

IDS

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

April 8, 2022 Quarterly Commission Meeting
Meeting Material

Commission on Indigent Defense Services

April 8, 2022
10:00 AM – 3:00 PM
Proposed Agenda

Call to Order		Dorothy Hairston Mitchell
10:00	Introductions Minutes of January 28, 2022 Commission Meeting Adoption of Proposed Agenda State Government Ethics Act <i>Members of the commission/committee are hereby advised of their duty under the State Government Ethics Act to avoid conflicts of interest & the appearance of conflict & are instructed to refrain from participating in any matter coming before this commission/committee with respect to which there is a conflict of interest or appearance of conflict</i>	
10:15	Remarks from the Chair Welcome Aaron Gallagher, Chief Financial Officer	Dorothy Hairston Mitchell
10:20	Director's Report on IDS Business	Mary Pollard
10:30	Updates from the Field Parent Defender	Wendy C. Sotolongo
10:45	Public Business Informational Update on the work of NC CRED	James Williams
11:00	Commission Business Committee Reports (Budget Committee) Requests for Waiver of Fee Application Deadline Other Business (NCAWA Appointment)	Chad Boykin
11:15	Break	
11:30	Executive Session	Dorothy Hairston Mitchell
Adjourn		Dorothy Hairston Mitchell
Next Meeting: July 15, 2022		

Zoom Information

NC IDS Staff is inviting you to a scheduled Zoom meeting.

Topic: IDS Commission Meeting

Time: Apr 8, 2022 08:30 AM Eastern Time (US and Canada)

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Find your local number: <https://us02web.zoom.us/j/87855685797>

VOLUNTARY WAIVER OF PER DIEM

Indigent Defense Services Commissioners who are not state employees may claim a \$15 per diem for each day of official service. See G.S. 7A-498.4(j) and 138-5(a)(1). Beginning January 1, 2017, IDS is required to report Commissioner per diem fees to the Internal Revenue Service as income. (If you have any questions about the tax issues related to per diem payment as a Commissioner, consult a financial professional.)

WAIVER

I hereby waive payment of per diem fees as set forth in G.S. 7A-498.4(j) and 138-5(a)(1) for my services on the Indigent Defense Services Commission. I understand this waiver will continue in effect for all services related to IDS Commission business including Commission and Commission Committee meetings until such time as I submit a written revocation of this waiver to Indigent Defense Services.

Name of Commissioner

Date

Signature of Commissioner



MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

OFFICE OF INDIGENT
DEFENSE SERVICES
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DARRIN JORDAN

CHAIR

Memorandum

To: IDS Commissioners

Cc: IDS Director

From: Whitney Fairbanks, IDS Deputy Director/General Counsel & Designated Ethics Liaison

Re: State Government Ethics Act and Lobbying Laws¹

Date: Updated October 2021

This memo is intended to summarize the main aspects of the Election and Ethics Enforcement Act that impact individuals who serve on the Commission on Indigent Defense Services.²

I. STATE GOVERNMENT ETHICS ACT

A. COVERAGE AND DEFINITIONS:

The State Ethics Act went into effect on October 1, 2006, and applies to all “covered persons” as of January 1, 2007. “Covered persons” include the following:

- “Judicial officers”: All Justices and Judges of the appellate and trial courts, District Attorneys, and Clerks of Superior Court, or any person elected or appointed to any of these positions prior to taking office. G.S. 138A-3(21).
- “Judicial employees”: The Director and Assistant Director of the Administrative Office of the Courts, and any other Judicial Branch employees who earn at least \$60,000 per year and are designated by the Chief Justice as a judicial employee. 138A-3(42).
- “Public servants”: Judicial employees and voting members of public boards or commissions with more than advisory authority. G.S. 138A-3(3) & (70)i.

So, all members of the IDS Commission are “covered persons” under the Act’s definition of “public servants.”³ To date the Chief Justice has not designated any IDS employees as “judicial

¹ This memo is a revision of one originally drafted by Danielle Carman in January of 2008, which was drawn in large part from a Memorandum titled “State Ethics Act—Effective January 1, 2007,” which was authored by Pamela Weaver Best, AOC Deputy Legal Counsel, and distributed to judicial officials on December 15, 2006, as well as materials distributed at an October 11, 2006 North Carolina Academy of Trial Lawyers CLE titled “Ethics and Lobbying: The New Statute.”

² Effective December 18, 2018, the North Carolina General Assembly recodified Chapter 163A, Elections and Ethics Enforcement Act, into Chapter 138A, State Government Ethics Act. See S.L. 2018-46.

³ This memo describes the obligations of an IDS Commissioner as a “public servant” under the Act. It does not describe any additional or different obligations of “judicial officers.” IDS Commissioners who are also judges should

employees.” Chief Justice Martin also has not designated any IDS employees as “judicial employees.” Thus, the IDS Director, Appellate Defender, Capital Defender, Juvenile Defender, Parent Defender, Special Counsel Supervising Attorney, and Chief Public Defenders are not subject to the Act.

B. SPECIAL DUTIES OF THE IDS DIRECTOR AND IDS COMMISSION CHAIR:

The head of each State agency, and Chair of each board or commission subject to the Act, have special obligations that are set forth in G.S. 138A-15, such as:

- At the beginning of each IDS Commission meeting, the IDS Commission Chair must remind the members of their duty to avoid conflicts of interest or the appearance of conflicts of interest, and must inquire of members whether there is a possible conflict with any issue coming before the Commission. G.S. 138A-15(e).
- The IDS Director and IDS Chair must notify the Ethics Commission of all new public servants or other officials who are covered by the Act, and provide those public servants or officials with copies of the Ethics Act and any necessary disclosure forms. 138A-15(h).
- The IDS Director and IDS Chair must consider the need for the development and implementation of in-house ethics educational programs, procedures, or policies. 138A-15(g).

C. OBLIGATIONS OF PUBLIC SERVANTS:

1. Annual Statements of Economic Interest:

All members of the IDS Commission (and anyone who may be designated in the future as a “judicial employee” by the Chief Justice) must file an annual Statement of Economic Interest (“SEI”) with the North Carolina Ethics Commission by April 15. Because all of the information in each year’s SEI must be current as of the last day of December of the preceding year, a SEI cannot be filed prior to January 1 of the filing year. G.S. 138A-22(d). All SEIs are public records. G.S. 138A-23.

The SEI form requires reporting of your ownership or interest in certain assets and businesses as of December 31 of the prior year, including:

- Real estate, including personal residence;
- Interests in public or private corporations or other businesses;
- Vested trusts created, established, or controlled by the filing person; and
- All liabilities, excluding indebtedness on a personal residence.

receive information and training about their obligations as “judicial officers” directly from the AOC and North Carolina Ethics Commission.

See G.S. 138A-24 and the SEI long form for the full contents of the required disclosure. The Ethics Commission has instructed filers not to leave any questions blank or the form will be returned and the filer may be subject to a fine or sanction; if the answer to any question is “none,” the filer should write “none.”

The Ethics Commission has a duty to evaluate SEIs on a biennial basis and issue written opinions about the existence or lack of conflicts of interest and potential conflicts of interest. G.S. 1385-24(e). If the Ethics Commission cites an actual or potential conflict of interest with regard to any member of the IDS Commission, the conflict must be recorded in the Commission minutes and brought to the attention of the Commission by the Commission Chair. G.S. 138A-15(c).

All new IDS Commission appointees must file a SEI and have it evaluated by the Ethics Commission before their initial appointment can be effective. G.S. 138A-22(a). The only exception is that a public servant who serves on more than one board may file one SEI and, if that public servant begins membership on another covered board during the biennial cycle, s/he is not required to file another SEI and the Commission is not required to evaluate the existing one again.

Any public servant who fails to file the required SEI will be notified by the Commission within 30 days of the due date, with a copy to the designated ethics liaison. If the public servant fails to file the SEI within 30 days of receipt of the late notice, he or she will be subject to a \$250 fine. If the public servant fails to file the SEI within 60 days of receipt of the late notice, he or she will be subject to disciplinary action. G.S. 138A-25(b).

It is a Class 1 misdemeanor knowingly to conceal or fail to disclose required information on a SEI. G.S. 138A-26. It is a Class H felony knowingly to provide false information on a SEI. G.S. 138A-27.

2. Mandatory Ethics Education:

As public servants, all members of the IDS Commission are required to receive ethics education within six months of their appointment, and must receive refresher education every two years thereafter. The Act also requires the designated ethics liaison to receive that education. G.S. 138A-14(c) & (f). Unless the Chief Justice designates any IDS employees as “judicial employees” in the future, no other IDS staff members are subject to this requirement.

The Ethics Commission has developed an educational program that satisfies the ethics education and the lobbying education requirements. See Section II.B. below. The combined program is about 2 hours long. The Commission has also developed an on-line training program that satisfies these requirements, which is available at <http://www.ethicscommission.nc.gov/education/eduOnline.aspx>.

3. Ethical Standards:

Public servants and other covered persons shall not knowingly use their public position in a manner that will result in a financial benefit to the person, a member of the person's extended family, or a business with which he or she is associated. G.S. 138A-31(a).

Public servants and other covered persons "shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition . . . shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity . . ." G.S. 138A-31(b).

In addition, public servants must protect against conflicts of interest by continually monitoring their financial, personal, and professional interests. G.S. 138A-35(b). Public servants must also refrain from taking any official action, up to and including abstaining from voting, if the public servant or a person with whom the public servant is associated "may incur a reasonably foreseeable financial benefit from the matter under consideration" and that benefit "would impair the public servant's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant's participation in the official action." G.S. 138A-36(a) & (b). If the public servant is unsure whether there is a conflict, the public servant should disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. G.S. 138A-35(a) and 138A-36(d).

Recusal is the stated way of avoiding conflicts of interest. G.S. 138-36. However, otherwise disqualified covered persons are allowed to participate in official actions if the interest or reasonably foreseeable benefit accrues equally to all members of the particular profession, occupation, or general class. G.S. 138A-38(a)(1). It has been the IDS staff's belief that the exception in 138-38(a)(1) allows Commissioners who are also private appointed counsel to take part in official actions that impact payments to private attorneys in indigent cases, such as changes in the hourly rates. On May 22, 2008, the State Ethics Commission issued an advisory opinion, which provides that Commissioners who are also private appointed counsel may take part in official actions that impact payments to private attorneys in indigent cases, such as changes in the hourly rates private attorneys, under the "safe harbor" in 138-38(a)(1).

4. Gifts:

A covered person "shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person

. . . or for another person, in return for being influenced in the discharge of the covered person's . . . official responsibilities." G.S. 138-32.

Covered persons "may not solicit for a charitable purpose any gift from any subordinate State employee." This ban does not apply if the solicitation is a generic request to all employees, such as requests to contribute to the State Employees Combined Campaign. G.S. 138A-32(b).

In addition, public servants shall not "knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal registered under Article 8 of [Chapter 163A]. G.S. 138A-32(c). Nor may a public servant "knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

- (1) Is doing or is seeking to do business of any kind with the public servant's employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties."

G.S. 138A-32(d). Prohibited gifts must be declined, returned, paid for, or donated to charity or the State. G.S. 138-32(g).

There are a number of exceptions to the gift ban that permit public servants to accept food and beverages for immediate consumption at public events (such as IDS Commission meetings), reasonable actual expenditures for educational programs or meetings, and plaques or non-monetary recognition mementos. G.S. 138A-32(f).

In addition, 138A-32(f)(10) provides that the gift bans in G.S. 138A-32(c) and (d) do not apply to "[g]ifts given or received as part of a business, civil, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying."

5. Honoraria:

Covered persons shall not accept an honorarium for "conducting any activity where any of the following apply:

- (1) The employing entity reimburses the covered person . . . for travel, subsistence, and registration expenses.

- (2) The employing entity's work time or resources are used.

- (3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's . . . official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person . . . in conducting an activity within the duties of the covered person . . . or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person . . . " G.S. 138A-32.

6. Other Compensation or Benefits:

Public servants and other covered persons "shall not solicit or receive personal financial gain" for acting in the public servant's official capacity or for advice or assistance given in the course of official duties. G.S. 138A-33.

In addition, covered persons shall not cause a member of the covered persons' extended family to be hired or appointed to a position over which the covered person has supervisory authority. G.S. 138A-40.

D. ADVISORY OPINIONS FROM THE ETHICS COMMISSION:

The Ethics Commission has authority to render advisory opinions if requested by a public servant or other covered person. G.S. 138A-13(a). A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. G.S. 163A-157.

E. DESIGNATED ETHICS LIAISON:

Each agency is required to designate someone on staff as the ethics liaison to advise public servants of their duties under the law and maintain communication with the Ethics Commission. G.S. 138A-13(f). (IDS has designated the IDS Deputy Director/General Counsel to serve as our ethics liaison.

F. VIOLATIONS, INQUIRIES BY THE ETHICS COMMISSION, AND ACTION ON COMPLAINTS:

The Ethics Commission can accept complaints, investigate, and conduct hearings on alleged violations by public servants. If the Commission finds by clear and convincing evidence that a public servant has violated the Act, the Commission may issue a private admonishment or refer the matter for appropriate action to the entity that appointed or employed the public servant. The Commission can also refer criminal matters to the Attorney General and local district attorney. G.S. 138A-12(m)(1).

Willful violations of the Act by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order that could lead to dismissal.

II. AMENDED LOBBYING LAWS:

A. COVERAGE AND DEFINITIONS:

In varying degrees, the lobbying laws apply to numerous individuals as defined by G.S. 120C-100:

- “Designated individuals”: Those subject to being lobbied, including legislators, legislative employees, and public servants (as defined above).
- “Liaison personnel”: Any state employee whose principal duties, in practice or as set forth in his or her job description, include lobbying legislators or legislative employees.
- “Lobbyist”: Does not include designated individuals who are acting in their official capacity or individuals registered as liaison personnel.
- “Lobbying”: Includes direct lobbying and goodwill lobbying.

Except for any person designated as a liaison personnel under G.S. 120C-500, the provisions of Article 8 of Chapter 163A do not apply to state employees when appearing solely in connection with matters pertaining to their office and public duties. G.S. 120C-700(3). **Article 8** of Chapter 1163A also does not apply to any person appearing before a committee, commission, board, or council at the invitation or request of the committee or a member thereof. G.S. 120C-700(2)

B. OBLIGATIONS OF PUBLIC SERVANTS: LOBBYING EDUCATION:

As public servants, all members of the IDS Commission are required to receive lobbying education and awareness training within six months of their appointment, and must receive refresher education every two years thereafter. G.S. 120C-103(a). Any IDS employee who may be designated by the Chief Justice in the future as a “judicial employee” will also become subject to this requirement.

C. ADDITIONAL OBLIGATIONS OF LIAISON PERSONNEL:

Every State agency must designate at least one and no more than two liaison personnel to lobby for legislative action. G.S. 120C-500. Subsection (d) provides that the Chief Justice shall designate “at least one, but no more than four, liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A of the General Statutes.” In March 2009, the Chief Justice designated the IDS Director as one of the four liaison personnel for Chapter 7A agencies.

Liaison personnel are generally exempt from the lobbying laws, but are subject to the registration, reporting, and gift ban provisions of **Article 8 of Chapter 163A**. G.S. 120C-501. Violations of the registration and reporting provisions are generally Class 1 misdemeanors and may subject the violator to civil fines. G.S. 120C-602.

1. Registration:

Annually, liaison personnel must file with the Secretary of State a Liaison Registration form and a State Agency Authorization Statement. No registration fee shall be required. G.S. 120C-200 and 120C-501(b).

2. Reporting:

Liaison personnel must file quarterly lobbyist reports with the Secretary of State under G.S. 120C-402. G.S. 120C-501. “The report shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Reportable expenditures reimbursed by the lobbyist’s principal, or another person on the lobbyist’s principal’s behalf.
- (4) All reportable expenditures for gifts given G.S. 138A-32(f)(1)-(9), 138A-32(f)(11), 138A-32(f)(12), and all gifts given under G.S. 138A-32(f)(10) with a value of more than ten dollars (\$10.00).”

In addition, if the liaison personnel incurs reportable expenditures in any month while the General Assembly is in session, the liaison personnel shall file a monthly reportable expenditure report.

3. Gifts:

The gift ban in G.S. 120C-501) applies to liaison personnel with respect to legislators and legislative employees. G.S. 163A-346(e). Subject to the gift exceptions in G.S. 138A-3(32), liaison personnel may not directly or indirectly give a gift to a legislator or legislative employee.

However, liaison personnel may make political contributions to legislators. G.S. 138A-3(32) defines a “gift” for purposes of the State Government Ethics Act as anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-3(d)(1), (2), or (3). However, pursuant to G.S. 138A-3(3), campaign contributions that are properly received and reported as required under **Article 23 of Chapter 163A** are not gifts. In addition, while G.S. 163-278.13B provides that no lobbyist may make a campaign contribution as defined in G.S. 163-278.6 to a candidate who is a legislator, G.S. 120C-100 provides that the term “lobbyist” shall not include registered liaison personnel.

D. LIMITATION ON IDS COMMISSION APPOINTMENT OF LOBBYISTS:

There are limitations on the ability of the IDS Commission to appoint lobbyists or recent lobbyists as one of the Commission’s three appointees to the IDS Commission. G.S. 120C-304 has been amended to provide: “A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist’s registration representing that person.” Any appointment made in violation of this section is void. G.S. 120C-304

E. NO STATE AGENCY MAY CONTRACT WITH A LOBBYIST:

G.S. 120C-500 provides that “[n]o State agency or constitutional officer of the State may contract with individuals who are not employed by the State to lobby legislators and legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17.”

III. FORMS & QUESTIONS:

- The following link is to the North Carolina Ethics Commission website: <http://www.ethicscommission.nc.gov>. The annual Statement of Economic Interest forms, including the long form and no change form, can be accessed at that site.
- For general questions about your obligations under Subchapter II of the State Elections and Ethics Enforcement Act (formerly the State Ethics Act) as a member of the IDS Commission, please contact:
 - Whitney B. Fairbanks, IDS Deputy Director/General Counsel & Designated Ethics Liaison, at (919) 354-7205 or Whitney.B.Fairbanks@nccourts.org; or
 - Kathleen Edwards, Associate General Counsel, State Board of Elections and Ethics Enforcement at (919) 814-3600 or Ethics.Commissions@ncsbe.gov.
- For questions about the Statement of Economic Interest, please contact Lisa Johnson, Disclosure and Reporting Manager, State Board of Elections and Ethics Enforcement, at (919) 814-3600 or lisa.johnson@ncsbe.gov.
- For questions about the mandatory ethics education, please contact Sue Lundberg, Associate General Counsel, State Board of Elections and Ethics Enforcement, at (919) 814-3600 or sr.lundberg@ncsbe.gov.

Draft Minutes

2022.01.28 MEETING MINUTES

Commission on Indigent Defense Services

Legislative

Quarterly Meeting – January 28, 2022

Location: Virtual

Commissioner Attendees: Dorothy Hairston Mitchell (Chair), Art Beeler (Vice Chair), William “Gus” Anthony, Art Beeler, Brian Cromwell, Caitlin Fenhagen, Karen Franco, Staples Hughes, Brian Jones, Jan Pritchett, Stacey Rubain

Staff Attendees: Chad Boykin (Financial Services Staff Attorney), Susan Brooks (Defender Administrator), D. Tucker Charns (Chief Regional Defender), William Childs (Budget Director), Jeff Connolly (Regional Defender), Kristen DeSimone (Legal Assistant), Whitney Fairbanks (Deputy Director), Margaret Gressens (Research Director), Angela Henderson (Juvenile Contracts Administrator), Stephen Lich (Researcher), Sarah R. Olson (Forensic Resource Counsel), Susan Perry (Legal Assistant), Mary S. Pollard (Executive Director), Elisa Wolper (Financial Officer)

Local and State Public Defender Program Attendees: Woodrena Baker-Harrel (District 15B), Dawn Baxton (District 14), Jennifer Harjo (District 5), Paul James (District 21), Robert Kemp (District 3A), John Neiman (District 18), Laura Powell (District 29A), Robert Sharpe, Jr. (Capital Defender), Samuel Snead (District 28), Wendy C. Sotolongo (Parent Defender), Beth Stang (District 29B), Kevin Tully (District 26), Dolly Whiteside (Chief Special Counsel), Eric Zogry (Juvenile Defender)

The meeting was called to order by Dorothy Hairston Mitchell, who then proceeded with the welcome and conducted a roll call of members.

Hairston Mitchell introduced and welcomed new Commissioner Karen Franco, appointed by the Indigent Defense Services Commission.

Approval of October 28, 2021 Quarterly Commission Meeting Minutes

Hairston Mitchell opened the floor for members to discuss the minutes from the last Quarterly Commission Meeting. The minutes were approved by unanimous vote.

State Government Ethics Act Reminder

Hairston Mitchell reminded the Commissioners of their responsibilities under the State Government Ethics Act.

Commission Business

Commissioner Beeler presented a motion to appoint Hairston Mitchell to the Commission seat (NCGS 7A- 498.4(b)(11)) recently vacated by the Honorable Lisa V. Menefee. Rubain seconded the motion and all Commissioners present voted in support of the motion.

Remarks from the Chair

Hairston Mitchell thanked Margaret Gressens, IDS Research Director, for her many years of service to IDS and to the public defender community.

Director's Report on IDS Business

Director Pollard introduced William Childs, Budget & Planning Director, to the Commission.

Alamance County Early Representation Project. Pollard reminded the Commission that IDS had ceased funding the project following the General Assembly's enactment of SB 350 which made it clear that the General Assembly did not intend to fund counsel at first appearances. Pollard informed the Commission that, as requested during the October 28 meeting, she had investigated alternative funding which would allow IDS to continue the program without using PAC funds. Former Commissioner Jenni Owen made grant funding available through the Office of Strategic Partnerships so that the program could continue for the time being. Commissioner Fenhagen expressed appreciation that IDS had secured funding for the project.

Contract Defender Program Update. Pollard updated the Commission on the offices work to replace the large-scale RFP contract program with the Managed Assigned Counsel ("MAC") highlighting the staff's work with the NC Administrative Office of the Courts' procurement team to issue an RFP for an online timekeeping and billing tool. She reminded the Commission that the timeline for ending the current system and starting the new one is short: pilots in June followed by full release in December.

IDS' Eight Year Plan. Pollard informed the Commission that Staff was making progress on the eight-year plan. Pointing to growing interest and excitement surrounding public defender expansion, she expressed her desire to expedite development. Acknowledging that it was ambitious, she stated her intent to have a plan with all funding requests necessary to implement it ready for the 2023 Long Session.

Other Matters. Pollard apprised the Commission on the status of a handful of other projects including:

- As in all prior years, IDS received the highest marks possible in its annual audit;
- Progress of IT director search;
- Website reception and work on standalone site for Office of Parent Defender;
- Progress of NC Administrative Office of the Courts' Remote Proceedings Taskforce and its work to continue using remote proceedings in some cases after the pandemic ends;
- Upcoming NC Administrative Office of the Courts' meeting on clearing pandemic related court backlogs; and
- IDS resource video.

Fiscal Year 2023 Budget & Preparing for the Expansion Budget. Pollard then turned the meeting over to Budget Planning Director William Childs who advised the Commission that he was working with Wolper and Pollard to develop an expansion budget for the Governor and the General Assembly. He noted that the request would focus on a pragmatic expansion of the public defender program. Specifically, he said that IDS intends to request funding to expand the District 5 office to include Pender County (currently only includes New Hanover) and to split District 2 from District 1 (currently appointed Chief Public Defender for District 1 staffs satellite offices in District 2).

Fiscal Report

Final FY22 Budget & Projections for Biennium. Chief Financial Officer Elisa Wolper provided an analysis of IDS' year-to-date spending but cautioned that it was still too early in the fiscal year to provide a fine level assessment. She noted that while spending to date looked more like FY2019 than either FY2020 or FY2021 she still projected that IDS would end the fiscal year with unspent money in the PAC fund without moving money from lapsed salary.

Wolper highlighted the trends in current year spending that most significantly impacted her cash flow analysis:

- Staggered staffing in new District 27B;
- Increased average fee application size;
- Significant increase in the number of capital assignments;
- New PAC rates;
- Inability to model receipts from set off debt until tax season gets underway;
- Increased receipts from new General Court of Justice Fees; and
- IVE Funding/ Parent Defender Reimbursement, which started coming in during January 2022.

Turning to projections for the next fiscal year, Wolper expressed concern that IDS would see “real growth” in demand in the coming fiscal year. However, she noted that IDS would also realize savings from District 27B during that year. She summed it up by predicting that IDS would need to move lapsed salary to the PAC fund as early FY2023 but reminded the Commission that there is nothing unusual about that.

Pollard relayed to the Commission the overwhelming expression of appreciation from the field for the Commission's work to implement PAC increases. Hughes requested Commissioners and others be mindful of the impact of rate increases on the clients who will see larger judgements for attorneys' fees.

Update from the Field

OJD Planning for Youth Homicide Appointments. Eric Zogry, Juvenile Defender, and Kim Howes, OJD Project Contractor, outlined the Office of Juvenile Defender's ongoing Youth Homicide Project planning. Zogry provided the Commission with a high-level procedural description of youth homicide law. Because there is no death penalty for children charged with murder, the cases are not covered by the Office of the Capital Defender and appointment of counsel is made at the local level. Further, because there is not a lot of overlap in the juvenile and criminal attorney rosters, there often is a gap in representation between the transfer proceeding, which occurs in the juvenile division, and the trial proceedings, which occur superior court.

Howes then walked the Commission through OJD's plan to close or tighten the gap in services. Using the Office of Capital Defender's appointment procedures as model, Howes told the Commission that OJD was focused on creating and maintaining a roster of qualified attorneys and moving the appointment authority from the bench to OJD.

Sam Snead, Chief Public Defender for District 28, expressed his opinion that a centralized plan was good. He asked whether OJD had considered having the attorney from the criminal division shadow the attorney in the juvenile division and pondered whether that would help attract attorneys who want to do the work but are hesitant to get on the juvenile roster. Zogry said OJD was exploring that model. Hairston Mitchell pointed out that the paired model works especially well in cases where the child is likely to be returned to the juvenile division.

Commissioner Hughes asked whether the juvenile expert role in select cases could be filled by an Assistant Juvenile Defender. Zogry said OJD was exploring that as an option given the AJDs already provide some direct representation. He acknowledged that limited human resources and time impact the office's ability to take many assignments. Howes pointed out that because the office consults on cases throughout the state, conflicts also limit its ability to take on direct representation.

Public Defender Association. Laura Powell, Chief Public Defender for District 29A, gave the report of the Public Defender Association. Powell commended the recently appointed new chief public defender in District 27B, Lydia Hoza, to the commission. She also updated the commission on the collective concern of the chiefs with efforts across the state to deal with the covid related backlogs. Powell reminded the Commission that, even at the height of Covid, she, the other Chiefs, and the APDs had been working every day on behalf of their clients, especially their incarcerated clients. She finished by thanking the Commission for its work to raise the PAC rates, noting that it would make it easier for the public defenders to recruit conflict counsel.

Commission Business

2022 Committee Assignments. Hairston Mitchell turned the Commissions attention to the committee assignments memorandum in the written materials. She reminded the

Commissioners that work done in the committees makes the Commissions work easier and advised anyone with questions to contact her, Pollard, or Fairbanks.

Chief Special Counsel Recruitment Policy. Fairbanks updated the Commission on the recruitment process for the Chief Special Counsel position. She read the names of the Commissioners who approved the plan into the record.

Requests for Relief from Judgments. Chad Boykin, Financial Services Staff Attorney, began by describing the issue to the Commission. Historically, if a former client complained to the Clerk of Superior Court when their state income tax return was intercepted by the Department of Revenue and used to offset a judgement for attorney's fees, the Clerk would sometimes cancel the interest accrued on the debt. In 2020, General Counsel for the Administrative Office of the Court advised clerks to discontinue the practice. In response, IDS was working through the Budget Committee on internal procedures.

Requests for Waiver of Fee Application Deadline. Boykin moved on to the pending Requests for Waiver of Fee Application Deadline, all of which fell outside the deadline for Director Approval and, therefore, required Commission approval. Boykin walked the Commission through the requests and relayed Staff's recommendation that they all be approved for payment. Beeler made a motion to pay the full fees for all requests, which Cromwell seconded. All Commissioners present voted to approve full payment.

Evidence.com. Boykin explained some of problems the public defender offices were having with digital technology, including their own outdated technology and expensive storage. He said that, after significant research, Staff believed that a contract with Evidence.com for the public defender offices would alleviate many of those problems. He analogized the program to Netflix, explaining that the evidence will be stored to the cloud and the public defenders could stream it as needed.

Report of Review Committee. Fairbanks informed the Commission that the Review Committee met earlier in January and reversed Capital Defender Sharpe's decision to remove attorney Mark Key from the capital roster while disciplinary matters were pending with the NC State Bar. The decision came with a specific direction to Sharpe to provide additional oversight and support to Mr. Key.

Meeting adjourned by acclamation at 12:30pm.

Other Reports

COMMISSION UPDATE:
REQUESTS FOR RELIEF
APRIL 2022

IDS OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

1

REVIEW

- Upon conviction an indigent defendant's court appointed attorney fees are docketed as a civil judgment, creating an immediate lien at 8% annually.
- Defendant has a right to be heard on this in open court.
- NC Tax refunds and lottery winnings are intercepted to pay these debts (Department of Revenue Intercept = DORI).
- Debtors sometimes contest the intercepts and/or make requests for relief (RFR).

IDS OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

2

REVIEW

- The Budget Committee met on January 28, 2022, and March 07, 2022, to
- Consider RFR issues; and
- Consider possible legislative recommendations.

IDS OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

3

RESEARCH

As part of the Budget Committee discussions IDS performed a study of:

- Case law on the constitutionality of recoupment; and
- Recoupment practices in 46 other jurisdictions.
 - Analysis of recoupment statutes in 46 states
 - Provider interviews in 14 states
 - Interview with Univ. of Minn. Law Professor Fred Friedman.
 - Review of 1986 U.S. DOJ report, "Containing the Cost of Indigent Defense Programs: Eligibility Screening and Cost Recovery Procedures.; Robert L. Spangenberg.
 - Review of 2013 U.S. DOJ report, "State Administered Indigent Defense Systems, 2013", Suzanne M. Strong, Ph.D., BJS Statistician.

4



4

CASE LAW

- Constitutional requirements:
 - "Present ability to pay"
 - No "manifest hardship"
- Fuller v. Oregon, 417 U.S. 40 (1974).
- Minnesota v. Tennin, 674 N.W.2d 403 (2004).
- State v. Friend, N.C. App, 809 S.E.2d 902 (2018).

5



5

RELIEF MECHANISMS - OTHER JURISDICTIONS

- "Ability to Pay" Form to freeze collection efforts.
- Debts discharged after a period of years.
- Ability to petition the court at any time for debt reduction based on income.
- Fines and costs can be discharged by community service.
- Debt reductions or elimination for "good cause" or inability to pay.

6



6

RESEARCH CONCLUSIONS

- No evidence of any other jurisdiction that imposes:
 - Appointment fee; and
 - Attorney fee as civil judgment with interest; and
 - No relief mechanism

7

SOD - CANCELLED DEBTS 2020

- In 2020 the SOD team cancelled **731 debts**.
- The amount of relief granted ranged from **\$10.07** to **\$6,154.64**.
- The amount of relief/debt cancelled totaled **\$273,142.30**.
- This reflects **0.026%** of the total outstanding judgment debt.
 - Basis: In May 2020 aggregate judgments outstanding were \$1,019,307,876.23.
- SOD receipts for FY 2020 were \$4,337,392.00 (relief was 6%).
- Approx. 24,000 intercepts per year, relief granted in 731 cases, or 3%.

8

SOD - CANCELLED DEBTS 2020

- Average size of original judgment \$427.21
- Average accrued interest \$577.24
- Average total paid \$630.21
- Average amount of relief \$373.66

9

BUDGET COMMITTEE

The Budget Committee recommended that in an RFR or DORI contest:

- Continue status quo of forgiving debts when principal has been met (including when payments applied only to interest equal or exceed principal); and
- Allow ED to approve relief based on a showing of manifest hardship. ED shall report to Commission on ED relief granted; and
- Work through the Committee and Commission on possible legislative requests to create a more equitable, consistent, and constitutional system.

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COMMISSION REVIEW

- Questions or discussion from Commission on Budget Committee recommendations on RFR?

11



11

POTENTIAL LEGISLATIVE RECOMMENDATIONS

- Remove interest requirement.
- Adopt a set co-payment based on charge, instead of full fee; *or*
- Reasonable discounted recoupment *if* paid within 60 days (example, \$200 felony, \$100 misdemeanor).
 - Could increase amounts collected; and
 - Provide a less punitive/more constitutional recoupment system; and
 - Increase amounts collected; and
 - Reduce the growth in largely uncollectible approx. \$1 billion total debt.

12



12

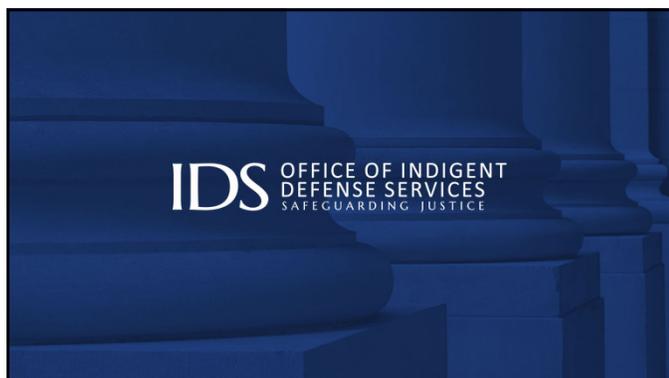
POTENTIAL LEGISLATIVE RECOMMENDATIONS

- IDS will research possible legislative recommendations.
- Research will involve budget, research, fiscal operations, and will include projections of possible reforms on SOD receipts.
- Full update on legislative recommendations in October 2022 meeting.

13



13



14

MARY POLLARD
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OFFICE OF
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STATE OF NORTH CAROLINA

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DOROTHY HAIRSTON MITCHELL
CHAIR

ART F. BEELER
VICE CHAIR

Memo

To: IDS Commission
From: Mary Pollard
Re: Recommendation for Exceptional Relief from One-Year Fee Application Deadline:
Attorney Shelby Chase
Date: March 21, 2022

As you know, IDS Rule 1.9(a)(1a) provides that “[f]or all cases finally disposed at the trial level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the trial judge within no more than one year after the date on which the case was finally disposed at the trial level...In accordance with policies and procedures approved by the IDS Commission, an attorney may apply to the IDS Director...for a waiver of the applicable deadline.”

The Commission’s approved policy on waivers of the fee application deadline provides that, if an attorney did not submit a timely fee application, the attorney “may apply to the IDS Director for a waiver of the deadline and for approval of fees for attorney time...The request must be postmarked within 90 days after the one-year deadline passes. The waiver request must include a showing of good cause that prevented submission of the fee application within the one-year deadline. Unawareness of the one-year deadline due to attorney neglect shall not constitute good cause.”

Assuming good cause is found, the policy further provides that “[i]n determining the amount of the fee, the Director will:

- 1) review the amount of time claimed by the attorney and approve an appropriate amount of time based on the factors normally considered in fixing attorneys’ fees and any data available to the Director on the average time claimed in that type of case; and
- 2) multiply the hours approved by the standard hourly rate in effect at the time the work was performed; and
- 3) reduce the amount of the award . . . by up to 10% for each partial or full month that the original submission was past the deadline, but no more than 30%.”

A. Waiver Requests Received:

On January 31, 2022, IDS received four fee applications from attorney Shelby Chase, who had previously contacted our offices to report an issue.

1. *Joseph Abrams*: The fee application claims 1.3 hours for a class 1 misdemeanor in Davidson County District Court. The disposition date is April 12, 2019, and the case was dismissed by District Attorney, with no notice provided to Ms. Chase, who became aware

of the dismissal when inquiring with the clerk in December 2020. At the \$60.00 hourly rate that would apply for Superior Court work based on Ms. Chase's appointment date, full payment would amount to \$330.00. The deadline waiver request date is January 31, 2022.

2. *Jermaine Peace*: The fee application claims 5.5 hours for a class G felony in Davidson County Superior Court, and included 7 District Court hearings, 1 Superior Court hearing, a bond hearing, and discovery. The disposition date is April 5, 2019, and the case was dismissed by the District Attorney, with no notice provided to Ms. Chase, who became aware of the dismissal when inquiring with the clerk in December 2020. If full payment were issued a \$185.00 flat fee would apply based on Ms. Chase's appointment date. The deadline waiver request date is January 31, 2022.
3. *Jessica Farthing*: The fee application claims 2.1 hours for a class 1 misdemeanor in Davidson County District Court, which consisted of 7 court dates with an OFA issued on the 7th court date. The disposition date is May 28, 2020, and the case was dismissed by District Attorney. If full payment were issued a \$185.00 flat fee would apply based on Ms. Chase's appointment date. The deadline waiver request date is January 31, 2022.
4. *Joshua Locklear*: The fee application claims 2.1 hours for a class 1 misdemeanor in Davidson County District Court, consisting of 3 court dates. The disposition date is April 20, 2020, and the case was dismissed by District Attorney, with no notice provided to Ms. Chase, who became aware of the dismissal when inquiring with the clerk in December 2020. If full payment were issued a \$185.00 flat fee would apply based on Ms. Chase's appointment date. The deadline waiver request date is January 31, 2022.

Because the fee applications were submitted more than one year and 90 days after the expiration of the deadline, I do not have authority to grant relief and award a fee. However, Section V. of the approved waiver policy provides that, "[u]pon recommendation of the IDS Director and a showing of exceptional circumstances, the IDS Commission may grant relief in addition to that specifically permitted under this policy." Pursuant to Section V. of the waiver policy, I am writing to recommend that the Commission grant relief to Ms. Chase.

B. Showing of Cause and Additional Information Gathered by Staff:

The showing of cause in the request is that each of the four cases described above were dismissed by the District Attorney with no notice of the dismissals provided to Ms. Chase by the Court. Ms. Chase became aware of the dismissals when she inquired with the Clerk of Superior Court as to the status in December 2021. Ms. Chase contacted IDS staff and submitted a deadline waiver request on January 31, 2022.

IDS staff reviewed Ms. Chase's payment history in the North Carolina Accounting System. According to NCAS, no payments have been issued for these fee applications.

C. Director's Recommendation:

Pursuant to Section V. of the Commission's fee deadline waiver policy, I recommend that the Commission approve exceptional relief in this case and award 100% of the claimed fees by Ms. Chase, for a total payment of \$885.00.

IDS Budget Update, April 8, 2022 Commission Meeting

1. **Expansion Budget Request**

IDS has requested the following items for the governor's short session expansion budget recommendations. The request was to keep this list minimal, so most of these also appeared in the 2021 long session request. IDS Administration is continuing to work on the strategic plan that will provide direction for our expansion requests going forward.

- a) Western Regional Defender: IDS requested funds for an additional regional defender to focus on western counties, especially the attorney deserts in Districts 24, 30A, and 30B.
- b) Special Counsel: With a caseload increase of 33% over the last six years, this request would add an additional Special Counsel position.
- c) Capital Defender: The murder rate statewide increased by 44% from FY2015 to FY2020 while PAC rosters statewide have seen a reduction in capital-capable PAC attorneys. This request would add 2 Assistant Capital Defenders and 1 Legal Assistant to the office to address caseload.
- d) Expansion of District 5 in Pender County: Pender County is part of District 5 in all other judicial districts (District Court, Superior Court, and Prosecutorial Districts) but not in Public Defender District 5. Expanding PD District 5 to Pender would address one of the state's attorney deserts in an area where the PD Office is already fully operational. This request would add 3 Assistant Public Defenders and 2 support staff.
- e) Separate District 1 and District 2: Having a separate PD Office in District 2 would reduce the administrative burden in both District 1 and District 2, allowing for more casework time among attorney staff and more direct participation in the PAC rosters. This request would add a Chief Public Defender in District 2 and upgrade one of the support staff to Administrative Assistant to manage the office.
- f) IT Director Compensation: IDS Administration has been unable to hire an IT Director after two rounds of posting. Many of the more qualified candidates who have applied have asked for a minimum compensation above IDS's range. This request would add appropriated compensation to the position, allowing IDS to post at a more competitive range.

2. **Budget Update**

The FY 2021-22 budget is likely to end the fiscal year with a balance in each of the IDS funds.

- a) PAC Fund: IDS is estimating that the PAC fund will end the year with between \$1.6 million and \$3 million in reserve.
- b) Public Defender Fund: With some funds held in reserve for equipment replacement and legal services needs, IDS is estimating that the PD Fund will end the year with about \$2 million dollars that will revert if not obligated.
- c) IDS Admin Fund: With some costs still undecided because of the as-yet unfilled Research Director and IT Director positions, IDS is estimating that the IDS Admin Fund will end the year with about \$200,000 that will revert if not obligated. Some of these funds may be used for IT upgrades.

§ 7A-498.4. Establishment of Commission on Indigent Defense Services.

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

- (1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former member of the North Carolina judiciary.
- (2) The Governor shall appoint one member, who shall be a nonattorney.
- (3) The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the President Pro Tempore of the Senate.
- (4) The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the Speaker of the House of Representatives.
- (5) The North Carolina Public Defenders Association shall appoint member, who shall be an attorney.
- (6) The North Carolina State Bar shall appoint one member, who shall be an attorney.
- (7) The North Carolina Bar Association shall appoint one member, who shall be an attorney.
- (8) The North Carolina Academy of Trial Lawyers shall appoint one member, who shall be an attorney.
- (9) The North Carolina Association of Black Lawyers shall appoint one member, who shall be an attorney.
- (10) The North Carolina Association of Women Lawyers shall appoint one member, who shall be an attorney.
- (11) The Commission shall appoint three members, who shall reside in different judicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of the North Carolina judiciary. One appointee shall be Native American. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.

(c) The terms of members appointed pursuant to subsection (b) of this section shall be as follows:

- (1) The initial appointments by the Chief Justice, the Governor, and the General Assembly shall be for four years.
- (2) The initial appointments by the Public Defenders Association and State Bar, and one appointment by the Commission, shall be for three years.
- (3) The initial appointments by the Bar Association and Trial Academy, and one appointment by the Commission, shall be for two years.
- (4) The initial appointments by the Black Lawyers Association and Women Lawyers Association, and one appointment by the Commission, shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person shall serve more than two consecutive four-year terms plus any initial term of less than four years.

(d) Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law

enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys.

(e) All members of the Commission are entitled to vote on any matters coming before the Commission unless otherwise provided by rules adopted by the Commission concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.

(f) Each member of the Commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired term. Removal of Commission members shall be in accordance with policies and procedures adopted by the Commission.

(g) A quorum for purposes of conducting Commission business shall be a majority of the members of the Commission.

(h) The Commission shall elect a Commission chair from the members of the Commission for a term of two years.

(i) The Director of Indigent Defense Services shall attend all Commission meetings except those relating to removal or reappointment of the Director or allegations of misconduct by the Director. The Director shall not vote on any matter decided by the Commission.

(j) Commission members shall not receive compensation but are entitled to be paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as applicable.

(k) The Commission shall hold its first meeting no later than September 15, 2000. All appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of this section shall be made by the appointing authorities by September 1, 2000. The appointee of the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the Commission shall make the appointments specified in subdivision (11) of subsection (b) of this section and shall elect its chair. (2000-144, s. 1; 2001-424, s. 22.11(b).)

ANNUAL REPORT
OF THE
COMMISSION ON INDIGENT DEFENSE SERVICES
JULY 1, 2020 – JUNE 30, 2021

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

03 | 15 | 2022

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The Commission on Indigent Defense Services

The Honorable Dorothy Hairston Mitchell, Vice-Chair
District 14, District Court Judge, Durham
Appointed by the IDS Commission



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



William "Gus" Anthony
Bogle & Anthony, PA, Gastonia
Appointed by the Speaker of the House



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



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



Ms. Caitlin Fenhagen
Criminal Justice Resource Department, Hillsborough
Appointed by the IDS Commission



Ms. Karen Franco
Crime Victim Advocate, Haliwa-Saponi Indian Tribe, Hollister
Appointed by the IDS Commission



Ms. Allison B. Garren
Teddy Meekins & Talbert, Shelby
Appointed by NC Advocates for Justice



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



Mr. Bryan Jones
Attorney at Law, Morganton
Appointed by President Pro Tempore of the Senate



Mr. Jan E. Pritchett
Schlosser & Pritchett, Greensboro
Appointed by North Carolina Bar Association



Ms. Stacey Rubain
Quander Rubain, Winston-Salem
Appointed by the North Carolina State Bar

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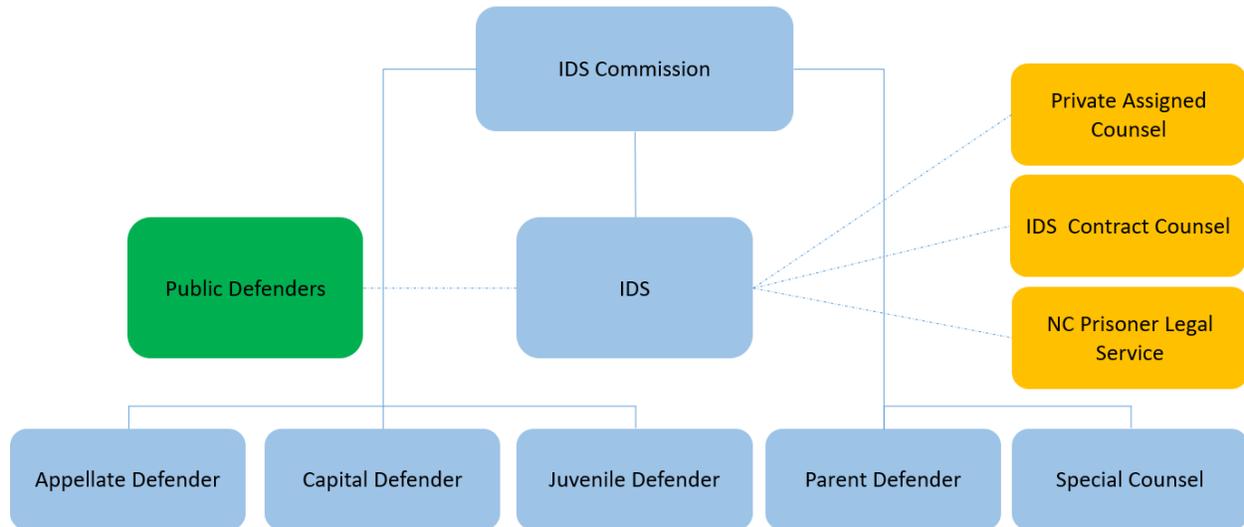
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Indigent Defense Services Organizational Structure



The 13-member volunteer **Commission on Indigent Defense Services** was established by the General Assembly in 2000. Since that time, it has offered oversight and guidance to the Office of Indigent Defense Services (IDS) and the North Carolina public defense community through periods of both growth and austerity. The Commission and its various committees develop and improve programs by which IDS provides legal representation to indigent persons.

Indigent Defense Services administers the North Carolina public defense system. It provides administrative support to the local Public Defender and Statewide Defender Offices; administers the PAC fund; and administers individually negotiated and large-scale contracts for services.

Eighteen **Public Defender Offices** in 19 Defender Districts (20 Judicial Districts) provide criminal and non-criminal trial level defense to eligible people. The Chief Public Defenders are appointed through a statutory process by the Senior Resident Superior Court Judge to serve four-year terms. Chief PDs and Assistant PDs are state-employed defenders.

Five **Statewide Defender Offices** provide oversight and supervision in specialized areas of the law. The Chiefs of each office are appointed by the Commission to serve four-year terms. They administer rosters of specialized attorneys; supervise in-house attorneys; and work with legislators, court actors, and other stakeholder groups on court improvement initiatives. The Chief and their Assistants are state-employed defenders.

North Carolina Prisoner Legal Services is a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in the state in response to the United States Supreme Court decision in *Bounds v. Smith*, 430 U.S. 817 (1977). IDS contracts with NCPLS to fulfill North Carolina’s constitutional obligation to provide inmates access to court.

Private Assigned Counsel, often referred to as “PAC,” are private attorneys who agree to accept appointment for eligible clients for an hourly rate or other arrangement. They are independent contractors. In districts without a public defender, IDS must rely on local volunteer bar committees to exercise supervision over the PAC.

IDS Contract Counsel refers to a subset of PAC who contract with IDS to cover specified case types with payment at a set rate. IDS administers both a large-scale contract system for criminal defense cases in 18 counties and individually negotiated contracts statewide.

Legislative Requests

The General Assembly's 2021 public defense appropriation allowed IDS to implement long overdue increases to the rates for Private Assigned Counsel (PAC) and to take a step forward in the expansion of public defender offices. We are grateful to the General Assembly for its recognition that North Carolina public defense system is struggling and hope that the increased PAC rates will slow the alarming attrition in the ranks of qualified attorneys choosing to do this work.

Failure to adequately fund public defense leads to this attrition in the PAC rosters. In the closing remarks of its 2021 report "Private Appointed Counsel Caseload and Compensation Study," the NC State Bar noted that experienced attorneys were choosing to leave the work and. The subcommittee conducting the study expressed concern that excessive caseloads were hindering the ability of lawyers to represent their clients effectively. This attrition has resulted in "attorney deserts" throughout the state, particularly in rural areas. System stakeholders have increasingly requested that IDS create public defender offices in the underserved areas of the state.

This attrition leads to significant costs to the system. From inefficient court rooms to wrongful convictions to increased appellate costs, the increased expenses associated with a shortage of qualified attorneys may be significant. Both research and anecdotal evidence overwhelmingly support one conclusion: North Carolina needs a statewide system of local public defender programs, supported by qualified and adequately compensated private counsel to handle conflict and overflow cases.

The Indigent Defense Services Commission and Office are committed to developing a statewide system of public defense that provides quality representation in the most cost-efficient manner possible. To further these goals, the IDS Commission and Office respectfully request the General Assembly continue to make the public defense a priority this session and continue to appropriate necessary funding for its support. Our request is as follows:

1. **Expand Regional Defender Program.** (\$164,688 Recurring; \$20,000 Non-recurring) Regional Defenders act as a resource to local attorneys, making them a key component in recruiting counsel to take on public defense work both in areas where the number of available attorneys is limited and in cases that the public defenders cannot take. IDS is requesting an additional Regional Defender to recruit and work with attorneys in the western counties of North Carolina, especially in Districts 24, 30A, and 30B, which is one of the largest attorney deserts in the state.
2. **Fund IT Needs to Promote Efficiency for Staff and Attorneys.** (\$250,000 Non-recurring) IDS is dependent on information technology to conduct our administrative and analytical work, but our technology is among the oldest and least secure of any state agency. IDS is requesting funds to outsource necessary upgrades to meet the demands of the ongoing eCourts project at AOC and to address technology and security concerns with aging data collection applications.

3. **Expand Local Public Defender Programs.** (\$737,000 Recurring; \$52,000 Non-recurring)
The IDS Commission and Office request funding for the next step in our long-term plan to expand public defender programs throughout the state. The funding would allow IDS to establish a standalone public defender program in District 2 (\$254,000 recurring) and expand the existing program in District 5 to cover Pender County (\$483,000 recurring; \$52,000 Non-recurring). Districts 1 and 2 are both currently covered by the same public defender office, which creates an administrative burden on the Chief Public Defender, who has to keep track of court schedules and PAC rosters in 12 diverse counties. The funds requested would allow these two districts to split, easing the administrative burden and allowing each Chief Public Defender to concentrate on the management of a single judicial district. District 5 currently covers only New Hanover County, but Pender is increasingly becoming an attorney desert. Expanding this office to cover all of District 5 would be an easy and efficient way to address the needs of the local bar and the court.
4. **Targeted Staffing Increases.** (\$616,000 Recurring; \$14,500 Non-recurring) IDS is requesting four targeted new positions in specialized defender programs where demand has grown beyond existing resources. (2 Assistant Capital Defenders, 2 Special Counsel).
 - a. Pursuant to Chapter 122C of the NC General Statutes, the Office of Special Counsel must accept all civil commitment admissions in the State. For many reasons, including the State's expanded use of private Psychiatric Residential Treatment Facilities, the office's caseload has increased at an alarming pace in recent years (33% over the last six years). (\$202,000 Recurring; \$7,250 Non-recurring)
 - b. The murder rate increased by 44% statewide from FY2015 to FY2020 (the most recent year for which we have data). To meet this dramatic increase in need, the Office of the Capital Defender recruited 40 new attorneys for the Capital Roster. However, during the same time (roughly September 2020 to present) 37 experienced attorneys removed themselves from the roster. Two new Assistant Capital Defenders are needed to augment the roster and position OCD to meet the increase in demand. (\$414,000 Recurring; \$7,250 Non-recurring)

Actions to Improve Cost-Effectiveness and Quality of Indigent Defense Services

Quality of counsel remains a particular concern for IDS. The pandemic exacerbated weaknesses in IDS's supply of qualified private attorneys, particularly for high-level felony and child welfare cases. After 10 years of reduced hourly rates, the availability on the court-appointed rosters has been a concern for the agency for several years. IDS's efforts to improve quality are focused on (1) continued expansion of the public defender system; (2) expansion of the role of regional defenders and their outreach to court appointed attorneys; and (3) providing resources to private attorneys to allow effective participation in remote court proceedings and client contact. While the General Assembly's 2021 public defense appropriation allowed IDS to implement long

overdue increases to the rates we pay PAC, IDS will continue to seek funding for rate restoration as needed.

Despite its financial limitations, IDS accomplished several projects during FY2021.

1. Contract Services Overhaul

In 2021, the IDS Commission and Office undertook an evaluation of the unit-based RFP system. While a planned, well-run, and properly resourced and supported contract system can lead to quality improvements while containing costs, IDS found that these benefits are not evenly realized across all contract categories or in all districts. Accordingly, IDS Staff conducted extensive research into improvements to the contract system that would ensure that contracts for every case category in every district are cost-efficient and promote quality representation. Staff determined that a Managed Assigned Counsel (MAC) system would provide a simplified and more cost-effective way of contracting with private counsel while continuing to afford both contract defenders and IDS the benefit of a monthly payment, continued access to resources and oversight through the Regional Defender program, and enhanced qualitative and quantitative data.

2. Expanded Grant Funding

As mentioned above, IDS researchers and the Office of the Juvenile Defender (OJD) collaborated on an extensive evaluation of juvenile defense delivery throughout North Carolina. Beginning in FY2019, the grant allowed OJD and IDS to target areas of critical need, expand contract defense for juveniles into under-resourced areas, and develop and deploy new resources for juvenile defenders. OJD learned in October 2021 that the grant had been renewed.

Throughout FY2021, the Office of the Parent Defender (OPD) worked with the NC Court Improvement Project to develop a contract management module for Parent Defense Contracts. IDS Fiscal Staff and OPD also worked with NC Department of Health and Human Services on a Memorandum of Understanding that would allow OPD to draw down limited federal funding for case related services—e.g., increased use of social workers—in child welfare cases. The MOU was signed on July 1, 2021, and the first disbursement was in January of 2022.

3. Cost Control Measures

To ensure the effective use of IDS's limited appropriations, IDS has implemented measures meant to encourage efficiency while continuing to promote quality representation. For example, in addition to revamping the contract system to be more cost-effective, IDS has increased oversight of expensive capital post-conviction cases to provide safeguards against unexpected costs. This oversight includes a pre-budgeting procedure for new counsel and a second level of review of requests for expert authorizations.

4. Mitigating the Impact of Covid-19

The global pandemic forced IDS, like many agencies, to make rapid and significant adjustments. While neither the Commission nor the Office predicted that the Governor's and Chief Justice's public health emergency orders would continue into the next fiscal year, much less the next calendar year, Staff undertook several initiatives intended to maintain workflow, protect the safety of those working in public defense, and protect client interests. Efforts through FY2020 and FY2021 focused on employee safety, ensuring continuity in workflow, and upgrading equipment. For PAC, IDS encouraged interim fee applications, which enabled us to pay attorneys for work they had already completed even when the final disposition in the matter was continued indefinitely. Other initiatives include streamlined billing for video conference, subsidized continuing legal education, and modified or extended service contracts as needed.

Volume and Cost of Cases Handled by Assigned Counsel or Public Defenders

TRENDS IN THE COST OF INDIGENT DEFENSE

IDS's total spending in any given year is impacted by:

- trends in court filings and dispositions,
- share of dispositions handled by PAC or public defenders,
- changes in the number of serious felony dispositions,
- legislative changes that increase complexity of indigent defense,
- hourly PAC rates,
- state government pay and benefit rates, and
- changes in the size of the public defender and contract programs.

While IDS spending was relatively stable through most of the last decade, this was at the expense of low hourly PAC rates and little change in the size of public defender program. Beginning in FY2016, several factors combined to increase the costs of indigent defense. One of these is payroll. Public defender payroll is over a third of the total IDS budget, meaning that legislative increases in state employee pay and benefit costs led to increases in total spending, driving up the cost of public defender offices by 7.8% in FY2021. IDS Administration expenses, while only 2.2% of total expenditures, grew 10.5% over FY2020 and 18.3% over the last four years.

Another cost driver is demand. Indigent defense demand was increasing in FY2020 before the pandemic significantly slowed court activity in the last quarter and throughout FY2021. While the final tally for FY2020 saw demand at only 2% below average, in FY 2021, demand fell an additional 11.8%.

PROJECTING FY2022

The cost of indigent defense will continue to increase in FY2022. Indigent defense resources will be strained by such issues as resolving the current backlog of cases, the increased cost of capital

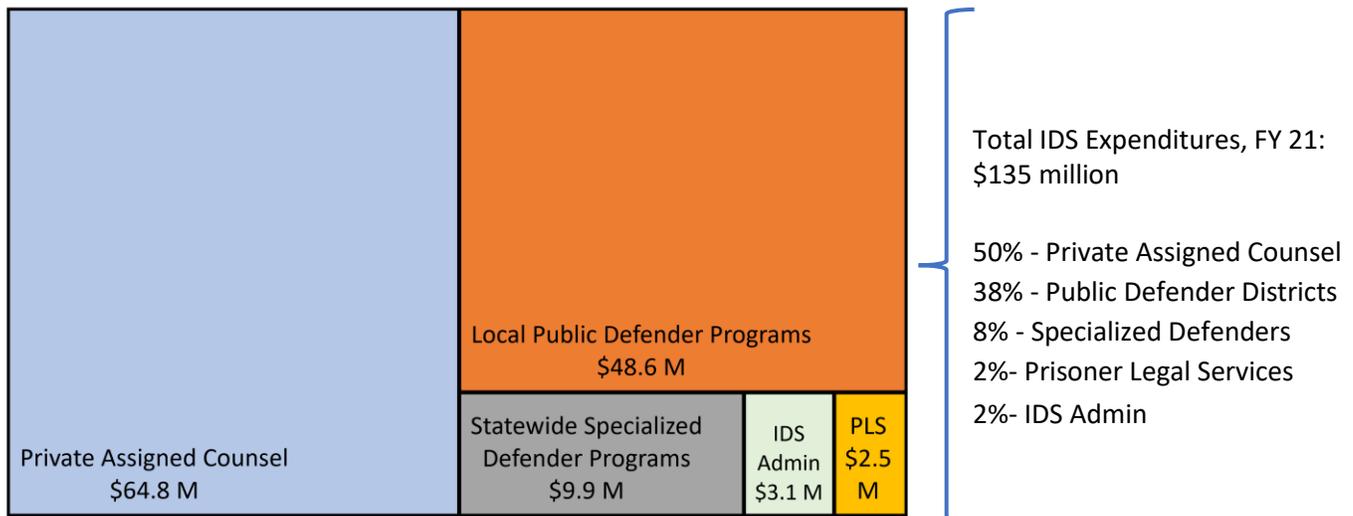
cases, continuances due to inadequate PAC rosters, and increased numbers of civil commitment cases.

To address the increasing number of attorney deserts across the state, IDS implemented across-the-board rate increases for PAC in FY2022. The rate restoration package, which was effective January 1, 2022, is projected to increase PAC spending by roughly 14% in the second half of the fiscal year and going forward. PAC spending thus far in FY2022 has been very similar to PAC spending in FY2019. Court activity has increased, but substantial backlogs and difficulties in scheduling jury trials have balanced these increases. If the similarity with FY2019 numbers continues through the remainder of the year, the 14% increase in demand during March-June 2022 will lead to projected PAC spending of \$80 million in FY 2022, a 23% increase over FY2021.

Clearing the backlog of cases created by the pandemic is one area of considerable concern. AOC’s data reveal an alarming case backlog in several case types for which IDS is responsible. According to their data, between August 31, 2019 and December 31, 2021 total pending cases increased by 19% for felonies, 6.6% for pending district court criminal cases and infractions, 27% for driving while impaired, and 13.4% in district civil cases. While IDS is not responsible for providing counsel in all cases that make up these backlogs, considered in conjunction with our own data on FY2022 year-to-date demand, IDS anticipates AOC efforts to clear the backlog will have a significant impact on PAC and local public defender programs. We are working closely with AOC to analyze data on expected increases in court activity to address the backlog of cases and to project the budgetary impact for FY2022 and FY2023.

IDS does not predict that we will end FY2022 with carryforward debt. However, the combined effect of clearing swelling court backlogs may result in shortfalls and carry-over debt as early as FY2024. Concern about earlier, more substantial shortfalls is heightened by the unpredictable nature of fiscal demands, which are subject to pressures outside of IDS control, such as the possibility that a Court may decide to expand right to counsel to include first appearance.

IDS Spending by Program:



- ☆ County and district public defender offices combined reported 69,479 dispositions and withdrawals, which represented approximately 30% of the indigent caseload in North Carolina, including criminal and non-criminal cases. Five statewide defender offices cover an additional 6%.
- ☆ IDS paid fee applications to 1,964 unique PAC attorneys around the State, including hourly rosters, flat-fee programs, and contract defenders.
- ☆ Hourly PAC reported 118,576 cases disposed, including potentially capital trials, capital appeals and post-conviction cases, adult non-capital cases, juvenile cases, and Guardian ad Litem cases, which represented 51% of all indigent cases.
- ☆ Non-RFP contractors reported 7,061 dispositions and withdrawals and RFP contractors reported 20,855 dispositions, for a total of 27,916 contractor dispositions, which represented approximately 12% of the indigent caseload in North Carolina, including criminal and non-criminal cases.

Five statewide defender offices play a critical role in ensuring that indigent defendants and respondents receive quality, cost-effective representation. The statewide defender offices provide direct representation and/or support and oversight in specialized case types where a defendant or respondent faces substantial loss of liberty.

In addition to screening applicants, all statewide defender offices provide advice and support on highly specialized areas of law to the nearly 2,000 PAC across the state. The Chiefs in each of the statewide defender offices also work closely with other state agencies and stakeholder groups to develop policies and draft proposed legislation affecting their clients, their offices, and IDS.

FY2021 State Defender dispositions by program are:

Program	Dispositions
Offices of the Appellate Defender	168
Capital Defender	164
Parent Defender	32
Juvenile Defender	85
Special Counsel	14,296

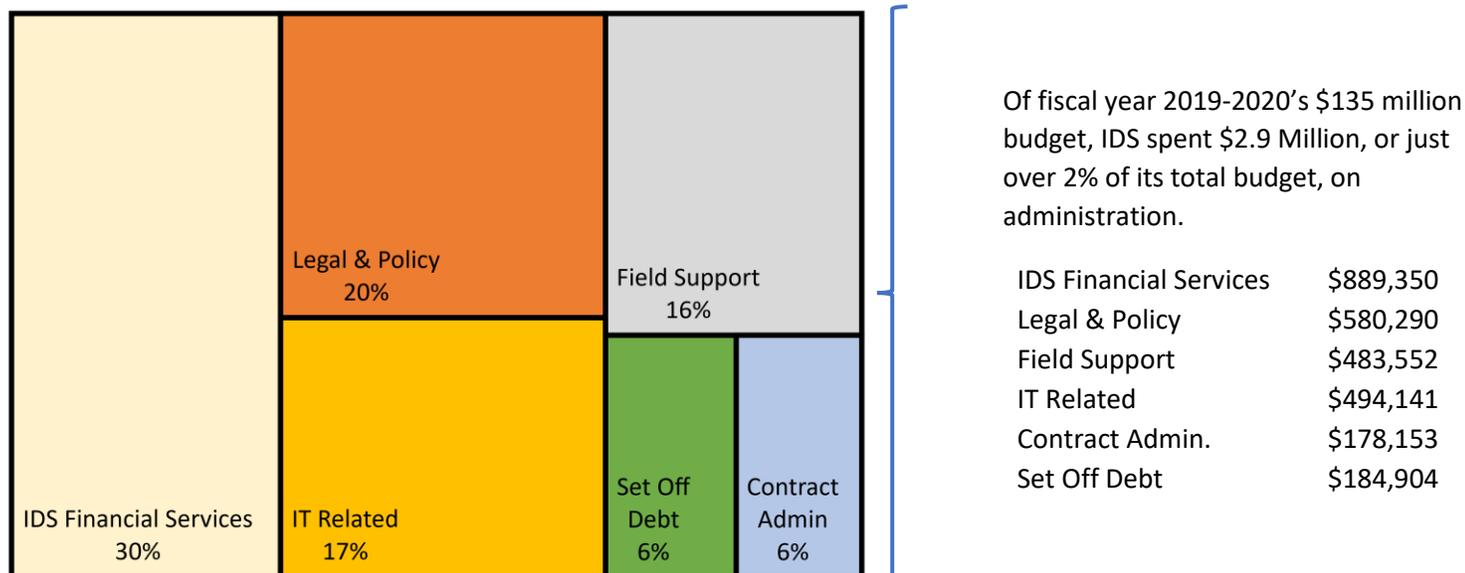
*To see where Local Defender Programs are located throughout the state, see Appendix A, “Public Defense Districts (Effective 1/1/2019).

*For detailed descriptions of the Statewide Defender Offices see Appendix B.

*Data on the volume and cost of cases handled in each district by PAC, contractors, and public defenders during fiscal year 2020-2021 is attached to this report as Appendix C.

*For a District-by-District accounting of fee applications and demand for private assigned counsel, contract counsel and experts see “Demand by County” attached as Appendix D.

Indigent Defense Services Administration



IDS's statutory charge is to:

- enhance oversight of the delivery of counsel and related services provided at State expense;
- improve the quality of representation and ensure the independence of counsel;
- establish uniform policies and procedures for the delivery of services;
- generate reliable statistical information to evaluate the services provided and funds expended; and
- deliver services in the most cost-effective manner without sacrificing quality representation.

IDS administration does this with a remarkably lean staff. Working closely with the Commission, the IDS Executive Director and Staff continuously evaluate cost and effectiveness of existing policies to ensure that quality representation is being provided in a fiscally responsible manner.

In addition to oversight and policy work, IDS provides direct support to public defense attorneys.

- ☆ Two Regional Defenders provide direct support to PAC attorneys who have contracted with IDS to provide representation. In addition to consulting with attorneys on substantive and procedural matters, these attorneys also work with the local bar, clerks'

offices, and judges to ensure that there are enough qualified attorneys to meet local demand.

- ☆ Forensic Resource Counsel assists North Carolina attorneys litigating scientific evidence issues. Through individual case consultations, continuing legal education programs, and the Forensic Resources website, Forensic Resource Counsel educates attorneys about relevant forensic science issues and assists with litigating claims related to forensic evidence at the trial, appellate and post-conviction phases of representation.
- ☆ Contract consulting attorneys provide case-by-case expert analysis in complex felonies and other cases, leading to increased quality in services and efficiencies in case processing.

FINANCIAL SERVICES

IDS Financial Services Staff is responsible for attorney and other vendor payments, as well as recoupment of money owed to the agency. In FY2021, IDS Financial Services:

- ☆ Processed 122,178 fee applications and invoices.
- ☆ Set 1,242 fee awards for attorney fee applications in potentially capital cases and appeals, including interim and final fees.
- ☆ Set fee awards for 3,415 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.
- ☆ Processed and paid 8,663 flat fee awards in criminal and non-criminal cases disposed of in the district court division in counties with flat-fee systems.

In the winter of 2021, the AOC issued the results of its third annual Internal Controls Audit of IDS pursuant to G.S. 7A-498.2(d). As in prior years, all internal controls tested by AOC were determined to be “Effective,” the highest rating possible.

Recoupment & Revenue Collection

	FY22	FY21	FY20
FMS Recoupment			
Attorney Fees – as ordered		\$4,227,308	\$4,130,834
Appointment Fees		\$927,297	\$920,890
	\$70 to IDS; \$5 to tech fund	\$70 to IDS; \$5 to tech fund (as of 12/1/2020)	\$55 to IDS; \$5 to tech fund (as of 12/1/2011)
Set Off Debt Recoupment			
Intercepted Tax Refunds or Lottery Winnings		\$4,569,001	\$4,851,345
Criminal Court Fees			
Court of Justice Fees	\$5 (as of 2/1/2022)	\$2 (as of 12/1/2020)	
Total Revenues		\$10,138,271	\$9,903,070

CRIMINAL COURT FEE REVENUE

FY2021 is the first year IDS received funding through the General Court of Justice fee. G.S. 7A-304(a), as amended by Session Law 2020-83, Section 10.1(b), imposed a new fee of \$2 in every criminal case in the superior or district court wherein the defendant is convicted, enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness. The \$2 fee also applies to infractions. This fee was effective on December 1, 2020. The table above shows the changes in IDS Receipts over the last three fiscal years. In the General Court of Justice fees, the revenues of \$414,665 reflect 7 months of collections in FY21 at the \$2 level.

(G.S. 7A-304(a), was subsequently amended by Session Law 2021-180, Section 16.15.(a), to increase the new fee from \$2 to \$5. This fee change did not apply to certain motor vehicle infractions. Effective on February 1, 2022, this will be reflected as a five-month period of increased criminal court fees in our FY 2022 revenues.)

RECOUPMENT AND SET-OFF DEBT

Total revenues from recoupment during FY2021 amounted to \$9.7 million, which represents a decrease of 1.8% from the prior fiscal year. Set off debt revenues (attorney and appointment fees recouped by intercepting a debtor's state income tax return or lottery proceeds) decreased by 5.8%, a large enough drop to offset the 2.0% increase in new FMS revenues and recoupments, which are discussed above.

As noted in the chart above, G.S. 7A-455.1, as amended by Session Law 2020-83, Section 10.1, increased the attorney appointment fee from \$60 to \$75. Of this, \$70 is remitted to the PAC Fund, while \$5 is remitted to the Court Information Technology Fund. The increased fee was effective December 1, 2020.

IDS recognizes several factors that could reduce recoupment:

- a shift towards more serious crimes, where recoupment opportunities tend to be lower;
- the reduction in entitlement to counsel for low level misdemeanors, where opportunities for recoupment are higher;
- increases in other monetary obligations for convicted defendants;
- increased representation under contracts, where attorneys have a lower incentive to submit complete information on their fee applications; and
- changes in state tax policy which impact frequency of tax refunds.

On an individual basis, though, recoupment always is impacted by the individual circumstances for each defendant.

Plans for Changes in Rules, Standards, or Regulations

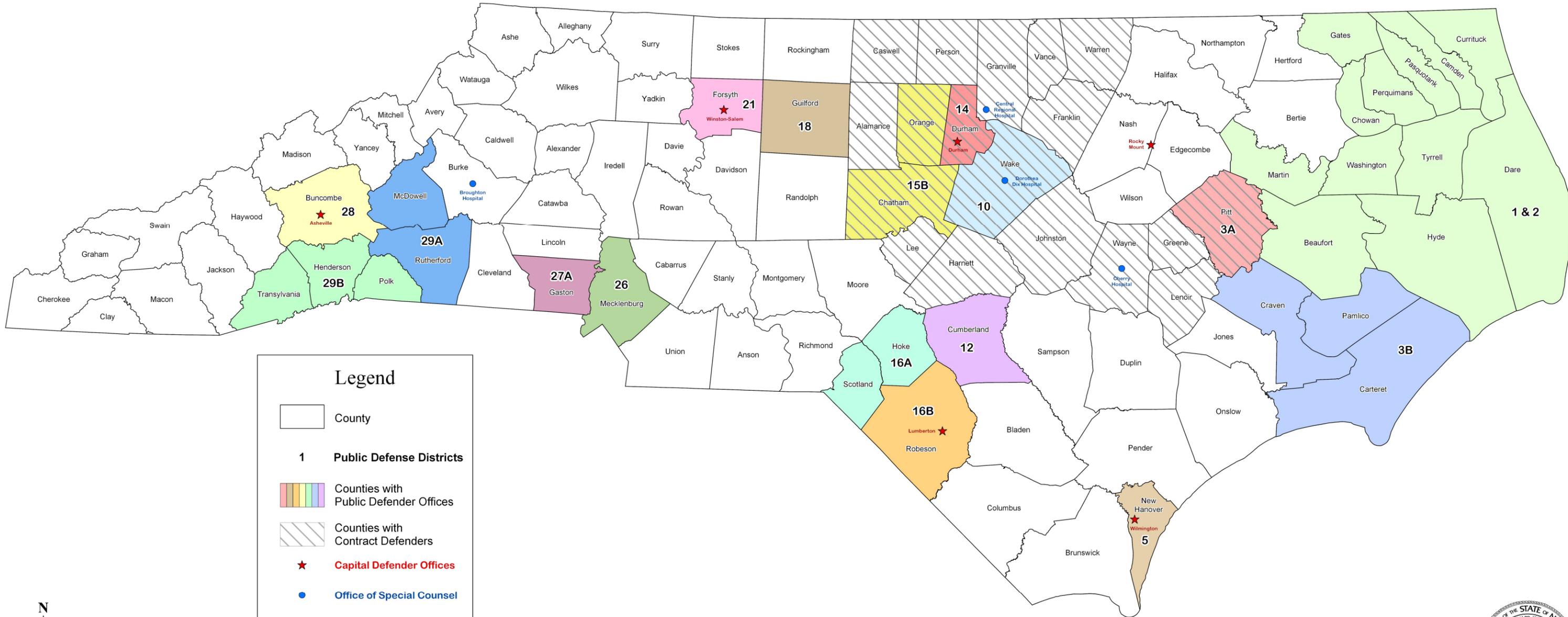
IDS is committed to a measured expansion of public defender offices in a way that addresses the areas of highest need first, that provides policymakers with a roadmap for future budget priorities, and that results in a statewide system of public defense that provides quality representation in the most efficient and cost-effective manner. IDS plans to present a long-term plan to the General Assembly in January 2023. In the meantime, in furtherance of IDS's commitment to provide quality client service in all 100 counties, IDS's plans for changes in rules, standards, or regulations, for FY2022 include:

1. Building a specialized roster of attorneys to represent juveniles charged with first degree murder through the development and promulgation of new rules and standards.
2. Developing internal rules and policies to improve recoupment procedures.

Conclusion

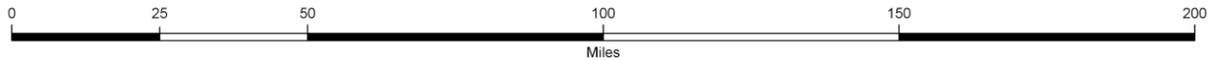
The Indigent Defense Services Commission and Office continue to work on a long-term plan that identifies how best to provide public defense in all areas of the state, using both private assigned counsel and public defender programs. IDS wants measured expansion of public defender offices in a way that will address the areas of highest need first, provide policymakers with a roadmap for future budget priorities, and result in a statewide system of public defense that provides quality representation in the most efficient and cost-effective manner.

Public Defense Districts (Effective 1/1/2019)



Legend

- County
- 1** Public Defense Districts
- Counties with Public Defender Offices
- Counties with Contract Defenders
- Capital Defender Offices
- Office of Special Counsel



Printed by the NC General Assembly, February 13, 2018.



Up-to-date through December 31, 2021. Does not include Public Defender District 27B (Cleveland and Lincoln Counties), which was established by S.L. 2021-180, Section 17.4(a).

Appendix B: COST AND CASE DATA ON REPRESENTATION OF INDIGENTS

July 1, 2020-June 30, 2021

	Number of Cases*	Total Cost**
Assigned Private Counsel		
Potentially Capital Trial	1,242	\$5,493,642
Capital appeals/post-conviction	179	\$1,068,413
Adult non-capital cases	112,445	\$40,051,846
Juvenile cases	4,100	\$1,596,831
Guardian ad Litem assigned by IDS	610	\$257,825
Total	118,576	\$48,468,557
Contracted Legal Services		
Individually Negotiated Contracts	7,061	\$2,220,131
RFP Contracts	20,855	\$7,950,205
Legal Services to Inmates	12	\$2,520,056
Total	146,492	\$12,690,392
Public Defender Offices		
District 1 & 2***	2,365	\$2,492,988
District 3A	2,993	\$2,153,505
District 3B	1,517	\$1,416,973
District 5 (New Hanover County)	4,944	\$2,455,221
District 10	7,105	\$4,710,345
District 12	4,024	\$2,420,695
District 14	8,039	\$3,376,016
District 15B	2,034	\$1,614,045
District 16A	2,269	\$1,445,635
District 16B	1,772	\$1,828,194
District 18	5,327	\$4,472,809
District 21	3,738	\$3,223,926
District 26	9,131	\$9,504,790
District 27A	3,656	\$2,533,709
District 28	5,210	\$2,239,296
District 29A	3,604	\$1,388,851
District 29B	1,751	\$1,366,511
Total	69,479	\$48,643,510
Office of the Appellate Defender	206	\$3,469,483
Office of the Capital Defender	164	\$4,315,987
Office of Special Counsel	14,296	\$1,649,388
Office of the Juvenile Defender	85	\$513,283
TOTAL DISPOSITIONS PAC+PD	230,722	\$119,237,317
Support Services (PAC only)****		
Transcripts, records, and briefs		\$344,312
Expert witness fees		\$2,206,752
Investigator fees		\$3,487,021
Interpreters & Translators		\$126,629
Lay Witness Expenses		\$0
Video Transmission		\$18,903
Total		\$6,183,617
Set-Off Debt Collection		\$184,904
Indigent Defense Services		\$2,964,242
TOTAL INDIGENT DEFENSE SERVICES		\$129,083,362.26

* 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 FY21. 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 \$2.9 Million in fee applications received in FY2021 but paid in FY2022, these demand figures are larger than cash figures. These figures exclude county funded positions in PD and IDS offices, the Mecklenburg salary supplement for attorneys, registration fees collected to defray training costs, and payments for 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. 812 of the reported FY21 dispositions were in District 2.

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

Appendix C: Recoupment and IDS Cost by County FY2021

County	FMS Recoupment		Set Off Debt	Total	Non-Capital PAC Demand	PD Office Expense	Total Cost
	Atty Fees	Appt Fees					
Alamance	\$91,052	\$28,295	\$99,667	\$219,014	\$1,080,195		\$1,080,195
Alexander	\$35,607	\$7,751	\$27,289	\$70,647	\$228,391		\$228,391
Alleghany	\$10,173	\$2,364	\$2,572	\$15,108	\$69,974		\$69,974
Anson	\$12,225	\$550	\$48,987	\$61,762	\$172,966		\$172,966
Ashe	\$30,399	\$9,230	\$8,955	\$48,584	\$151,124		\$151,124
Avery	\$23,147	\$3,761	\$2,734	\$29,641	\$130,396		\$130,396
Beaufort	\$56,807	\$14,419	\$24,089	\$95,316	\$422,616	\$347,349	\$769,966
Bertie	\$8,936	\$2,010	\$8,751	\$19,697	\$126,160		\$126,160
Bladen	\$29,111	\$4,231	\$15,863	\$49,205	\$379,222		\$379,222
Brunswick	\$121,302	\$18,997	\$46,830	\$187,129	\$1,270,658		\$1,270,658
Buncombe	\$56,671	\$20,923	\$48,248	\$125,843	\$1,218,760	\$1,888,652	\$3,107,413
Burke	\$22,786	\$3,380	\$72,051	\$98,217	\$747,882		\$747,882
Cabarrus	\$109,479	\$17,867	\$126,670	\$254,016	\$862,869		\$862,869
Caldwell	\$25,133	\$4,785	\$92,054	\$121,972	\$851,875		\$851,875
Camden	\$1,545	\$1,006	\$969	\$3,520	\$10,081	\$45,203	\$55,284
Carteret	\$49,002	\$8,744	\$11,314	\$69,061	\$390,238	\$581,764	\$972,002
Caswell	\$11,388	\$3,306	\$9,311	\$24,005	\$112,499		\$112,499
Catawba	\$45,567	\$982	\$121,248	\$167,797	\$1,085,135		\$1,085,135
Chatham	\$4,099	\$5,113	\$12,203	\$21,415	\$133,708	\$390,172	\$523,880
Cherokee	\$21,080	\$4,428	\$12,239	\$37,747	\$287,259		\$287,259
Chowan	\$5,216	\$1,650	\$8,241	\$15,108	\$53,147	\$118,162	\$171,309
Clay	\$7,986	\$1,790	\$2,567	\$12,343	\$88,230		\$88,230
Cleveland	\$71,890	\$23,043	\$65,785	\$160,718	\$684,673		\$684,673
Columbus	\$52,268	\$9,928	\$37,463	\$99,658	\$707,946		\$707,946
Craven	\$75,033	\$10,333	\$48,864	\$134,231	\$665,923	\$458,685	\$1,124,608
Cumberland	\$64,451	\$16,810	\$82,551	\$163,811	\$1,588,913	\$1,742,860	\$3,331,774
Currituck	\$25,305	\$5,459	\$8,043	\$38,807	\$43,445	\$215,706	\$259,151
Dare	\$42,822	\$8,637	\$19,123	\$70,582	\$70,941	\$350,521	\$421,463
Davidson	\$97,030	\$14,869	\$157,927	\$269,826	\$857,260		\$857,260
Davie	\$32,733	\$5,263	\$19,562	\$57,558	\$250,441		\$250,441
Duplin	\$80,322	\$9,750	\$25,109	\$115,181	\$423,264		\$423,264
Durham	\$21,033	\$9,537	\$59,821	\$90,390	\$1,042,213	\$2,658,696	\$3,700,909
Edgecombe	\$40,624	\$7,350	\$28,679	\$76,654	\$366,740		\$366,740
Forsyth	\$93,055	\$31,019	\$149,580	\$273,654	\$1,211,212	\$2,369,339	\$3,580,551
Franklin	\$36,614	\$9,631	\$29,117	\$75,362	\$468,277		\$468,277
Gaston	\$17,815	\$25,327	\$68,671	\$111,813	\$683,740	\$1,941,027	\$2,624,767
Gates	\$3,852	\$1,285	\$1,511	\$6,648	\$10,849	\$51,547	\$62,396
Graham	\$1,985	\$275	\$3,821	\$6,081	\$155,598		\$155,598
Granville	\$20,957	\$6,305	\$33,957	\$61,218	\$330,375		\$330,375

	FMS Recoupment		Set Off Debt	Total	Non-Capital PAC Demand	PD Office Expense	Total Cost
Greene	\$9,257	\$2,153	\$11,916	\$23,326	\$170,711		\$170,711
Guilford	\$109,934	\$34,052	\$188,732	\$332,717	\$1,414,120	\$3,529,881	\$4,944,001
Halifax	\$46,648	\$7,434	\$57,345	\$111,427	\$732,284		\$732,284
Harnett	\$26,146	\$7,757	\$39,532	\$73,434	\$884,870		\$884,870
Haywood	\$50,610	\$7,860	\$52,933	\$111,403	\$709,276		\$709,276
Henderson	\$22,561	\$5,322	\$77,005	\$104,888	\$510,211	\$637,323	\$1,147,534
Hertford	\$10,647	\$1,487	\$12,003	\$24,137	\$113,184		\$113,184
Hoke	\$10,721	\$2,475	\$11,725	\$24,922	\$146,626	\$422,333	\$568,959
Hyde	\$2,273	\$620	\$2,943	\$5,836	\$17,880	\$22,998	\$40,878
Iredell	\$133,057	\$27,605	\$84,366	\$245,028	\$871,496		\$871,496
Jackson	\$29,583	\$5,253	\$17,812	\$52,647	\$340,496		\$340,496
Johnston	\$64,160	\$20,538	\$48,647	\$133,345	\$1,361,606		\$1,361,606
Jones	\$9,243	\$1,397	\$6,253	\$16,893	\$68,204		\$68,204
Lee	\$19,693	\$5,937	\$41,846	\$67,476	\$447,252		\$447,252
Lenoir	\$43,854	\$7,342	\$63,488	\$114,684	\$785,949		\$785,949
Lincoln	\$50,409	\$10,420	\$50,985	\$111,814	\$514,352		\$514,352
Macon	\$39,877	\$6,088	\$15,121	\$61,086	\$402,342		\$402,342
Madison	\$23,984	\$5,637	\$2,838	\$32,460	\$133,600		\$133,600
Martin	\$33,838	\$5,196	\$9,997	\$49,031	\$159,034	\$177,640	\$336,674
McDowell	\$54,662	\$14,889	\$42,565	\$112,116	\$316,062	\$500,780	\$816,842
Mecklenburg	\$51,895	\$2,921	\$198,323	\$253,139	\$3,330,792	\$7,129,036	\$10,459,829
Mitchell	\$19,141	\$3,490	\$8,237	\$30,869	\$138,400		\$138,400
Montgomery	\$9,561	\$1,665	\$18,265	\$29,490	\$102,313		\$102,313
Moore	\$59,559	\$9,651	\$51,029	\$120,239	\$783,998		\$783,998
Nash	\$89,700	\$18,577	\$66,128	\$174,405	\$599,818		\$599,818
New Hanover	\$98,800	\$21,496	\$129,334	\$249,630	\$944,695	\$1,811,385	\$2,756,081
Northampton	\$5,127	\$869	\$8,121	\$14,117	\$124,147		\$124,147
Onslow	\$134,964	\$22,371	\$63,576	\$220,911	\$1,097,449		\$1,097,449
Orange	\$35,510	\$11,373	\$22,154	\$69,037	\$211,962	\$908,698	\$1,120,660
Pamlico	\$12,925	\$2,106	\$6,327	\$21,358	\$39,445	\$45,081	\$84,526
Pasquotank	\$23,539	\$7,248	\$14,889	\$45,676	\$100,013	\$336,247	\$436,260
Pender	\$36,880	\$6,199	\$22,988	\$66,067	\$345,099		\$345,099
Perquimans	\$4,081	\$1,968	\$6,859	\$12,907	\$21,067	\$114,197	\$135,264
Person	\$22,543	\$6,570	\$32,298	\$61,411	\$321,700		\$321,700
Pitt	\$50,686	\$13,398	\$97,673	\$161,757	\$670,702	\$1,756,302	\$2,427,005
Polk	\$3,820	\$1,335	\$10,241	\$15,396	\$99,733	\$157,830	\$257,563
Randolph	\$76,300	\$14,650	\$89,252	\$180,201	\$938,613		\$938,613
Richmond	\$14,383	\$1,197	\$91,960	\$107,540	\$737,046		\$737,046
Robeson	\$28,383	\$4,123	\$50,996	\$83,502	\$2,123,123	\$1,323,375	\$3,446,498
Rockingham	\$114,708	\$16,970	\$67,131	\$198,808	\$818,672		\$818,672
Rowan	\$127,572	\$26,556	\$120,598	\$274,725	\$1,092,003		\$1,092,003
Rutherford	\$60,884	\$19,888	\$50,044	\$130,815	\$221,347	\$642,953	\$864,300

	FMS Recoupment		Set Off Debt	Total	Non-Capital PAC Demand	PD Office Expense	Total Cost
Sampson	\$37,070	\$9,425	\$30,804	\$77,299	\$336,349		\$336,349
Scotland	\$4,640	\$458	\$12,836	\$17,935	\$232,036	\$611,403	\$843,438
Stanly	\$13,015	\$2,616	\$49,863	\$65,494	\$292,656		\$292,656
Stokes	\$36,049	\$8,488	\$22,935	\$67,473	\$372,152		\$372,152
Surry	\$92,067	\$13,543	\$39,157	\$144,766	\$611,377		\$611,377
Swain	\$25,925	\$2,675	\$5,527	\$34,128	\$212,106		\$212,106
Transylvania	\$12,420	\$2,558	\$20,112	\$35,090	\$195,015	\$255,649	\$450,664
Tyrrell	\$5,209	\$1,451	\$3,368	\$10,029	\$20,280	\$38,859	\$59,138
Union	\$104,559	\$16,128	\$103,886	\$224,572	\$1,407,021		\$1,407,021
Vance	\$20,660	\$8,391	\$43,624	\$72,675	\$118,826		\$118,826
Wake	\$85,715	\$41,112	\$280,568	\$407,396	\$2,798,582	\$3,842,710	\$6,641,291
Warren	\$7,842	\$2,845	\$12,768	\$23,454	\$20,948		\$20,948
Washington	\$10,564	\$2,752	\$5,707	\$19,023	\$72,282	\$57,099	\$129,381
Watauga	\$52,777	\$8,384	\$14,641	\$75,802	\$328,910		\$328,910
Wayne	\$68,776	\$17,411	\$82,940	\$169,126	\$996,641		\$996,641
Wilkes	\$46,715	\$12,552	\$56,524	\$115,791	\$383,352		\$383,352
Wilson	\$83,597	\$8,791	\$36,855	\$129,243	\$610,448		\$610,448
Yadkin	\$55,357	\$7,842	\$32,331	\$95,531	\$343,268		\$343,268
Yancey	\$35,731	\$5,392	\$7,646	\$48,769	\$127,666		\$127,666
Totals	\$4,227,308	\$927,297	\$4,569,001	\$9,723,606	\$53,876,801	\$37,481,463	\$91,358,264

Appendix D: Demand by County

	Number of Payments	Demand
<u>District 1</u>		
Camden	17	\$12,610
Chowan	80	\$54,304
Currituck	103	\$74,397
Dare	168	\$74,463
Gates	18	\$15,785
Pasquotank	174	\$229,775
Perquimans	47	\$28,997
District Total	607	\$490,331
<u>District 2</u>		
Beaufort	1,104	\$440,942
Hyde	52	\$19,877
Martin	457	\$195,168
Tyrrell	58	\$20,280
Washington	186	\$88,035
District Total	1,857	\$764,302
<u>District 3A</u>		
Pitt	1,470	\$843,152
District Total	1,470	\$843,152
<u>District 3B</u>		
Carteret	659	\$400,979
Craven	1,749	\$855,140
Pamlico	113	\$55,789
District Total	2,521	\$1,311,908
<u>District 4A</u>		
Duplin	985	\$488,431
Jones	216	\$78,217
Sampson	1,288	\$377,096
District Total	2,489	\$943,743
<u>District 4B</u>		
Onslow	4,451	\$1,276,434
District Total	4,451	\$1,276,434
<u>District 5</u>		
New Hanover	2,977	\$1,139,009
Pender	1,114	\$477,967
District Total	4,091	\$1,616,976

<u>District 6A</u>		
Halifax	2,025	\$939,881
District Total	2,025	\$939,881
<u>District 6B</u>		
Bertie	407	\$201,195
Hertford	427	\$177,667
Northampton	393	\$239,941
District Total	1,227	\$618,803
<u>District 7A</u>		
Nash	1,810	\$760,344
District Total	1,810	\$760,344
<u>District 7B/C</u>		
Edgecombe	1,173	\$447,057
Wilson	1,841	\$759,797
District Total	3,014	\$1,206,854
<u>District 8A</u>		
Greene	370	\$277,447
Lenoir	1,593	\$957,075
District Total	1,963	\$1,234,522
<u>District 8B</u>		
Wayne	2,415	\$1,157,334
District Total	2,415	\$1,157,334
<u>District 9</u>		
Franklin	1,199	\$479,108
Granville	1,094	\$352,699
Person	962	\$350,234
Vance	1,267	\$291,449
Warren	299	\$42,393
District Total	4,821	\$1,515,883
<u>District 10</u>		
Wake	7,886	\$3,334,200
District Total	7,886	\$3,334,200
<u>District 11A</u>		
Harnett	1,654	\$1,151,048
Lee	884	\$515,649
District Total	2,538	\$1,666,698

<u>District 11B</u>		
Johnston	1,849	\$1,546,673
District Total	1,849	\$1,546,673
<u>District 12</u>		
Cumberland	3,157	\$2,042,195
District Total	3,157	\$2,042,195
<u>District 13A</u>		
Bladen	961	\$477,549
Columbus	1,878	\$1,081,926
District Total	2,839	\$1,559,475
<u>District 13B</u>		
Brunswick	3,393	\$1,403,314
District Total	3,393	\$1,403,314
<u>District 14</u>		
Durham	2,089	\$1,194,651
District Total	2,089	\$1,194,651
<u>District 15A</u>		
Alamance	3,422	\$1,277,206
District Total	3,422	\$1,277,206
<u>District 15B</u>		
Chatham	452	\$136,048
Orange	446	\$244,635
District Total	898	\$380,684
<u>District 16A</u>		
Hoke	266	\$350,215
Scotland	553	\$320,618
District Total	819	\$670,833
<u>District 16B</u>		
Robeson	4,166	\$2,292,755
District Total	4,166	\$2,292,755
<u>District 17A</u>		
Caswell	360	\$118,389
Rockingham	2,561	\$914,856
District Total	2,921	\$1,033,245

<u>District 17B</u>		
Stokes	1,174	\$393,848
Surry	2,265	\$675,046
District Total	3,439	\$1,068,895
<u>District 18</u>		
Guilford	3,844	\$1,905,022
District Total	3,844	\$1,905,022
<u>District 19A</u>		
Cabarrus	2,583	\$922,974
District Total	2,583	\$922,974
<u>District 19B</u>		
Montgomery	376	\$233,311
Randolph	3,058	\$1,103,537
District Total	3,434	\$1,336,848
<u>District 19C</u>		
Rowan	3,564	\$1,262,750
District Total	3,564	\$1,262,750
<u>District 19D</u>		
Moore	2,683	\$829,337
District Total	2,683	\$829,337
<u>District 20A</u>		
Anson	779	\$261,272
Richmond	2,449	\$823,333
Stanly	902	\$405,651
District Total	4,130	\$1,490,256
<u>District 20B</u>		
Union	3,402	\$1,571,189
District Total	3,402	\$1,571,189
<u>District 21</u>		
Forsyth	4,475	\$1,583,217
District Total	4,475	\$1,583,217
<u>District 22A</u>		
Alexander	655	\$271,026
Iredell	3,304	\$910,566
District Total	3,959	\$1,181,592

District 22B		
Davidson	3,359	\$928,998
Davie	770	\$257,560
District Total	4,129	\$1,186,558

District 23		
Alleghany	227	\$76,525
Ashe	443	\$158,336
Wilkes	1,615	\$391,964
Yadkin	745	\$354,936
District Total	3,030	\$981,761

District 24		
Avery	513	\$141,363
Madison	550	\$138,241
Mitchell	532	\$167,827
Watauga	1,193	\$329,536
Yancey	432	\$127,970
District Total	3,220	\$904,937

District 25A		
Burke	2,583	\$922,974
Caldwell	3,294	\$865,985
District Total	5,877	\$1,788,959

District 25B		
Catawba	4,067	\$1,194,380
District Total	4,067	\$1,194,380

District 26		
Mecklenburg	5,303	\$4,084,591
District Total	5,303	\$4,084,591

District 27A		
Gaston	2,125	\$848,385
District Total	2,125	\$848,385

District 27B		
Cleveland	2,991	\$745,786
Lincoln	1,766	\$545,082
District Total	4,757	\$1,290,868

District 28		
Buncombe	3,094	\$1,332,383
District Total	3,094	\$1,332,383

<u>District 29A</u>		
McDowell	508	\$326,227
Rutherford	643	\$291,563
District Total	1,151	\$617,790
<u>District 29B</u>		
Henderson	1,241	\$628,194
Polk	275	\$121,601
Transylvania	412	\$195,235
District Total	1,928	\$945,031
<u>District 30A</u>		
Cherokee	625	\$304,018
Clay	267	\$88,230
Graham	243	\$155,861
Macon	1,020	\$449,640
Swain	523	\$226,305
District Total	2,678	\$1,224,053
<u>District 30B</u>		
Haywood	2,076	\$775,205
Jackson	1,031	\$388,568
District Total	3,107	\$1,163,772
GRAND TOTAL	150,717	\$ 63,797,940

Notes: Reports through FY07 included only payments to attorneys; FY08 through FY21 data include 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 FY20 but not paid until FY21 but includes those held for payment at end of FY21.