

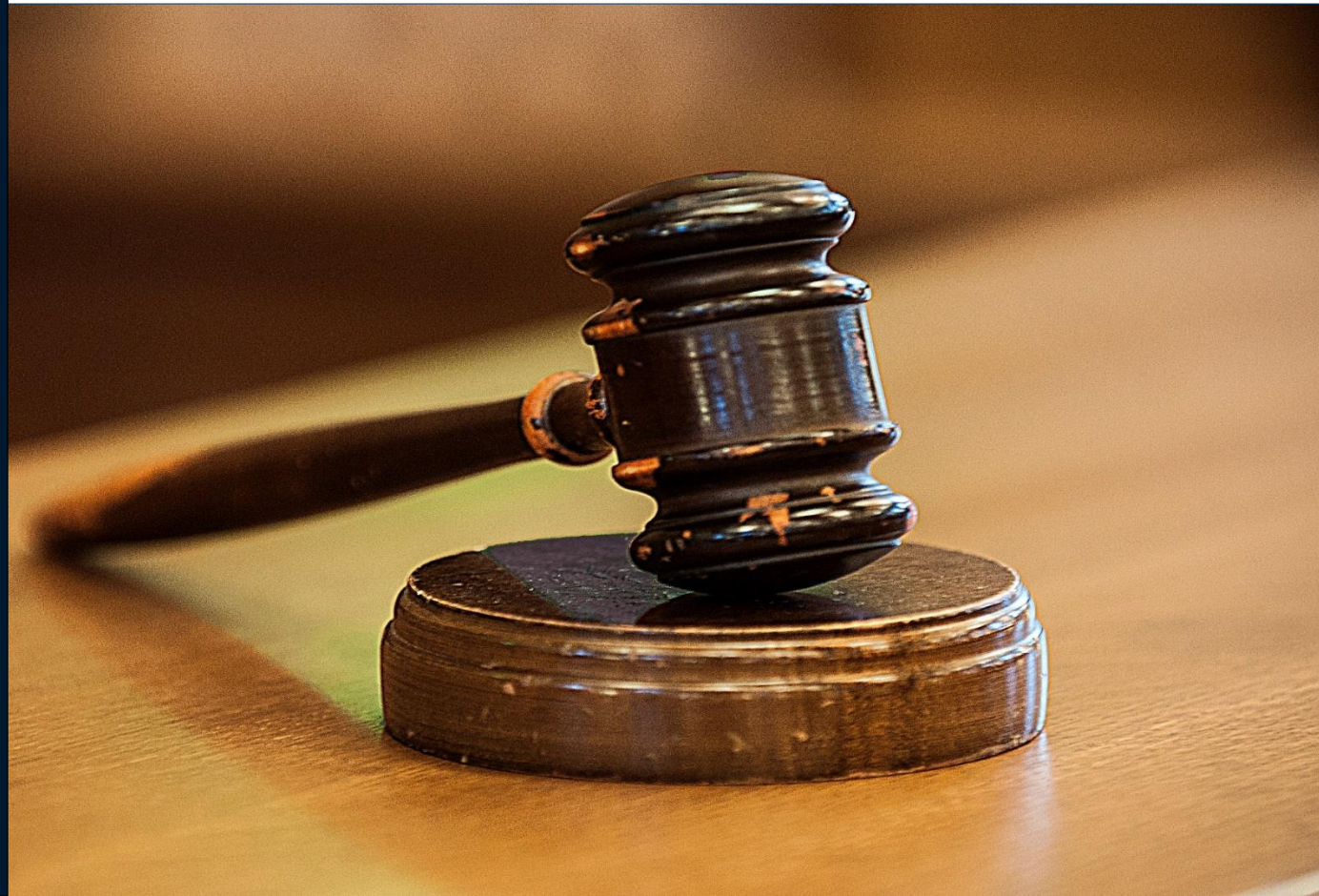
REPORT ON MODEL FEE SCHEDULE

March 15, 2018

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SERVICES



Agenda

- Legislative Mandate
- Implementation
 - Selection of Pilot Counties
 - Development of Model Fee Schedule
- Available Data
- Stakeholder Input
- Findings and Recommendations
- Moving Forward

Legislative Mandate

Session Law 2016-94, Section 19A.4.(a)

- NCAOC in collaboration with IDS
- Pilot project establishing a uniform fee schedule for the payment of attorneys' fees for legal representation of indigent persons in district court
 - One or more counties in six judicial districts
 - Consultation and collaboration with the chief district court judges and the district bar in each of the selected districts
- Report findings and recommendations March 15, 2018 and every two years thereafter

Selection of Pilot Counties

Selection of Pilot Counties

■ Legislative Requirements for Pilot Counties

- At least two counties with small caseloads, two counties with medium caseloads, and two counties with large caseloads
- Districts 10, 18, and 26 specifically excluded as possible pilot counties

■ Selected Counties

- LARGE: Iredell County (District 22A), Davidson County (District 22B)
- MEDIUM: Lincoln County (District 27B), Burke County (District 25)
- SMALL: Watauga County (District 24), Macon County (District 30)

Model Fee Schedule

Development of Model Fee Schedule

Data Sources

- Data collected from fee applications to calculate the average hours for each case type statewide and specifically in the pilot counties
- Flat fees already in place in Cabarrus and Rowan counties
- Input from local court officials and attorneys
- Input from the Offices of Special Counsel, Appellate Defender, Parent Attorney Coordinator, and Juvenile Defender

Model Fee Schedule (March 2018)

Case Type	Fee
Class A-D felonies	\$425
All other felonies	\$230
Class A1 misdemeanors	\$200
Class 1-3 misdemeanors and other traffic offenses	\$185
DWI	\$300
Probation violations	\$185
Civil and Criminal Contempt	\$185
Probable Cause and Transfer - Class A-E felonies	\$535
Adjudication and Disposition - Class A-E felonies	\$535
Adjudication and Disposition - Class F-I felonies; Class A1 misdemeanors	\$300
Adjudication and Disposition -Class 1-3 misdemeanors	\$200
Post-Disposition Proceedings - Motions for Review; Probation Violations	\$150
Adjudication and Disposition	\$500
GAL	\$250
Termination of Parental Rights	\$500
GAL	\$250
Other child welfare	\$130
Withdrawals	\$95

Scope of Model Fee Schedule

- Cases disposed in district court in which counsel was appointed on or after June 1, 2017
- Excluded case types
 - Civil commitment proceedings
 - Child support enforcement proceedings
 - Some juvenile delinquency proceedings
- Exceptional Case Policy
 - Extraordinary cases that require exceptional amount of time

Scope of Model Fee Schedule

Exceptional Cases

- Extraordinary cases in which the amount of time reasonably necessary to provide effective representation is above what can be considered part of the average
- Allows an attorney to request to be compensated under the hourly system instead of the fee schedule pilot
- Judge makes decision to designate exceptional case

Implementation

Implementation Overview

- Pilot began June 1, 2017
- Applies to cases in which counsel was appointed on or after June 1, 2017
- Key Implementation Resources
 - Model Fee Schedule
 - Policy Guidelines
 - FAQs
 - Ongoing stakeholder input and feedback

Implementation Adjustments

- November 2017 – Increase in Approved Rates
 - IDS adjusted Model Fee Schedule proportionally to reflect changes in rates by the IDS Commission
- December 2017 – Lack of Adequate Representation
 - Attorneys in Macon County removed themselves from roster for child welfare proceedings
 - IDS excluded child welfare proceedings from the Fee Schedule in Macon County; attorneys compensated under hourly system to secure adequate representation

Available Data

Fee Applications Processed

Overview (June 1, 2017 - January 23, 2018)

- 2,443 fee applications processed pursuant to the pilot, for a total of \$510,953
 - This represents 32% of the fee applications processed and 29% of the fees paid in the pilot counties.
- Seven fee applications for exceptional cases, totaling \$4,097, under the exceptional case policy
- Number of pilot cases likely to continue to increase as cases in which counsel was appointed before June 1, 2017 are resolved and paid

Fee Applications Processed

By Case Type (June 1, 2017 – January 23, 2018)

CASE TYPE	FREQUENCY
Criminal District Court (adults)	2,154
Child Welfare Proceedings (adults)	216
Juvenile Delinquency Proceedings (children)	72
Rule 17 Guardian ad Litem	1
ALL CASE TYPES	2,443

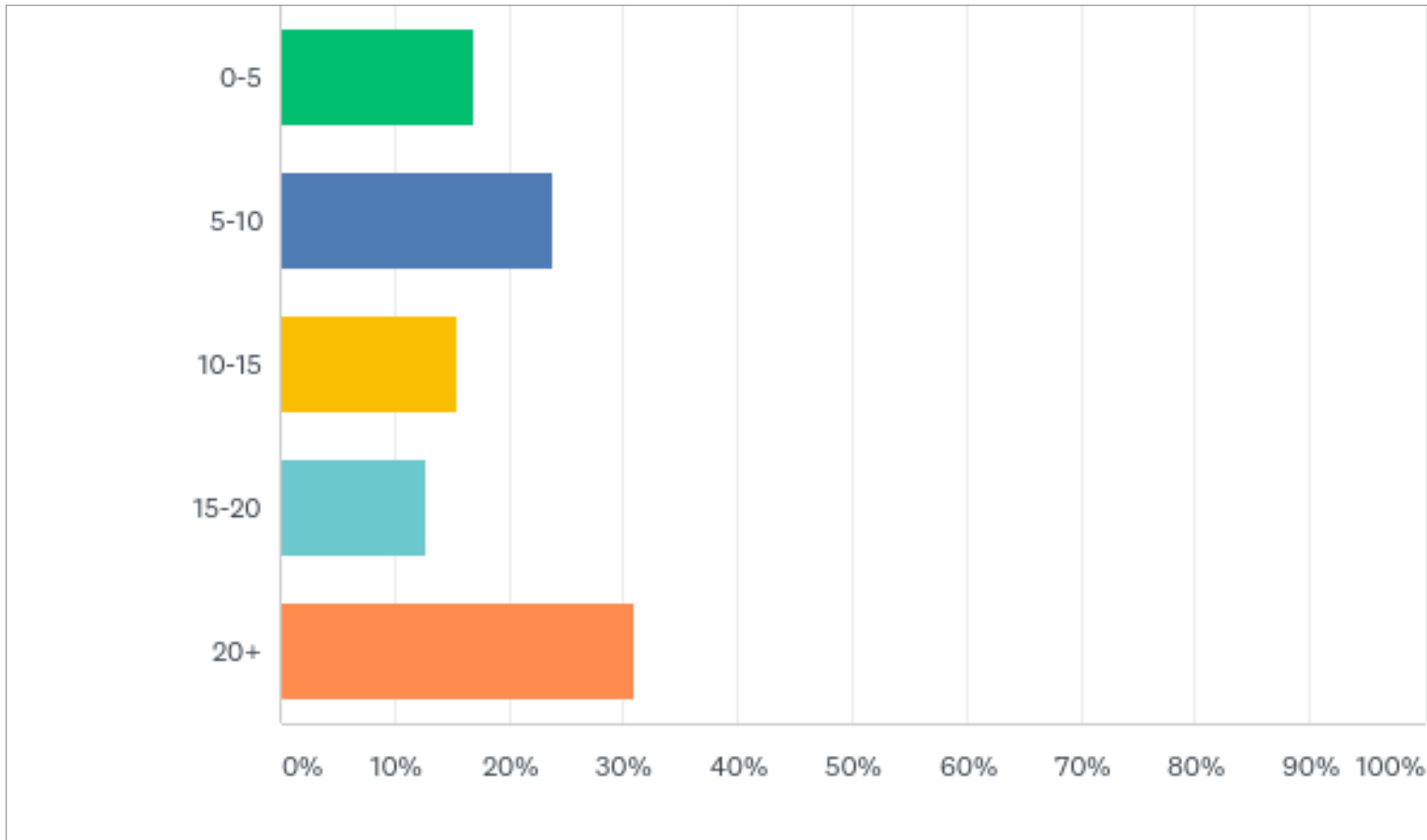
Number of Participating Attorneys By County (June 1, 2017 – January 23, 2018)

- 130 attorneys filed at least one fee application

County	Number of Attorneys Who Submitted Fee Applications		
	At least One Application	Five or Fewer Applications	Six or More Applications
Burke	18	3	15
Davidson	35	3	32
Iredell	40	9	31
Lincoln	17	4	13
Macon	6	1	5
Watauga	14	5	8
All Pilot Counties	130	25	105

Experience Level of Participating Attorneys

Number of Years, by Percentage



Practice Areas of Participating Attorneys

Court-Appointed Cases

- Attorneys in each experience group reported handling each type of case
- Percentage of Court-Appointed Cases
 - More than 75% of practice (13% of attorneys)
 - 50 to 75% of practice (33% of attorneys)
 - Less than 50% of practice (54% of attorneys)
- 19% of the attorneys who reported spending more than half of their practice on appointed district court cases had 10 or more years of experience

Practice Areas of Participating Attorneys

Case Type

- Attorneys in each experience group reported handling each type of case in the pilot practice areas
- Many of the responding attorneys reported appearing in multiple case types covered by the fee schedule pilot
 - 85% of provide representation in adult felony cases
 - More than half represent children in juvenile delinquency and/or parents in child welfare proceedings
- The rate at which counsel handled felonies and juvenile delinquency cases increased with experience

Stakeholder Input

Survey

February 9, 2018

- Survey of all attorneys on the roster in the pilot counties seeking quantitative and qualitative input
- 70 attorneys participated in survey, including attorneys from each pilot county

County	Number of Responding Attorneys
Iredell County (District 22A),	14
Davidson County (District 22B)	14
Lincoln County (District 27B)	9
Burke County (District 25)	9
Watauga County (District 24)	13
Macon County (District 30)	10

Survey Questions

- Do you view the pilot as a success?
- Does the fee schedule pilot decrease, increase, or have no impact on your willingness to accept appointed cases?
- Does the fee schedule pilot impact the quality of representation?
- Does the fee schedule pilot impact the lawyers accepting cases under the fee schedule pilot?

Survey Responses

By Case Type

County	Success	Not a Success	Less Willing to Accept	More Willing to Accept	Equally Willing to Accept	Impacts Quality	Does Not Impact Quality	Impacts Lawyers	Does Not Impact Lawyers
ALL PILOT COUNTIES	38.46%	61.54%	54.41%	8.82%	36.76%	54.29%	45.71%	74.29%	25.71%
Burke	62.5%	37.5%	11%	22%	67%	44%	56%	44%	56%
Davidson	55%	45%	38%	0%	62%	43%	57%	64%	36%
Iredell	36%	64%	57%	14%	29%	71%	29%	86%	14%
Lincoln	75%	25%	37.5%	12.5%	50%	0%	100%	37.5%	62.5%
Macon	0%	100%	100%	0%	0%	100%	0%	100%	0%
Watauga	18%	82%	82%	0%	18%	50%	50%	92%	8%

Stakeholder Feedback

Overview

- 62% of respondents did not view the pilot as a success
 - None of the respondents in Macon County viewed the pilot as a success
- 54% of respondents said the pilot made them less willing to accept appointments
- 54% of respondents believed the pilot affected the quality of representation

Stakeholder Feedback

Sampling of Attorney Comments

Positive

- Cases move more quickly
- Attorneys know what they will make
- Clients know what they will owe
- Pays for sufficient time to provide representation

Negative

- Makes it difficult to spend enough time on case
- Encourages cutting corners
- Does not work well for lengthy, complicated cases—i.e., child welfare and DWI
- Based on already low \$55-per-hour rate

Preliminary Findings

Findings

General Observations

- The majority of respondents to the survey expressed a negative view of the pilot
- There appears to be some correlation between an overall increase in compensation in a county and positive perception of the pilot
 - The counties where the flat fee resulted in a significant reduction in compensation view the pilot negatively.
 - In contrast, counties that saw an increase in compensation under the fee schedule pilot view the pilot favorably.

Findings

Preliminary Perceptions

- District court judges, elected clerks, an elected district attorney, and lawyers who represent Departments of Social Services generally had a more positive perception than attorneys
- Stakeholders in smaller, multicounty districts generally reported more negative impressions
- Attorneys who handle child welfare proceedings generally expressed more negative impressions

Impact on Costs

Early Indications – No impact

- Early indications are that overall spending on cases resolved in district court does not seem to be affected significantly by the fee pilot
- Because the flat fees were set based on the statewide averages paid for these case types, cases resolved under the Fee Schedule generally mirror the average cost of the same case under the hourly system
- For example, the flat fee for non-traffic misdemeanors is \$185 per case in the pilot counties, while the average amount paid for those cases under the hourly system in FY 2016-17 was slightly lower at \$182.40

Cost Per Case for Non-Traffic Misdemeanor

Flat Fee v. Average Payment

Non-Traffic Misdemeanor	Flat Fee \$185 (Pilot Fee Schedule) 2018	Average Payment for All Pilot Counties (FY 2016-17)
ALL PILOT COUNTIES	\$185	\$182.40
Burke	\$185	\$191.60
Davidson	\$185	\$168.37
Iredell	\$185	\$195.51
Lincoln	\$185	\$152.55
Macon	\$185	\$258.66
Watauga	\$185	\$214.95

Impact on Quality of Representation

Early Indications

- A majority of attorneys (54%) indicated that the pilot made them less willing to be on the appointed roster
- Early challenges in finding qualified counsel resulted in adjustments to the pilot (Macon County)
- Some indication that the pilot has resulted in a loss of experienced attorneys on the roster

Recommendations & Next Steps

Data Challenges

- The limited time in which the pilot has been in operation and the modest number of fee applications paid under the pilot preclude meaningful evaluation of the pilot at this time
 - Modest number of applications paid pursuant to the pilot
 - Likely overrepresentation of less complex cases in total number of dispositions
- Preliminary data and stakeholder feedback raise issues related to pilot's impact on quality of representation
- IDS will provide a report by December 31, 2018 that will allow more meaningful analysis

Next Steps

December 31 Report

- IDS expects to have more robust data by end of year 2018 related to the following measures:
 - increases or decreases in per case spending
 - predictability in spending
 - ability of counties to maintain rosters with adequate number of experienced attorneys
 - outcomes for clients
 - failure to consolidate cases for single disposition
 - increased number of time served pleas and other measures
- IDS will provide analysis of the data in a report by December 31, 2018

Recommendations

- Allow counties to opt out of the pilot if the interests of justice require
 - County would return to hourly compensation model (or alternative model) to ensure effective assistance of counsel
- Continue the pilot through December 31, 2018, with modifications necessary to ensure effective assistance of counsel
- Review additional information available in December 31, 2018 report to inform policy decisions

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