

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

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

February 1, 2015

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# North Carolina Indigent Defense Services Organization Chart

(As of January 2015)

**IDS Commission**  
13 Members  
(4 Year Terms)

**NC Prisoner Legal Services**

**Public Defender Offices**  
Public Defenders  
(4 Year Terms)

- District 1&2 Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans Counties and Beaufort, Hyde, Martin, Tyrrell, and Washington Counties (PD + 20 APDs + Support)
- District 3A Pitt County (PD + 13 APDs + Support)
- District 3B Carteret County (PD + 2 APDs + Support)
- District 5 New Hanover County (PD + 14 APDs + Support)
- District 10 Wake County (PD + 30 APDs + Support)
- District 12 Cumberland County (PD + 15.5 APDs + Support)
- District 14 Durham County (PD + 22 APDs + Support)
- District 15B Orange & Chatham Counties (PD + 9 APDs + Support)
- District 16A Scotland & Hoke Counties (PD + 6 APDs + Support)
- District 16B Robeson County (PD + 9 APDs + Support)
- District 18 Guilford County (PD + 28 APDs + Support)
- District 21 Forsyth County (PD + 18 APDs + Support)
- District 26 Mecklenburg County (PD + 62 APDs + Support)
- District 27A Gaston County (PD + 15 APDs + Support)
- District 28 Buncombe County (PD + 11 APDs + Support)
- District 29B Henderson, Polk & Transylvania (PD + 7 APDs + Support)

**Office of Indigent Defense Services**  
Executive Director  
(4 Year Term)

- Assistant Director/General Counsel (FP)
  - Contracts Administrator (FP)
  - Legal Associate (FP)
- Chief Financial Officer (FP)
  - Accounts Payable Sup. (FP)
  - Team Leader (FP)
  - 3 Accounting Specialists (FP)
  - Accounting Specialist (PT)
- Auditor (FP)
- Set Off Debt Officer (FP)
  - Accounting Specialist (PT)
- Financial Analyst (FP)
- Information Technology Director (FP)
- Public Defender Administrator (FP)
- Research Director (FP)
  - Research Associate (FP)
- Office Manager (FP)
  - Administrative Assistant (FP)
- Forensic Resource Counsel (FP)
- 4 Regional Defenders (FP)  
(2 of 4 have been created)

**Office of the Special Counsel**  
Special Counsel  
Supervising Attorney (FP)

**Broughton Hospital Office of Special Counsel**  
Special Counsel (FP)  
Legal Assistant (FP)  
Asst. to Spec. Counsel (FP)

**Cherry Hospital Office of Special Counsel**  
Special Counsel (FP)  
Legal Assistant (FP)  
Asst. to Spec. Counsel (FP)

**Dorothea Dix Campus**  
3 Special Counsel (FP)  
2 Legal Assistants (FP)

**Central Regional Hospital Office of Special Counsel (Butner Campus)**  
2 Special Counsel (FP)  
Legal Assistant (FP)  
Legal Assistant (FP)

**Office of the Juvenile Defender**  
Juvenile Defender  
(4 Year Term)  
Assistant Juvenile Defender (FP)  
Administrative Assistant (FP)

**Office of the Appellate Defender**  
Appellate Defender  
(4 Year Term)  
Administrative Assistant (FP)  
20 Assistant Appellate Defenders (FP)  
Legal Assistant (FP)  
2 Paralegals (FP)  
Parent Represent. Coord. (FP)  
Administrative Assistant (FP)  
3 Asst. Parent Represent. Coords. (FP)

**Office of the Capital Defender**  
Capital Defender  
(4 Year Term)  
Capital Case Coordinator (FP)

**Durham Regional Capital Defender Office**  
8 Assistant Capital Defenders (FP)  
2 Investigators (FP)  
2 Legal Assistants (FP)  
Legal Assistant (PT)  
Paralegal (FP)

**Forsyth Regional Capital Defender Office**  
3 Assistant Capital Defenders (FP)  
Investigator (FP)

**New Hanover Regional Capital Defender Office**  
3 Assistant Capital Defenders (FP)  
Investigator (FP)

**Buncombe Regional Capital Defender Office**  
1 Assistant Capital Defender (FP)  
Investigator (FP)  
Paralegal (FP)

**Private Appointed Counsel**

**IDS Contract Counsel**

**Key:**  
 FP Full-time Permanent  
 PP Part-time Permanent  
 FT Full-time Temporary  
 PT Part-time Temporary  
 ——— Fiscal and Hiring/Firing Authority  
 - - - - - Fiscal Authority Only

## EXECUTIVE SUMMARY

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

As required by G.S. 7A-498.9, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2013-14. The report also contains a number of legislative recommendations for the 2015 long session, as well as last fiscal year’s data on indigent caseloads and case costs across the State. More information about the work and accomplishments of the IDS Commission and Office, including a series of focused fact sheets on various topics, is available at [www.ncids.org](http://www.ncids.org).

The IDS Commission and Office have accomplished a great deal since their formation and are preparing to accomplish even more in the years to come. The Commission and Office have implemented a number of initiatives to improve the efficiency, cost-effectiveness, and quality of the State’s indigent defense program, including measures to slow the rate of increase in spending without compromising the quality of representation. The Commission and Office have also taken significant steps to enhance communication and resource-sharing with the defense bar and other system actors; to provide specialized training and support to the attorneys handling indigent cases; and to improve data collection and analysis capabilities.

Since it was established in 2001, IDS has taken steps to control increases in the cost of indigent representation. The increase in overall IDS demand (spending and current-year obligations) since IDS was created has averaged 4.5%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS’ creation. Largely due to the dramatic reductions to the hourly rates paid to private assigned counsel (“PAC”) in May 2011, overall IDS demand decreased by 8.9% in fiscal year 2011-12, increased by 0.4% in fiscal year 2012-13, and decreased by 0.2% in fiscal year 2013-14. Overall demand is projected to grow by a very modest 0.8% this fiscal year. *See Appendix A.* Indigent defense per disposition expenditures fluctuate from year to year, but overall per disposition costs during fiscal year 2013-14 were only \$1.24 more than per disposition costs the year before IDS was established (fiscal year 2000-01). While there have been modest increases in average per case costs for some case types over the past decade, the overall increases in demand on the fund are primarily due to an expanding indigent caseload.

Despite the comparatively lower increases in new demand on the fund since IDS was created, the significant reductions in the hourly rates that IDS pays to PAC, and the modest changes in per disposition expenditures over the years, indigent defense remains underfunded. The IDS Office is currently projecting that IDS will end this fiscal year with approximately \$4 million of debt. As a result, the Commission and Office respectfully request that the General Assembly appropriate an additional \$5.89 million for fiscal year 2015-16 to enable IDS to pay off the

anticipated carry-forward debt and to cover some modest growth in demand. In addition, the current depressed PAC hourly rates and contractor pay are unsustainable and will need to be restored over time to ensure that the attorneys handling indigent cases have adequate resources to provide constitutionally effective representation. As a first step, the Commission and Office respectfully request an additional recurring appropriation of \$3.2 million in fiscal year 2015-16 and \$6.4 million in fiscal year 2016-17 to increase all of the PAC hourly rates by \$5 and to make comparable adjustments to contractor pay effective January 1, 2016.



## REPORT

In 2000, the General Assembly passed the Indigent Defense Services Act of 2000 (Session Law 2000-144; G.S. 7A-498 *et seq.*) (“IDS Act”), creating a new statewide Office of Indigent Defense Services (“IDS Office”), housed in the Judicial Department and governed by the 13-member Commission on Indigent Defense Services (“IDS Commission”). The IDS Act charges the IDS Office with the responsibility of overseeing the provision of legal representation to indigent defendants and respondents who are entitled to counsel under North Carolina law. In accordance with that Act, the IDS Office assumed responsibility for overseeing indigent defense services on July 1, 2001.

As required by G.S. 7A-498.9, the IDS Office must report to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House of Representatives Subcommittee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety by February 1, 2015 about the following matters:

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

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

## IDS ORGANIZATIONAL STRUCTURE AND FUNCTIONS

### IDS COMMISSION AND COMMITTEES

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

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

Committee	Duties
Budget	Prepares proposed budgets, analyzes non-capital case costs and budgetary trends, and develops initiatives to enhance IDS’ oversight of spending

<b>Committee</b>	<b>Duties</b>
Capital	Addresses issues such as the quality of capital representation, recruitment of attorneys and experts, regional capital defender offices, compensation of capital attorneys and experts, and ways to provide cost-effective consulting services
Client Advisory	Discusses ways to obtain feedback from indigent clients about the services they receive, and identifies and promotes innovative projects that serve clients and communities
Contracts	Developed and continues to enhance a Request for Proposals and contract system for delivering legal services to indigent persons, which the Legislature originally directed during the 2011 long session
Indigency Standards	Working to develop standards to guide judges in making indigency determinations and other ways to improve indigency screening and verification
Juvenile	Worked with a group of outside juvenile experts to evaluate the findings and recommendations in the American Bar Association's 2003 report—"North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings"—and guides the statewide Juvenile Defender's work
Long-Term Planning	Addresses transition issues that arise, including Commissioner term expirations
Personnel	Evaluates the performance of Commission appointees, including the Executive Director, Appellate Defender, Capital Defender, and Juvenile Defender
Public Defender	Worked with the public defenders to develop plans to govern the qualifications and appointment of counsel in each public defender district, and previously made recommendations to the full IDS Commission about the appointment of chief public defenders around the State
Review	Addresses all requests for review of the IDS Director's fee and roster decisions
Senior Advisory	Comprised of former leaders on the Commission, helps maintain institutional knowledge and experience and advises the IDS Commission and staff
Systems Evaluation	Working with staff and outside participants to develop an objective tool to measure the quality and performance of indigent defense systems at the county, regional, and statewide levels

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

## **IDS ADMINISTRATIVE OFFICES**

The IDS administrative offices are comprised of a central office in Durham and a Financial Services office in Raleigh. The central office staffs the IDS Commission and is responsible for administration and implementation of policy as directed by the Commission. The Financial Services office is responsible for processing and paying appointed attorney fee applications, issuing monthly payments to contract attorneys, and performing other accounts payable functions. Both offices combined accounted for less than 2% of IDS' overall budget in fiscal year 2013-14.

The IDS Commission and Office developed rules to govern the continued delivery of services in cases under IDS' oversight. The rules address non-capital and non-criminal cases at the trial level; capital cases at all stages (trial, appellate, and post-conviction); non-capital and non-criminal appeals; and inmate access to the courts. The current rules are available on the IDS

website ([www.ncids.org](http://www.ncids.org)), and are published in North Carolina Rules of Court, State (Thomson-West) and the Annotated Rules of North Carolina (LexisNexis).

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

- *Indigent Appointment Plans for Public Defender Districts:* The Commission and Office worked with the chief public defenders to develop plans for the appointment of counsel in non-capital criminal and non-criminal cases in all public defender districts, which provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation and contain qualification and performance standards for attorneys on the district indigent lists. As IDS implements contracts in districts pursuant to the Requests for Proposals that are required by § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, § 18A.4 of Session Law 2013-360, and § 18B.1(k) of Session Law 2014-100, these local appointment plans are being supplemented or superseded by contractor appointment instructions that IDS issues in consultation with local court system actors.
- *Model Appointment Plan for Non-Public Defender Districts:* The Commission and Office developed a model indigent appointment plan for non-public defender districts, which is modeled after the public defender appointment plans, includes qualification standards for the various indigent lists, provides for more oversight by a local indigent committee, and includes some basic reporting requirements to the IDS Office. While Office staff are continuing to work with local actors in a variety of counties and districts to implement some version of the model plan, as above, these local plans will be supplemented or superseded by contractor appointment instructions as IDS implements the new contract system throughout the State.
- *Billing Policies Governing Non-Capital and Non-Criminal Cases at the Trial Level:* The IDS Office developed policies and procedures governing fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level. The policies address general billing principles, reimbursable expenses, recoupment of attorney fees, and expert and support services, and contain detailed instructions on completing the various fee application forms.
- *Non-Capital and Non-Criminal Billing Education:* With the assistance of School of Government ("SOG") faculty and the North Carolina Bar Association ("NCBA"), the IDS Office developed a video training program for appointed attorneys in non-capital and non-criminal cases at the trial level entitled "Ethics and Practice—Billing in Appointed Indigent Cases." The video contains segments on the journey of a fee application, IDS' billing policies, the various fee application forms, getting paid, and record keeping. The video is posted on the SOG and IDS websites, where attorneys can access it for free. It is also available on the NCBA website for one hour of continuing legal education ethics credit.
- *Billing and Compensation in Capital Cases and Appeals:* On July 1, 2001, the IDS Office assumed direct responsibility for compensating attorneys and experts in all potentially capital cases at the trial level, all appeals, and all capital post-conviction

proceedings. IDS is committed to reducing the rate of increase in expenditures in those cases without causing any decline in the quality of representation. To that end, the IDS Commission and Office adopted uniform rates of attorney compensation, and developed detailed billing policies governing these case types, as well as financial auditing procedures that Office staff apply to every fee petition IDS receives.

In December 2008, the IDS Commission approved an “exceptional case” policy that is designed to help IDS better monitor and control spending in the most complex and expensive potentially capital cases. The policy sets limits on the amount of compensation that an attorney can receive for services rendered pre-trial, unless the IDS Director has declared a case exceptional based on the presence of certain enumerated criteria. The policy also sets limits on the amount of pre-trial funding that can be authorized for investigator and mitigation specialist services absent an exceptional designation. In addition, since September 2012, IDS has been requiring attorneys to develop pre-trial budgets in some cases.

- *Standardized Expert Rate Schedule:* In conjunction with the Administrative Office of the Courts (“AOC”), the IDS Office developed an hourly rate schedule for experts for the courts, prosecution, and defense. The rate schedule is based on a combination of education and expertise, and addresses 17 different categories of experts. Both AOC and IDS policies allow prosecutors and defense attorneys to apply to the applicable agency director for a deviation from the standardized rate schedule based on extraordinary case-specific needs.
- *Appointment of Counsel in Post-Release Supervision Cases:* The IDS Office has developed procedures for the appointment and payment of counsel in post-release supervision preliminary revocation hearings before a hearing officer, which may be held in any North Carolina county, as well as videoconference post-release supervision revocation hearings and criminal contempt hearings before the North Carolina Post-Release Supervision and Parole Commission, which are limited to seven Division of Adult Correction facilities in six North Carolina counties that have diagnostic centers. IDS expects the number of these hearings, and thus the cost of representation in this area, to increase significantly as a result of the Justice Reinvestment Act.

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

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

IDS has conducted extensive research on indigency standards in other jurisdictions, as well as model standards promulgated by other state and national organizations. The IDS

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

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

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

IDS then planned to ascertain what data sources are available to verify information on the affidavits and if any of the defendants' income and assets were substantially higher than reported. Based on this sample data, IDS intended to determine if a broader effort would generate enough savings to justify the cost to the taxpayers of more vigorous efforts in this area, such as more concrete indigency standards and/or income verification. However, given the 20% reduction to IDS' administrative funding in the 2014 Appropriations Act, the planned study has not been possible.

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

- *Attorney and Expert Compensation in Capital Cases and Appeals:*
  - ✓ During fiscal year 2013-14, the IDS Office set uniform fee awards for 2,529 attorney fee applications in capital cases and appeals, including interim and final fees. During fiscal year 2014-15 to date (through December 29, 2014), the Office set an additional 1,168 attorney fee awards.
  - ✓ During fiscal year 2013-14, the IDS Office set fee awards for 2,607 expert bills in capital cases and appeals, including private investigators, mitigation specialists, psychologists and psychiatrists, and ballistics and scientific experts, again including

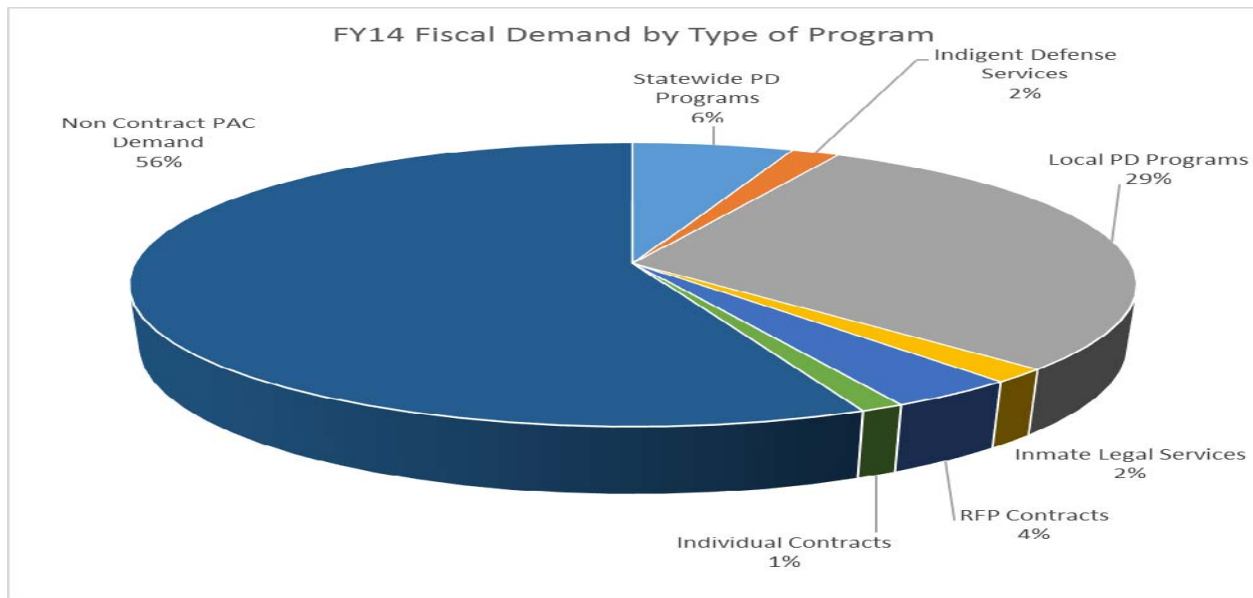
- interim and final fees. During fiscal year 2014-15 to date (through December 29, 2014), the Office set an additional 1,067 expert fee awards.
- ✓ The Office is currently processing almost 100 attorney and expert fee applications per week, and generally forwards those awards to IDS Financial Services for payment within one to two weeks of receiving each fee petition. In potentially capital cases, the IDS Director routinely asks the presiding judge for his or her opinion about the attorney's fee application before awarding final fees.
  - ✓ In October 2014, the North Carolina Office of the State Auditor issued a report on a performance audit of IDS' payments to private assigned counsel ("PAC") in potentially capital cases at the trial level that opened between January 1, 2006 and June 30, 2013. The auditors reviewed a sample of 940 fee applications and found that all but four were paid at the correct rate pursuant to published IDS policies. The four errors, which represented an error rate of 0.4%, all occurred shortly after the date on which the IDS Commission reduced the applicable hourly rates due to budget reductions. The audit report is available at <http://www.ncauditor.net/EPSWeb/Reports/Performance/PER-2013-2000.pdf>.
- *Appointment of Qualified Counsel in Capital Post-Conviction Cases:* During fiscal year 2013-14, the IDS Office made 20 attorney appointments in 15 different capital post-conviction cases. During fiscal year 2014-15 to date (through December 29, 2014), the Office made three additional attorney appointments in three different capital post-conviction cases.
- *Expert and Miscellaneous Expense Funding Authorizations in Appeals and Capital Post-Conviction Cases:* During fiscal year 2013-14, the IDS Office reviewed and acted on 155 requests for expert funding and miscellaneous expenses in appeals and capital post-conviction cases. During fiscal year 2014-15 to date (through December 29, 2014), the Office acted on an additional 79 such requests. The IDS Office has established procedures to approve or deny those requests, sometimes with the assistance of a case consultant, and to assist attorneys in focusing on the experts and support services that are necessary for an effective defense.
- *Fee Transparency Special Provision:* Section 18A.1 of Session Law 2014-100 requires IDS to post online certain information from attorney fee applications, including the name of the attorney filing the application, the case number and the county, the class of the highest charge against the defendant, an indication as to whether there are multiple charges against the defendant, the name of the judge who approved the fee application, the amount paid to the attorney, and the date of the payment. The special provision further provides that the data should be searchable and updated at least biweekly. The IDS Office has worked with the Office of State Controller to develop a program to extract the required data from the North Carolina Accounting System ("NCAS") and send it to a web-based Systemware application. IDS staff will then download the data from Systemware and generate an Excel spreadsheet that can be searched and sorted. The posted data will be limited to criminal case fee applications submitted by PAC for three reasons: 1) the data has to be generated from NCAS; 2) the special provision refers to "charges" and "defendants;" and 3) the provision states that it does not require disclosure of information otherwise protected as confidential. IDS should be in a position to begin posting the required data in the coming weeks.

## RELATIONSHIP BETWEEN IDS AND AOC

The IDS Act requires the AOC to provide general administrative support to the IDS Office. *See* G.S. 7A-498.2(c). The relationship between the two agencies continues to evolve over time, and AOC and IDS staff consult regularly to determine the most effective methods of performing the administrative functions necessary for the proper operation of the courts. As it does for the rest of the Judicial Branch, AOC continues to perform purchasing and personnel functions for the IDS Office and to provide technological and telecommunications support.

- *Accounts Payable:* In fiscal year 2005-06, AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including a number of accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or the IDS Director, and an employee who is responsible for administering the set-off debt program for recoupment of attorney fee judgments. In addition, employees in IDS' central office have assumed responsibility for establishing new attorney and expert vendors in the accounting system, and IDS Financial Services staff have assumed responsibility for processing non-attorney payments that are confined to IDS' budget. AOC personnel continue to print checks for legal services, but IDS Office staff now manage the imaging system that is used to store electronic copies of fee petitions.
- *Defense Interpreting and Translation Costs:* In fiscal year 2005-06, AOC and IDS entered into a memorandum of agreement concerning the allocation of foreign language interpreter and translator costs. The memorandum provides that IDS will bear the cost of out-of-court interpretation and translation that is performed solely for the defense function. During fiscal year 2013-14, IDS spent \$129,998 on out-of-court interpretation and translation services for PAC, contract attorneys, and defender offices. In light of the United States Department of Justice's March 2012 report finding significant deficiencies in the North Carolina court system's policies and procedures with respect to access to interpreters and translators, as well as AOC's subsequent commitment to expand language access services in compliance with federal law, IDS expects these out-of-court defense costs to increase in coming years.
- *Defense Lay Witness Costs:* Effective July 1, 2011, § 64 of Session Law 2011-391 amended G.S. 7A-314 to transfer funding responsibility for defense-requested lay witnesses from AOC to IDS. AOC remains responsible for funding lay witnesses acting on behalf of the court or prosecution. During fiscal year 2013-14, IDS spent \$4,978 on defense lay witness fees and expenses in indigent cases handled by PAC, contract attorneys, and defender offices.

## PROGRAM OVERSIGHT AND ADMINISTRATION



### COUNTY AND DISTRICT PUBLIC DEFENDER OFFICES

There are currently 16 county- and district-based public defender offices in North Carolina, which cover 17 judicial districts and 31 counties. The General Assembly has created five of those offices—in Forsyth County, Judicial District 1 (Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans Counties), Wake County, New Hanover County, and Judicial District 29B (Henderson, Polk, and Transylvania Counties)—since IDS was established in 2001. At the request of local actors and pursuant to § 16.8 of Session Law 2012-142, the IDS Commission voted in June 2012 to expand the Judicial District 1 Public Defender Office into Judicial District 2 (Beaufort, Hyde, Martin, Tyrrell, and Washington Counties). The IDS Commission and Office regularly investigate the potential cost savings from and advisability of creating new public defender offices in other districts or regions, as well as expanding existing offices, and report any recommendations to the General Assembly. During fiscal year 2013-14, all of the county and district public defender offices combined reported 106,952 dispositions and withdrawals, which represented approximately 34.1% of the indigent caseload in North Carolina, including criminal and non-criminal cases.

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

- *Balloting Regulations and Plans for the Appointment of Counsel:* After consultation with the local bar and bench, the IDS Director adopts rules to govern the balloting and nomination process for the chief public defenders pursuant to G.S. 7A-498.7(b). For each new office, IDS Office staff also met with the chief public defenders on numerous occasions to assist them in establishing the new offices and developing plans for the appointment of counsel in all non-capital cases in their districts.



- *Appointment of Chief Public Defenders:* In accordance with numerous national recommendations stressing the importance of an independent defense function, effective July 1, 2011, § 15.16(b) of Session Law 2011-145 amended G.S. 7A-498.7(b) to transfer responsibility for appointing chief public defenders to the IDS Commission. The appointment still had to be made from a list of two or three attorneys nominated by written ballot of the local bar. After that provision was enacted, the Commission developed procedures to govern the appointment of chief public defenders, as well as an end-of-term evaluation form. The adopted procedures required the IDS Director to conduct a mid-term evaluation and an end-of-term evaluation, with the latter including personal contact with the local senior resident superior court judge and chief district court judge to solicit their comments, as well as the electronic solicitation of comments from other local court system actors. Whenever possible, the end-of-term evaluation also included a site visit to the public defender office. Based on the evaluations and any materials received from non-incumbent nominees, the IDS Director developed an appointment recommendation for the Public Defender Committee, which in turn developed a recommendation for the full Commission. After assuming this responsibility, the IDS Commission evaluated and reappointed eight incumbent chief public defenders, and appointed a new chief public defender in Wake County after the former chief public defender was elected to be a superior court judge. Effective August 1, 2013, § 18A.5(a) of Session Law 2013-360 again amended G.S. 7A-498.7(b) to transfer responsibility for appointing chief public defenders back to the local senior resident superior court judges.
  
- *Public Defender Disposition Reporting and Cost-Effectiveness Studies:* All public defender offices report their case closings to IDS via an online system that allows IDS Office staff to analyze data on case closings by office, by attorney, and by selected time periods. Based on that data, IDS has traditionally conducted annual studies of the cost-effectiveness of public defender offices, which compared the costs of those offices to the costs that IDS would have incurred if PAC had handled the same cases. Some of those studies also examined the impact on district-wide indigent defense expenditures and per case costs from the creation of new public defender offices. In addition, the 2011 study attempted to quantify the county jail savings that are generated by the existence of a public defender office, which often far outweigh the county costs for providing office space and facilities. Due to the significant changes in the rate structure for PAC that the IDS Commission implemented during fiscal year 2010-11 and the shift toward a large-scale contract system, IDS has not conducted a cost-effectiveness study since fiscal year 2010-11.
  
- *Tracking Public Defender Office Conflict Assignments:* Section 18A.6(a) of Session Law 2013-360 created new G.S. 7A-498.7(f1), which provides that, whenever practical, public defender offices should seek to assign conflict cases to another office in the region, rather than to PAC. The Session Law also directs IDS to submit annual reports on the number of public defender conflict cases that arose during the prior year and the associated PAC costs to resolve them, as well as the number of conflict cases assigned to neighboring offices pursuant to new subsection (f1) and the associated PAC savings. The IDS Office submitted its first two annual reports pursuant to this provision on October 1, 2013 and October 1, 2014. To implement the provision, IDS Office staff revised the public defender offices' online disposition reporting system to enable those offices to enter data

about the reasons for outside assignments, including case-specific conflicts and overload conflicts, and whether the cases were assigned to PAC or a neighboring public defender office. As explained in IDS’ reports, with the possible exception of very serious felony cases and excluding the Gaston County conflict attorney who is housed in the Mecklenburg County office, it is rare for an assignment to a neighboring office to be practical because of the additional time it would take assistant public defenders to travel to a neighboring county and because of the disruption to their regular in-county caseloads.

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

The 2013 Appropriations Act (Session Law 2013-360, § 18A.2), authorized IDS to create up to 50 new attorney positions and 25 new support staff positions during the 2013-2015 fiscal biennium. During fiscal year 2013-14, the IDS Director created five new attorney and 0.5 new support staff positions pursuant to this authority:

Office	Type of Position	# Positions
Cumberland County Public Defender Office	Assistant Public Defender	1
Pitt County Public Defender Office	Assistant Public Defender	1
Wake County Public Defender Office	Assistant Public Defender	1
Office of Appellate Defender	Assistant Appellate Defender	2
Wake County Public Defender Office	Legal Assistant	0.5

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

To meet this directive, IDS and AOC first engaged in an extensive information-gathering phase, including gathering input from the offices about their workflows and their requirements for any new system. In October 2013, AOC used the information that had been gathered to develop a Request for Information (“RFI”) from software vendors. Twenty-three vendors responded to the RFI with information packets and, from those submissions, IDS and AOC selected three vendors to give demonstrations of their products during February 2014. IDS identified its top two choices, but the cost for one of the vendors was too high and the other vendor subsequently withdrew its offer. As a result, AOC and IDS withdrew the RFI and agreed that AOC would adapt the Criminal Court Information System—District Attorney (“CCIS-DA”) and create a Criminal Court Information System—Public Defender (“CCIS-PD”). AOC expects to do the initial

programming and issue a first version of CCIS-PD by July 1, 2015, and has informed IDS that it will need to fund two new information technology positions to maintain the system and to add new features that will meet the requirements of the public defender offices and IDS.

## **PRIVATE ASSIGNED COUNSEL**

More than 2,600 PAC around the State handled approximately 57.4% of the indigent cases that were disposed during fiscal year 2013-14, including criminal and non-criminal cases. IDS values the contributions and talent of the private appointed bar and is committed to maintaining private bar participation in North Carolina’s indigent defense programs when it is cost effective and ensures quality. In its standards for administering indigent defense services, the American Bar Association (“ABA”) recommends that indigent defense programs utilize a mix of service delivery systems, concluding that substantial private bar involvement is crucial to an effective program. PAC bring expertise and skills developed in their private practices to the representation of indigent clients. The PAC system also offers IDS the greatest flexibility to match capacity to demand because attorneys are assigned as cases arise and are paid for actual time spent on cases, which allows the cost of cases to be determined by their complexity. The benefits of this flexibility are particularly salient in rural areas with smaller and less predictable caseloads.

In light of the State’s fiscal crisis, the 2011 Appropriations Act reduced IDS’ budget by \$10.5 million on top of an existing shortfall of almost \$10 million, and directed IDS to reduce the PAC hourly rates to minimize the shortfall. Effective May 2011, the IDS Commission dramatically reduced the hourly rates that are paid to PAC, with estimated annual reductions in PAC payments of approximately \$17 million once the cuts were fully implemented. The following chart sets forth the hourly rate changes for cases at the trial level since IDS was created in 2001:

<b>Case Type</b>	<b>Original IDS Rates (2002)</b>	<b>Aug. 2006 Rates</b>	<b>Feb. 2008 Rates</b>	<b>Jan. 2011 Rates</b>	<b>May 2011 Rates</b>
Potentially Capital Cases	\$85	\$95	\$95	\$95 (\$85 after a non-capital declaration)	\$85 (\$75 after a non-capital declaration)
High-Level Felonies (Class A-D)	\$65	\$65	\$75	\$75	\$70
All Other Superior Court Cases	\$65	\$65	\$75	\$75	\$60
All Other District Court Cases	\$65	\$65	\$75	\$75	\$55

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

a decade ago; all of the current rates are significantly below what attorneys can earn in retained cases and appointed cases in federal court.

The private attorneys who represent indigent persons in North Carolina provide those professional services at an extremely low cost compared to the “market” cost of private legal services. For a typical DWI case, most private lawyers in North Carolina charge between \$1,500 and \$3,000. By comparison, based on the current hourly rates, IDS pays an average of less than \$270 for an indigent DWI case that is resolved in district court and an average of less than \$455 for an indigent DWI case that is resolved in superior court. The IDS Commission and staff are not aware of any other professional services offered by private practitioners to the State at such a steep discount.

IDS is currently conducting a study to determine how many PAC stopped handling indigent cases after the hourly rates were reduced in May 2011. Preliminary results suggest that, since the rate reductions, the pace at which attorneys are leaving indigent defense work has increased dramatically. Conservatively, the rate at which attorneys are leaving indigent defense appears to have increased at least 33% and probably closer to 50%. The IDS Commission and Office also released a survey of PAC in early January 2015 to help determine the impact of the rate cuts. As of January 28, 2015, 418 PAC from all over the State had responded, and 41.8% said the rate cuts were the primary cause of changes in their state court practice since May 2011. When asked if they will stop accepting appointments to state court indigent cases in the next two years if the rates remain at current levels, 17.8% said they definitely will, 23.7% said there is a strong possibility, and 39.9% said they are considering that change. Anecdotally, attrition has been higher among the more experienced attorneys, leaving less experienced counsel to handle the indigent caseload.

In addition to the rate reductions, IDS’ historical underfunding has often led to payment delays for PAC. In fiscal year 2013-14, as a result of underfunding from prior years and carry-forward debt that had to be paid out of IDS’ appropriation for last fiscal year, IDS ended the fiscal year with \$3.2 million of debt. While that was a significant improvement over the \$7.9 million of debt at the end of fiscal year 2012-13 and the resulting seven-week payment delay, the ongoing payment delays create a significant hardship for PAC, most of whom are solo practitioners or members of small law firms. They also make it difficult for IDS to recruit and retain qualified counsel to represent indigent persons. No other actors in the criminal justice system have their pay delayed as a result of the State’s budget problems.

## **REQUESTS FOR PROPOSALS AND CONTRACTS**

- *Individually Negotiated Contracts:* Since the spring of 2003, the IDS Office has been exploring the use of contracts with attorneys as an alternative method of delivering quality and cost-effective legal services to indigent persons in various districts in North Carolina. As of June 30, 2014, IDS had individually negotiated contracts with 43 different attorneys in Alexander, Avery, Brunswick, Buncombe, Catawba, Davie, Forsyth, Guilford, Harnett, Iredell, Johnston, Madison, Mitchell, Robeson, Rowan, Stanly, Wake, Watauga, Yadkin, and Yancey Counties, with the Center for Children’s Defense and the Neighborhood Advocacy Center in Charlotte, and with the Elder Law Clinic of the Wake Forest School of Law in Winston-Salem. During fiscal year 2013-14,

IDS had contracts with 46 attorneys, some of which terminated mid-fiscal year, and the listed organizations to cover the above jurisdictions. IDS' negotiated contracts cover a variety of case types, including adult criminal, juvenile delinquency, abuse/neglect/dependency, termination of parental rights, civil commitment, guardianship, Industrial Commission contempt, and treatment court proceedings.

IDS believes that carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered. Excluding the Buncombe County misdemeanor contracts and the contracts in Brunswick, Forsyth, and Robeson Counties for youth and drug treatment courts, which were reported under a different system, all of the individually negotiated contracts combined saved 4% (over \$60,000) during fiscal year 2013-14 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments. While those savings are somewhat lower than in prior years, the IDS Office believes that is due to several factors, including the fact that the costs of the contracts are being compared to unsustainably low PAC hourly rates and the difficulty of developing a cost-effective contract system for low-volume case types, such as juvenile delinquency cases.

- *Requests for Proposals (“RFPs”) and Contracts:* Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, § 18A.4 of Session Law 2013-360, and § 18B.1(k) of Session Law 2014-100 direct IDS to issue RFPs for the provision of legal representation in all classes of indigent cases in all judicial districts. In cases where the proposed contract can provide representation more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards, the current special provision directs IDS to use PAC funds to enter into contracts. In selecting contractors, the special provision further directs IDS to consider the cost-effectiveness of the proposed contract. It also provides that disputes about the ability of a potential contractor to provide effective representation shall be determined by the senior resident superior court judge for the district.

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

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

- ✓ Reviewed North Carolina law governing RFPs and service contracts with state agencies.
- ✓ Reviewed RFPs and legal services contracts in other jurisdictions, as well as national reports and recommendations for strong indigent defense contract systems, to identify best practices and potential pitfalls.
- ✓ Developed policies to govern the issuance of RFPs and the establishment of legal services contracts.

- ✓ Drafted a model RFP, including standard contract terms and conditions, and a model offer form.
- ✓ Created a page on the IDS website dedicated to RFPs and contracts.
- ✓ Released an online virtual education program for interested attorneys about the RFP process and the contract system.
- ✓ Analyzed case data by county to determine the number of hours needed to provide representation and to develop appropriate caseload units.

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

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

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

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

Of the 177 total caseload units that were originally available in the first wave of RFP counties, 23 units (or 12%) were not renewed across all counties and contract categories. In addition to those 23 units, the IDS Office added 17 new units due to higher-than-projected caseloads. Thus, after the first renewal period, only 40 caseload units were available for competitive offers. Due in part to the high renewal rate and the fact that

contractors can terminate without cause by giving 30 days' notice, the Commission and Office are tentatively planning to move toward four-year contracts.

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

As of January 25, 2014, RFP-based contract attorneys had entered data into the online reporting system about more than 52,000 adult criminal cases, including pending and disposed cases:

<b>Contract Category</b>	<b># Pending Cases in Online System (as of 1/25/14)</b>	<b># Disposed Cases in Online System (as of 1/25/14)</b>
Misdemeanor	9,316	23,466
Low-Level Felony	5,728	11,921
High-Level Felony	891	1,077
<b>Totals</b>	<b>15,935</b>	<b>36,464</b>

For more details about the RFPs and contracts, see IDS' Report to the Chairs of the House Appropriations Subcommittee on Justice and Public Safety, the Senate Appropriations Committee on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety: Requests for Proposals and Contracts for Legal Services (Sept. 25, 2014), available at [www.ncids.org](http://www.ncids.org).

- *Contractor Dispositions During Fiscal Year 2013-14:* During fiscal year 2013-14, non-RFP contractors reported 8,043 dispositions and withdrawals and RFP contractors reported 18,605 dispositions and withdrawals, for a total of 26,648 contractor dispositions, which represented approximately 8.5% of the indigent caseload in North Carolina, including criminal and non-criminal cases.

## **OFFICE OF THE CAPITAL DEFENDER**

In addition to the Capital Defender, the Office of the Capital Defender currently employs 15 staff attorneys in four regional offices around the State who represent indigent defendants charged with potentially capital cases at the trial level. The regional offices are located in Asheville, Durham, Wilmington, and Winston-Salem. During fiscal year 2013-14, all of the regional offices combined handled 107 unique potentially capital cases at the trial level, including pending cases and withdrawals. Because two assistant capital defenders are assigned to some cases that are proceeding capitally, the offices' workload last fiscal year was closer to 120 cases.

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

- During fiscal year 2013-14, the office made 585 attorney appointments in 525 potentially capital cases at the trial level. During fiscal year 2014-15 to date (through December 29, 2014), the office made an additional 302 attorney appointments in potentially capital cases. Based on a review of appointments in 217 cases, the Office of the State Auditor's 2014 performance audit report that is discussed above concluded that the Office of the Capital Defender assigned second counsel to cases in accordance with IDS' published policies 100% of the time.
- During fiscal year 2013-14, the office reviewed and acted on 1,888 requests for expert funding and miscellaneous expenses at the trial level. During fiscal year 2014-15 to date (through December 29, 2014), the office reviewed and acted on an additional 882 requests.

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

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

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

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

In addition to the Appellate Defender, the Office of the Appellate Defender currently has 20 staff attorneys who represent indigent persons on direct appeal in the Appellate Division. In addition to the Parent Representation Coordinator, the Office of Parent Representation Coordinator, which is technically housed within the Office of the Appellate Defender but specializes in abuse/neglect/dependency, termination of parental rights, and contempt appeals, has three staff attorneys who represent indigent persons on direct appeal. During fiscal year 2013-14, both offices combined disposed of 267 direct appeals.

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

- During fiscal year 2013-14, the offices made 1,063 attorney appointments in capital, non-capital criminal, and non-criminal appeals. During fiscal year 2013-14 to date (through December 29, 2014), the offices made an additional 493 attorney appointments.

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

- Evaluate appellate briefs for inclusion in an online brief bank.



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

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

### **OFFICE OF SPECIAL COUNSEL**

The Office of Special Counsel represents indigent respondents in civil commitment proceedings around the State through regional offices at Cherry Hospital in Wayne County, Broughton Hospital in Burke County, Central Regional Hospital in Granville County, and on the campus of the former Dorothea Dix Hospital in Wake County. In fiscal year 2013-14, in addition to the Special Counsel Supervising Attorney, the four Offices of Special Counsel employed eight attorneys and eight support staff and disposed of a total of 12,537 cases.

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

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

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

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

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

- Serves as a central resource and contact for individual juvenile defenders and juvenile associations statewide.
- Fields questions from practitioners and performs case consultations as needed.
- Develops ways to connect and support juvenile defense attorneys across the State, including maintaining a special delinquency page on the IDS website and a delinquency listserv.
- Evaluates the existing systems and practices, and the current quality of representation, in various areas of the State.
- Provides on-site monitoring of juvenile delinquency contractors;
- Identifies training needs and works with SOG and other groups to develop and sponsor training programs.
- Develops and maintains a clearinghouse of materials on North Carolina juvenile law and practice.

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

## **INMATE ACCESS TO THE COURTS**

Pursuant to a contract with IDS, North Carolina Prisoner Legal Services ("NCPLS") provides legal advice and assistance to approximately 38,000 prisoners in the custody of the Division of Adult Correction ("DAC") in some cases in which they have a statutory or constitutional right of access to the courts. The State began contracting with NCPLS in 1989 as part of a settlement to enforce *Bounds v. Smith*, 430 U.S. 817 (1977), in which the United States Supreme Court held that inmates have a constitutional right to meaningful access to the courts. In addition to reviewing inmates' cases for potential post-conviction claims and providing representation in criminal post-conviction proceedings, NCPLS previously provided representation in civil proceedings challenging conditions of confinement or the actions of government officials (*e.g.*, the provision of inadequate medical care, cases involving sexual abuse by prison guards and negligent failure to protect, and the application of gain time credits for disabled inmates). NCPLS also previously had a jail credit program, through which the organization identified and corrected unapplied jail credit.

Due to a significant reduction to NCPLS' funding in the 2013 Appropriations Act, NCPLS can no longer review and evaluate individual inmate claims relating to their conditions of confinement and is unable to explain why some claims are frivolous to the extent that they previously did. Thus, inmates with legitimate grievances lack representation, and other inmates wrongly believe that litigation is warranted and proceed with frivolous *pro se* lawsuits. Between July 2013 and November 2014, NCPLS had to decline to investigate 1,700 potential conditions

claims that it would have investigated if its funding had not been reduced. Included in that figure are a number of serious conditions concerns that should be litigated to ensure safe prisons in North Carolina: 67 complaints of sexual assault; 24 complaints about inappropriate use of long-term segregation; and 10 complaints of failure to protect at one DAC facility that is currently being sued in federal court for repeated instances of violence against inmates.

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

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

## **INNOCENCE INQUIRY COMMISSION PROCEEDINGS**

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

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

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

During fiscal year 2013-14, IDS spent a total of \$6,225.30 on one Buncombe County case that was pending before the Commission and a total of \$3,178.90 on one Warren County case that

was pending before the Commission. The Buncombe County case was not referred to a special three-judge panel, and the Warren County case was closed without being presented to the Commission.

## **TRAINING, RESOURCES, AND SUPPORT**

### **IDS WEBSITE**

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

- News and update links addressing the state of indigent defense funding, timing of attorney payments, and any other recent developments or matters of interest.
- Contact information for IDS staff members and all state defender offices.
- All approved minutes of IDS Commission meetings, and a list of IDS Commission committees and their participants.
- IDS rules, policies, and procedures.
- Focused fact sheets about various aspects of IDS' work.
- Forms and applications, including applications for the capital and appellate attorney rosters and attorney and expert fee application forms.
- All approved indigent appointment plans.
- Performance guidelines for non-capital criminal cases, juvenile delinquency cases, and abuse, neglect, dependency and termination of parental rights cases at the trial level.
- Materials used in IDS co-sponsored training programs and an index of all posted training materials by topic.
- Legal resources and reference materials, including all of the North Carolina indigent defense manuals.
- A North Carolina appellate brief bank, as well as capital and non-capital trial motions banks.
- Forensic science resources, including an expert database and State Bureau of Investigation ("SBI") laboratory protocols and procedures.
- Dedicated pages for specialized areas of the law, including juvenile delinquency; abuse, neglect, dependency; child support contempt; and civil commitment and guardianship.
- A page devoted to the RFPs and contracts that the General Assembly has mandated.
- Reports and data generated by Office staff.

Since its creation in May 2002, there have been almost 550,000 visits to the IDS website.

### **IDS LISTSERVS AND EBLASTS**

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

In addition, IDS has created a system for sending one-way “EBlasts” to attorneys across the State so they can be more informed about matters that impact them, such as IDS’ funding, the timing of PAC payments, issued RFPs, and training opportunities. Attorneys can register to receive EBlasts by completing a simple form on the IDS website. As of December 2014, 1,400 people had registered to receive EBlasts.

## **GRANT FUNDING FOR SPECIAL PROJECTS**

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

- During calendar years 2010 and 2011, IDS and SOG received a total of \$95,000 in grant funding from Z. Smith Reynolds (with a \$30,000 match) to support the development of the Collateral Consequences Assessment Tool (“C-CAT”). C-CAT is an electronic database that compiles all of the civil consequences of criminal convictions in North Carolina. The database became available during the spring of 2012 and is a resource for defense attorneys, prosecutors, judges, social service agencies, legal aid attorneys, and others. There is only one other jurisdiction in the country that currently has a resource similar to C-CAT. C-CAT can be accessed at <http://ccat.sog.unc.edu/>.
- In March 2010, the Governor’s Crime Commission (“GCC”) notified IDS that its application for funds for a capital and serious violent felony training initiative had been approved, at the level of \$39,132 spread over a two-year period (with a 25% match). The GCC grant funded four training programs around the State between December 2010 and February 2012.
- In September 2010, the Bureau of Justice Assistance (“BJA”) notified IDS and the Conference of District Attorneys that a joint application for training funds for a capital case litigation initiative had been approved, at a level of \$198,564 spread over a two-year period. Those funds were split equally between the prosecution and defense. For the defense, the BJA grant funded four primary programs around the State between May 2011 and September 2012, as well as a supplemental DNA program during the summer of 2012.
- In May 2012, the Open Society Foundations (“OSF”) awarded IDS \$225,000 in grant funds as part of a larger grant to the National Legal Aid and Defender Association (“NLADA”) to work on a project called the Justice Standards, Evaluation and Research Initiatives (“JSERI”). JSERI’s mission is to expand the research capacity of the indigent defense community nationally in order to more effectively advocate for funding and sensible criminal justice policies. \$225,000 of the grant funds was used to support the Systems Evaluation Project and data warehouse that is described later in this report, as well as the development of a variety of research toolkits. The grant expired in August 2014, although the work of the project will continue.
- In September 2013, BJA notified IDS and the Conference of District Attorneys that a second joint application for training funds for another capital case litigation initiative had been approved, at a level of \$169,714 spread over a two-year period. Those funds are again being split equally between the prosecution and defense. The defense funds were

used for two bring-your-own-case programs during the spring and fall of 2014, and will be used for two additional bring-your-own-case programs during the spring and fall of 2015.

- During fiscal year 2012-13, Equal Justice Works provided IDS with \$20,000 to cover some personnel costs associated with fellows that the Mecklenburg and Wake County Public Defender Offices hired through their program. The fellows design projects that address a range of legal issues, such as domestic violence, homelessness, immigration, civil rights, and juvenile justice, and Equal Justice Works matches the fellows with sponsors to support their projects. Equal Justice Works also provides training to the fellows over a three-year period.

## **IMPROVED TRAINING**

IDS continues to provide funding for defender training, and has sponsored a number of new training programs, many of which cover areas of representation that traditionally have not had adequate continuing legal education. During fiscal year 2013-14, in addition to the grant-funded training programs described above, IDS and SOG co-sponsored the following in-person programs and live webinars, which allow attendees to send questions electronically and get responses in real time:

- The annual hands-on five-day Defender Trial School in July 2013, which is an intensive program in which participants develop trial skills by working on their own cases.
- A two-day introductory program for new appellate attorneys called the “North Carolina Appellate Boot Camp” in August 2013.
- An annual one-day conference for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings, called “Making a Case: The First 60 Days” in August 2013.
- An annual one-day juvenile defender conference in August 2012, which focused on client-centered advocacy.
- An evening program that focused on firearms in August 2013.
- An intensive immigration training program in September 2013.
- The annual four-day New Misdemeanor Defender Training in September 2013.
- A case and legislative update webinar in December 2013.
- Administrative and legal assistant training in December 2013.
- A January 2014 program on the fundamentals of State Crime Laboratory forensic science disciplines.
- A one-day conference for attorneys representing respondents in child support contempt cases in January 2014.
- The annual three-day New Felony Defender Training in February 2014.
- A three-day advanced program for attorneys who represent juveniles in delinquency proceedings in March 2014.
- Regional programs for contractors in Districts 9 and 9A in March 2014 and for contractors in District 15A in April 2014, which focused on motions practice in DWI cases.
- Management and leadership training for managing attorneys in defender offices in April 2014.
- A hands-on three-day advanced appellate advocacy training program in April 2014.

- The annual three-day conference for public defenders and investigators in May 2014.
- A case and legislative update webinar in June 2014.
- A program for all criminal contractors in June 2014.

In addition to these programs, IDS and SOG have sponsored a number of other innovative programs during recent years, including programs for attorneys handling Chapter 35A guardianship proceedings and attorneys handling civil commitment cases. The IDS Office posts on its website materials that are used in IDS co-sponsored training programs, as well as a comprehensive training materials index, so that attorneys around the State can benefit from programs they were unable to attend in person. As a cost-saving measure and a way of reaching more attorneys, IDS and SOG also sponsor a number of online training programs, including the webinars mentioned above and self-paced virtual programs. Those programs can be accessed for free or purchased for continuing legal education credit.

Finally, in November 2014, the Office of the Capital Defender sponsored a free one-day capital jury selection program at the University of North Carolina School of Law. Four instructors volunteered their time and eight attorneys, most of whom were new to the capital trial rosters, attended the program.

## **PERFORMANCE GUIDELINES AND REFERENCE MANUALS**

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

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

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

## **ADDITIONAL IMPROVED RESOURCES**

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

IDS also created two Resource Counsel positions to improve the quality and cost-effectiveness of representation in complex cases by ensuring that attorneys do not have to “reinvent the wheel” in individual cases:

- *Forensic Resource Counsel:* In 2010, partly in response to the negative press coverage about the SBI Crime Laboratory and the independent audit of the lab’s forensic biology section, IDS created the position of Forensic Resource Counsel to assist public defenders, PAC, and contractors who are facing complex scientific and forensic issues in their cases. Among other things, the Forensic Resource Counsel is responsible for:
  - ✓ Consulting with attorneys who are handling indigent cases involving complex forensic science issues.
  - ✓ Helping attorneys identify appropriate forensic resources and experts.
  - ✓ Ensuring that counsel obtain and understand available discovery.
  - ✓ Assisting counsel in preparing legal challenges to forensic science evidence.
  - ✓ Creating and maintaining a clearinghouse of information concerning forensic science, such as available experts, transcripts, and published treatises.
  - ✓ Creating and presenting training materials on forensic science issues for attorneys, investigators, and others.
  - ✓ Maintaining a page on the IDS website that contains forensic resources, including a searchable database of prosecution and defense experts by name and area of expertise and SBI laboratory procedures and protocols.

The IDS Commission and Office believe that this position improves the quality of representation in cases involving forensic science issues and ensures that complex scientific issues are handled in a cost-effective manner.

- *Trial Resource Counsel:* In early 2011, IDS created a new Trial Resource Counsel position to assist public defenders, PAC, and contractors who were facing complex trials, particularly capital trials, prepare for trial and evaluate plea options. This trial resource and consulting function was previously filled by the Center for Death Penalty Litigation’s Trial Assistance Unit. Among other things, the Trial Resource Counsel was responsible for:
  - ✓ Providing technical assistance to and consulting with attorneys representing clients in complex cases, including meeting with the clients and members of the defense team when appropriate to discuss plea decisions and other case-related issues.
  - ✓ Assisting in designing and implementing training programs for attorneys handling complex cases, including capital cases.



This position was eliminated effective August 11, 2014 as a result of the 20% reduction to IDS' administrative budget in the 2014 Appropriations Act. Some of the functions previously performed by the Trial Resource Counsel have been absorbed by the Office of the Capital Defender.

## **BUDGETARY OVERSIGHT AND FACTS**

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

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

As shown in Appendix A, the increase in overall demand (spending and current-year obligations) since IDS was created has averaged 4.5%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS' creation. Comparing PAC demand over time is complicated by the drastic hourly rate reductions that the IDS Commission implemented in May 2011. The growth rate declined significantly (-8.9% overall and -14.6% in the PAC fund alone) during fiscal year 2011-12, but the decline was largely attributable to the rate reductions. In fiscal year 2012-13 and 2013-14, overall demand was virtually flat, with 0.4% growth in fiscal year 2012-13 and a 0.2% decline in fiscal year 2013-14. However, if the current PAC hourly rates are adjusted to the prior rate, there was some real growth in the system, although the rate of growth was lower than in many prior years. Growth rates measured by demand and by disposition year remain difficult to predict because court resources and other volatile factors affect the timing of case dispositions.

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

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

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

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

staff update a study comparing the total number of indigent case file numbers disposed in district and superior court to the total number of court file numbers disposed in case types for which IDS would be responsible if the defendant was indigent, excluding traffic dispositions and dispositions from civil cases such as special proceedings and child support contempt. The 2015 study revealed that there has been a 9.5% *decrease* in the number of total criminal non-traffic court file numbers between fiscal years 2001-02 and 2012-13. However, 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%

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

Overall indigent defense expenditures per disposition (for both public defender offices and PAC combined) declined over the first four years after IDS was established—between fiscal years 2001-02 and 2004-05—with modest increases in per disposition costs between fiscal years 2004-05 and 2008-09. Per disposition expenditures then decreased in fiscal year 2009-10, increased modestly in fiscal year 2010-11, decreased again in fiscal years 2011-12 and 2012-13, and increased again in fiscal year 2013-14. Overall, indigent defense expenditures per disposition during fiscal year 2013-14 were only \$1.24 more than per disposition expenditures the year before IDS was established (fiscal year 2000-01).

	FY01	FY09	FY10	FY11	FY12	FY13	FY14
Per Disp Expenditures	\$370.94	\$383.01	\$377.74	\$387.93	\$370.15	\$356.22	\$372.18

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

## REVENUE COLLECTION

IDS Office staff regularly evaluate data on the amount each county collects in recoupment (through probationary collections and civil judgments) each fiscal year, and determine the amount recouped as a percentage of that county’s expenditures on indigent defense. Total revenues from recoupment during fiscal year 2013-14, including the attorney appointment fee required by G.S. 7A-455.1, amounted to \$12.9 million, which represented a slight decrease of less than 1% compared to the prior fiscal year. The minimal drop in total recoupment was the result of a 1.4% decrease in the collection of attorney fees, which was somewhat mitigated by a 3.5% increase in the collection of attorney appointment fees. While the drop in attorney fees collections was a result of the decrease in the PAC hourly rates in 2011, the increase in appointment fees was probably due to continued work to clarify how those fees are handled in clerks’ offices around the State.

While total recoupment collections decreased slightly during fiscal year 2013-14, collection of fees through clerks' offices fell more sharply, with a decrease of 5.5% compared to fiscal year 2012-13. The amount of recoupment from the interception of state income tax refunds and lottery proceeds grew by almost 6.6% compared to fiscal year 2012-13. While long-term trends in collections through the set-off debt program are unpredictable, total collections have increased steadily and exceeded \$5 million for the first time in fiscal year 2012-13.

During fiscal year 2013-14, there continued to be wide variability in recoupment rates among counties. Excluding three small counties (Hyde, Tyrell, and Warren) with unusually high recoupment rates, recoupment as a percentage of non-capital spending on PAC and public defender offices ranged from a low of 3.9% to a high of 38.3%, with an overall statewide rate of 13.2%. While this is the same recoupment rate as in fiscal year 2012-13, the average recoupment rate by county has increased from 11.4% in fiscal year 2008-09 to 13.2% the past two fiscal years. Most counties had similar recoupment rates in fiscal years 2012-13 and 2013-14, but 45 counties increased their rate last year.

Since fiscal year 2009-10, IDS has also used case disposition data to look at recoupment rates adjusted for the proportion of spending that was recoupment eligible. Based on prior studies, roughly 30% of attorney fees in criminal cases are not eligible for recoupment because the cases were dismissed or the clients were acquitted. That means the effective statewide recoupment rate (defined as total recoupment as a share of recoupment-eligible spending) last fiscal year was closer to 19%. For a county-by-county comparison of unadjusted recoupment rates, see Appendix B.

The IDS Office has continued to undertake a number of initiatives to improve the recoupment process and to increase revenues to the indigent defense fund. For instance, IDS Office staff continue to work with the public defender offices to ensure that they submit fee applications for entry of judgment in all recoupment-eligible cases, and have held meetings around the State with public defenders, judges, and clerks to discuss ways to increase revenues. IDS' set-off debt program staff also work with clerks' offices around the State and AOC Court Services staff to ensure that attorney fee judgments are correctly docketed.

IDS' recoupment revenues have historically kept pace with increases in demand on the indigent fund. However, recoupment revenues began to decline in fiscal year 2012-13 due to the reduced PAC hourly rates. In addition, IDS expects recoupment revenues to continue to decline for several reasons. First, the 2013 state tax reforms were accompanied by changes in the withholding tables that are expected to result in fewer people receiving state income tax refunds, and one-third of IDS' recoupment revenues come from intercepted state tax refunds. Second, as IDS shifts more cases away from PAC paid by the hour to contract defenders who are paid monthly or public defenders who are paid a salary, an effective recoupment system based on hours claimed will become more difficult to maintain. Finally, attorney fees and the attorney appointment fee are last in the statutory priority for the disbursement of costs, fines, and fees collected by clerks offices, so legislative increases in other costs and fees may result in fewer funds available to repay attorney fees and the attorney appointment fee. *See* G.S. 7A-304(d)(1).

## **HISTORICAL UNDERFUNDING AND CURRENT PROJECTIONS FOR FISCAL YEAR 2014-15**

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

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

During fiscal year 2012-13, as a result of the depressed PAC hourly rates, IDS was able to chip away slightly at the continuing carry-forward debt and ended the fiscal year with \$7.9 million of unpaid fee awards. During fiscal year 2013-14, due in large part to a \$3.7 million non-recurring appropriation, IDS was able to decrease the continuing carry-forward debt even further and ended last fiscal year with \$3.2 million of unpaid fee awards. Current projections suggest that IDS will end this fiscal year with a slightly larger shortfall of approximately \$4 million, which would mean that IDS will again have to stop paying PAC and defense experts before the end of the fiscal year, continuing the problem of payment delays on top of the rate reductions. Despite slowed growth in the overall court system and some reduction in costs from the new contract system and the Class 3 misdemeanor changes that were enacted during the 2013 session, if IDS does not receive an increased appropriation over the upcoming biennium to eliminate the ongoing shortfall and to cover some modest growth in the system, IDS will be facing a potential deficit of \$6 million or more at the end of fiscal year 2015-16.

The IDS Commission and Office recognize that reductions in spending were needed to meet the fiscal crisis, and have worked diligently to reduce spending over the past several years. However, the United States Constitution requires States to provide and pay for competent legal representation for indigent defendants who are accused of a crime and facing a possible deprivation of liberty. Various North Carolina General Statutes also require IDS to provide legal representation to indigent persons in a number of additional proceedings. The significant cuts to the hourly rates paid to PAC, both those on local rosters and those who work under contract with IDS, and the continuing inability to pay counsel at the end of each fiscal year are imperiling IDS' ability to ensure effective assistance of counsel. Thus, the Commission and Office respectfully request an additional appropriation of \$5.89 million in fiscal year 2015-16 to eliminate the projected deficit in the PAC fund and to cover some modest growth in demand.

## RESEARCH AND REPORTS

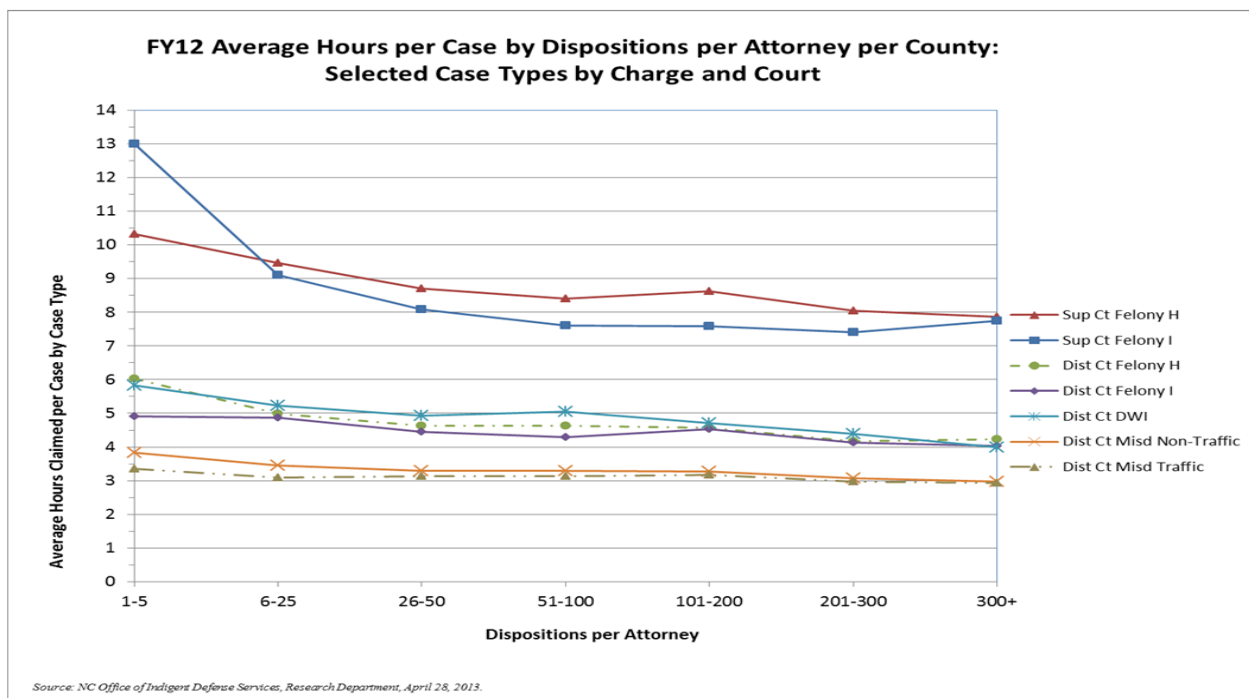
IDS Office staff continually work with AOC and IDS Financial Services to develop better and more comprehensive data collection and reporting systems for the indigent defense program, and now receive periodic data exports from the AOC's Automated Criminal Infraction System ("ACIS") upon request. With the OSF grant funding for the JSERI initiative that is discussed earlier in this report, IDS hired an Information Technology consultant to build a data warehouse that automates the integration of data from various court information systems into a data depository and facilitates data mining, reporting, and analysis. The data warehouse became operational in July 2014. The next steps are for Office staff to repair minor bugs and master the warehouse so that it can be used for analysis.

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

### PAC AVERAGE HOURS STUDIES

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

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



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

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

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

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

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

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

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

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

## **CAPITAL CASE COSTS AND DISPOSITIONS STUDY**

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

The study generated four primary findings:

- IDS' per case spending on potentially capital cases at the trial level had not risen. While there had been some fluctuation in the average cost of cases from year to year, IDS' total annual expenditures on potentially capital cases had grown because the number of pending cases had grown each year.
- The high profile expensive cases were the exception. Fifty percent of all potentially capital cases had total case costs less than \$14,400 and 90% had total case costs less than \$64,500. Twenty five percent of all potentially capital cases had no expert spending and 60% had total expert spending less than \$5,000.

- IDS' spending on potentially capital cases is driven by prosecutorial decisions over which the defense function has no control, including prosecutors' decisions to charge the vast majority of intentional homicides as first-degree or undesignated degree of murder and to proceed capitally and seek the death penalty.
- The dispositions of these cases did not justify the expenditures. Over 83% of the cases in the study ended in convictions of second-degree murder or less, and 45% ended in convictions of less than second-degree murder. More than 12% ended in dismissals without leave to refile, no true bills, or no probable cause. For cases that actually proceeded capitally, 60% ended in second-degree murder or less and 22% ended in less than second-degree murder. A mere 3% of the cases that actually proceeded capitally ended in a death verdict.

## **MISDEMEANOR RECLASSIFICATION STUDY**

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

In fiscal year 2010-11, IDS Office staff conducted a misdemeanor reclassification study that examined the sentence outcomes and potential cost savings that would be associated with reclassifying 31 different misdemeanors as infractions, as well as 13 additional misdemeanors that the Sentencing and Policy Advisory Commission recommended for reclassification pursuant to § 19.5 of Session Law 2010-31. Seventeen of the 31 offenses were identified for study because there is a high volume of cases, a high percentage of dismissals or other resolution without conviction, and a lower likelihood of objection to reclassification because, for example, the offense is a victimless crime or reclassification should not have a negative impact on public safety. Additional related statutes were examined to ensure that projected savings could not be eliminated or minimized if law enforcement or prosecutors start charging defendants who engage in the same conduct pursuant to a different but related criminal statute. The study analyzed all charges associated with cases disposed in fiscal year 2008-09 that included at least one of the identified statutes.

The study found that cases that involved at least one of the 31 statutes comprised 65.2% of the court system's (not IDS') caseload in fiscal year 2008-09 (or 977,750 cases), and that the majority of selected statutes rarely or never resulted in active or intermediate time or probation. Most often, the cases resulted in a financial penalty only or a dismissal without leave. Excluding driving while license revoked ("DWLR") cases, the study concluded that IDS would save



approximately \$2.25 million annually in attorney fees if the identified statutes were reclassified as infractions. Those projected savings were based on the prior \$75 hourly rate paid to PAC and, based on the current \$55 district court rate, the projected savings from reclassification as infractions should be closer to \$1.65 million. While reclassification of DWLRs would generate additional savings, there are more than 70 ways for a defendant's license to be revoked and the IDS Commission and Office only recommend reclassification of DWLRs that are based on a failure to comply or other similar conditions, not DWLRs that are based on a prior DWI conviction. In addition to the 31 offenses selected by IDS, the study concluded that reclassification of the 13 offenses recommended by the Sentencing and Policy Advisory Commission would generate almost \$1 million (again, based on the prior PAC hourly rate) in attorney fee savings. Reclassification as infractions would also relieve over-burdened criminal courts and generate additional savings for the prosecutors, courts, jails, corrections, and probation.

## **SYSTEMS EVALUATION PROJECT**

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

The major phases of the Systems Evaluation Project include:

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

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

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

- *SEP Pilot Site Project:* SEP hosted a multi-state project to develop nationally comparable Key Performance Indicators ("KPIs") for indigent defense systems in three areas: case outcomes, access to attorneys, and pretrial release. The multi-state project has developed nationally reviewed KPI measures for client case outcomes and access to

attorneys, and is currently working on pretrial release performance measures. Although the grant ended in August 2014, the multi-state project participants continue to work together to develop additional KPIs.

- *Research Toolkits:* SEP developed four toolkits that provide information and instructions to help other indigent defense agencies replicate SEP’s research and products, including a “Building In-House Research Capacity Toolkit,” “Case Outcome Data and KPI Toolkit,” “Access to Attorney Data and KPI Toolkit,” and “Building a Data Warehouse Toolkit.”
- *Data Warehouse:* SEP built the technological infrastructure to house, integrate, and facilitate data mining of more than 15 million data records, with an expected annual growth of more than 2 million records, to sustain SEP’s program evaluation work in the future. The data warehouse became operational in June 2014 and will be available upon request to other indigent defense agencies.
- *NLADA Research & Data Analysis Advisory Committee:* SEP staff served on the NLADA’s Research & Data Analysis Advisory (“RDAA”) Committee for over two years. The goal of the RDAA Committee was to expand the research capacity of the defense community nationally.

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

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

The existing data on the volume and cost of cases handled in each district by PAC, contractors, and public defenders during fiscal year 2013-14 is attached to this report as Appendix C. The IDS Office is continually working to improve data collection procedures and data reporting capabilities and hopes to continue improving the quality of the data that is reported in future annual reports.

## **CONTRACTS WITH LOCAL GOVERNMENTS FOR ASSISTANT PUBLIC DEFENDERS**

G.S. 7A-346.2(a) directs the IDS Office to report by March 1 of each year on contracts with local governments for additional assistant public defender positions, including the number of such contracts, the number of attorney positions, and the dollar amount of each contract. During fiscal year 2013-14, Mecklenburg County continued to fund positions throughout the local court system under the terms of a Master Agreement. For IDS, the Master Agreement included six assistant public defender positions and six legal assistant positions for the public defender office. In addition, Mecklenburg County Area Mental Health contracted with the local public defender office to support two full-time social worker positions to screen clients for appropriate treatments in an effort to prevent recidivism. The first social worker began in fiscal year 2009-10 and the

second was added in April 2013. Total expenditures for these 14 positions during fiscal year 2013-14 were \$911,807. Finally, Mecklenburg County reimburses 25% of the personnel expenses for two assistant public defenders under a long-standing arrangement to expedite drug-related cases. During fiscal year 2013-14, \$42,749 in expenses were reimbursed by Mecklenburg County.

## LEGISLATIVE RECOMMENDATIONS

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

Even with the fully annualized savings from the May 2011 PAC rate reductions, IDS is currently projecting a deficit in its appropriation for this fiscal year (2014-15) of approximately \$4 million. That shortfall will mean that funding for payments to PAC and defense experts will again be depleted before the end of the fiscal year and IDS will have to pay the shortfall from its appropriation for fiscal year 2015-16.

As discussed earlier in this report, the IDS Commission and Office recognize that reductions in spending were needed to meet the fiscal crisis, and have worked diligently to reduce spending over the past several years. While a shift toward a large-scale contract system may contain long-term costs through enhanced efficiencies, there will be a short-term increase in spending as IDS issues up-front contractual payments at the same time it is paying PAC fee applications. In addition, because contractors who are not being paid on a per-case hourly basis will not have a financial incentive to submit recoupment applications to the court, a shift to a contract system may have a negative impact on IDS' recoupment revenues. Moreover, many district attorney offices appear to be shifting the cost of providing discovery to IDS by requiring appointed counsel to provide the necessary DVDs and/or paper. Those attorneys, in turn, seek reimbursement from IDS for their necessary expenses.

Partly due to the loss of non-recurring funding this fiscal year, if IDS does not receive an additional appropriation next fiscal year to cover the anticipated \$4 million carry-forward debt plus some modest growth, IDS will again be facing a potential deficit of more than \$6 million at the end of fiscal year 2015-16. With the continued combination of delayed payments and reduced rates, the IDS Commission and Office have serious concerns about the detrimental impact on the entire court system. In addition, as IDS shifts more of the indigent caseload away from case-by-case PAC appointments and toward contract defenders who are paid monthly, there will be a smaller group of PAC who will have to bear the full brunt of the payment delays at the end of each year.

The IDS Commission and Office respectfully request that the General Assembly appropriate an additional \$5.89 million for fiscal year 2015-16 to enable IDS to pay off the anticipated shortfall from this fiscal year and to cover some expected modest growth in demand next fiscal year. This funding request assumes that the Office will be permitted to use all recoupment receipts and available lapsed salary funds. In addition, the IDS Commission and Office respectfully request an additional recurring appropriation of \$3.2 million in fiscal year 2015-16 and \$6.4 million in fiscal year 2016-17 to begin restoring the PAC hourly rates by increasing each by \$5 and to make comparable adjustments to contractor pay effective January 1, 2016.

Type of Case	Current Hourly Rate	Annual Cost of \$5 Increase*
Superior Court Criminal	\$60 for most \$70 for high-level felonies	\$1,629,052
District Court Criminal	\$55 for most \$70 for high-level felonies	\$1,694,836
District Court Civil/Other	\$55	\$1,692,890
District Court Traffic/DWI	\$55	\$569,319
Juvenile Delinquency	\$55 for most \$70 for high-level felonies	\$202,427
Appeals	\$60 for most \$70 for high-level felonies	\$151,900
Potentially Capital Trial	\$75/\$85 ( <i>depending on how proceeding</i> )	\$497,175
Capital Post-Conviction	\$85	\$44,385
Comparable Increases to Contractor Pay	Not Hourly	\$483,831
<b>Total</b>		<b>\$6.42 million</b>

\* Estimated costs based on 2014 caseloads.

## FUNDING FOR PUBLIC DEFENDER CASE MANAGEMENT SYSTEM

As discussed earlier in this report, § 18B.10 of Session Law 2013-360 directed both IDS and AOC to contribute up to \$350,000 during the 2013-2015 fiscal biennium to develop or acquire a new case management system for the public defender offices by February 1, 2015, and § 18A.2 of Session Law 2014-100 extended the deadline for AOC to submit a final report on implementation of the system to July 1, 2015. The new system is intended to replace the offices' current case management system, which was developed by AOC in the 1990s and will soon be obsolete. While a functioning case management system is crucial to the efficient operation of the public defender offices, developing and maintaining the system with available funds creates a significant additional strain on IDS' budget. Based on current estimates, the IDS Commission and Office respectfully request an additional recurring appropriation of \$237,225 in fiscal years 2015-16 and 2016-17 to support two permanent information technology positions to maintain and enhance CCIS-PD, as well as an additional non-recurring appropriation of \$74,250 in fiscal year 2015-16 to cover a one-time purchase of Adobe software for users and start-up costs for the positions.

## REVISE SPECIAL PROVISION DIRECTING IDS TO ISSUE REQUESTS FOR PROPOSALS FOR CONTRACTS

In December 2013, the IDS Commission Chair and IDS Director gave a presentation about the RFPs and contract system to the Justice and Public Safety ("JPS") Oversight Committee, and some legislators expressed concerns about whether the system provides enough resources to attorneys to ensure quality representation in very serious cases. The Commission subsequently met to discuss those concerns, and concluded that IDS should make some internal adjustments to the existing extraordinary pay provisions for serious felony cases, which did not require legislative action. The Commission also concluded that IDS should respectfully suggest that the General Assembly exclude the most serious and complex case types—*i.e.*, potentially capital cases, direct appeals, and capital and non-capital post-conviction cases—from the special

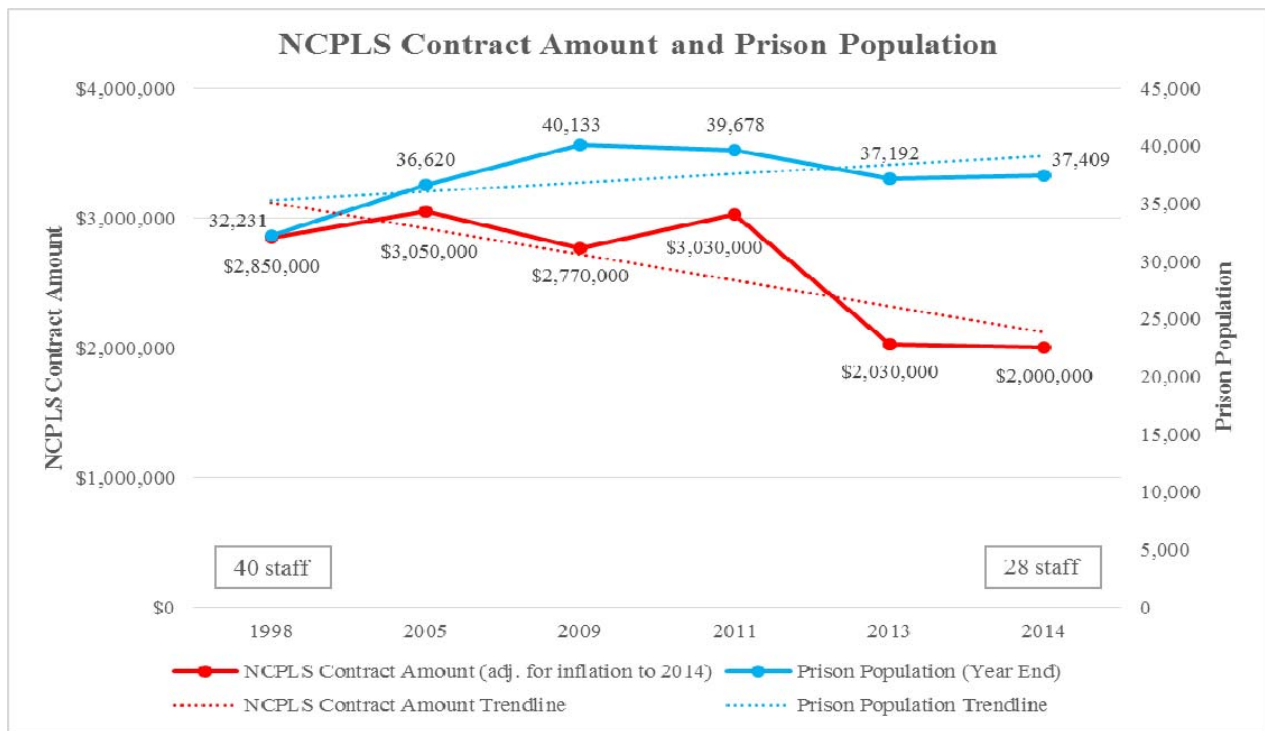
provision that directs IDS to issue RFPs. The IDS Commission and Office recommend the following minor revision to that special provision, which is currently found in § 18B.1(k) of Session Law 2014-100:

The Office of Indigent Defense Services shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of all classes of legal cases for indigent clients in all judicial districts, with the exception of potentially capital cases at the trial level, direct appeals to the Appellate Division, and post-conviction proceedings. The Office of Indigent Defense Services shall report on the issuance of this request for proposals to the Chairs of the House of Representatives Appropriations Subcommittee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety and to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by October 1 of each year. In cases where the proposed contract can provide representation services more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards, the Office of Indigent Defense Services shall use private assigned counsel funds to enter into contracts for this purpose. In selecting contracts, the Office of Indigent Defense Services shall consider the cost-effectiveness of the proposed contract. Disputes regarding the ability of the potential contractor to provide effective representation for clients served by the contract shall be determined by the senior resident superior court judge for the district.

The Commission and Office also recommend that the General Assembly extend some confidentiality protections to the process, such as an exemption from the public records laws for reference information that IDS obtains during the RFP process.

### **RESTORE NORTH CAROLINA PRISONER LEGAL SERVICES' FUNDING**

In the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets that accompanied the 2013 Appropriations Act, the General Assembly reduced NCPLS' budget by \$890,000 recurring, from \$2.89 million to \$2 million. The Committee Report stated that the reduction was intended to "reflect the declining number of inmates incarcerated in the state's prison system." However, NCPLS' funding was never increased to match prior increases in the prison population, and the organization now has fewer staff and a significantly lower budget (after adjusting for inflation) than it did in 1998 when the prison population was much smaller.



Year	Prison Population (Year End)	Approx. # of Attorneys and Staff	NCPLS' Contract Amount	NCPLS' Contract Amount (adj. for inflation to 2014 purchasing power)
1998	32,231	40	\$1.97 million	\$2.85 million
2005	36,620	40	\$2.52 million	\$3.05 million
2009	40,133	40	\$2.52 million	\$2.77 million
2011	39,678	40	\$2.89 million	\$3.03 million
2013	37,192	26	\$2.00 million	\$2.03 million
2014	37,409	28	\$2.00 million	\$2.00 million
<b>% Change (1998-2014)</b>	<b>+16.1%</b>	<b>-30.0%</b>	<b>+1.5%</b>	<b>-29.8%</b>

In light of the significant funding reduction in the 2013 Appropriations Act, NCPLS had to eliminate 16 attorney and support staff positions. After restoring two positions in 2014, NCPLS is now working to serve more than 37,000 inmates with only 28 attorneys and support staff. As a result, and as discussed in more detail earlier in this report, NCPLS is no longer able to handle most civil conditions of confinement claims or jail credit issues, and the State is risking a law suit on the ground that North Carolina is no longer providing inmates with meaningful access to the courts. The IDS Commission and Office respectfully request that the General Assembly restore NCPLS' funding to its prior level.

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

For several years, the IDS Commission and Office have advocated that the General Assembly reclassify as infractions certain lower-level traffic or other misdemeanors that rarely or never result in jail sentences when reclassification would not undermine public safety or compromise a defendant's ability to resolve underlying issues, such as a revoked license. If some such offenses are reclassified, a jail sentence would not be a possible consequence and the State would not be obligated to provide appointed counsel. *See* "Misdemeanor Reclassification Study," above.

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

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

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

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

Allowing defense access to CJLEADS, at least for full-time attorneys employed in public and statewide defender offices, would help the offices with a number of tasks, such as: 1) determining clients' criminal, juvenile, and driving records; 2) determining clients' credit for time served; 3) identifying clients' other outstanding charges, including charges in other jurisdictions; 4) receiving notifications of clients' jail bookings; and 5) receiving notifications of new charges brought against clients. Having CJLEADS for these functions would likewise make

the court system run more smoothly by reducing delays, because the attorneys could better and earlier in the court process advise their clients about the potential consequences they face, work to limit unintended adverse effects for those clients, find successful interventions to prevent the clients from reentering the system, resolve all charges at once, and keep track of clients who are rearrested and detained.

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

### **TRANSFER CHIEF PUBLIC DEFENDER APPOINTMENT AUTHORITY BACK TO IDS COMMISSION**

While § 15.16(b) of Session Law 2011-145 transferred authority to appoint chief public defenders from the local senior resident superior court judges to the IDS Commission, § 18A.5(a) of Session Law 2013-360 transferred that authority back to the judges. The IDS Commission and Office respectfully suggest that this authority should be transferred back to the Commission for a number of reasons. First, the Commission and Office believe that a more appropriate management and oversight relationship between IDS and the chief public defenders would lead to enhanced efficiency and accountability. The Commission also believes that such a relationship can best be accomplished if IDS has hiring authority, as it does with the Appellate, Capital, and Juvenile Defenders. As it did before assuming appointment authority between 2011 and 2013, IDS has responsibility for funding public defender offices but has a very limited ability to affect the efficiency or quality of the offices. While the Commission has no desire to micro-manage the daily operations of public defender offices and did not do so during the two years it had appointment authority, all chief public defenders need some level of support, oversight, and management, which the Commission believes IDS is in the best position to provide.

Second, the system of appointment by senior resident superior court judges is not conducive to active supervision of the chief public defenders. The judges who appoint the chief public defenders do not have the time or information to exercise coordinated management of the public defender offices. Even if the judges had such time and information, it would not be appropriate for judicial officials to manage and supervise the public defender offices when the attorneys in those offices appear before them in court.

Third, appointment by judges has the potential to compromise the independence of the public defenders, which conflicts with national standards. Standard 5-1.3 of the American Bar Association Standards for Criminal Justice Providing Defense Services provides as follows: "The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." Standard 5-4.1 goes further to



provide that “[s]election of the chief defender and staff by judges should be prohibited.” The North Carolina Office of the State Auditor has also concluded that judicial appointment of public defenders “compromise[s] the independence of attorneys” in violation of national standards and that “public defenders cannot be considered independent from the judges that appoint them to office.” In a 2007 report, the Office of the State Auditor recommended that “public defenders should be appointed by the independent agency tasked with providing oversight for the State’s indigent defense delivery system” and that the IDS Office “should propose legislation to gain appointment authority for public defenders or propose some other authority that would ensure the independence of the public defenders.” See Performance Audit: Office of Indigent Defense Services (Feb. 2007), available at [www.ncauditor.net](http://www.ncauditor.net).

Fourth, appointment by the IDS Commission was one of the original recommendations of the North Carolina Indigent Defense Study Commission, which was composed of one Senator, one Representative, one Senior Resident Superior Court Judge, one chief public defender, three private defense attorneys, and one *ex officio* District Court Judge. The Study Commission’s May 2000 report, which was submitted to the General Assembly pursuant to Session Law 1998-212, § 16.5, as amended by Session Law 1999-237, § 17.11, recommended the following: “Public defenders should be appointed by the Commission for four-year terms, with present incumbents serving to the end of their terms. The local bar would submit nominees to the Commission, as under present law, but in exceptional circumstances, the Commission should be allowed to appoint from outside the bar’s list of nominees. Public defenders should be subject to removal for cause by two-thirds of the full Commission, with a right to hearing before the Commission, and judicial review of the Commission’s decision on the record (not *de novo*).” While the General Assembly enacted into law almost all of the Study Commission’s recommendations, it did not adopt the recommendation that the IDS Commission be given authority to appoint the chief public defenders.

Fifth, the General Assembly has expressed interest in a more regionalized public defender system, particularly in rural areas where the population and caseload would be insufficient to support a traditional county- or district-based office, which could follow a similar model as the public defender office that currently serves both District 1 and District 2. However, such a regional system would by definition encompass more than one superior court district, which would result in multiple judges being responsible for one appointment decision.

Finally, the Commission demonstrated during the two years that it had appointment authority that it could and would exercise it responsibly, deliberatively, and with appropriate regard to the valuable opinions of local actors. As discussed earlier in this report, the Commission developed an end-of-term evaluation form and procedures to govern its appointment decisions, including the solicitation of comments from local court system actors and site visits. During the two years the Commission had appointment authority, it evaluated and reappointed eight incumbent chief public defenders, and appointed a new chief public defender in Wake County after the former chief public defender was elected to be a superior court judge.

## **REPEAL OR AMEND PROHIBITION ON PAYING PUBLIC DEFENDERS FOR TRAVEL WITHIN COUNTY OF RESIDENCE**

Section 15.17B(c) of Session Law 2009-451 amended G.S. 7A-498.7 by adding the following new subsection (emphasis added): “When traveling on official business outside his or her county of *residence*, each public defender and assistant public defender is entitled to reimbursement for travel expenses to the same extent as State employees generally. For purposes of this subsection, the term ‘official business’ does not include regular, daily commuting between a person’s home and the public defender’s office.” The Session Law contained a similar provision for district attorneys and assistant district attorneys.

The IDS Commission and staff agree that attorneys should not be reimbursed for expenses associated with regular commuting between their home and duty station. However, these provisions create the incongruous result that, if a state-employed attorney lives and works in County A, he or she is entitled to reimbursement for travel in County B. However, if an attorney lives in County B and has a primary duty station in County A, he or she is not entitled to reimbursement for travel in County B. For purposes of consistency, AOC has adopted the position that prosecutors may not receive reimbursement for travel within the county of their primary duty station or the county of their residence. Some state-employed attorneys have to engage in significant in-county travel between their offices and jails and courthouses, and many offices do not have state cars. IDS believes those expenses should be reimbursable and recommends that the General Assembly repeal or amend the prohibition in G.S. 7A-498.7.

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

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

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

## **ALLOW RETIRED STATE EMPLOYEES TO ACCEPT INDIGENT APPOINTMENTS AND/OR RESOLVE PENDING CASES ON AN APPOINTED OR PRO BONO BASIS**

G.S. 135-1(20) provides that, “[i]n order for a [former State employee’s] retirement to become effective in any month, the [former State employee] must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement.” Pursuant to this provision, a state employed defense attorney who retires cannot place his or her name on the indigent appointment lists and cannot resolve any cases that are pending at the time of his or her retirement (even on a *pro bono* basis). With respect to pending cases, IDS then has to pay a new state employed attorney or appointed attorney to take over the representation and, in many cases, perform the same work over again. IDS recommends that the General Assembly consider some exception to this statutory prohibition for recently retired attorneys who want to accept new appointments from the indigent lists, submit an offer for a contract in response to an RFP, or resolve pending cases on an hourly or *pro bono* basis.

### **ADDITIONAL LEGISLATIVE RECOMMENDATIONS**

During the 2015 long session, the IDS Commission and Office may recommend additional changes in law or funding that would assist IDS in fulfilling its administrative responsibilities or clarify the entitlement to counsel in certain areas.

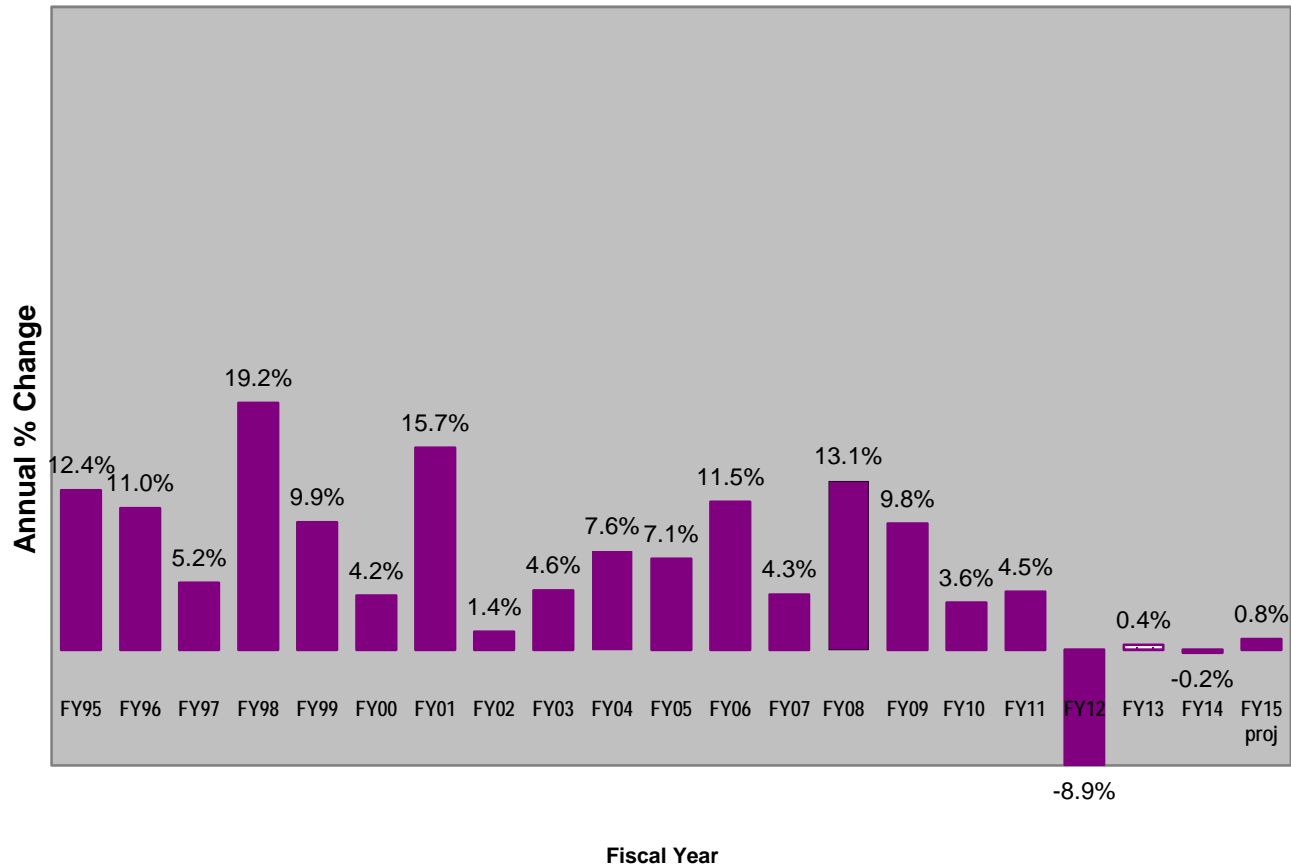
## **CONCLUSION**

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

## **APPENDIX A**

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

(excludes prior year obligations and includes current obligations)



## **APPENDIX B**

**RECOUPMENT DATA FY2014**

<u>County</u>	<u>Appointment Fee</u>	<u>Attorney Fees</u>	<u>Total</u>	<u>Non Capital Spending</u>	<u>Recoup %</u>
Alamance	\$50,355	\$328,789	\$379,143	\$1,336,870	28.4%
Alexander	\$12,985	\$67,903	\$80,888	\$338,007	23.9%
Alleghany	\$5,332	\$20,389	\$25,721	\$71,528	36.0%
Anson	\$9,958	\$70,368	\$80,326	\$350,867	22.9%
Ashe	\$6,973	\$34,942	\$41,916	\$198,524	21.1%
Avery	\$6,136	\$37,729	\$43,865	\$144,099	30.4%
Beaufort	\$11,366	\$95,205	\$106,572	\$647,880	16.4%
Bertie	\$3,249	\$25,116	\$28,365	\$127,334	22.3%
Bladen	\$9,299	\$71,064	\$80,363	\$492,778	16.3%
Brunswick	\$31,284	\$167,275	\$198,558	\$1,335,483	14.9%
Buncombe	\$38,712	\$125,940	\$164,652	\$3,107,021	5.3%
Burke	\$13,577	\$123,939	\$137,516	\$637,321	21.6%
Cabarrus	\$66,067	\$334,477	\$400,544	\$1,044,876	38.3%
Caldwell	\$19,701	\$163,640	\$183,341	\$754,350	24.3%
Camden	\$1,241	\$6,050	\$7,291	\$34,145	21.4%
Carteret	\$9,902	\$51,815	\$61,717	\$791,501	7.8%
Caswell	\$4,926	\$38,230	\$43,156	\$176,073	24.5%
Catawba	\$19,444	\$192,045	\$211,489	\$1,104,867	19.1%
Chatham	\$7,889	\$21,921	\$29,810	\$737,983	4.0%
Cherokee	\$8,030	\$47,230	\$55,259	\$525,301	10.5%
Chowan	\$1,836	\$15,796	\$17,631	\$102,304	17.2%
Clay	\$1,959	\$9,257	\$11,216	\$145,727	7.7%
Cleveland	\$49,113	\$153,726	\$202,839	\$865,434	23.4%
Columbus	\$11,306	\$91,860	\$103,166	\$929,301	11.1%
Craven	\$21,235	\$144,635	\$165,871	\$607,726	27.3%
Cumberland	\$38,556	\$108,654	\$147,211	\$3,739,370	3.9%
Currituck	\$4,615	\$35,513	\$40,129	\$381,053	10.5%
Dare	\$8,001	\$54,082	\$62,083	\$695,318	8.9%
Davidson	\$56,948	\$342,245	\$399,194	\$1,232,111	32.4%
Davie	\$11,460	\$54,392	\$65,852	\$326,420	20.2%
Duplin	\$16,615	\$108,849	\$125,464	\$356,728	35.2%
Durham	\$35,399	\$171,760	\$207,159	\$4,148,878	5.0%
Edgecombe	\$11,166	\$93,006	\$104,172	\$513,796	20.3%
Forsyth	\$89,214	\$309,687	\$398,901	\$3,831,400	10.4%
Franklin	\$10,872	\$61,497	\$72,369	\$483,283	15.0%
Gaston	\$55,625	\$57,677	\$113,303	\$2,630,869	4.3%
Gates	\$871	\$4,883	\$5,754	\$79,181	7.3%
Graham	\$2,185	\$14,777	\$16,962	\$151,522	11.2%
Granville	\$11,181	\$72,555	\$83,736	\$363,258	23.1%
Greene	\$4,258	\$44,052	\$48,310	\$141,336	34.2%
Guilford	\$87,633	\$294,440	\$382,073	\$5,490,195	7.0%
Halifax	\$15,294	\$140,663	\$155,957	\$953,708	16.4%
Harnett	\$16,425	\$91,220	\$107,645	\$594,272	18.1%
Haywood	\$16,724	\$128,092	\$144,816	\$745,881	19.4%
Henderson	\$21,130	\$97,069	\$118,199	\$979,630	12.1%
Hertford	\$4,852	\$36,801	\$41,652	\$207,201	20.1%
Hoke	\$5,405	\$34,872	\$40,277	\$910,317	4.4%
Hyde	\$1,985	\$13,199	\$15,184	\$25,912	58.6%
Iredell	\$46,026	\$249,099	\$295,125	\$1,303,679	22.6%
Jackson	\$7,870	\$50,736	\$58,607	\$328,172	17.9%
Johnston	\$37,649	\$184,603	\$222,252	\$907,716	24.5%
Jones	\$4,335	\$21,870	\$26,206	\$108,459	24.2%
Lee	\$22,849	\$106,468	\$129,318	\$459,420	28.1%
Lenoir	\$20,644	\$176,471	\$197,115	\$682,029	28.9%
Lincoln	\$23,555	\$99,347	\$122,901	\$606,540	20.3%
Macon	\$6,682	\$49,893	\$56,575	\$326,373	17.3%
Madison	\$6,957	\$46,639	\$53,595	\$222,360	24.1%
Martin	\$9,032	\$43,854	\$52,886	\$297,903	17.8%
McDowell	\$16,370	\$94,002	\$110,372	\$516,708	21.4%
Mecklenburg	\$32,134	\$427,708	\$459,841	\$11,592,119	4.0%
Mitchell	\$4,711	\$33,845	\$38,556	\$127,435	30.3%
Montgomery	\$9,343	\$35,079	\$44,423	\$186,476	23.8%
Moore	\$18,070	\$144,649	\$162,719	\$894,369	18.2%
Nash	\$20,209	\$164,589	\$184,798	\$767,675	24.1%
New Hanover	\$40,285	\$302,438	\$342,724	\$2,925,498	11.7%
Northampton	\$2,289	\$20,380	\$22,669	\$153,151	14.8%
Onslow	\$41,481	\$251,339	\$292,820	\$1,178,709	24.8%
Orange	\$16,845	\$53,483	\$70,328	\$1,352,267	5.2%
Pamlico	\$3,159	\$17,383	\$20,541	\$77,147	26.6%
Pasquotank	\$10,274	\$55,262	\$65,536	\$420,622	15.6%
Pender	\$12,421	\$68,881	\$81,302	\$371,663	21.9%
Perquimans	\$1,881	\$8,910	\$10,791	\$50,511	21.4%
Person	\$11,054	\$81,961	\$93,015	\$524,186	17.7%

**RECOUPMENT DATA FY2014**

<u>County</u>	<u>Appointment Fee</u>	<u>Attorney Fees</u>	<u>Total</u>	<u>Non Capital Spending</u>	<u>Recoup %</u>
Pitt	\$26,925	\$245,031	\$271,956	\$2,547,157	10.7%
Polk	\$5,041	\$20,120	\$25,161	\$211,471	11.9%
Randolph	\$31,517	\$182,629	\$214,146	\$1,109,086	19.3%
Richmond	\$22,247	\$172,296	\$194,543	\$853,444	22.8%
Robeson	\$18,816	\$150,292	\$169,108	\$3,329,660	5.1%
Rockingham	\$25,294	\$183,008	\$208,302	\$983,771	21.2%
Rowan	\$55,863	\$283,090	\$338,953	\$1,370,508	24.7%
Rutherford	\$38,857	\$153,551	\$192,408	\$667,513	28.8%
Sampson	\$13,614	\$69,251	\$82,865	\$365,538	22.7%
Scotland	\$8,232	\$45,593	\$53,825	\$606,195	8.9%
Stanly	\$12,406	\$90,193	\$102,599	\$435,830	23.5%
Stokes	\$10,457	\$69,558	\$80,014	\$355,043	22.5%
Surry	\$22,221	\$148,963	\$171,183	\$682,933	25.1%
Swain	\$4,591	\$25,126	\$29,717	\$205,725	14.4%
Transylvania	\$8,837	\$29,729	\$38,566	\$461,298	8.4%
Tyrrell	\$1,898	\$8,636	\$10,534	\$13,823	76.2%
Union	\$43,142	\$250,658	\$293,800	\$1,491,077	19.7%
Vance	\$11,584	\$89,746	\$101,330	\$298,318	34.0%
Wake	\$162,763	\$390,117	\$552,881	\$7,004,998	7.9%
Warren	\$3,417	\$21,416	\$24,833	\$36,064	68.9%
Washington	\$3,772	\$19,528	\$23,300	\$99,374	23.4%
Watauga	\$15,381	\$95,500	\$110,881	\$360,282	30.8%
Wayne	\$26,496	\$195,291	\$221,787	\$899,867	24.6%
Wilkes	\$27,957	\$100,399	\$128,355	\$429,540	29.9%
Wilson	\$9,200	\$102,137	\$111,338	\$644,787	17.3%
Yadkin	\$11,416	\$89,166	\$100,583	\$314,334	32.0%
Yancey	\$7,463	\$42,676	\$50,139	\$159,875	31.4%
<b>Totals</b>	<b>\$2,003,821</b>	<b>\$10,871,917</b>	<b>\$12,875,739</b>	<b>\$97,907,641</b>	<b>13.2%</b>



## **APPENDIX C**

**COST AND CASE DATA ON REPRESENTATION OF INDIGENTS**

July 1, 2013-June 30, 2014

	<b>Number of Payments/Cases*</b>	<b>Total Cost**</b>
<b>Private Assigned Counsel Payments</b>		
Potentially Capital Cases at Trial Level	1,265	\$8,520,174
Capital Appeals/Post-Conviction	117	\$797,719
Adult Non-Capital Cases	176,741	\$52,007,417
Juvenile Cases	6,812	\$1,698,403
Guardian ad Litema Funded by IDS	1,453	\$544,330
<b>Total</b>	<b>186,388</b>	<b>\$63,568,044</b>
<b>Individually Negotiated Contract Dispositions</b>	<b>8,043</b>	<b>\$1,504,141</b>
<b>RFP Contract Dispositions</b>	<b>18,605</b>	<b>\$4,487,654</b>
<b>Legal Services to Inmates</b>		<b>\$2,024,000</b>
<b>Public Defender Office Dispositions</b>		
District 1 & 2***	3,120	\$1,847,993
District 3A	3,456	\$1,688,203
District 3B (Carteret County)	1,400	\$490,759
District 5 (New Hanover)	5,506	\$1,943,311
District 10	11,058	\$3,675,742
District 12	6,485	\$1,866,191
District 14	10,976	\$2,724,002
District 15B	3,296	\$1,444,949
District 16A	2,593	\$1,063,894
District 16B	3,396	\$1,623,479
District 18	10,873	\$3,420,851
District 21	8,025	\$2,520,525
District 26	19,415	\$7,143,703
District 27A	7,216	\$2,157,070
District 28	7,516	\$1,833,535
District 29B	2,621	\$942,420
<b>Total</b>	<b>106,952</b>	<b>\$36,386,627</b>
<b>Office of the Appellate Defender Dispositions</b>	<b>267</b>	<b>\$2,682,481</b>
<b>Office of the Capital Defender Dispositions &amp; Pending</b>	<b>107</b>	<b>\$3,023,670</b>
<b>Office of Special Counsel Dispositions</b>	<b>12,537</b>	<b>\$1,356,157</b>
<b>TOTAL PAYMENTS/DISPOSITIONS PAC+PD</b>	<b>332,899</b>	
<b>Support Services (PAC only)****</b>		
Transcripts, Records, and Briefs		\$551,415
Expert Witness Fees		\$2,543,186
Investigator Fees		\$3,321,398
Interpreters & Translators		\$101,560
Lay Witness Expenses		\$2,506
<b>Total</b>		<b>\$6,520,065</b>
<b>Set-Off Debt Collection</b>		<b>\$122,838</b>
<b>Indigent Defense Services</b>		<b>\$2,197,195</b>
<b>Office of the Juvenile Defender</b>		<b>\$292,169</b>
<b>TOTAL INDIGENT DEFENSE SERVICES</b>		<b>\$124,165,040</b>

\* The number of "cases" shown for private assigned counsel (PAC) is the number of payments (fee applications) to appointed attorneys. For public defender offices, the number of "cases" is the number of indigent persons whose cases were disposed by public defenders during FY14. For contractors, numbers are dispositions reported per contract requirements. For the Office of the Capital Defender, number includes pending cases; because two assistant capital defenders are assigned to some cases that are proceeding capitally, the office's workload in FY14 was closer to 120 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 \$7.9 million in unpaid fee applications at the end of FY13 and about \$3.2 million left unpaid at the end of FY14, the figures here differ from NCAS by about \$4.7 million. These figures exclude receipt supported positions in Mecklenburg County and the IDS office, dual employment payments, and grant funded training and research programs.

\*\*\* The number of cases and total cost for the District 1 Public Defender Office includes expansion into all counties in District 2, effective February 2013. 1,263 of the reported FY14 dispositions were in District 2.

\*\*\*\* Support service costs for public defender offices and statewide defender offices, including interpreters, lay witnesses, etc., are included in total office costs.

**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 1</u></b>		
Camden	21	\$8,062.00
Chowan	80	\$31,436.45
Currituck	186	\$92,175.75
Dare	345	\$222,423.33
Gates	42	\$18,695.40
Pasquotank	308	\$206,978.24
Perquimans	45	\$72,613.98
District Total	1,027	\$652,385.15
<b><u>District 2</u></b>		
Beaufort	1,111	\$418,244.85
Hyde	53	\$13,942.30
Martin	547	\$260,770.26
Tyrrell	24	\$28,317.98
Washington	1,160	\$53,940.18
District Total	2,895	\$775,215.57
<b><u>District 3A</u></b>		
Pitt	3,211	\$1,180,903.07
District Total	3,211	\$1,180,903.07
<b><u>District 3B</u></b>		
Carteret	605	\$430,415.19
Craven	2,090	\$704,156.20
Pamlico	230	\$91,115.98
District Total	2,925	\$1,225,687.37
<b><u>District 4A</u></b>		
Duplin	1,573	\$446,137.05
Jones	305	\$124,046.94
Sampson	1,500	\$450,595.68
District Total	3,378	\$1,020,779.67
<b><u>District 4B</u></b>		
Onslow	4,891	\$1,395,716.61
District Total	4,891	\$1,395,716.61
<b><u>District 5</u></b>		
New Hanover	3,256	\$1,180,186.24
Pender	1,481	\$385,736.94
District Total	4,737	\$1,565,923.18

**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 6A</u></b>		
Halifax	3,000	\$1,213,409.95
District Total	3,000	\$1,213,409.95
<b><u>District 6B</u></b>		
Bertie	504	\$153,730.55
Hertford	755	\$270,203.20
Northampton	498	\$193,136.28
District Total	1,757	\$617,070.03
<b><u>District 7A</u></b>		
Nash	2,142	\$878,608.80
District Total	2,142	\$878,608.80
<b><u>District 7B/C</u></b>		
Edgecombe	1,708	\$640,936.36
Wilson	2,054	\$831,877.78
District Total	3,762	\$1,472,814
<b><u>District 8A</u></b>		
Greene	447	\$156,652.12
Lenoir	1,942	\$763,431.16
District Total	2,389	\$920,083.28
<b><u>District 8B</u></b>		
Wayne	3,048	\$1,193,258.55
District Total	3,048	\$1,193,258.55
<b><u>District 9</u></b>		
Franklin	1,436	\$484,122.57
Granville	1,235	\$374,404.32
Vance	1,668	\$335,653.64
Warren	379	\$39,243.28
District Total	4,718	\$1,233,423.81
<b><u>District 9A</u></b>		
Caswell	531	\$228,798.74
Person	1,335	\$584,723.76
District Total	1,866	\$813,522.50

**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 10</u></b>		
Wake	12,350	\$4,038,667.18
District Total	12,350	\$4,038,667.18
<b><u>District 11A</u></b>		
Harnett	2,708	\$851,411.94
Lee	2,125	\$620,465.39
District Total	4,833	\$1,471,877.33
<b><u>District 11B</u></b>		
Johnston	3,691	\$1,222,440.76
District Total	3,691	\$1,222,440.76
<b><u>District 12</u></b>		
Cumberland	4,971	\$2,781,732.85
District Total	4,971	\$2,781,732.85
<b><u>District 13A</u></b>		
Bladen	1,513	\$599,976.62
Columbus	2,475	\$1,124,999.91
District Total	3,988	\$1,724,976.53
<b><u>District 13B</u></b>		
Brunswick	4,274	\$1,453,738.47
District Total	4,274	\$1,453,738.47
<b><u>District 14</u></b>		
Durham	4,916	\$1,696,073.73
District Total	4,916	\$1,696,073.73
<b><u>District 15A</u></b>		
Alamance	4,606	\$1,648,907.74
District Total	4,606	\$1,648,907.74
<b><u>District 15B</u></b>		
Chatham	464	\$256,725.03
Orange	774	\$498,821.81
District Total	1,238	\$755,546.84

**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 16A</u></b>		
Hoke	438	\$341,826.62
Scotland	478	\$277,571.36
District Total	916	\$619,397.98
<b><u>District 16B</u></b>		
Robeson	5,939	\$2,506,288.77
District Total	5,939	\$2,506,288.77
<b><u>District 17A</u></b>		
Rockingham	3,153	\$1,171,046.37
District Total	3,153	\$1,171,046.37
<b><u>District 17B</u></b>		
Stokes	1,478	\$533,479.99
Surry	2,529	\$746,801.67
District Total	4,007	\$1,280,281.66
<b><u>District 18</u></b>		
Guilford	6,710	\$2,521,734.87
District Total	6,710	\$2,521,734.87
<b><u>District 19A</u></b>		
Cabarrus	4,298	\$1,166,833.34
District Total	4,298	\$1,166,833.34
<b><u>District 19B</u></b>		
Montgomery	949	\$235,378.78
Randolph	4,791	\$1,276,201.45
District Total	5,740	\$1,511,580.23
<b><u>District 19C</u></b>		
Rowan	5,390	\$1,566,324.82
District Total	5,390	\$1,566,324.82
<b><u>District 19D</u></b>		
Moore	3,200	\$1,062,063.43
District Total	3,200	\$1,062,063.43

**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 20A</u></b>		
Anson	1,480	\$406,828.30
Richmond	3,543	\$1,161,305.76
Stanly	1,752	\$597,554.13
District Total	6,775	\$2,165,688.19
<b><u>District 20B</u></b>		
Union	4,894	\$1,810,902.48
District Total	4,894	\$1,810,902.48
<b><u>District 21</u></b>		
Forsyth	6,662	\$2,160,098.34
District Total	6,662	\$2,160,098.34
<b><u>District 22A</u></b>		
Alexander	1,235	\$360,353.80
Iredell	4,749	\$1,451,847.75
District Total	5,984	\$1,812,201.55
<b><u>District 22B</u></b>		
Davidson	5,942	\$1,403,924.24
Davie	1,218	\$347,453.00
District Total	7,160	\$1,751,377
<b><u>District 23</u></b>		
Alleghany	325	\$165,697.09
Ashe	730	\$204,016.55
Wilkes	2,066	\$475,227.31
Yadkin	963	\$315,843.03
District Total	4,084	\$1,160,783.98
<b><u>District 24</u></b>		
Avery	532	\$178,946.77
Madison	730	\$224,240.45
Mitchell	475	\$127,547.30
Watauga	1,199	\$383,183.91
Yancey	646	\$161,358.52
District Total	3,582	\$1,075,276.95

**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 25A</u></b>		
Burke	2,251	\$739,172.72
Caldwell	3,646	\$1,000,817.17
District Total	5,897	\$1,739,989.89
<b><u>District 25B</u></b>		
Catawba	4,339	\$1,265,837.36
District Total	4,339	\$1,265,837.36
<b><u>District 26</u></b>		
Mecklenburg	12,570	\$5,470,297.44
District Total	12,570	\$5,470,297.44
<b><u>District 27A</u></b>		
Gaston	1,439	\$641,440.77
District Total	1,439	\$641,440.77
<b><u>District 27B</u></b>		
Cleveland	3,923	\$1,089,086.62
Lincoln	2,353	\$669,139.96
District Total	6,276	\$1,758,226.58
<b><u>District 28</u></b>		
Buncombe	4,255	\$1,388,377.05
District Total	4,255	\$1,388,377.05
<b><u>District 29A</u></b>		
McDowell	1,743	\$555,841.32
Rutherford	3,097	\$741,172.17
District Total	4,840	\$1,297,013.49
<b><u>District 29B</u></b>		
Henderson	1,178	\$462,880.56
Polk	296	\$168,268.63
Transylvania	514	\$276,191.18
District Total	1,988	\$907,340.37



**Assigned and Contracted Private Counsel and Experts**

	<u>Number of Payments</u>	<u>Demand</u>
<b><u>District 30A</u></b>		
Cherokee	1,249	\$537,472.41
Clay	385	\$145,735.01
Graham	302	\$162,171.66
Macon	942	\$364,385.65
Swain	593	\$272,001.88
District Total	3,471	\$1,481,766.61
<b><u>District 30B</u></b>		
Haywood	2,388	\$828,381.42
Jackson	1,105	\$352,118.80
District Total	3,493	\$1,180,500.22

*Notes: Reports through FY07 included only payments to attorneys; FY08 through FY14 data includes payments to experts and investigators as well. Count of payments is not identical to number of cases but is a count of number of fee applications paid plus number of closed cases reported by contractors.*

*Interpreters not included. This data excludes fee applications/contract payments received during FY14 but not paid until FY15, but includes those held for payment at end of FY14.*