

NC OFFICE OF INDIGENT DEFENSE SERVICES

PRESENTATION TO IDS SUBCOMMITTEE OF
JPS OVERSIGHT COMMITTEE

Presented by Thomas K. Maher, IDS Executive Director

January 26, 2016

This Presentation Will Cover:

- Overview of IDS
- IDS' Successes in Meeting Statutory Mission
- IDS' Budget
- The Future

OVERVIEW OF IDS

Planting the Seeds for IDS

- **1998:** General Assembly established Indigent Defense Study Commission to “study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants without compromising the quality of legal representation”
- **May 1, 2000:** Study Commission issued Report and Recommendations

Study Commission's Key Findings

- As to both cost-effectiveness and quality, indigent defense suffered from “lack of any centralized authority to provide coordinated planning, oversight, or management”
 - Between FY89 and FY99, costs increased by 168% while caseloads grew by 90%
 - Capital defense costs rose 338% during same time period
- No statewide uniform standards for appointment, qualifications, compensation or performance of counsel
- System hampered because “statistics and information needed for management of indigent defense programs are incomplete and suffer from numerous comparability problems”
- System compromised necessary defense independence from other judicial branch functions

Study Commission's Recommendations Enacted

- General Assembly should “create an Office of Indigent Defense Services vested with the comprehensive authority and provided with the resources necessary to provide for quality legal representation statewide in the most cost-effective manner possible”
- Recommended IDS Act of 2000, which was enacted in G.S. 7A-498 et seq.
- IDS Act defines IDS' mission:
 - Enhance oversight of services
 - Improve quality and enhance independence of counsel
 - Establish uniform policies
 - Generate reliable data
 - Deliver services in most efficient and cost-effective manner without sacrificing quality

Independent Defense Agency

- Act Created IDS Office as an independent entity within Judicial Department
- Provided oversight through a 13-member Commission appointed by range of stakeholders
 - Chief Justice, Governor, Senate, House, State Bar, voluntary bar associations, and Commission itself
- Provided that IDS shall “exercise its prescribed powers independently of the head of the Administrative Office of the Courts” and that the AOC Director “shall not reduce or modify [IDS’] budget” without IDS Commission approval

Changes Made in 2015

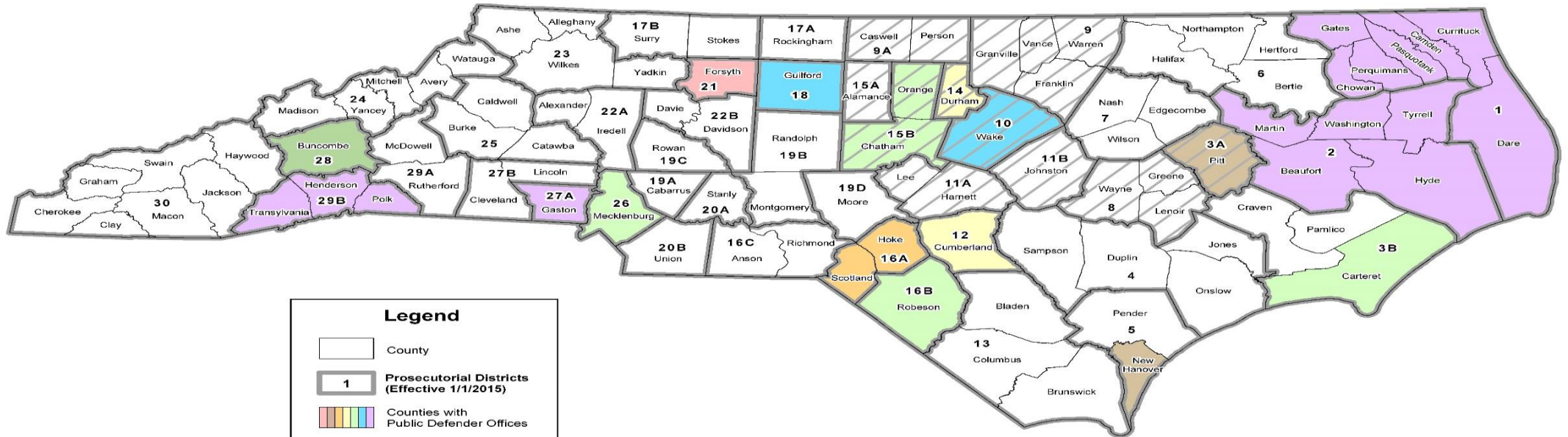
- IDS Act amended to diminish independence of defense function:
 - Act now provides that IDS is created within AOC
 - AOC Director may now modify IDS' budget or use IDS' funds without consent of IDS Commission or Office
- AOC tasked with performing annual audit of IDS' budget
- Changes not supported by Chief Justice or AOC

Types of Representation Provided

- Adult criminal prosecutions, including potentially capital cases
- Juvenile delinquency proceedings
- Abuse, neglect, or dependency and termination of parental rights cases
- Commitment and guardianship cases
- Appeals
- Post-conviction, including capital post-conviction
- Meaningful access to the courts for inmates (NCPLS)
- Others (e.g., GALs for parents, extradition, satellite monitoring hearings)

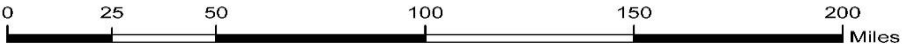
How Representation is Provided

Prosecutorial Districts with Public Defender Offices and Contract Defenders (Effective 1/1/2015)



Legend

-  County
-  Prosecutorial Districts (Effective 1/1/2015)
-  Counties with Public Defender Offices
-  Counties with Contract Defenders



Prosecutorial Districts 1 and 2 are covered by the same Public Defender's office.

Printed by the NC General Assembly, February 2, 2015.



Local Public Defender Offices

- 16 offices covering 31 counties
 - 276 Assistant Public Defenders
 - 43 investigators
 - 111 other support staff
 - Includes some grant-funded positions in Charlotte
- FY15:
 - All offices combined disposed of 102,939 cases (includes pending murder cases)
 - At a cost of \$37.43 million

Statewide Defenders

- Office of the Capital Defender
 - Offices in Durham, Winston-Salem, Asheville, and Wilmington
 - 17 assistant capital defenders and 11 support staff (one part time)
 - FY15: In addition to administrative responsibilities and support of more than 270 PAC, PDs, and APDs with active cases, 130 unique murder cases disposed and pending at cost of \$3.45 million (withdrawals excluded)
 - FY15: Four offices combined opened cases in 34 counties
- Office of the Appellate Defender (incl. Parent Representation unit)
 - Office in Durham
 - 23 assistant appellate defenders and 5 support staff
 - FY15: In addition to administrative responsibilities and support of more than 80 PAC and APDs, disposed of 229 capital, non-capital, and non-criminal appeals at cost of \$2.78 million
- Special Counsel
 - Offices in Raleigh, Morganton, Goldsboro, and Butner
 - 8 attorneys and 8 support staff
 - FY15: Disposed of 13,138 cases at cost of \$1.37 million

PAC Rosters (Local and Statewide)

- FY15: Paid more than 2,500 PAC to handle approximately 167,400 cases at a total cost of \$60.45 million
- Hourly rates:
 - \$55 for misdemeanors and low-level felonies resolved in District Court
 - \$60 for misdemeanors and low-level felonies resolved in Superior Court
 - \$70 for high-level felonies
 - \$85 for first-degree murder cases unless declared non-capital, then \$75
- Per session fees for some cases handled by session, such as child support contempt
- Flat fees for cases resolved in District Court in Rowan and Cabarrus Counties

Private Counsel Under Contract

- Contracts issued through Request for Proposals (RFP) process:
 - Adult criminal cases
 - \$17,500 annually for 102 to 124 misdemeanors
 - \$19,500 annually for 56 to 68 low-level felonies
 - \$23,500 annually for 21 to 25 high-level felonies (plus hourly pay over 50 hours)
 - Extraordinary pay available for difficult cases
 - Two Regional Defenders who provide resources and oversight
 - Currently contracts with more than 200 attorneys in 18 counties
- Other contracts:
 - Non-profits, such as NC Prisoner Legal Services and Council for Children's Rights
 - Individually negotiated contracts, primarily for juvenile delinquency and non-criminal cases

Health Systems Have a Mix of Service Delivery

- The ABA recommends that indigent defense programs utilize a mix of service delivery systems
 - ABA Standards for Criminal Justice Providing Defense Services, Standard 5-1.2: “The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization. . . Every system should include the active and substantial participation of the private bar.”
- A mix of service delivery provides coverage for conflicts and ensures against overload in PD Offices
- NC has 100 counties with widely varying populations and caseloads, and the best system for handling non-capital trial-level cases in one county may not be the best system for those cases in another county
- Each delivery group has strengths that complement and fill in gaps of other groups

IDS' SUCCESSES IN MEETING STATUTORY MISSION

Delivering Services in the Most Efficient and Cost-Effective Manner...

- Very modest costs per disposition

FY	Overall Average Cost per Disposition
01	\$370.94
14	\$372.18

- Overall spending growing at slower rate than growth in dispositions

Time Span	% Increase in Overall Costs	% Increase in Overall Dispositions	% Increase in Capital Attorney Costs (incl. PAC + OCD; trial, appeal, and post-conviction)
12 Years Pre-IDS	232%	114%	389.6%
12 Years Post-IDS	68%	90%	7.4%

IDS Successes at Controlling Costs

- Provides fiscal oversight through billing policies, standardized hourly and expense rates, auditing to prevent duplicate payments, deadlines for fee applications, and data analysis
- Controls costs in potentially capital cases, including exceptional case policy and requirement of pre-trial budgets in high cost cases
- Works with local actors to develop alternative service delivery and compensation systems where appropriate, such as attorney for the day or representation for a court session
- Created and implemented new cost-effective contract system at General Assembly's directive

Success at Predicting Funding Needs

- Historically, IDS' projections for demand on PAC Fund (including PAC, experts, and support) have been very accurate
- End-of-year deficits are not due to unpredictability of funding demands but are because indigent defense has not received the funding IDS knew it would need

FY	Sept. Projection Compared to End-of-FY PAC Fund Demand
09	-1.46%
10	-4.16%
11	0.14%
12	-4.70%
13	-5.55%
14	-4.37%
15	0.83%
7-Year Average	-2.75%

Negative percentages mean demand was lower than projected

... Without Sacrificing Quality Representation

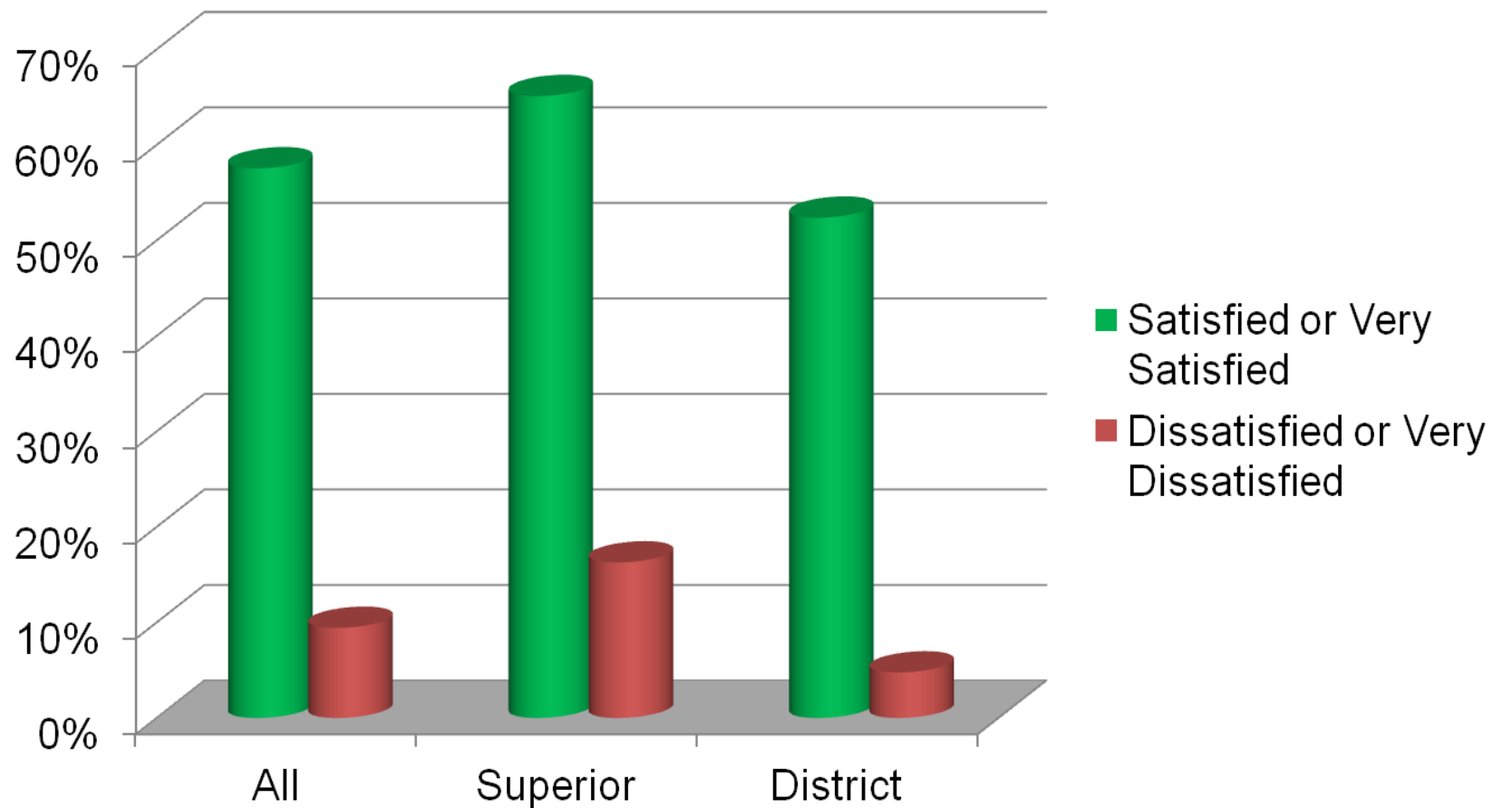
- IDS works with other groups to develop and provide manuals, performance guidelines, checklists, and other resources for indigent defense counsel, both private attorneys and full-time public defenders
- Enhanced training through SOG, including
 - Trial School
 - New Misdemeanor Defender and New Felony Defender programs
 - Specialized programs for appellate, juvenile, and parent representation
 - Management and Leadership Training for public defenders

... Without Sacrificing Quality Representation

- New Resources:
 - Juvenile Defender: Resource for counsel in juvenile delinquency cases
 - Forensic Resource Counsel: Works with counsel to identify experts, understand underlying science and discovery provided, and ensure effective representation in cases in which forensic science plays a role
 - Regional Defenders in contract counties: Provide local trainings, consult on cases, observe contract attorneys in court, address client complaints, and assist courts with issues that arise
 - PD Administrator: Works with PD offices, conducts in-depth site visits, monitors workloads, handles complaints from clients, and assists with personnel issues and training
 - Research Department: Conducts in-depth data collection and analysis, producing reports on numerous aspects of indigent defense

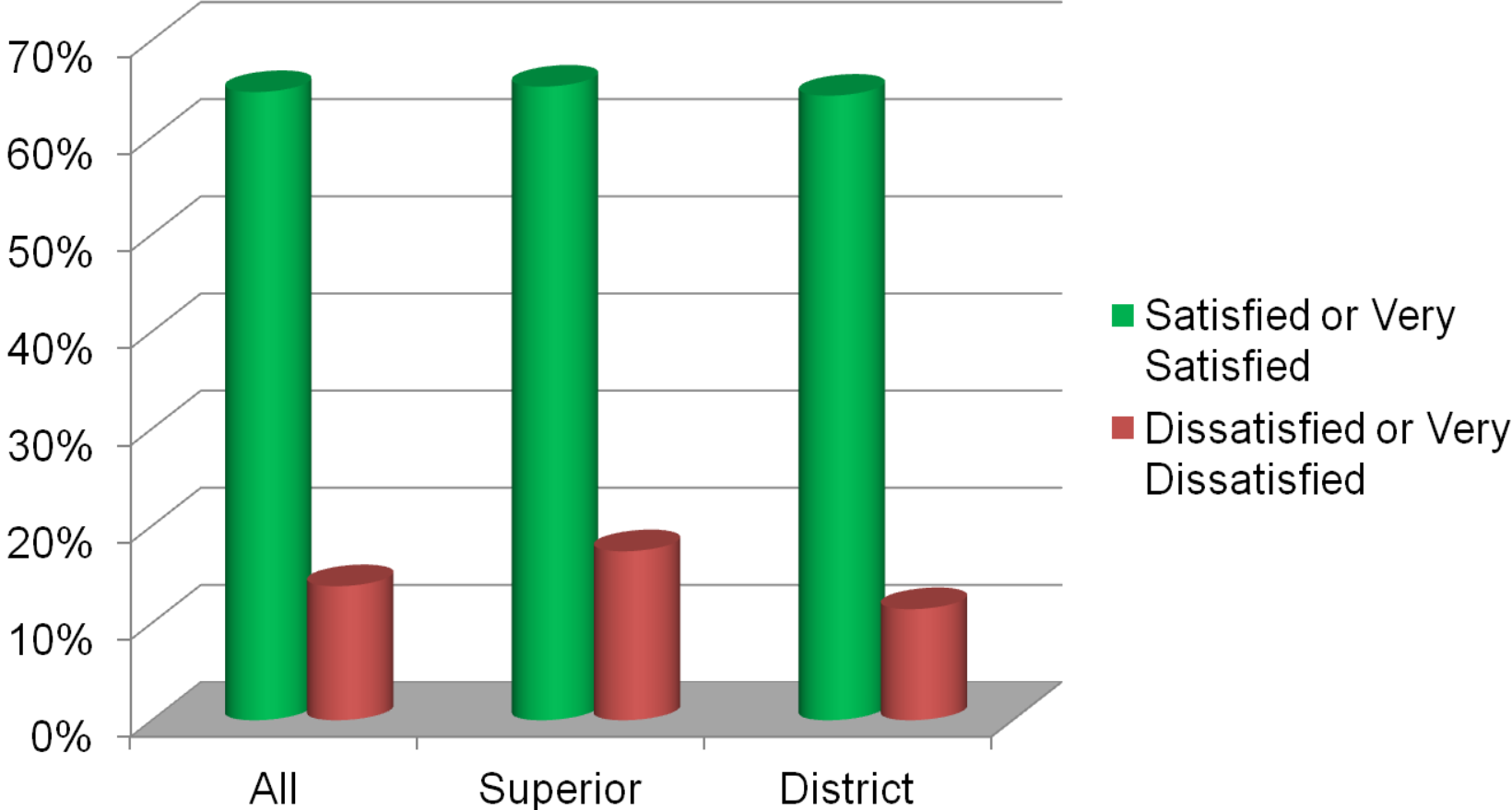
IDS Success Reflected in Recent SOG Survey of Judges

- September 2015 SOG Survey of all District and Superior Court Judges
 - 135 Respondents: 81 District Court Judges and 54 Superior Court Judges
 - About 35% response rate
- "What is your overall level of satisfaction with IDS's administration of indigent representation in **potentially capital cases?**"



More Judge Survey Results

“What is your overall level of satisfaction with IDS's administration of indigent representation in **non-capital** cases?”



And in Recent Performance Audit of Potentially Capital Cases

- Based on published IDS policies, IDS' assignment of second counsel in potentially capital cases was justified 100% of the time
 - Sample of 217 cases
 - 51 cases had two attorneys and all cases had documentation supporting second counsel
- Based on published IDS policies, IDS paid correct hourly rate 99.6% of the time
 - Sample of 940 PAC fee applications
 - IDS staff applied incorrect hourly rate to 4 fee applications (0.4%)
 - 4 overpayments totaled \$2,460 of \$4.3 million in fees reviewed
 - 4 errors occurred near time when IDS Commission implemented \$10 per hour rate reduction after cases declared non-capital

IDS' BUDGET

Where the Money Comes From

Source of Funds	FY15 Amount of Funding
Appropriation	\$111,951,902
Budgeted Recoupment Receipts	\$10,186,742
Miscellaneous Receipts	\$134,793
Total	\$122,273,437

Source: NCAS

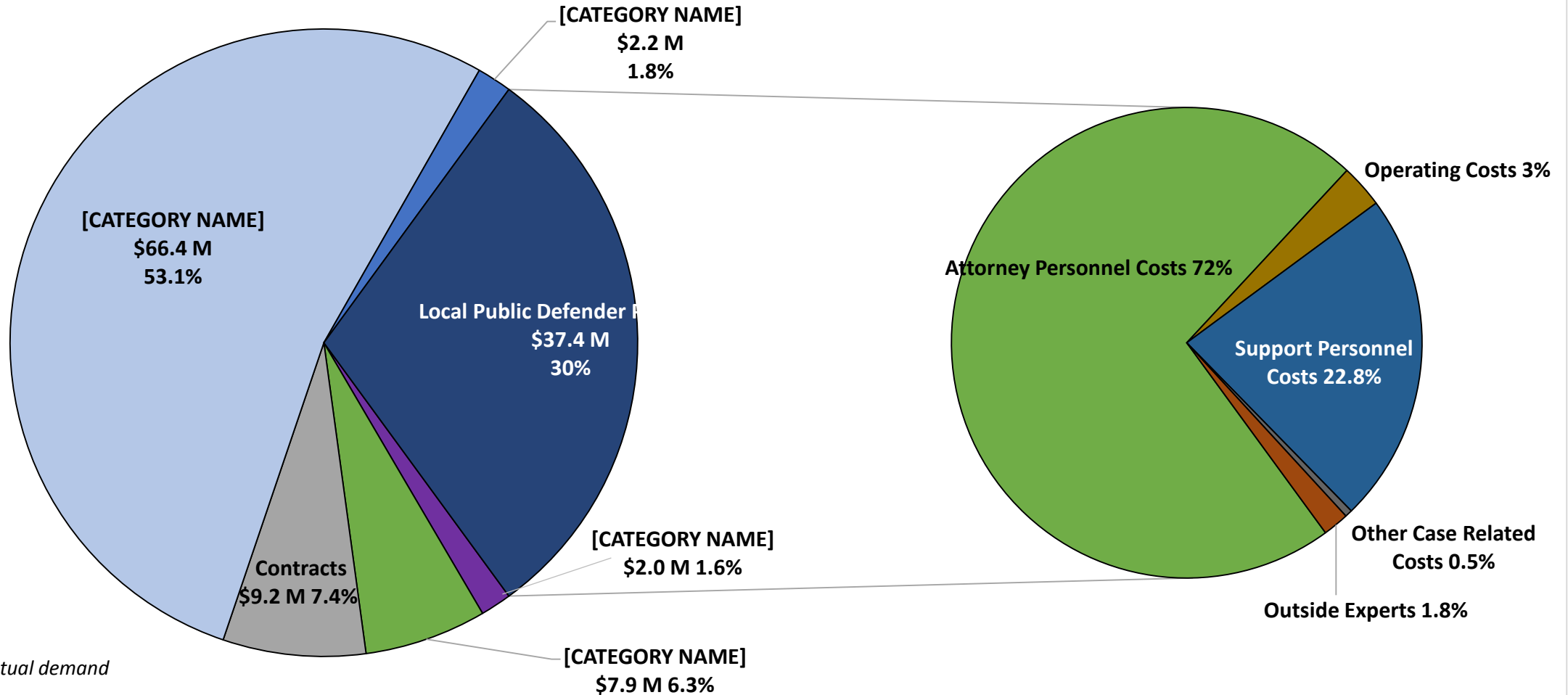
Where the Money Goes

Program	FY15 Dispositions	FY15 Cost	FY15 % of Cost
PAC Rosters	167,395	\$60,448,871	48.3%
Contract Attorneys (RFP & non-RFP)	35,092	\$9,174,000	7.3%
PAC Support (incl. investigators, experts, transcripts, lay witness fees, interpreters, and translators)	--	\$5,923,814	4.7%
Defender Offices (local & statewide) (incl. experts and support services used by offices)	116,432 (incl. pending murder cases)	\$45,303,549	36.2%
Inmate Services (NCPLS)	--	\$2,024,000	1.6%
IDS (incl. central IDS Office, IDS Financial Services, and Set-off Debt program)	--	\$2,238,054	1.8%
Total	318,919	\$125,112,288	

Note: PAC data is on demand basis to reflect fee applications received in a given FY even if payment is held due to limited cash. PAC and total cost data differ from NCAS and FY15 funding from prior screen by about \$2.9 million due to additional shortfall from FY15.

Local Public Defender Programs

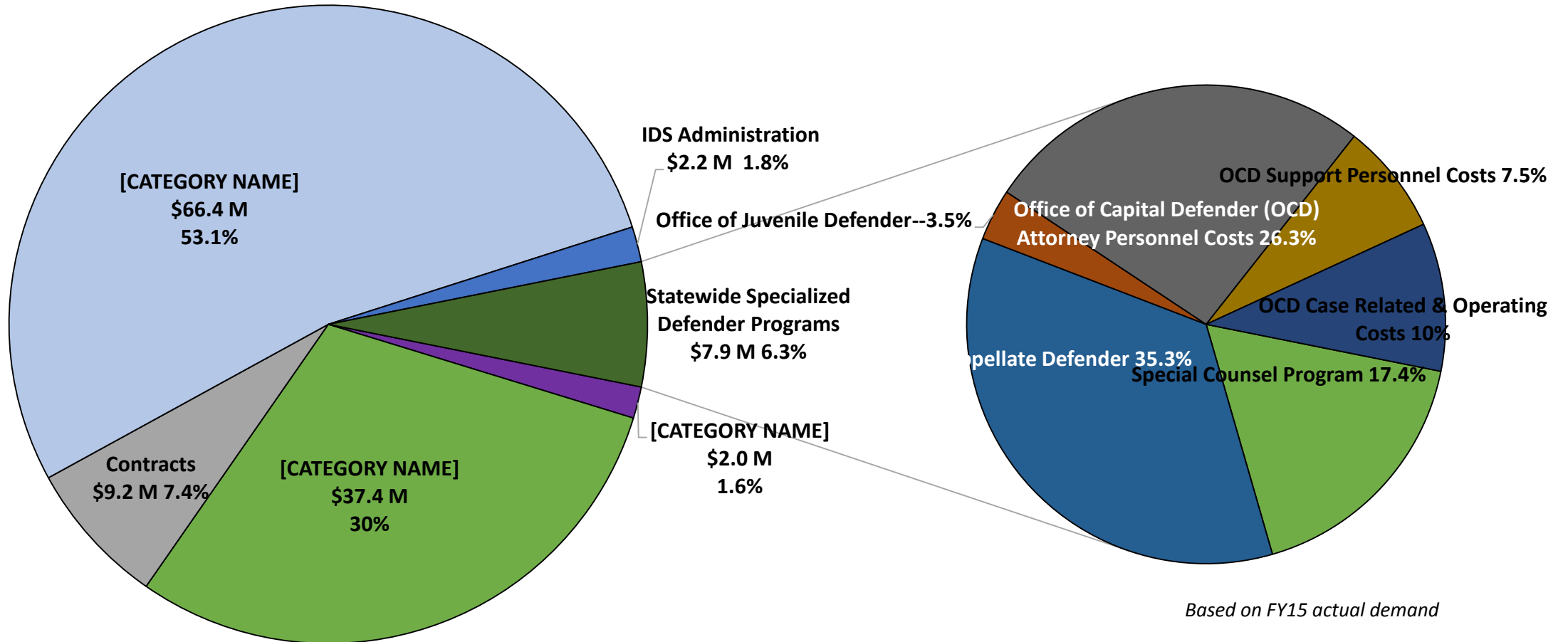
IDS SPENDING MAJOR CATEGORIES AND DETAILS ON LOCAL DEFENDER PROGRAMS



Based on FY15 actual demand

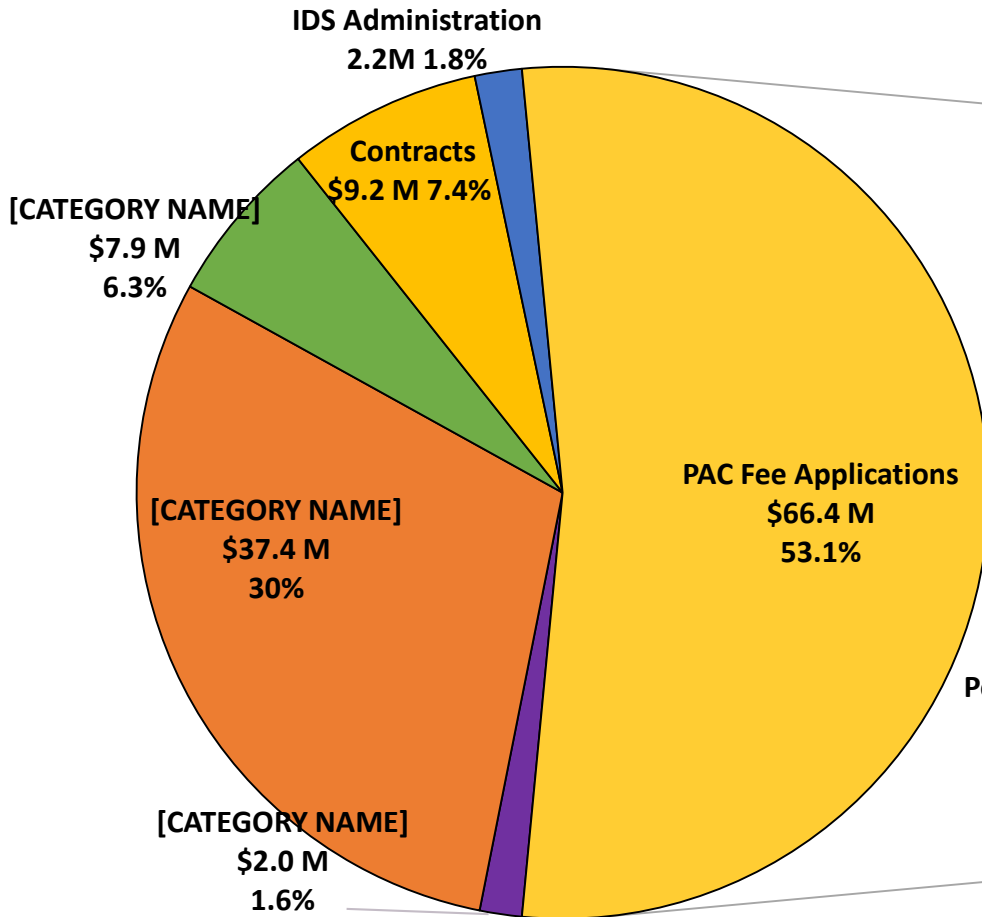
Statewide Defender Programs

IDS SPENDING MAJOR CATEGORIES AND DETAILS ON STATEWIDE DEFENDER PROGRAMS

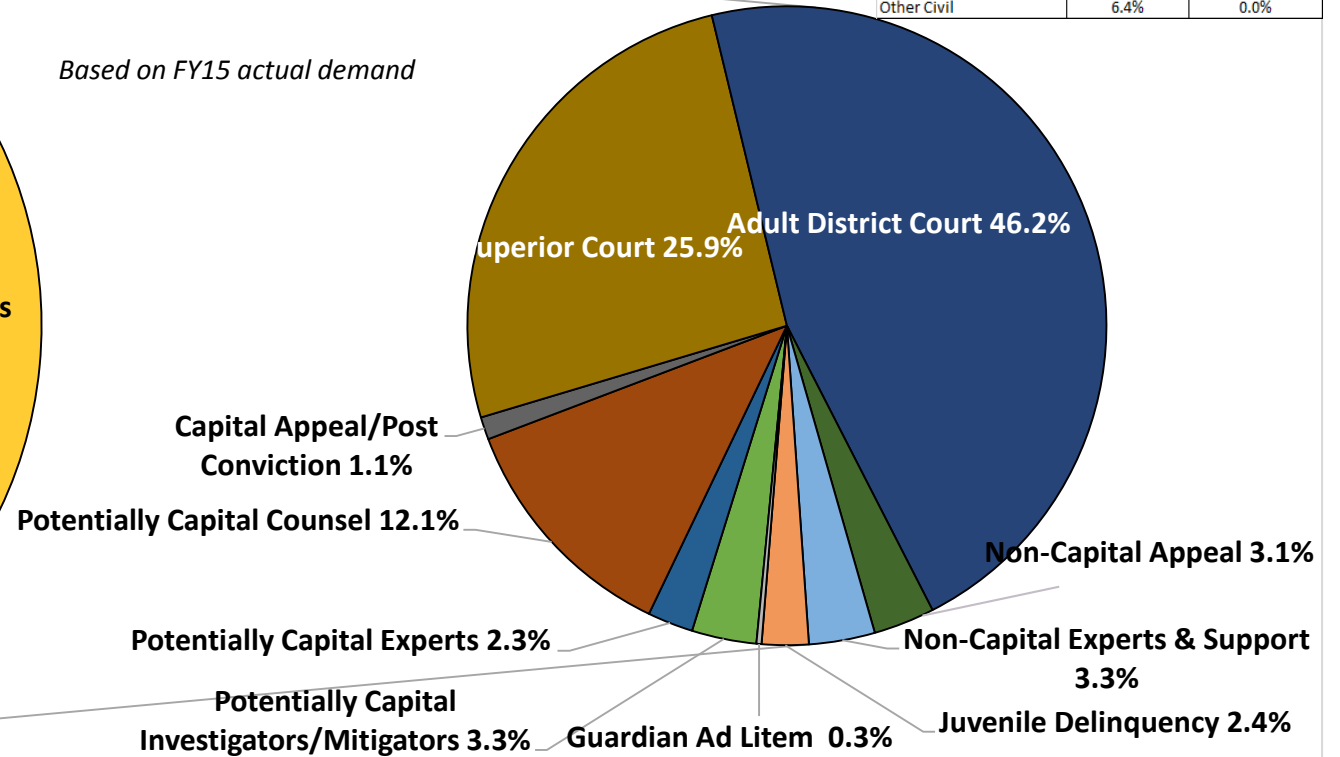


Local and Statewide PAC Rosters

IDS SPENDING MAJOR CATEGORIES AND DETAILS ON PAC FEE APPLICATIONS



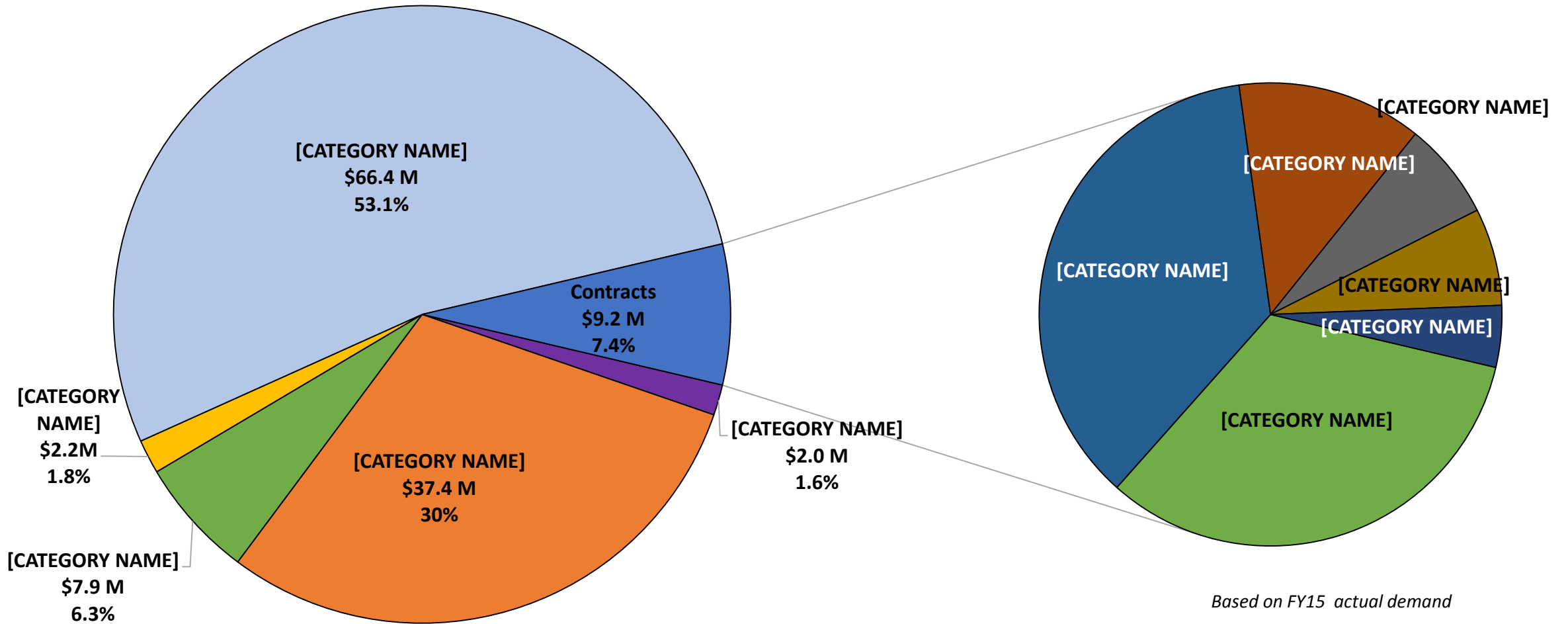
Based on FY15 actual demand



Breakdown of Type of Charges Included in Trial Court		
(\$ paid on fee applications FY15 actual demand)		
	Adult District Ct.	Adult Superior Ct.
High Level Felony	1.7%	36.9%
Low Level Felony	12.3%	57.7%
Misdemeanor (inc Traffic)	41.3%	5.0%
Other Criminal	0.9%	0.4%
Parent Representation	26.5%	0.0%
Child Support Contempt	10.8%	0.0%
Other Civil	6.4%	0.0%

Private Counsel Under Contract

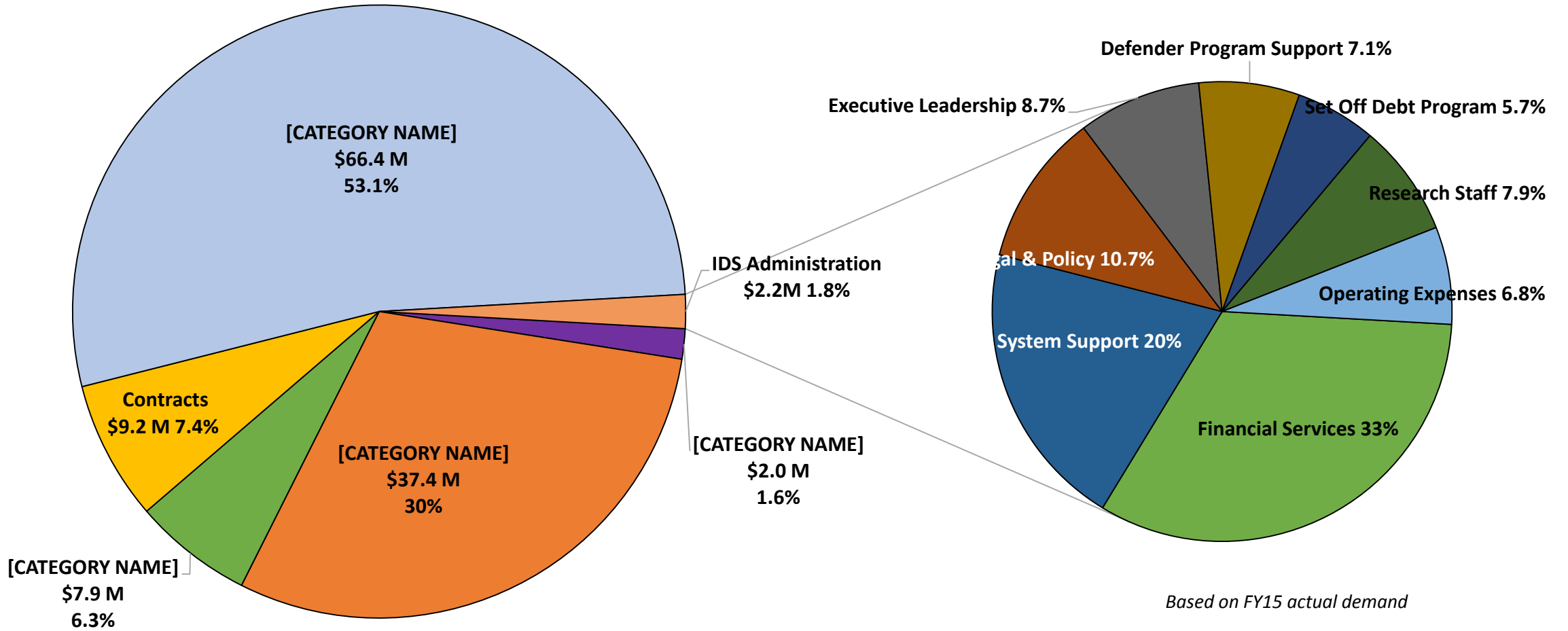
IDS SPENDING MAJOR CATEGORIES AND CONTRACTS DETAIL



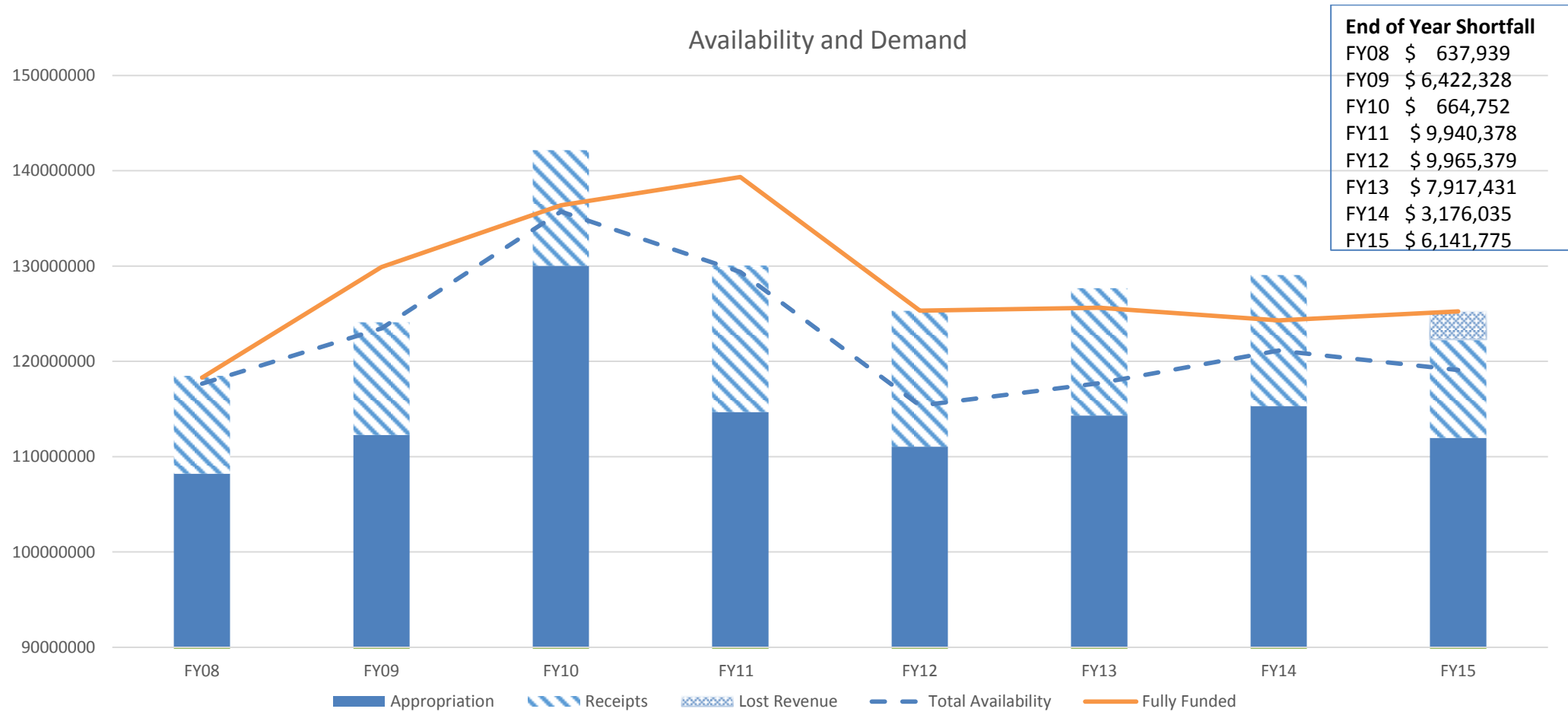
Based on FY15 actual demand

IDS Administration

IDS SPENDING MAJOR CATEGORIES AND DETAILS ON ADMINISTRATIVE EXPENSES



History of Underfunding and Shortfalls



FY15 lost recoupment revenue due to changes in tax code and withholding tables

What Drives IDS' Costs

- Per case costs are not the primary factor driving IDS' overall spending
- PAC per case costs are quite low and quite stable

FY	Overall Average Cost per Disposition
01	\$370.94
14	\$372.18

- IDS' overall spending is due to the type and volume of cases
 - e.g., a shift toward more felonies or toward higher level felonies will increase IDS' spending
 - e.g., changing indigency rates

Increasing Share of the Pie

- Between FY02 and FY14, there has been a **9.5% decrease** in the number of total criminal non-traffic court file numbers
- During that same time period, there has been a **44.7% increase** in the number of criminal non-traffic public defender, PAC, and contractor file numbers that are funded through IDS

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

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

Impact of Funding Cuts

- 2011: General Assembly reduced IDS' budget and required reduction in rates paid to PAC
 - Non-capital rates reduced from \$75 per hour to as low as \$55 per hour
 - Capital rates reduced from \$95 to \$85, with a further reduction to \$75 when case is declared non-capital
- Budget reductions place an additional strain on PDs
 - PDs only have access to approximately 90% of their salary allotments
 - Compounded by years of little or no legislative salary increases
 - Restricted equipment, training, and travel funds
- Underfunding is negatively impacting quality of services being provided



**Private Assigned Counsel Survey Results:
Impact of May 2011 Rate Reductions**

March 2015

North Carolina Office of Indigent Defense Services
123 West Main Street, Suite 400
Durham, NC 27701
www.ncids.org



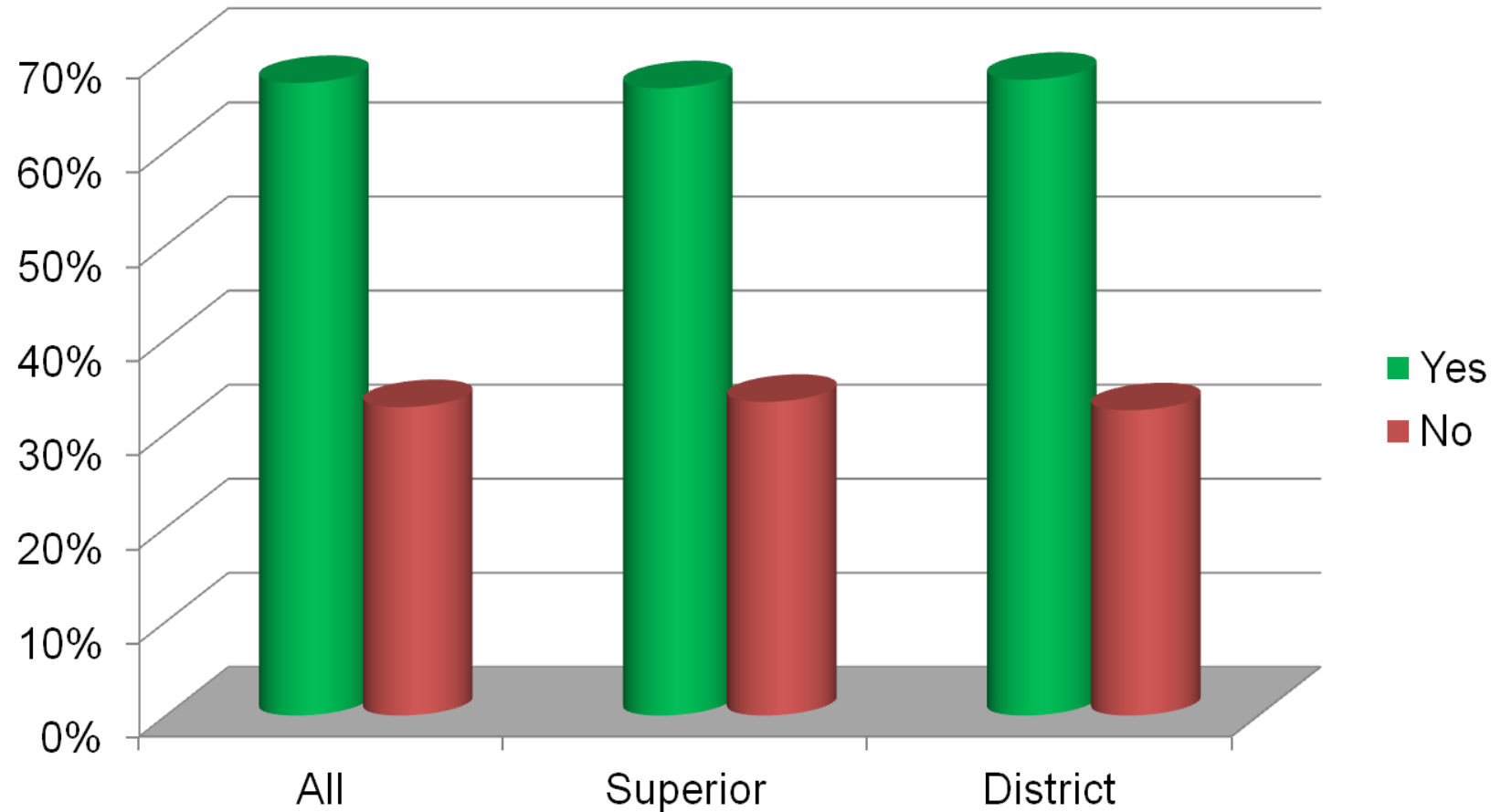
**State Defender Survey Results:
Impact of Budget Constraints**

November 2015

North Carolina Office of Indigent Defense Services
123 West Main Street, Suite 400
Durham, NC 27701
www.ncids.org

More Judge Survey Results

“Due to reductions to its budget, in 2011 IDS was required to reduce the rates paid to **private assigned counsel**. Have you seen any impact on the quality of representation provided by assigned counsel that you think could be attributed to those rate reductions?”



THE FUTURE

What a Healthy Indigent Defense System Looks Like: Role of Defense Counsel

- [In] our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided for him. This seems to be an obvious truth.
 - *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)
- To ensure a fair trial, counsel needs:
 - Knowledge
 - Experience
 - Access to resources
 - Time
 - Support from other professionals
 - Independence

What a Healthy System Looks Like for Counsel and Clients

- **Counsel**

- Come to court knowing the law and the facts, including all relevant facts about their client and possible defenses, and ready to proceed
- Have met with their client and reviewed the facts, law, and the client's options
- Represent the best interest of the client, even when that means opposing the prosecution and pressing issues in court
- Have the skill and experience to advocate effectively for their client in all court proceedings

- **Clients**

- Trust their lawyers
- Understand the charges, both factually and legally
- Understand their options and the consequences of their choices
- Have had their questions answered
- Are prepared for the proceeding that is to take place in court

And for the System

- **The System:**

- Includes the defense in policy decisions
- Provides management of the available resources
- Provides oversight for defenders
- Attracts and trains new counsel
- Attracts and keeps competent counsel involved in representation



*Partners in
Policymaking*

What is Needed to Achieve These Goals

- Appropriate funding to support reasonable pay for service providers
- Administration by independent agency that is directly accountable to General Assembly
- Authority for IDS, working with local actors, to implement delivery systems that work in locality and that best meet the goals of ensuring cost-effective quality representation
- No further changes to IDS' independence or existing service delivery systems until Chief Justice's NCCALJ reports recommendations to 2017 legislature