

## **Recommendations of the Joint Legislative Oversight Committee's Subcommittee on the Future of Indigent Defense Services and the Innocence Inquiry Commission**

### **Indigent Defense Services**

1. Modify the membership and appointment of the Commission on Indigent Defense Services as provided in the attached bill draft. (2015-SA-18)
2. Maintain a Commission that is directly accountable to the General Assembly, and that has primary responsibility and authority over the delivery of indigent representation and management of the indigent defense budget, by modifying the provisions of G.S. 7A-498.2(e) as follows:

"(e) The Director of the Administrative Office of the Courts may modify the budget of the Office of Indigent Defense Services and may use funds appropriated to the Office ~~without the approval of the Commission or the Office of Indigent Defense Services.~~ only after direct consultation with a quorum of the Commission."
3. Allow the Office of Indigent Defense Services to assess the need for new satellite offices to handle potentially capital cases at the trial level, to be staffed by full-time assistant capital defenders and appropriate support staff, in areas in which the use of salaried attorneys will ensure that effective representation is provided in a cost-effective manner. The Office should consider the addition of capital defenders to existing public defender offices before the creation of separate satellite offices.
4. If Recommendation #3 is adopted, require the Office of Indigent Defense Services, as part of its annual report to the General Assembly, to provide data regarding the determination to create any new satellite offices, including the counties to be served by the offices, the number of attorney appointments made in the counties served in the past three fiscal years, and the current number of eligible private counsel and local public defenders who are available in those counties.
5. Direct IDS and the Conference of District Attorneys to consult and determine what changes can be made to the current system of identifying, from the pool of cases in which a defendant is charged with first-degree or undesignated murder, those that merit the cost of a capital prosecution and defense, what steps can be taken to facilitate the appointment of local counsel in most cases, and to make any recommendations for potential changes. Any recommendations shall be made in time for consideration by the General Assembly during the 2017 legislative session.
6. Consider the establishment of regional public defenders offices to assist in alleviating scheduling conflicts resulting from appointed attorneys being appointed to cases in multiple jurisdictions.

7. Expand pre-trial programs, Diversion programs, and mediation to help alleviate climbing caseloads, aging cases, and increasing costs.
8. Require IDS to collect data on the total final costs of capital and potentially capital cases in addition to the fee application information.
9. Improve the pay rate for assistant public defenders, private assigned counsel, and assistant district attorneys.

### **Innocence Inquiry Commission**

10. Increase effectiveness by narrowing offenses for direct inmate applications to homicide, robbery, and sex offenses, but allowing referrals by attorneys and agencies for all felonies.
11. Increase transparency and judicial efficiency by providing *confidential* case status updates to the district attorney, appointed counsel and referring counsel, if any, every six months for all cases in formal review. This will ensure the defense and prosecution are making informed decisions regarding the possibility for relief and considering the most efficient and effective way to address the issues presented, if any. **(Note: This recommendation is included in H678 which is currently in Senate Rules)**
12. When a case is moved to formal inquiry and a defendant has informed the NCIC that he/she would like a specific attorney with existing knowledge of the case to represent them, the Director shall inform Indigent Defense Services that request for consideration.
13. Increase judicial efficiency and effectiveness by providing that cases can by-pass the eight member panel if the district attorney and appointed counsel consent to a finding of “sufficient evidence to merit judicial review” based on information provided during confidential case updates.
14. Provide the district attorney and the defendant notice and an opportunity to be heard before protective orders are used.
15. Establish reporting of the Innocence Inquiry Commission staff to the AOC Director to ensure separation and independence of administrative and adjudicative functions.
16. Require each co-defendant to have his or her case simultaneously investigated with their co-defendant case(s) or waive the right to future application. Allow exceptions with good cause shown and approval of the Commission Chair.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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BILL DRAFT 2015-SA-18 [v.4] (02/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
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Short Title: Indigent Defense Changes. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO AMEND THE APPOINTMENT OF THE COMMISSION ON INDIGENT  
DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-498.4 reads as rewritten:

**"§ 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~~ superior court judge, one member, who shall be an active or former district court judge, and shall additionally appoint the Director of the Administrative Office of the Courts as a member of the Commission. The Director of the Administrative Office of the Courts may designate an employee of the Administrative Office of the Courts to serve as his or her designee on the Commission.
- (2) The Governor shall appoint ~~one member, who~~ two members, at least one of whom shall be a nonattorney.
- (3) The General Assembly shall appoint ~~one member,~~ three members, who shall be ~~an attorney,~~ attorneys, upon the recommendation of the President Pro Tempore of the Senate. In addition, one of the three members shall be appointed based upon the recommendation of the North Carolina Public Defenders Association.
- (4) The General Assembly shall appoint ~~one member,~~ three members, who shall be ~~an attorney,~~ attorneys, upon the recommendation of the Speaker of the House of Representatives. In addition, one of the three members shall be

1 appointed based upon the recommendation of the North Carolina Advocates  
2 for Justice.

3 ~~(5) — The North Carolina Public Defenders Association shall appoint member, who~~  
4 ~~shall be an attorney.~~

5 ~~(6)(5)~~ The North Carolina State Bar shall appoint one member, who shall be an  
6 attorney.

7 ~~(7)(6)~~ The North Carolina Bar Association shall appoint one member, who shall be  
8 an attorney.

9 ~~(8) — The North Carolina Academy of Trial Lawyers shall appoint one member,~~  
10 ~~who shall be an attorney.~~

11 ~~(9) — The North Carolina Association of Black Lawyers shall appoint one member,~~  
12 ~~who shall be an attorney.~~

13 ~~(10) — The North Carolina Association of Women Lawyers shall appoint one~~  
14 ~~member, who shall be an attorney.~~

15 ~~(11) — The Commission shall appoint three members, who shall reside in different~~  
16 ~~judicial districts from one another. One appointee shall be a nonattorney, and~~  
17 ~~one appointee may be an active member of the North Carolina judiciary. One~~  
18 ~~appointee shall be Native American. The initial three members satisfying this~~  
19 ~~subdivision shall be appointed as provided in subsection (k) of this section.~~

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

22 ~~(1) — The initial appointments by the Chief Justice, the Governor, and the General~~  
23 ~~Assembly shall be for four years.~~

24 ~~(2) — The initial appointments by the Public Defenders Association and State Bar, and one~~  
25 ~~appointment by the Commission, shall be for three years.~~

26 ~~(3) — The initial appointments by the Bar Association and Trial Academy, and one~~  
27 ~~appointment by the Commission, shall be for two years.~~

28 ~~(4) — The initial appointments by the Black Lawyers Association and Women Lawyers~~  
29 ~~Association, and one appointment by the Commission, shall be for one year.~~

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

34 (d) Persons appointed to the Commission shall have significant experience in the defense  
35 of criminal or other cases subject to this Article or shall have demonstrated a strong commitment  
36 to quality representation in indigent defense matters. No active prosecutors or law enforcement  
37 officials, or active employees of such persons, may be appointed to or serve on the Commission.  
38 No active judicial officials, or active employees of such persons, may be appointed to or serve on  
39 the Commission, except as provided in subsection (b) of this section. No active public defenders,  
40 active employees of public defenders, or other active employees of the Office of Indigent  
41 Defense Services may be appointed to or serve on the Commission, except that notwithstanding  
42 this subsection, G.S. 14-234, or any other provision of law, Commission members may include  
43 part-time public defenders employed by the Office of Indigent Defense Services and may include  
44 persons, or employees of persons or organizations, who provide legal services subject to this  
45 Article as contractors or appointed attorneys.

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

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

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

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

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

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

18 (k) The Commission shall hold its first meeting no later than September 15, 2000. All  
19 appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of  
20 this section shall be made by the appointing authorities by September 1, 2000. The appointee of  
21 the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the  
22 Commission shall make the appointments specified in subdivision (11) of subsection (b) of this  
23 section and shall elect its chair."

24 **SECTION 2.** Persons who are members of the Commission on Indigent Defense  
25 Services on the effective date of this act, shall continue to serve as members until the completion  
26 of the term for which they have been appointed. Upon the expiration of a term, or a vacancy  
27 occurring prior to the completion of a term, in an appointment made by an authority no longer  
28 authorized to make appointment, the appointment shall be made as follows:

29 (a) For the member appointed by the North Carolina Association of Black Lawyers  
30 whose term expires in 2017, the appointment shall be made by the General Assembly upon the  
31 recommendation of the Speaker of the House of Representatives.

32 (b) For the member appointed by the North Carolina Association of Women Attorneys  
33 whose term expires in 2017, the appointment shall be made by the General Assembly upon the  
34 recommendation of the President Pro Tempore of the Senate.

35 (c) For the member appointed by the Indigent Defense Commission whose term expires  
36 in 2017, the appointment shall be made by the Chief Justice of the North Carolina Supreme  
37 Court and shall be the appointment of the Administrative Director of the Courts.

38 (d) For the member appointed by the North Carolina Advocates for Justice, formerly  
39 known as the North Carolina Academy of Trial Lawyers, whose term expires in 2018, the  
40 appointment shall be made by the General Assembly upon the recommendation of the Speaker of  
41 the House of Representatives.

42 (e) For the member appointed by the Indigent Defense Commission whose term expires  
43 in 2018, the appointment shall be made by the Chief Justice of the North Carolina Supreme  
44 Court.

1       (f)     For the member appointed by the North Carolina Public Defenders Association  
2 whose term expires in 2019, the appointment shall be made by the General Assembly upon the  
3 recommendation of the President Pro Tempore of the Senate.

4       (g)     For the member appointed by the Indigent Defense Commission whose term expires  
5 in 2019, the appointment shall be made by the Governor.

6           **SECTION 3.**       This act becomes effective January 1, 2017.