependency cases.

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

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

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

### **ADDITIONAL IMPROVED RESOURCES**

IDS and the former Office of Sentencing Services developed an online treatment provider database that allows defense attorneys, prosecutors, judges, sentencing specialists, and the public to search for appropriate and available treatment resources in their communities, and IDS and SOG jointly developed the online database of all of the collateral consequences of criminal convictions in North Carolina that is described above.

In 2010, partly in response to the negative press coverage about the then-SBI Crime Laboratory and the independent audit of the lab's forensic biology section, IDS created the position of Forensic Resource Counsel to assist public defenders, PAC, and contractors who have cases involving complex scientific and forensic issues. Among other things, the Forensic Resource Counsel is responsible for:

- Consulting with attorneys who are handling indigent cases involving complex forensic science issues.
- Helping attorneys identify appropriate forensic resources and experts.
- Ensuring that counsel obtain and understand available discovery.
- Assisting counsel in preparing legal challenges to forensic science evidence.
- Creating and maintaining a clearinghouse of information concerning forensic science, such as available experts, transcripts, and published treatises.
- Creating and presenting training materials on forensic science issues for attorneys, investigators, and others.
- Maintaining a page on the IDS website that contains forensic resources, including a searchable database of prosecution and defense experts by name and area of expertise and North Carolina State Crime Laboratory procedures and protocols.

The IDS Commission and Office believe that this position improves the quality of representation in cases involving forensic science issues and ensures that complex scientific issues are handled in a cost-effective manner by ensuring that attorneys who are facing such issues do not have to "reinvent the wheel" in individual cases.

The IDS Office has also worked with the public defender and state defender offices to create a statewide North Carolina Forensic Consultant Network ("NCFCN") and a statewide North Carolina Immigration Consequences Network ("NCICN"), and to assist the members of those

networks in developing expertise that allows them to serve as resources for other attorneys within their offices.

## **BUDGETARY OVERSIGHT AND FACTS**

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

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

As shown in Appendix A, the increase in overall demand (spending and current-year obligations) since IDS was created has averaged 4.3%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS's creation. The increase in overall demand over the past six fiscal years (between fiscal years 2009-10 and 2015-16) has averaged a mere 0.06%. Comparing PAC demand over time is complicated by the drastic hourly rate reductions that the IDS Commission was required to implement in May 2011. The growth rate declined significantly (-8.9% overall and -14.6% in the PAC fund alone) during fiscal year 2011-12, but the decline was largely attributable to the rate reductions. Between fiscal years 2012-13 and 2014-15, overall demand was virtually flat, with 0.38% growth in fiscal year 2012-13, 0.35% decline in fiscal year 2013-14, 1.08% growth in fiscal year 2014-15, and .24% growth in fiscal year 2015-16. If the current PAC hourly rates are adjusted to the prior rate, there was real growth in the system, although the rate of growth was lower than in many prior years. While growth rates measured by demand and by disposition are predictable over the long term, they remain difficult to predict over the short term because court resources and other volatile factors affect the timing of case dispositions.

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

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

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

While there have been some modest increases in average per case costs, *see* "PAC Average Hours Studies," below, the overall increases in demand on the fund are largely attributable to more people being found indigent and entitled to court-appointed counsel. Annually, IDS Office

staff update a study comparing the total number of indigent case file numbers disposed in district and superior court to the total number of court file numbers disposed in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support contempt. The 2016 study revealed that there has been a 13.4% *decrease* in the number of total criminal non-traffic court file numbers between fiscal years 2001-02 and 2015-16. However, during that same time period, there has been a 35.5% *increase* in the number of criminal non-traffic public defender, PAC, and contractor file numbers that are funded through IDS.

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

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

Overall indigent defense expenditures per disposition (for both public defender offices and PAC combined) have fluctuated over the years due to a number of factors, including the increasingly complex nature of criminal defense, changes in the mix of case types funded by IDS, changes in the types of delivery systems, and cost-saving measures implemented by the Commission. Overall, indigent defense expenditures per disposition during fiscal year 2015-16 were only \$24.73 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01).

	FY01	FY09	FY10	FY11	FY12	FY13*	FY14*	FY16
Per Disp Expenditures	\$370.94	\$383.01	\$377.74	\$387.93	\$370.15	\$364.51	\$365.19	\$395.67

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

To the extent that there have been modest changes in average per case costs over the past 15 years, the IDS Commission and Office believe they are largely due to the increasingly complex nature of criminal defense. Other factors that may be impacting average per case costs are discussed in "PAC Average Hours Studies," below.

## REVENUE COLLECTION

IDS Office staff regularly evaluate data on the amount each county collects in recoupment (through probationary collections and civil judgments) each fiscal year, and determine the amount recouped as a percentage of that county's expenditures (payments to private attorneys and experts and costs of local public defender programs) on indigent defense. Total revenues from recoupment during fiscal year 2015-16, including the attorney appointment fee required by G.S. 7A-455.1, amounted to \$10.09 million, which represented an increase of 0.7% compared to the prior fiscal year. In addition to recoupment revenues that go to IDS, the attorney appointment

fee required by G.S. 7A-455.1 generated \$121,256 in FY16 for the Technology Fee Fund administered by AOC. During fiscal year 2015-16, there continued to be wide variability in recoupment rates among counties. Recoupment as a percentage of non-capital spending on PAC and public defender offices ranged from a low of 2.6% to a high of 37.8%, with an overall statewide rate of 10.1%. Over half the counties saw an increase in their recoupment rate due to some rebound in collections through set-off debt during FY16. This past fiscal year set-off debt revenues represented 34% of total recoupment, up from 29% the prior year.

IDS recently began looking at recoupment rates among counties calculating total IDS expenditures using only attorney and case related expenditures in public defender programs, rather than full overhead. That is a more comparable comparison with PAC expenditures. With this revised calculation, the recoupment rate statewide is 11.1% and in counties with public defender programs it is estimated as 6.24% instead of the 5.4% under standard method of calculation.

Since fiscal year 2009-10, IDS has also used case disposition data to look at recoupment rates adjusted for the proportion of spending that was recoupment eligible. Based on prior studies, roughly 36% of attorney fees in criminal cases are not eligible for recoupment because the cases were dismissed or the clients were acquitted. That means the effective statewide recoupment rate (defined as total recoupment as a share of recoupment-eligible spending) last fiscal year was closer to 15.8%. For a county-by-county comparison of unadjusted recoupment rates, see Appendix B.

The IDS Office has continued to undertake a number of initiatives to improve the recoupment process and to increase revenues to the indigent defense fund. For instance, IDS Office staff continue to work with the public defender offices to ensure that they submit fee applications for entry of judgment in all recoupment-eligible cases, and have held meetings around the State with public defenders, judges, and clerks to discuss ways to increase revenues. IDS's set-off debt program staff also work with clerks' offices around the State and AOC Court Services staff to ensure that attorney fee judgments are correctly docketed. IDS's recoupment revenues have historically kept pace with increases in demand on the indigent fund. However, recoupment revenues began to decline in fiscal year 2012-13 due to the May 2011 reductions to the PAC hourly rates. In addition, if IDS continues to shift more cases away from PAC paid by the hour to contract defenders who are paid monthly or public defenders who are paid a salary, an effective recoupment system based on hours claimed will become more difficult to maintain because those service providers have less of a financial incentive to submit prompt and accurate applications. Finally, attorney fees and the attorney appointment fee are last in the statutory priority for the disbursement of costs, fines, and fees collected by clerks offices, so legislative increases in other costs and fees may result in fewer funds available to repay attorney fees and the attorney appointment fee. See G.S. 7A-304(d)(1).

## **HISTORICAL UNDERFUNDING AND CURRENT PROJECTIONS FOR FISCAL YEAR 2015-16**

During the 2009 legislative session, the General Assembly shifted \$3.5 million in funding for IDS from recurring to non-recurring, and reduced IDS's continuation budget for fiscal year 2010-11. Thus, while IDS ended fiscal year 2009-10 with no shortfall, the Office's fiscal year 2010-11 projections showed there would be a \$5.1 million shortfall the next fiscal year. During the 2010 legislative session, IDS requested a recurring increase of \$5.1 million to fully fund PAC at the prior hourly rates during fiscal year 2010-11. However, the final budget included a \$5.875 million non-recurring decrease in the PAC fund, and IDS ended fiscal year 2010-11 with almost \$9.9 million of unpaid debt. Because the Office of State Budget and Management allowed IDS to carry forward more than \$700,000 in unspent recoupment revenues, the fiscal year 2010-11 shortfall was reduced to \$9.2 million.

During the 2011 legislative session, IDS requested a recurring increase of \$7.4 million to fully fund PAC during fiscal year 2011-12 at the prior hourly rates plus non-recurring funds to pay off the carry-forward debt from fiscal year 2010-11. However, the final budget for fiscal year 2011-12 reduced IDS's budget by an additional \$10.5 million and directed IDS to lower the PAC hourly rates to minimize the shortfall. Despite the dramatic rate reductions that the IDS Commission and Office implemented effective May 2011, the fiscal year 2011-12 shortfall was again \$9.9 million.

During fiscal year 2012-13, as a result of the depressed PAC hourly rates, IDS was able to chip away slightly at the continuing carry-forward debt and ended the fiscal year with \$7.9 million of unpaid fee awards. During fiscal year 2013-14, due in large part to a \$3.7 million non-recurring appropriation, IDS was able to decrease the continuing carry-forward debt even further and ended that fiscal year with \$3.2 million of unpaid fee awards. That debt grew to almost \$6.2 million in fiscal year 2014-15 as a result of the decline in recoupment revenues that was attributable to the changes in the state tax code. In part because of a \$3.4 million recurring increase during fiscal year 2015-16, which plugged the new hole in IDS's budget created by the drop in recoupment receipts, and a decline in the availability of lapsed salary funds due to increasingly underfunded personnel costs and legal expenses in defender offices, IDS ended fiscal year 2015-16 with approximately \$4.5 million of debt. As a result of a \$3.4 Million non-recurring appropriation, slightly increased recoupment, and contract savings and slowed demand growth, the Private Assigned Counsel fund is fully funded. Absent unforeseen developments we anticipate no unpaid invoices at year end. The \$4.6 Million left unpaid in June 2016 were paid in early July.

The IDS Commission and Office recognize that reductions in spending were needed to meet the fiscal crisis, and have worked diligently to reduce spending over the past several years. However, the United States Constitution requires States to provide and pay for competent legal representation for indigent defendants who are accused of a crime and facing a possible deprivation of liberty. Various North Carolina General Statutes also require IDS to provide legal representation to indigent persons in a number of additional proceedings. The significant cuts to the hourly rates paid to PAC, both those on local rosters and those who work under contract with IDS, and the continuing inability to pay counsel at the end of each fiscal year are imperiling IDS's ability to ensure effective assistance of counsel. Thus, the Commission and Office respectfully request an additional recurring increase of \$2.9 million in FY 2018, \$8.73 in FY 2019, and \$11.6 in FY 2020 to raise all of the PAC hourly rates by \$10 in \$5 increments.

## RESEARCH AND REPORTS

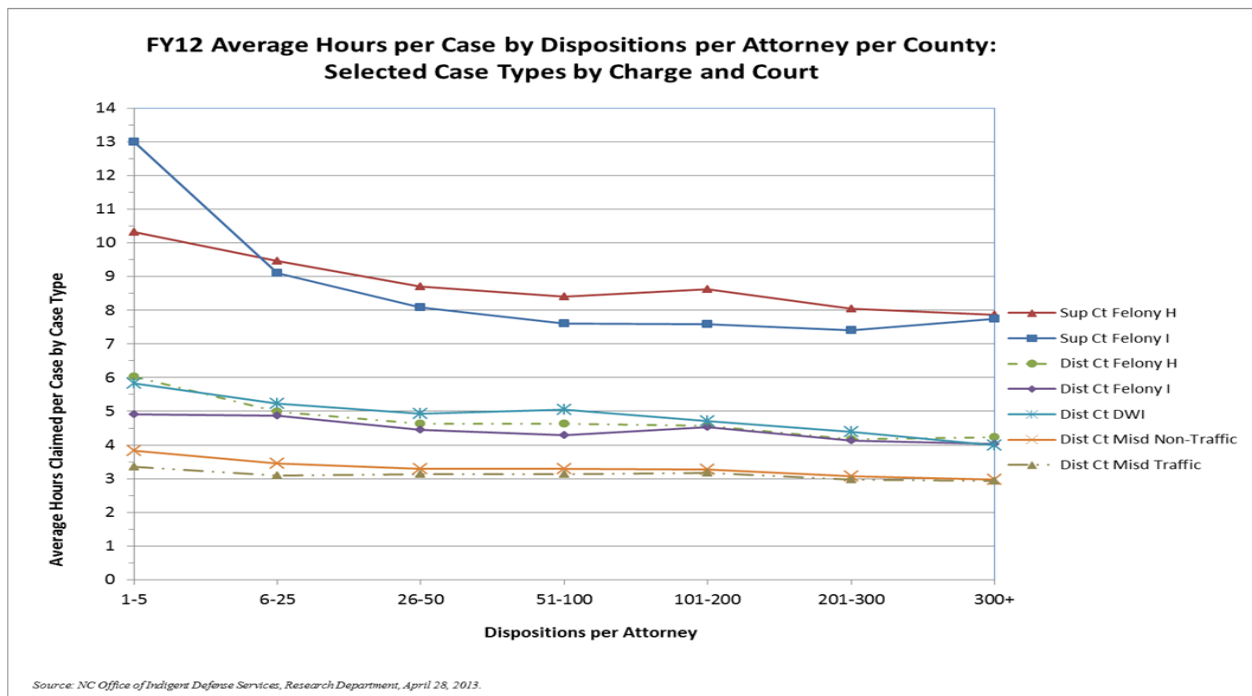
IDS Office staff continually work with AOC and IDS Financial Services to develop better and more comprehensive data collection and reporting systems for the indigent defense program, and now receive periodic data exports from AOC's Automated Criminal Infraction System ("ACIS") upon request. With the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

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

### PAC AVERAGE HOURS STUDIES

In order to assist judges in evaluating fee petitions that are submitted by PAC, the IDS Office completed statewide studies of the hours claimed by attorneys in non-capital cases in district and superior court in fiscal year 2004-05. The study reports provided average hours claimed and frequency distributions of claimed hours for various case types. In June 2013, the Office published an update to both studies. The updated study found that, for most case types, average hours claimed by PAC in fiscal year 2011-12 had increased modestly. The study report articulated a number of factors that could be driving those modest increases, including advances in forensic technologies that have changed the nature of practicing criminal law; the exposure of serious problems with the then-SBI Crime Laboratory; the reduction in PAC hourly rates leading to an increase in hours worked or more accurate documentation of hours worked; the influx of new attorneys to the indigent rosters as a result of the economic downturn; an increase in the number of less experienced attorneys handling indigent cases; an increase in the number of PAC handling cases in multiple counties or districts; and an increase in the number of PAC claiming expenses on their fee applications.

The study then investigated four of the above factors that were susceptible to analysis. First, the study found that the number of attorneys handling indigent cases rose 21% between fiscal years 2007-08 and 2011-12, thereby reducing the average number of appointed criminal cases per PAC by 18%. A regression analysis showed that the changes in caseload inversely impacted average hours per case. In other words, on average, attorneys with higher caseloads claimed fewer hours per case.



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

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

In August 2005, IDS completed a study of the costs associated with paying PAC to wait in court for their cases to be called during fiscal year 2004-05. The study found that 68.9% of attorney fee applications reported some waiting-in-court time and that, on average, PAC reported spending 4.55 hours per case and 57 minutes (or 21%) of that time waiting in court. Annualized for fiscal year 2004-05, the reported wait time cost the State \$9.8 million. In addition, the study found that district court criminal cases were the most costly in terms of wait time (\$5.25 million in fiscal year 2004-05). Because it is unlikely that over 30% of all fee applications actually involved no waiting-in-court time, the IDS staff believe that wait time may be significantly under-reported on fee applications and that the true cost of PAC waiting-in-court time during fiscal year 2004-05 may have been as high as \$14.2 million.

During April 2009, IDS conducted an online survey about scheduling practices in criminal district court with criminal defense attorneys, district attorneys, judges, and clerks that sought information about the current scheduling practices in their districts, as well as their suggestions about systemic changes that would improve efficiency. Overall, the responses made clear that the time of all court system actors, as well as defendants, witnesses, and victims, is currently being wasted on district court cases that do not move forward because one or more parties are

not ready to proceed. After analyzing the survey results, IDS staff held a meeting with a number of criminal defense attorneys who regularly practice in criminal district court to discuss the survey's findings and to brainstorm potential pilot programs that could improve scheduling.

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

- Creating an online system that would facilitate and enhance pre-court communication between opposing counsel, such as a simple web-based notification system that would allow appointed defense counsel to notify the prosecutor in advance of a court date whether a case will be pled or tried, or whether a continuance will be sought, which should in turn help prosecutors schedule cases more efficiently.
- Developing systems that encourage both district attorneys and defense counsel to set aside time to discuss cases and negotiate pleas before a court date.
- Creating systems that provide for early discovery or other information exchange.
- Exploring alternatives to the traditional system of appointing counsel on a case-by-case rotation, such as assigning appointed counsel to specific days of the week or month or appointing a given attorney to cases involving a certain officer or officers.
- Exploring alternatives to the traditional system of full-day calendar calls for multiple case types, such as setting specific dates and times by type of case or proceeding or by attorney, as well as additional specialized courts and dockets.

In addition, to the extent that some types of cases can be removed from the court dockets, that would alleviate some of the burden on the system. Potential strategies for removing certain case types from the docket include reclassifying as infractions certain low-level misdemeanors, encouraging even more screening of cases for alternative resolution prior to a court date, and/or creating web-based systems that would allow minor cases to be resolved with the payment of a fine without a court appearance.

## **CAPITAL CASE STUDIES AND REPORTS**

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

- The costs for private counsel and experts for a first-degree murder case that proceeds as a capital case are more than four times the cost of a first-degree murder case that is not capital. [ \$93,231 v. \$21,022 ]
- The costs for private counsel and experts in a first-degree murder case are significantly higher than the cost for a B1/B2 felony prosecution. [ \$21,022 v. \$2,847 ]
- A capital declaration is more likely to produce a first-degree murder conviction and life sentence; however, the cost for the defense in a capital case that results in a plea to a life sentence is almost twice the cost for the defense in a non-capital first-degree trial that results in a life sentence. [ \$83,488 v. \$44,480 ]
- A case that is declared capital takes approximately 50% longer to resolve than a non-

capital first-degree murder case.

- With the exception of cases in which the prosecution is committed to a capital trial, or to a plea to a life sentence, the designation of a case as capital often does not change the outcome. In cases that proceeded as a capital prosecution, 2.2% of defendants are found guilty of second-degree murder at trial and 35% of the defendants plead guilty to second degree murder. In non-capital cases, 2.3% of defendants are found guilty of second-degree murder at trial and 34.9% plead guilty to second degree murder.
- The increased cost of a first-degree murder defense is often incurred in cases in which the defendant pleads guilty to charges of less than second-degree murder. In 11.5% of first-degree murder cases that are declared capital and resolved by plea, the defendant pleads guilty to charges of less than second-degree murder. In non-capital first-degree murder cases the rate is much higher, with 33% of pleas being to a charge of less than second-degree murder.
- Districts that charge homicides as first-degree murder more often do not get different results than districts that charge homicides as first-degree murder less often.

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

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

In December 2008, the IDS Commission and Office finalized a study on IDS's spending on PAC and experts in potentially capital cases at the trial level, as well as the dispositions of all potentially capital cases at the trial level that were initiated after G.S. 15A-2004 was revised effective July 1, 2001; those revisions gave prosecutors discretion to proceed non-capitally even if there is evidence of an aggravating factor. In November 2015, the Commission and Office released an updated study about cases disposed between fiscal year 2006-07 and April 2015.

- While annual attorney expenditures in potentially capital cases at the trial level were relatively flat during the study time period, there has been a shift toward more salaried attorneys handling those cases. The expansion of the Office of the Capital Defender, as well as a renewed focus on using local public defender offices when possible, appears to have led to a corresponding decline in PAC expenditures in potentially capital cases.
- While per case expenditures have risen since the former study time period, the high profile expensive cases remain the exception. Fifty percent of all potentially capital cases had total case costs less than \$18,500 and 90% had total case costs less than \$74,046. More than 21% of all potentially capital cases had no expert or investigative spending at all, and 53.7% had total expert and investigative spending less than \$5,000.
- Fewer cases are proceeding capitally, which reduces overall costs but increases the average cost of proceeded non-capital cases. Other factors that appeared to contribute to increases in average case costs included changes in the PAC hourly rates, and an increase

in the number of PAC hours per case due to changes in forensic technologies and a shift to digital evidence.

- IDS's spending on potentially capital cases is driven by prosecutorial decisions over which the defense function has no control, including prosecutors' decisions to charge the vast majority of intentional homicides as first-degree or undesignated degree of murder and to proceed capitally and seek the death penalty.
- The dispositions of these cases did not justify the expenditures. More than 83% of the cases in the study ended in convictions of second-degree murder or less, and 45.7% ended in convictions of less than second-degree murder. More than 13% ended in acquittals, dismissals without leave to refile, no true bills, or no probable cause. For cases that actually proceeded capitally, 58.1% ended in second-degree murder or less and 20.1% ended in less than second-degree murder. A mere 2.2% of the cases that actually proceeded capitally ended in a death verdict.

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

## **MISDEMEANOR RECLASSIFICATION STUDY**

IDS spends a significant amount of money on appointed attorneys in low-level traffic and other misdemeanor offenses in district court that carry the theoretical possibility of imprisonment, and the IDS Commission and staff believe that reclassifying some of those offenses as infractions would save a significant amount of money, both for IDS and for other state and county agencies. If those offenses are reclassified as infractions, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. In addition, unlike the Class 3 misdemeanor changes that the General Assembly enacted during the 2013 legislative session, which changed a number of Class 1 and 2 misdemeanors to Class 3 misdemeanors and created a new category of "fine only" Class 3 misdemeanors for defendants with three or fewer prior convictions, reclassification as infractions without regard to the defendants' prior convictions would decrease the burden on our district courts. *See* "Legislative Recommendations: Repeal Class 3 Misdemeanor Changes from 2013 Session and Reclassify Minor Misdemeanors as Infractions," below.

In fiscal year 2010-11, IDS Office staff conducted a misdemeanor reclassification study that examined the sentence outcomes and potential cost savings that would be associated with reclassifying 31 different misdemeanors as infractions, as well as 13 additional misdemeanors that the Sentencing and Policy Advisory Commission recommended for reclassification pursuant to § 19.5 of Session Law 2010-31. Seventeen of the 31 offenses were identified for study because there is a high volume of cases, a high percentage of dismissals or other resolution without conviction, and a lower likelihood of objection to reclassification because, for example, the offense is a victimless crime or reclassification should not have a negative impact on public safety. Additional related statutes were examined to ensure that projected savings could not be

eliminated or minimized if law enforcement or prosecutors start charging defendants who engage in the same conduct pursuant to a different but related criminal statute. The study analyzed all charges associated with cases disposed in fiscal year 2008-09 that included at least one of the identified statutes.

The study found that cases that involved at least one of the 31 statutes comprised 65.2% of the court system's (not IDS's) caseload in fiscal year 2008-09 (or 977,750 cases), and that the majority of selected statutes rarely or never resulted in active or intermediate time or probation. Most often, the cases resulted in a financial penalty only or a dismissal without leave. Excluding driving while license revoked ("DWLR") cases, the study concluded that IDS would save approximately \$2.25 million annually in attorney fees if the identified statutes were reclassified as infractions. Those projected savings were based on the prior \$75 hourly rate paid to PAC; based on the current \$55 district court rate, the projected savings from reclassification as infractions should be closer to \$1.65 million. While reclassification of DWLRs would generate additional savings, there are more than 70 ways for a defendant's license to be revoked and the IDS Commission and Office only recommend reclassification of DWLRs that are based on a failure to comply or other similar conditions, not DWLRs that are based on a prior DWI conviction. In addition to the 31 offenses selected by IDS, the study concluded that reclassification of the 13 offenses recommended by the Sentencing and Policy Advisory Commission would generate almost \$1 million (again, based on the prior PAC hourly rate) in attorney fee savings. Reclassification as infractions would also relieve over-burdened criminal courts and generate additional savings for the prosecutors, courts, jails, corrections, and probation.

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

## **SYSTEMS EVALUATION PROJECT**

The goal of the Systems Evaluation Project ("SEP") is to develop an objective tool to evaluate the quality and performance of indigent defense systems on an ongoing basis at the county, district, and statewide levels. Such a tool could utilize data assessment, surveys, interviewing, on-site observations, and other methods of collecting information. It also should enable the IDS Commission and Office to identify systemic barriers to the efficient administration of justice, and then work with other system actors to remedy those barriers. Because there are no existing models for this type of systemic assessment of indigent defense or other legal systems, IDS expects this project to be a long-term undertaking and believes the tool that is developed will serve as a model for other jurisdictions around the country.

The major phases of the Systems Evaluation Project include:

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

The IDS Commission and Office have completed the first three major phases of the project, including developing a blueprint of the performance measures and statistical indicators. The blueprint defines the goals and objectives of a high quality indigent defense program and identifies the indicators that will measure performance for each objective.

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

- *SEP Pilot Site Project:* SEP hosted a multi-state project to develop nationally comparable Key Performance Indicators ("KPIs") for indigent defense systems in three areas: case outcomes, access to attorneys, and pretrial release. The multi-state project has developed nationally reviewed KPI measures for client case outcomes and access to attorneys, and is currently working on pretrial release performance measures. Although the grant ended in August 2014, the multi-state project participants continue to work together to develop additional KPIs.
- *Research Toolkits:* SEP developed four toolkits that provide information and instructions to help other indigent defense agencies replicate SEP's research and products, including a "Building In-House Research Capacity Toolkit," "Case Outcome Data and KPI Toolkit," "Access to Attorney Data and KPI Toolkit," and "Building a Data Warehouse Toolkit."
- *Data Warehouse:* SEP built the technological infrastructure to house, integrate, and facilitate data mining of more than 20 million data records, with an expected annual growth of more than 2 million records, to sustain SEP's program evaluation work in the future. The data warehouse became operational in June 2014, and currently houses charge-level and case-level data on all adult criminal cases disposed between January 1, 2008 and December 31, 2014. The program can be shared with other indigent defense agencies around the country upon request.
- *NLADA Research & Data Analysis Advisory Committee:* SEP staff served on the NLADA's Research & Data Analysis Advisory ("RDAA") Committee for over two years. The goal of the RDAA Committee was to expand the research capacity of the defense community nationally.

In February 2016, SEP completed the first analysis of indigent defense system performance for North Carolina. The analysis compared the performance of the various delivery systems that provide indigent defense services in North Carolina, including public defender offices, private appointed counsel, RFP contractors, and the flat per case district court fee systems in Cabarrus

and Rowan counties. The case outcomes of over 10 million adult criminal cases disposed between fiscal year 2008-09 and the second quarter of fiscal year 2014-15 were analyzed by attorney type and compensation system using 11 KPIs, including non-conviction rates, how often clients received an alternative to incarceration, and trial and appeal *de novo* rates.

In the long term, the IDS Commission and Office hope this project will enable IDS to begin to identify best practices and to make recommendations for change where needed. The performance measures or KPIs, toolkits, and additional materials about SEP are available at [www.ncids.org](http://www.ncids.org) under the “Research & Reports/Systems Evaluation Project” link.

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

The existing data on the volume and cost of cases handled in each district by PAC, contractors, and public defenders during fiscal year 2015-16 is attached to this report as Appendix C. The IDS Office is continually working to improve data collection procedures and data reporting capabilities and hopes to continue improving the quality of the data that is reported in future annual reports.

## **LEGISLATIVE RECOMMENDATIONS**

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

As discussed earlier in this report, as a result of a \$3.4 Million non-recurring appropriation, slightly increased recoupment, and contract savings and slowed demand growth, the Private Assigned Counsel fund is fully funded. Absent unforeseen developments we anticipate no unpaid invoices at year end. The IDS Commission and Office recognize that reductions in spending were needed to meet the fiscal crisis, and have worked diligently to reduce spending over the past several years. However, with the continued combination of delayed payments and reduced rates, the IDS Commission and Office have serious concerns about the detrimental impact on the entire court system.

The IDS Commission and Office respectfully request that the General Assembly an additional appropriation of \$2.9 million in FY 2018, \$8.73 in FY 2019, and \$11.6 in FY 2020 and beyond to increase the PAC hourly rates and to make comparable adjustments to contract and flat fee attorney pay. We are recommending a \$10 increase to be implemented in \$5 dollar increments beginning January 2018. This funding request assumes that the Office will be permitted to use all recoupment receipts and available lapsed salary funds.

Type of Case	Current Hourly Rate	Annual Cost of \$10 Increase*
Superior Court Criminal	\$60 for most \$70 for high-level felonies	\$2.64 million
District Court Criminal	\$55 for most \$70 for high-level felonies	\$5.3 million
Civil/Other	\$55	\$281,284
Juvenile Delinquency	\$55 for most \$70 for high-level felonies	\$281,284
Non-Capital Appeals	\$60 for most \$70 for high-level felonies	\$328,000
Potentially Capital Trial	\$75/\$85 ( <i>depending on how proceeding</i> )	\$1.04 million
Capital Appeals and Capital Post-Conviction	\$85	\$44,300
Comparable Increases to Contractor Pay	Not Hourly	\$1.42 million
<b>Total</b>		<b>\$11.64 million</b>

\* Estimated costs based on FY2016 caseloads.

## FULLY FUND PUBLIC DEFENDER OFFICE PERSONNEL AND LEGAL SERVICES COSTS

Due to chronic underfunding of some personnel and legal services costs in the public defender offices, the IDS Commission and Office have been forced to restrict the chief public defenders' access to allotted salary funds in order to generate lapsed salary that can be redirected to the underfunded items. For the current year, IDS is almost \$690,800 short for projected longevity. That shortfall will grow to \$1.3 million by FY19. In addition, the IDS budget is almost \$600,000 short for projected legal services costs that the offices need, such as outside investigators and experts, interpreters, and exhibits. Thus, the IDS Commission and Office respectfully request a recurring appropriation of \$1.9 million by FY 19 to cover underfunded longevity and legal expenses.

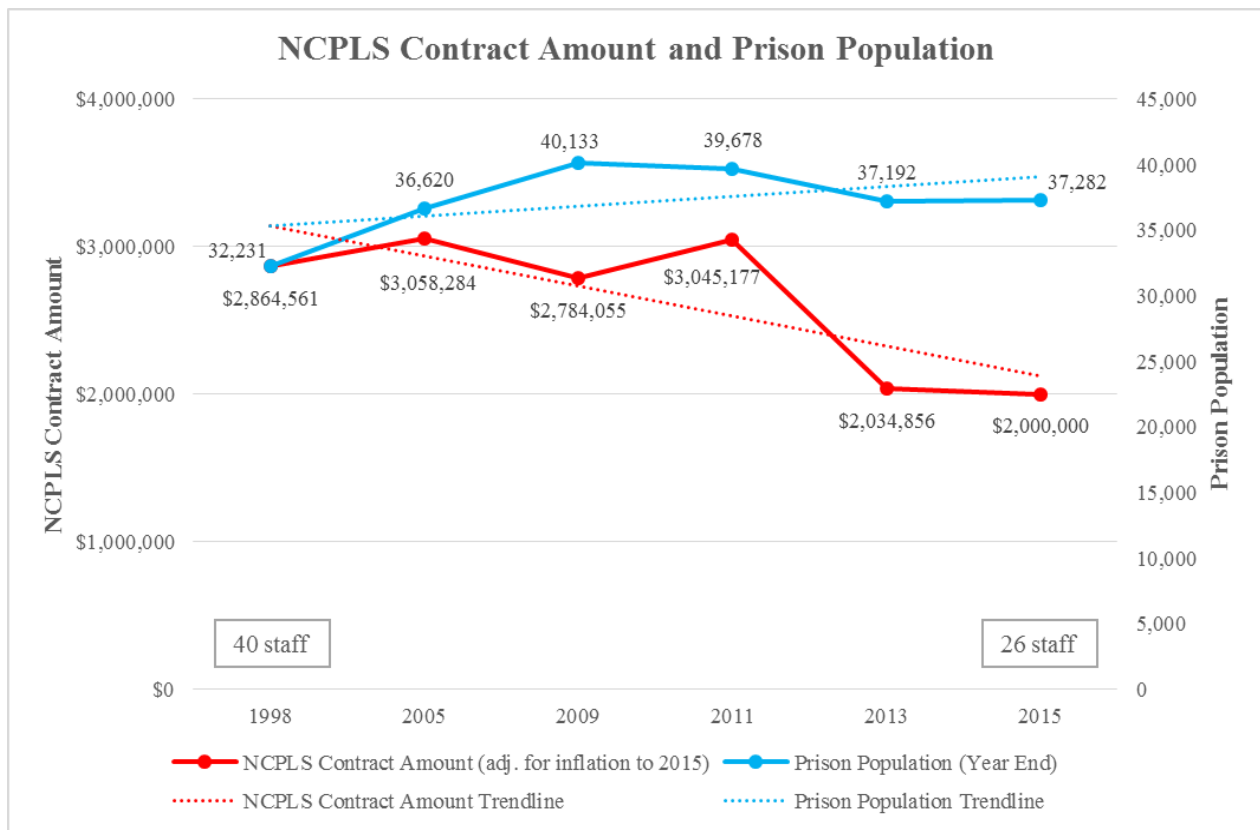
## GIVE IDS FLEXIBILITY TO CREATE NEW POSITIONS

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

## INCREASE FUNDING FOR NORTH CAROLINA PRISONER LEGAL SERVICES

In the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets that accompanied the 2013 Appropriations Act, the General Assembly reduced NCPLS' budget

by \$890,000 recurring, from \$2.89 million to \$2 million. The Committee Report stated that the reduction was intended to “reflect the declining number of inmates incarcerated in the state’s prison system.” However, NCPLS’ funding was never increased to match prior increases in the prison population, and the organization now has fewer staff and a significantly lower budget (after adjusting for inflation) than it did in 1998 when the prison population was much smaller.



Year	Prison Population (Year End)	Approx. # of Attorneys and Staff	NCPLS' Contract Amount	NCPLS' Contract Amount (adj. for inflation to 2015 purchasing power)
1998	32,231	40	\$1.97 million	\$2.86 million
2005	36,620	40	\$2.52 million	\$3.06 million
2009	40,133	40	\$2.52 million	\$2.78 million
2011	39,678	40	\$2.89 million	\$3.05 million
2013	37,192	26	\$2.00 million	\$2.03 million
2015	37,282	26	\$2.00 million	\$2.00 million
2016	37,000	26	\$2.00 million	\$2.00 million
<b>% Change (1998-2016)</b>	<b>12.9%</b>	<b>-35.0%</b>	<b>+1.5%</b>	<b>-30.2%</b>

In light of the significant funding reduction in the 2013 Appropriations Act, NCPLS had to eliminate a number of attorney and support staff positions, and NCPLS is now working to serve more than 37,000 inmates with only 26 attorneys and support staff. As a result, and as discussed in more detail earlier in this report, NCPLS is no longer able to handle most civil conditions of confinement claims or jail credit issues, and the State is risking a lawsuit on the ground that North Carolina is no longer providing inmates with meaningful access to the courts.

The IDS Commission and Office respectfully request that the General Assembly appropriate an additional \$515,616 in recurring funding to enable NCPLS to continue to provide inmates with its current level of post-conviction services and to resume civil conditions of confinement work and its jail credit program:

- Due to increases in operating expenses, NCPLS would need an additional \$187,438 in recurring funding to continue its current level of post-conviction services by filling two vacant attorney positions.
- NCPLS would need an additional \$127,308 recurring to resume civil conditions of confinement work, with the exclusion of medical malpractice complaints. That funding would enable the organization to hire two new civil attorneys and one paralegal.
- NCPLS would need an additional \$200,870 to resume assisting inmates with receiving proper jail credit for time served. That amount would enable them to fund an additional ¼ of an existing ¾ attorney position, who would supervise four new paralegals. In calendar year 2012, before the funding reductions, NCPLS paralegals, who are considerably less expensive than attorneys, identified and corrected 13,319 days of unapplied jail credit, saving the State more than \$1 million in incarceration costs.

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

For many years, the IDS Commission and Office have advocated that the General Assembly reclassify as infractions certain lower-level traffic or other misdemeanors that rarely or never result in jail sentences when reclassification would not undermine public safety or compromise a defendant's ability to resolve underlying issues, such as a revoked license. If some such offenses

are reclassified, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. *See* “Misdemeanor Reclassification Study,” above.

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

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

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

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

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

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

### **ALLOW FOR PART-TIME STATE EMPLOYED DEFENDERS AND ALLOW FULL-TIME STATE EMPLOYED DEFENDERS TO ENGAGE IN PRIVATE PRACTICE OF LAW FOR CHARITABLE PURPOSES**

G.S. 84-2 provides (emphasis added) that “[n]o justice, judge, magistrate, full-time district attorney, full-time assistant district attorney, *public defender*, *assistant public defender*, clerk, deputy or assistant clerk of the General Court of Justice, register of deeds, deputy or assistant register of deeds, sheriff or deputy sheriff shall engage in the private practice of law. Persons violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two hundred dollars (\$200.00).” G.S. 84-2.1 defines the practice of law very broadly as (emphasis added) “performing *any* legal service for any other person, firm or corporation, *with or without compensation*.”

Unlike the prohibition for prosecutors, the prohibition for defense attorneys is not limited to full-time attorneys, which precludes any state defender offices from utilizing part-time attorney positions if the attorneys also want to engage in the part-time private practice of law. In addition, the broad definition of the practice of law precludes the listed attorneys from performing volunteer legal services as part of a charitable effort. The IDS Commission and Office respectfully suggest that the General Assembly consider repealing the statutory barrier to part-time defender positions so that IDS is able to utilize part-time positions where appropriate. The Commission and Office also request an exemption from the prohibition against engaging in the private practice of law if it is without compensation and part of a charitable effort.

### **ADDITIONAL LEGISLATIVE RECOMMENDATIONS**

During the 2017 long session, the IDS Commission and Office may recommend additional changes in law or funding that would assist IDS in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

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

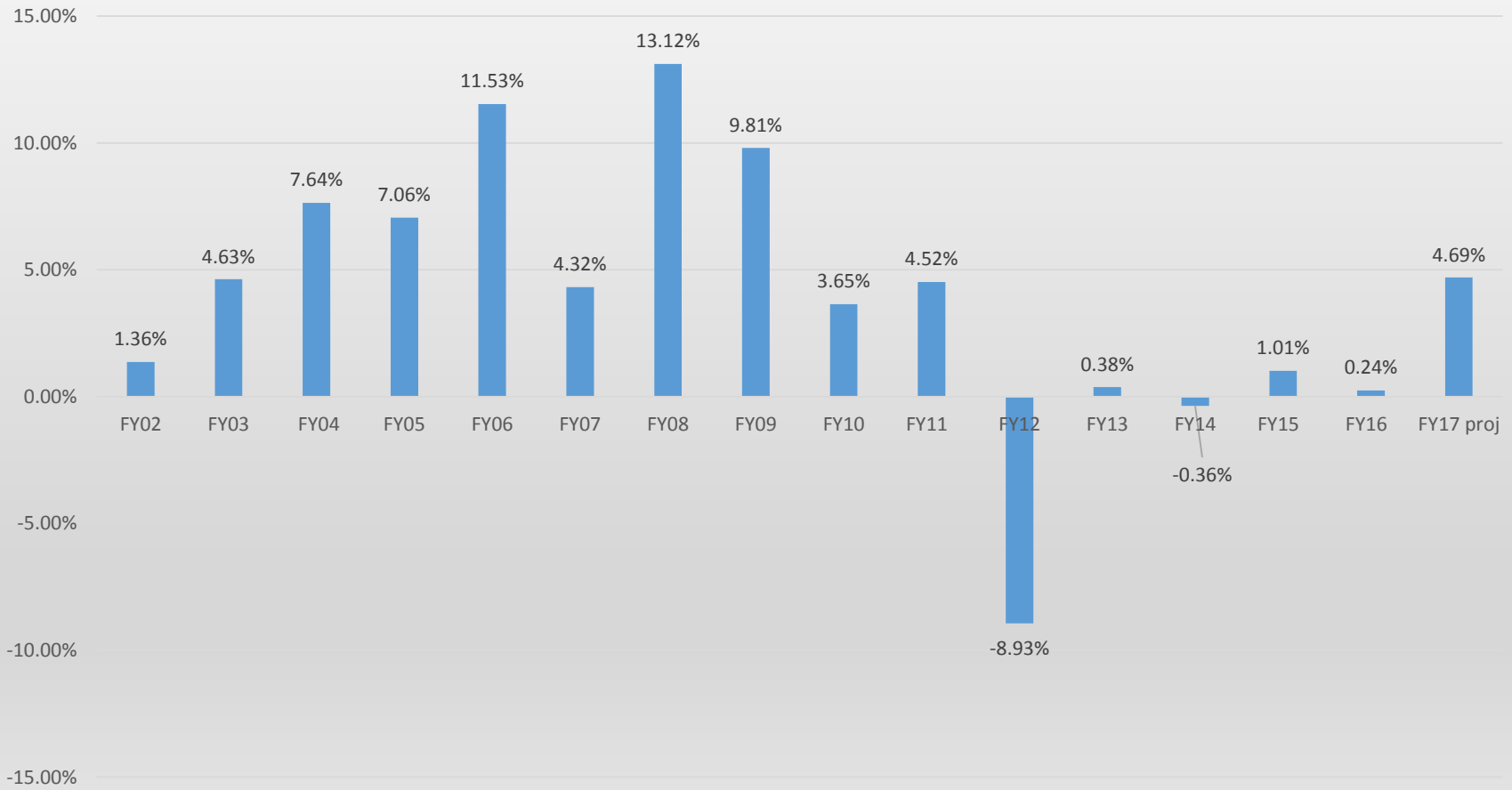
would require legislative action include a general preference for a statewide public defender system including local, district, and regional public defender offices.

## CONCLUSION

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

## **APPENDIX A**

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



## **APPENDIX B**

RECOUPMENT DATA FY2016

County	Attorney Fees	Appointment Fees	Total	Non Capital Spending	Recoupment %
Alamance	\$ 143,302.76	\$ 33,528.17	\$ 176,830.93	\$ 1,019,726.83	26.2%
Alexander	\$ 40,461.83	\$ 8,149.51	\$ 48,611.34	\$ 383,703.59	17.0%
Alleghany	\$ 13,710.58	\$ 3,852.31	\$ 17,562.89	\$ 96,922.25	20.1%
Anson	\$ 7,640.30	\$ 1,210.35	\$ 8,850.65	\$ 290,508.63	20.4%
Ashe	\$ 40,213.84	\$ 8,400.82	\$ 48,614.66	\$ 266,452.41	20.3%
Avery	\$ 29,369.91	\$ 5,401.94	\$ 34,771.85	\$ 157,317.19	23.2%
Beaufort	\$ 58,975.07	\$ 7,925.75	\$ 66,900.82	\$ 316,241.59	12.5%
Bertie	\$ 10,112.17	\$ 1,808.36	\$ 11,920.53	\$ 130,767.72	14.9%
Bladen	\$ 47,151.18	\$ 5,461.93	\$ 52,613.11	\$ 452,917.88	14.4%
Brunswick	\$ 90,382.75	\$ 17,128.29	\$ 107,511.04	\$ 1,311,353.01	10.5%
Buncombe	\$ 92,709.09	\$ 32,074.31	\$ 124,783.40	\$ 1,385,992.46	5.0%
Burke	\$ 51,795.64	\$ 5,880.94	\$ 57,676.58	\$ 739,495.84	15.7%
Cabarrus	\$ 168,734.61	\$ 33,996.32	\$ 202,730.93	\$ 1,073,941.38	27.6%
Caldwell	\$ 52,058.62	\$ 10,001.70	\$ 62,060.32	\$ 702,789.66	18.7%
Camden	\$ 2,515.83	\$ 1,148.82	\$ 3,664.65	\$ 8,659.15	8.8%
Carteret	\$ 47,613.01	\$ 11,210.58	\$ 58,823.59	\$ 257,886.67	8.6%
Caswell	\$ 22,770.51	\$ 3,356.97	\$ 26,127.48	\$ 153,591.16	27.8%
Catawba	\$ 67,747.22	\$ 8,854.85	\$ 76,602.07	\$ 1,110,653.86	15.7%
Chatham	\$ 7,819.34	\$ 5,165.50	\$ 12,984.84	\$ 142,718.83	3.6%
Cherokee	\$ 22,346.26	\$ 5,147.63	\$ 27,493.89	\$ 358,551.85	10.7%
Chowan	\$ 5,950.37	\$ 1,008.00	\$ 6,958.37	\$ 24,116.01	10.0%
Clay	\$ 7,056.73	\$ 1,459.16	\$ 8,515.89	\$ 119,970.83	8.9%
Cleveland	\$ 113,581.99	\$ 35,745.39	\$ 149,327.38	\$ 1,411,741.15	13.6%
Columbus	\$ 41,777.15	\$ 6,921.42	\$ 48,698.57	\$ 766,829.32	9.1%
Craven	\$ 79,355.95	\$ 13,641.06	\$ 92,997.01	\$ 625,059.65	19.6%
Cumberland	\$ 55,366.08	\$ 24,881.02	\$ 80,247.10	\$ 1,898,248.32	3.2%
Currituck	\$ 19,589.97	\$ 4,404.55	\$ 23,994.52	\$ 77,917.07	9.2%
Dare	\$ 33,202.15	\$ 6,533.32	\$ 39,735.47	\$ 161,249.86	10.8%
Davidson	\$ 159,092.75	\$ 15,109.98	\$ 174,202.73	\$ 1,370,011.83	21.5%
Davie	\$ 34,184.74	\$ 6,241.49	\$ 40,426.23	\$ 294,169.08	18.1%
Duplin	\$ 69,210.55	\$ 11,310.09	\$ 80,520.64	\$ 411,708.10	23.4%
Durham	\$ 61,498.73	\$ 23,771.50	\$ 85,270.23	\$ 1,226,467.48	3.0%
Edgecombe	\$ 52,118.55	\$ 9,019.78	\$ 61,138.33	\$ 460,042.95	19.0%
Forsyth	\$ 154,836.76	\$ 57,749.41	\$ 212,586.17	\$ 1,318,649.72	8.6%
Franklin	\$ 46,599.73	\$ 8,313.88	\$ 54,913.61	\$ 408,455.16	18.6%
Gaston	\$ 18,286.66	\$ 36,298.97	\$ 54,585.63	\$ 508,512.85	3.4%
Gates	\$ 5,166.14	\$ 796.00	\$ 5,962.14	\$ 33,479.05	11.1%
Graham	\$ 6,442.23	\$ 1,138.16	\$ 7,580.39	\$ 149,245.35	9.6%
Granville	\$ 33,312.49	\$ 6,197.50	\$ 39,509.99	\$ 372,897.60	17.0%
Greene	\$ 14,553.69	\$ 1,415.77	\$ 15,969.46	\$ 179,801.16	16.7%
Guilford	\$ 132,178.25	\$ 52,599.81	\$ 184,778.06	\$ 1,706,905.44	6.1%
Halifax	\$ 44,226.69	\$ 6,844.24	\$ 51,070.93	\$ 852,626.65	12.0%
Harnett	\$ 50,031.51	\$ 10,496.06	\$ 60,527.57	\$ 1,001,330.03	8.7%
Haywood	\$ 57,142.33	\$ 10,229.86	\$ 67,372.19	\$ 773,226.19	13.7%
Henderson	\$ 34,616.99	\$ 9,931.39	\$ 44,548.38	\$ 486,633.74	8.1%
Hertford	\$ 17,676.32	\$ 3,023.89	\$ 20,700.21	\$ 204,740.45	15.1%
Hoke	\$ 16,865.00	\$ 3,931.31	\$ 20,796.31	\$ 249,211.63	3.7%
Hyde	\$ 2,128.53	\$ 733.96	\$ 2,862.49	\$ 24,917.76	15.3%
Iredell	\$ 160,932.51	\$ 34,858.12	\$ 195,790.63	\$ 1,286,443.00	19.2%
Jackson	\$ 36,706.59	\$ 5,020.94	\$ 41,727.53	\$ 314,545.73	17.2%
Johnston	\$ 93,739.95	\$ 28,212.60	\$ 121,952.55	\$ 1,422,065.96	11.2%
Jones	\$ 14,924.94	\$ 2,169.70	\$ 17,094.64	\$ 85,089.93	25.9%
Lee	\$ 54,161.56	\$ 18,938.36	\$ 73,099.92	\$ 516,464.72	20.5%
Lenoir	\$ 70,385.54	\$ 14,060.43	\$ 84,445.97	\$ 702,216.55	19.8%
Lincoln	\$ 87,736.25	\$ 20,609.21	\$ 108,345.46	\$ 569,278.33	24.7%
Macon	\$ 35,769.43	\$ 4,582.52	\$ 40,351.95	\$ 304,323.78	17.6%
Madison	\$ 45,107.37	\$ 8,551.51	\$ 53,658.88	\$ 224,981.33	24.6%
Martin	\$ 24,348.87	\$ 5,258.66	\$ 29,607.53	\$ 157,936.52	11.7%
McDowell	\$ 50,628.37	\$ 10,517.51	\$ 61,145.88	\$ 629,395.33	13.2%
Mecklenburg	\$ 121,900.46	\$ 50,111.48	\$ 172,011.94	\$ 4,282,166.81	3.0%
Mitchell	\$ 22,933.10	\$ 4,045.88	\$ 26,978.98	\$ 186,347.47	17.0%
Montgomery	\$ 16,747.32	\$ 4,312.44	\$ 21,059.76	\$ 211,527.79	15.2%
Moore	\$ 84,874.18	\$ 14,990.21	\$ 99,864.39	\$ 805,075.89	16.6%
Nash	\$ 82,283.61	\$ 14,031.55	\$ 96,315.16	\$ 681,541.75	20.3%
New Hanover	\$ 130,613.32	\$ 31,064.25	\$ 161,677.57	\$ 948,468.06	8.2%
Northampton	\$ 8,490.28	\$ 1,503.95	\$ 9,994.23	\$ 133,882.58	10.9%
Onslow	\$ 143,715.81	\$ 27,604.01	\$ 171,319.82	\$ 1,073,987.50	21.6%
Orange	\$ 32,653.21	\$ 10,043.81	\$ 42,697.02	\$ 310,716.25	4.5%
Pamlico	\$ 9,090.31	\$ 2,045.65	\$ 11,135.96	\$ 92,689.95	15.6%
Pasquotank	\$ 36,524.64	\$ 7,765.24	\$ 44,289.88	\$ 91,271.13	12.7%
Pender	\$ 52,497.39	\$ 9,719.93	\$ 62,217.32	\$ 380,216.34	19.6%
Perquimans	\$ 6,105.03	\$ 1,650.08	\$ 7,755.11	\$ 35,970.20	9.6%
Person	\$ 35,166.10	\$ 6,045.55	\$ 41,211.65	\$ 406,681.26	15.5%
Pitt	\$ 60,114.56	\$ 14,710.95	\$ 74,825.51	\$ 872,952.63	6.0%
Polk	\$ 8,892.34	\$ 2,690.16	\$ 11,582.50	\$ 128,438.87	6.6%
Randolph	\$ 84,749.66	\$ 18,272.60	\$ 103,022.26	\$ 996,388.45	16.7%
Richmond	\$ 18,606.28	\$ 2,140.54	\$ 20,746.82	\$ 835,586.23	12.3%
Robeson	\$ 58,227.38	\$ 11,643.09	\$ 69,870.47	\$ 1,689,407.03	3.4%
Rockingham	\$ 82,810.81	\$ 12,620.60	\$ 95,431.41	\$ 993,350.12	14.9%



## **APPENDIX C**

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

July 1, 2015-June 30, 2016

	Number of Cases*	Total Cost**
<b>Assigned Private Counsel</b>		
Potentially Capital Trial	1,290	\$7,880,489
Capital appeals/post-conviction	120	\$784,579
Adult non-capital cases	145,740	\$47,630,108
Juvenile cases	5,721	\$1,547,063
Guardian ad Litem assigned by IDS	453	\$182,452
<b>Total</b>	<b>153,324</b>	<b>\$58,024,691</b>
<b>Individually Negotiated Contracts</b>	<b>8,646</b>	<b>\$1,578,041</b>
<b>RFP Contracts</b>	<b>30,488</b>	<b>\$8,460,643</b>
<b>Legal Services to Inmates</b>		<b>\$2,024,000</b>
<b>Public Defender Offices</b>		
District 1 & 2***	2,557	\$1,994,062
District 3A	3,621	\$1,833,833
District 3B (Carteret County)	1,226	\$515,995
District 5 (New Hanover)	6,155	\$2,056,662
District 10	8,847	\$4,062,008
District 12	5,881	\$1,996,573
District 14	8,987	\$2,922,843
District 15B	2,818	\$1,504,647
District 16A	2,161	\$1,195,820
District 16B	3,390	\$1,554,429
District 18	10,735	\$3,651,668
District 21	7,007	\$2,499,162
District 26	21,384	\$7,552,631
District 27A	6,896	\$2,231,538
District 28	6,452	\$1,789,249
District 29B	2,650	\$1,038,075
<b>Total</b>	<b>100,767</b>	<b>\$38,399,195</b>
<b>Office of the Appellate Defender</b>	<b>228</b>	<b>\$2,869,804</b>
<b>Office of the Capital Defender</b>	<b>112</b>	<b>\$3,678,844</b>
<b>Office of Special Counsel</b>	<b>12,948</b>	<b>\$1,321,830</b>
<b>TOTAL DISPOSITION PAC+PD</b>	<b>306,513</b>	<b>116,357,048</b>
<b>Support Services (PAC only)****</b>		
Transcripts, records, and briefs		\$415,833
Expert witness fees		\$2,273,826
Investigator fees		\$3,055,269
Interpreters & Translators		\$102,540
Lay Witness Expenses		\$3,425
<b>Total</b>		<b>\$5,850,893</b>
<b>Set-Off Debt Collection</b>		<b>\$120,174</b>
<b>Indigent Defense Services</b>		<b>\$2,222,564</b>
<b>Office of the Juvenile Defender</b>		<b>\$295,472</b>
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$124,846,151</b>

\* The number of "cases" shown for private assigned counsel (PAC) is the number of payments (fee applications) made by IDS for appointed attorneys. For public defender offices, the number of "cases" is the number of indigent persons whose cases were disposed by public defenders during FY16. For contractors, numbers are dispositions reported per contract requirements. For the Office of the Capital Defender, numbers include pending cases.

\*\* IDS reports most PAC data on a demand basis to reflect fee applications received in a given year, even if payment is held due to limited cash. Until FY10, this report was done on a cash basis. Because IDS had roughly \$6.1 million in unpaid fee applications at the end of FY15 and about \$4.3 million left unpaid at the end of FY15, the figures here differ from NCAS by about \$1.8 million. These figures exclude receipt supported positions in Mecklenburg County and the IDS office and dual employment payments

\*\*\* The number of cases and total cost for the District 1 Public Defender Office includes expansion into all counties in District 2, effective February 2013. 1,071 of the reported FY16 dispositions were in District 2.

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

**Fee Applications and Demand, All Accounts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 1</u></b>		
Camden	33	\$44,365.28
Chowan	73	\$67,360.67
Currituck	159	\$79,272.41
Dare	334	\$161,535.69
Gates	29	\$41,515.38
Pasquotank	218	\$151,733.66
Perquimans	45	\$43,448.18
District Total	891	\$589,231.27
<b><u>District 2</u></b>		
Beaufort	956	\$336,837.36
Hyde	44	\$25,364.06
Martin	488	\$180,881.99
Tyrrell	30	\$6,408.04
Washington	157	\$62,008.90
District Total	1,675	\$611,500.35
<b><u>District 3A</u></b>		
Pitt	2,357	\$1,355,969.47
District Total	2,357	\$1,355,969.47
<b><u>District 3B</u></b>		
Carteret	471	\$337,642.92
Craven	2,234	\$820,852.69
Pamlico	277	\$173,654.97
District Total	2,982	\$1,332,150.58
<b><u>District 4A</u></b>		
Duplin	1,792	\$494,520.87
Jones	230	\$85,878.66
Sampson	1,545	\$485,584.30
District Total	3,567	\$1,065,983.83
<b><u>District 4B</u></b>		
Onslow	4,801	\$1,443,011.55
District Total	4,801	\$1,443,011.55
<b><u>District 5</u></b>		
New Hanover	2,797	\$1,052,118.25
Pender	1,322	\$397,962.39
District Total	4,119	\$1,450,080.64
<b><u>District 6A</u></b>		
Halifax	2,889	\$1,100,649.42

District Total	2,889	\$1,100,649.42
<b><u>District 6B</u></b>		
Bertie	446	\$134,763.09
Hertford	638	\$229,713.94
Northampton	476	\$231,244.94
District Total	1,560	\$595,721.97
<b><u>District 7A</u></b>		
Nash	1,899	\$818,301.18
District Total	1,899	\$818,301.18
<b><u>District 7B/C</u></b>		
Edgecombe	1,436	\$573,689.65
Wilson	1,808	\$828,666.70
District Total	3,244	\$1,402,356
<b><u>District 8A</u></b>		
Greene	509	\$222,792.78
Lenoir	2,085	\$871,615.78
District Total	2,594	\$1,094,408.56
<b><u>District 8B</u></b>		
Wayne	2,928	\$1,503,543.24
District Total	2,928	\$1,503,543.24
<b><u>District 9</u></b>		
Franklin	1,299	\$443,727.01
Granville	1,046	\$445,500.55
Vance	1,630	\$668,423.14
Warren	413	\$187,441.47
District Total	4,388	\$1,745,092.17
<b><u>District 9A</u></b>		
Caswell	506	\$257,051.49
Person	1,182	\$489,423.34
District Total	1,688	\$746,474.83
<b><u>District 10</u></b>		
Wake	12,374	\$3,559,581.70
District Total	12,374	\$3,559,581.70
<b><u>District 11A</u></b>		
Harnett	3,188	\$1,209,211.71
Lee	1,820	\$734,366.74
District Total	5,008	\$1,943,578.45

<b><u>District 11B</u></b>		
Johnston	4,439	\$1,549,739.93
District Total	4,439	\$1,549,739.93
<b><u>District 12</u></b>		
Cumberland	4,087	\$2,607,726.27
District Total	4,087	\$2,607,726.27
<b><u>District 13A</u></b>		
Bladen	1,122	\$575,392.96
Columbus	1,928	\$1,041,731.13
District Total	3,050	\$1,617,124.09
<b><u>District 13B</u></b>		
Brunswick	3,415	\$1,364,885.63
District Total	3,415	\$1,364,885.63
<b><u>District 14</u></b>		
Durham	3,719	\$1,640,546.94
District Total	3,719	\$1,640,546.94
<b><u>District 15A</u></b>		
Alamance	4,151	\$1,134,384.08
District Total	4,151	\$1,134,384.08
<b><u>District 15B</u></b>		
Chatham	392	\$186,894.94
Orange	693	\$388,363.69
District Total	1,085	\$575,258.62
<b><u>District 16A</u></b>		
Hoke	384	\$335,043.40
Scotland	533	\$345,618.64
District Total	917	\$680,662.04
<b><u>District 16B</u></b>		
Robeson	5,075	\$2,645,948.29
District Total	5,075	\$2,645,948.29
<b><u>District 17A</u></b>		
Rockingham	2,802	\$1,031,683.23
District Total	2,802	\$1,031,683.23

<b><u>District 17B</u></b>		
Stokes	1,409	\$420,812.14
Surry	2,369	\$652,578.43
District Total	3,778	\$1,073,390.57
<b><u>District 18</u></b>		
Guilford	4,425	\$2,013,021.21
District Total	4,425	\$2,013,021.21
<b><u>District 19A</u></b>		
Cabarrus	4,125	\$1,263,441.99
District Total	4,125	\$1,263,441.99
<b><u>District 19B</u></b>		
Montgomery	892	\$263,155.87
Randolph	3,718	\$1,185,717.25
District Total	4,610	\$1,448,873.12
<b><u>District 19C</u></b>		
Rowan	4,189	\$1,494,548.99
District Total	4,189	\$1,494,548.99
<b><u>District 19D</u></b>		
Moore	2,974	\$1,004,672.42
District Total	2,974	\$1,004,672.42
<b><u>District 20A</u></b>		
Anson	1,195	\$340,431.95
Richmond	3,309	\$1,071,222.21
Stanly	1,495	\$451,418.66
District Total	5,999	\$1,863,072.82
<b><u>District 20B</u></b>		
Union	4,437	\$1,592,850.38
District Total	4,437	\$1,592,850.38
<b><u>District 21</u></b>		
Forsyth	2,905	\$1,679,454.68
District Total	2,905	\$1,679,454.68
<b><u>District 22A</u></b>		
Alexander	1,106	\$449,116.32
Iredell	3,874	\$1,370,390.79
District Total	4,980	\$1,819,507.11

<b><u>District 22B</u></b>		
Davidson	5,901	\$1,623,974.50
Davie	1,116	\$336,033.68
District Total	7,017	\$1,960,008
<b><u>District 23</u></b>		
Alleghany	285	\$101,731.55
Ashe	619	\$273,816.02
Wilkes	2,362	\$610,480.21
Yadkin	789	\$248,598.91
District Total	4,055	\$1,234,626.69
<b><u>District 24</u></b>		
Avery	547	\$170,140.54
Madison	723	\$247,643.91
Mitchell	611	\$187,216.05
Watauga	1,165	\$433,350.79
Yancey	534	\$161,610.47
District Total	3,580	\$1,199,961.76
<b><u>District 25A</u></b>		
Burke	2,566	\$784,207.79
Caldwell	3,121	\$840,239.24
District Total	5,687	\$1,624,447.03
<b><u>District 25B</u></b>		
Catawba	3,625	\$1,524,010.93
District Total	3,625	\$1,524,010.93
<b><u>District 26</u></b>		
Mecklenburg	9,901	\$5,058,261.62
District Total	9,901	\$5,058,261.62
<b><u>District 27A</u></b>		
Gaston	1,304	\$700,006.18
District Total	1,304	\$700,006.18
<b><u>District 27B</u></b>		
Cleveland	3,816	\$927,782.82
Lincoln	2,087	\$571,302.27
District Total	5,903	\$1,499,085.09
<b><u>District 28</u></b>		
Buncombe	3,441	\$1,465,510.94

District Total	3,441	\$1,465,510.94
<b><u>District 29A</u></b>		
McDowell	1,607	\$675,407.82
Rutherford	2,922	\$833,161.40
District Total	4,529	\$1,508,569.22
<b><u>District 29B</u></b>		
Henderson	1,111	\$507,427.83
Polk	320	\$153,053.01
Transylvania	560	\$316,431.34
District Total	1,991	\$976,912.18
<b><u>District 30A</u></b>		
Cherokee	970	\$406,718.19
Clay	289	\$119,852.91
Graham	293	\$151,237.20
Macon	800	\$339,685.07
Swain	674	\$364,542.39
District Total	3,026	\$1,382,035.76
<b><u>District 30B</u></b>		
Haywood	2,244	\$807,818.31
Jackson	967	\$371,135.10
District Total	3,211	\$1,178,953.41

*Notes: Reports through FY07 included only payments to attorneys; FY08 through FY16 data includes payments to experts and investigators as well. Count of payments is not identical to number of cases but is a count of number of fee applications paid plus number of cases closed as reported by contractors. Interpreters not included. This data excludes fee applications/contract payments received during FY15 but not paid until FY16, but includes those held for payment at end of FY16.*