

# State of North Carolina Office of Indigent Defense Services

Thomas K. Maher  
Executive Director

## Mission of IDS

### ■ Brief History:

1998 General Assembly authorized study  
commission to examine reforms to the delivery of  
indigent defense services

2000 Indigent Defense Study Commission  
submitted report recommending creation of IDS  
as an independent agency to control growth and  
improve quality

2001 IDS Commission and Office began operating

## Mission of IDS

- Indigent Defense Service Act, N.C.G.S. § 7A-489.1 sets forth purpose of IDS:
  - Enhance oversight of counsel and related services
  - Improve quality and ensure independence of counsel
  - Establish uniform policies and procedures for delivery of services
  - Generate reliable statistical information for evaluation of services and expenditure of funds
  - Deliver cost effective services without sacrificing quality

## Mission of IDS

- Since 2001, IDS has:
  - Slowed the average annual rate of growth in the indigent defense fund from 11% to 6.9%
  - Slowed growth despite increase in percentage of cases funded by IDS [40% growth in dispositions handled by IDS from FY02 to FY10, compared to a 3% decrease in the number of criminal non-traffic court dispositions]
  - Recoupment has kept pace with increases in spending: \$6.43 million in FY02 v. \$11.97 million in FY10 [although close to 20% of defendants not subject to recoupment]
  - Developed standard rates, detailed policies and educational materials on appropriate billing

## Mission of IDS

- Since 2001, IDS has:
  - Enhanced training and resources for appointed defense counsel [including expanded and specialized training calendar, performance guidelines, manuals covering multiple areas of the law]
  - Enhanced the quality of services in the most serious case types through qualification standards and centralized rosters
  - Through data collection and analysis, developed the ability to identify systemic problems and generate proposals to address them

## Mission of IDS

- IDS responsible for providing representation in cases:
  - In which indigent person is subject to deprivation of liberty or other constitutional interest and is entitled by law to legal representation
  - Under 7A-451 and 451.1
  - In which the State is legally obligated to provide access to the courts for inmates in DOC
  - Or otherwise designated by statute as responsible for providing legal representation

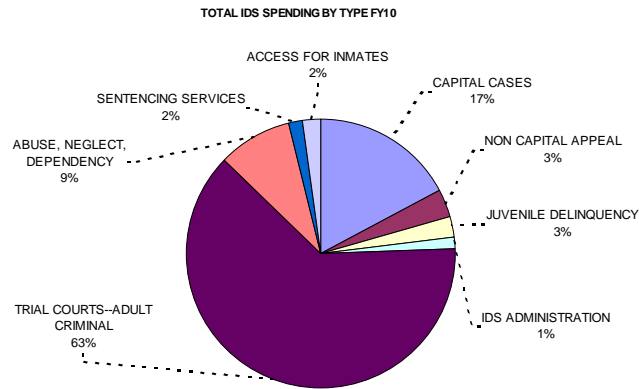
## Mission of IDS

- 7A-451 requires counsel for indigent persons in 17 classes of cases, including:
  - Adult criminal prosecutions, from district court misdemeanors to capital prosecutions, including probation violations [approximately 50% of criminal cases are funded by IDS]
  - Juvenile proceedings
  - Representation of parents in A/N/D and TPR
  - Involuntary commitment proceedings and competency proceedings

## Mission of IDS

- IDS also funds operation of Sentencing Services, which provides pre-sentencing evaluation and sentencing plans for defendants facing sentencing in the I/A sentencing grids

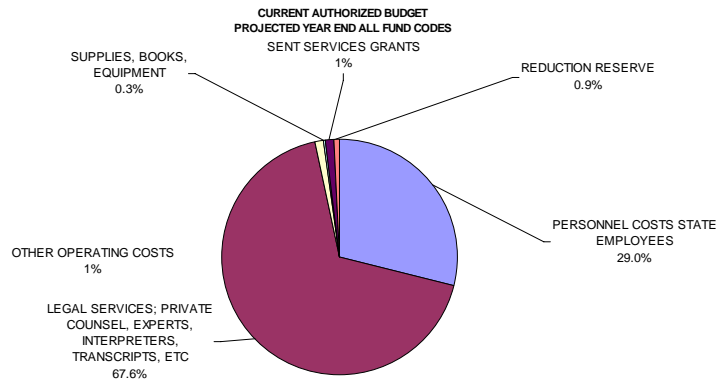
## Mission of IDS



## Mission of IDS

- Use of budget to meet mission:
  - Approximately 480 attorneys and support staff in public defender offices \$39 million [90% is personnel]
  - Approximately 3,000 private assigned counsel, paid by case, court session or contract, and related resources \$93 million
  - Prisoner Legal Services \$2.9 million
  - Sentencing Services \$2.1 million
  - IDS Administrative Office \$2.4 [less than 2% of overall budget]

## Mission of IDS



## Constitutional Mandates

- Most of IDS's mission is constitutionally mandated.
  - “[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth... The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” *Gideon v. Wainwright*, 372 U.S. 335 344 (1963)

## Constitutional Mandates

- Most of IDS's mission is constitutionally mandated.
  - That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command... An accused is entitled to be assisted by an attorney...who plays the role necessary to ensure that the trial is fair...For that reason, the Court has recognized that "the right to counsel is the right to the effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984)

## Constitutional Mandates

- Most of IDS's mission is constitutionally mandated.
  - Constitutional right to counsel in adult criminal prosecutions, including misdemeanors in which a suspended sentence can be imposed [*Alabama v. Shelton*, 535 U.S. 654 (2002)]
  - Constitutional right to counsel in criminal appeals [*Halbert v. Michigan*, 545 U.S. 605 (2005)]
  - Constitutional right to counsel in juvenile proceedings [*In re Gault*, 387 U.S. 1 (1967)]
  - Constitutional right to experts and investigators [*Ake v. Oklahoma*, 470 U.S. 68 (1985); *State v. Ballard*, 333 N.C. 515 (1993)].

## Constitutional Mandates

- Most of IDS's mission is constitutionally mandated.
  - Due Process right to counsel in appropriate TPR cases [*Lassiter v. Department of Social Services*, 452 U.S. 18 (1981)]
  - Constitutional right of meaningful access to the courts for inmates, met by PLS. [*Bounds v. Smith*, 430 U.S. 817, 822 (1977)]
  - Due Process rights in involuntary commitment proceedings. [*In re Mikels*, 31 N.C. App. 470, 474, 230 S.E.2d 155, 158 (1976) ("Chapter 122 was written to provide constitutionally defensible procedural and evidentiary rules" )]

## Prioritization of Programs

- Majority of IDS' budget is spent on direct representation and related resources, which are statutorily and constitutionally required.
- Sentencing Services, although not constitutionally mandated, assists in identifying defendants who can successfully be sentenced to intermediate punishment with treatment intervention rather than active imprisonment, saving money while increasing public safety.



## Current Fiscal Year Reversion

- FY11 reversion is approximately \$1.145 million, which comes from lapsed salaries in defender offices and IDS, and which would otherwise be used to off-set underfunding of PAC.

## Challenges for FY12

- Budget
  - Expect to end FY11 with approximately \$9 million of debt
  - Expect to end FY12 with an additional \$7 to \$8 million of debt, assuming 4% growth in caseload
  - APD salaries are low and raises restricted
  - PAC are small businesses, with overhead to pay, and are hurt by delays in payment
  - Only the General Assembly can significantly reduce caseload by examining scope of current criminal statutes