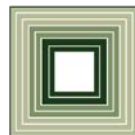




Joint Meetings of the House and Senate Appropriations Committee on Justice and Public Safety



FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

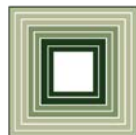
The seal of the North Carolina Judicial Department is a circular emblem. It features a central figure of Lady Justice, blindfolded and holding a sword in her right hand and a scale of justice in her left. The figure is set against a blue background. The words "JUDICIAL DEPARTMENT" are inscribed in gold capital letters along the top arc, and "STATE OF NORTH CAROLINA" along the bottom arc. Two gold stars are positioned on the left and right sides of the circle.

**Joint Appropriations Committee on Justice and
Public Safety**

Overview of District Attorneys and Indigent Defense

Morgan Weiss

March 18, 2021



FISCAL RESEARCH DIVISION
A Staff Agency of the North Carolina General Assembly

Outline

- AOC: District Attorneys
 - Responsibilities and Budget History
 - Prosecutorial Districts and Workload Assessment
 - Recent Legislative Actions
 - Emerging Issues
- Indigent Defense Services
 - Budget, 5-year History, and Organization
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JPS General Fund Base Budget Expenditures by Agency FY 2021-22

Total GF Budget: \$3.4 billion

DPS \$2.5B 75%

18%
A O C
\$606.0M

4%
I D S
\$140.3M

3%
D O J
\$93.7M

Source: FY 2021-22 Base Budget

JPS - AOC

Administrative Office of the Courts (AOC)

Administrative arm of the unified court system

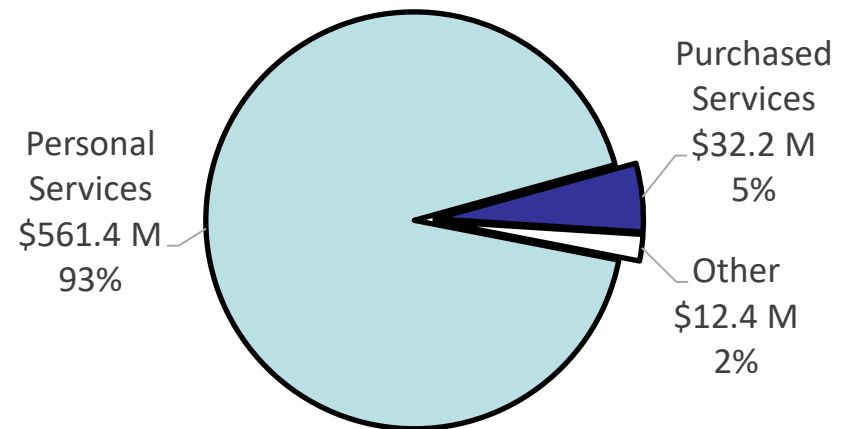
Paul Newby, Chief Justice

Andrew Heath, Director of AOC

Includes:

- Supreme Court
- Court of Appeals
- Superior courts
- District courts
- District attorneys
- Magistrates
- Clerks

**AOC Total General Fund Base Budget
FY 2020-21**

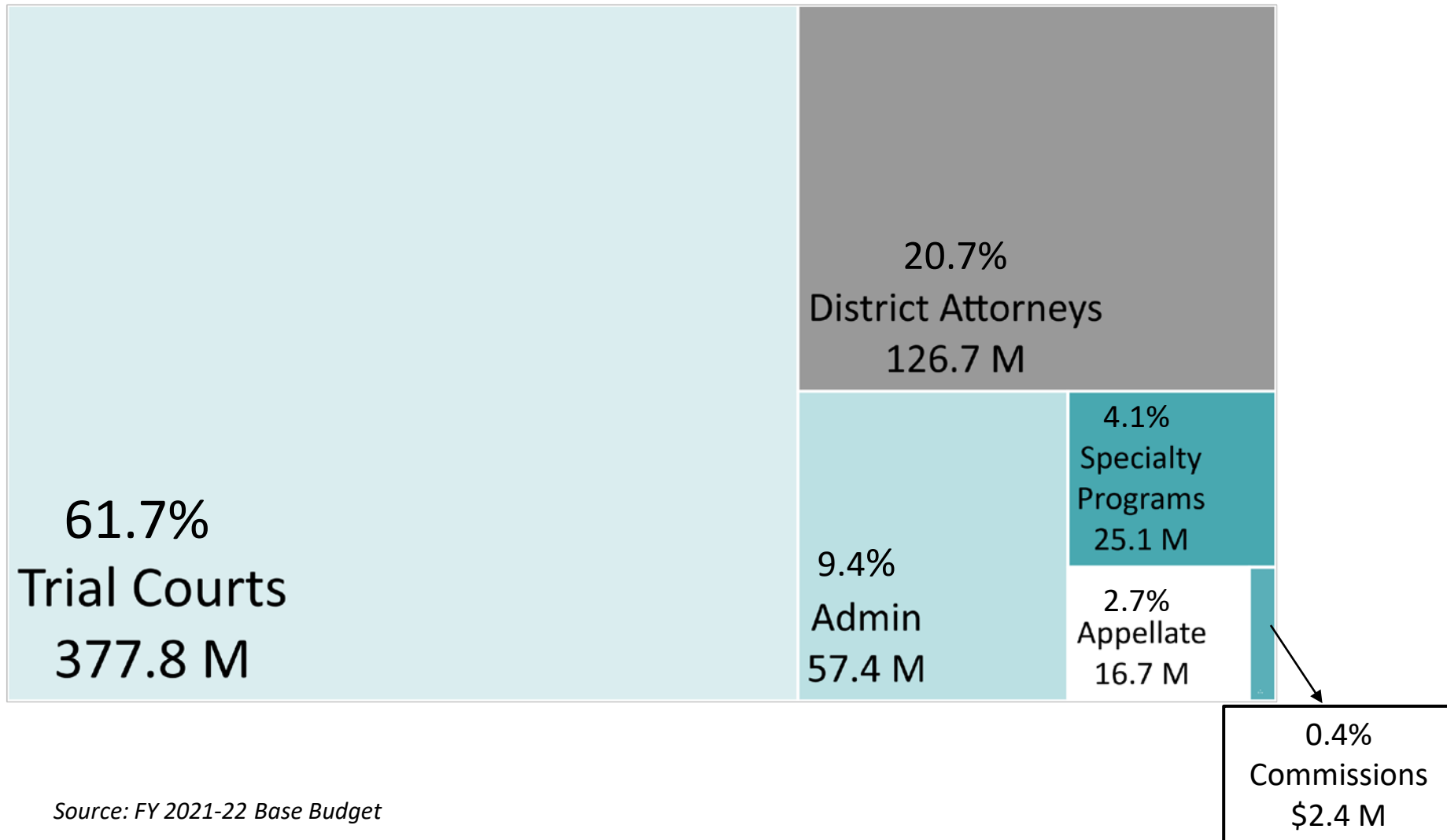


Total General Fund Budget: \$606 million

Total FTE: 6,451.25

Source: FY 2021-22 Base Budget, OSBM

AOC by Function FY 2020-21



District Attorneys

Requirements:
\$126.7 M

Receipts:
\$400.5 K

**Net General Fund
Appropriation:**
\$126.3 M

Total FTE:
1,178.5

**20.7% of Total AOC
Requirements**

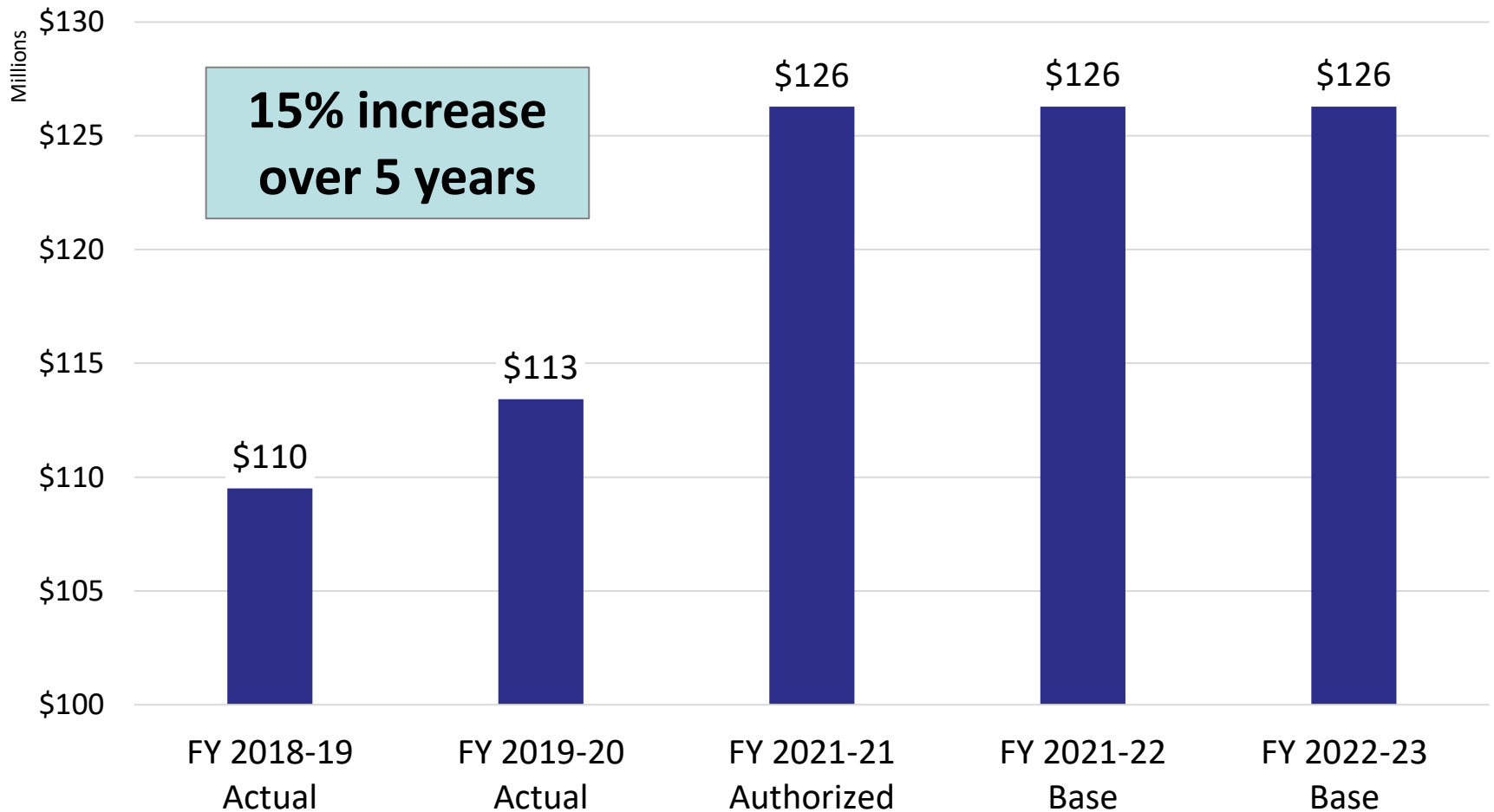
- Public officials, elected within local districts, to represent the State in the prosecution of all criminal matters
- 43 elected District Attorneys (DAs)
- Supervise a staff of assistant district attorneys (ADAs), legal assistants, victim services coordinators, investigators, and other support employees

DA Responsibilities

DAs, with staff support, are responsible for:

- Prosecuting all criminal cases filed in District and Superior Courts
- Managing criminal trial docket (“calendar”)
- Advising local law enforcement
- Providing information and assistance to crime victims

DA Budget History



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Prosecutorial Districts

In 2018 NCGA modified the prosecutorial districts:

- Eliminated elected DA position in District 19 (Scotland and Hoke) effective January 1, 2021
 - Scotland joined District 21 with Anson and Richmond
 - Hoke joined District 29 with Moore
- Created elected DA position in new District 44 (Catawba) effective January 1, 2023
- Moved Montgomery from District 26 with Randolph to District 28 with Stanly

Workload Formula

- National Center for State Courts completed assessment of workloads and created a formula for calculating Attorney Need and DA Office Staff Need
- Formula considers:
 - time required for each case type (e.g. traffic v. homicide)
 - the number of filings for each case type
- Formula is updated annually with the number of case filings from prior 3 years
- FY 2020-21 results indicate 13 districts need at least 1 additional prosecutor FTE

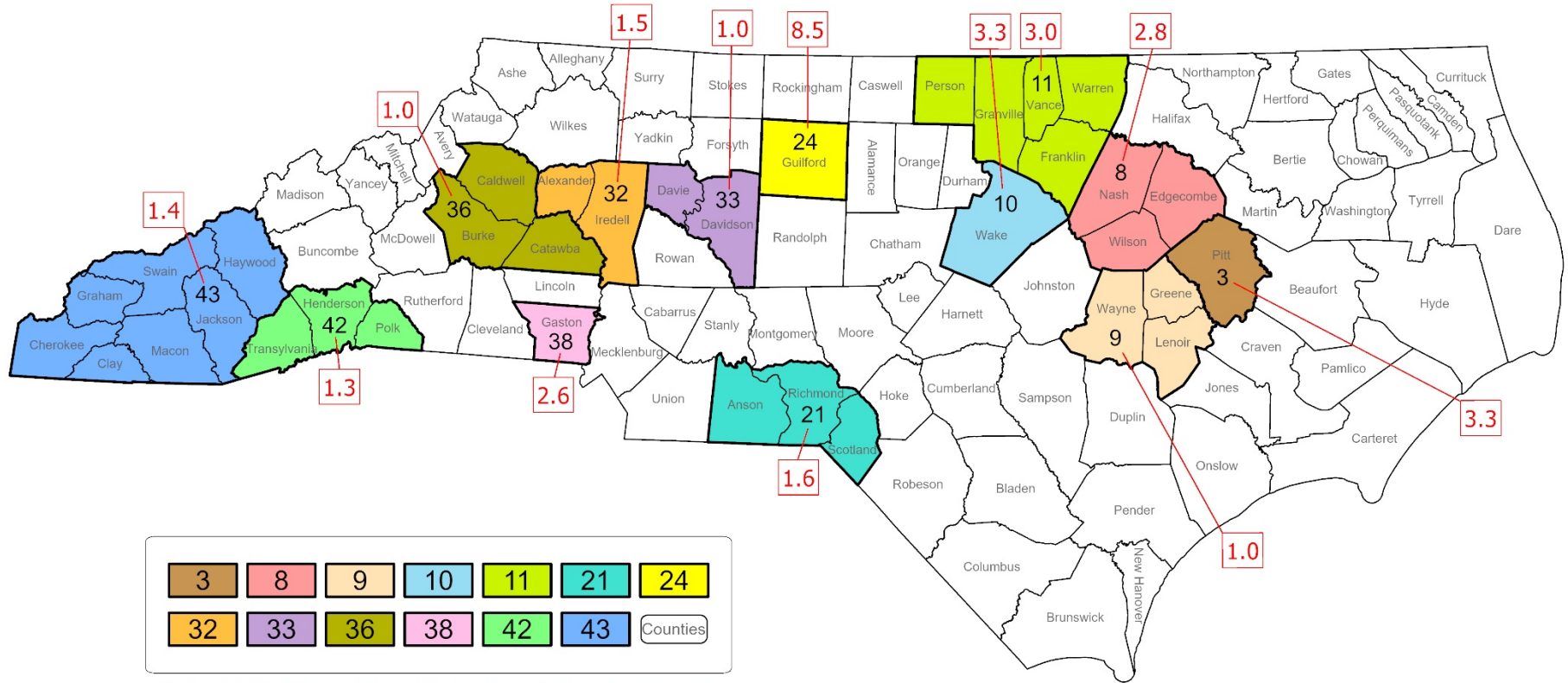
Prosecutorial Workload

Top 3 Most and Least Need, FY 2020-21

District	District Attorneys Authorized 7/1/2020	Workload-Recommended Staffing	Workload Need (Difference)	Staff to Workload Ratio
3 (Pitt)	13	16.3	3.3	79.7%
24 (Guilford)	36	44.5	8.5	81%
11 (Franklin, Granville, Person, Vance, Warren)	16	19.0	3	84.3%
16 (Durham)	23	18.4	(4.6)	124.7%
30 (Union)	14	10.9	(3.1)	128.1%
26 (Mecklenburg)	87	67.5	(19.5)	128.8%

Source: AOC

Assistant District Attorney Need per Workload Formula



Recent FTE Increases

FY 2017-18: S.L. 2017-57

- 31 ADAs (workload deficiencies)
- Arson Resource Prosecutor within the Conference

FY 2018-19: S.L. 2018-121

- 1 ADA (district revisions)

FY 2019-20: S.L. 2019-229

- 9 ADAs (Raise the Age implementation)
- 3 Legal Assistants (Raise the Age implementation)

FY 2020-21: S.L. 2019-229

- 7 ADAs (workload deficiencies)

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Recent Legislative Actions

S.L. 2019-216 – Implement Crime Victims Rights Amendment

- Expands victims' rights to be present and heard at court proceedings
- Provides enforcement procedure for failure to comply

S.L. 2020-78 – Agency Policy Directives

- Directs School of Government to study feasibility and cost of an independent Office of Prosecutorial Services
 - Report due April 1, 2021 to the House and Senate Appropriations Committee on Justice and Public Safety



- Prohibits AOC from transferring funds out of District Attorney fund code without consent of the Conference of District Attorneys

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Marsy's Law Implementation

Marsy's Law:

- State constitutional amendment passed in 2018
- Broadens the rights of crime victims and the cases in which victims can assert their rights

Effect:

- Increased demand for fulfilling notices and during discovery
- Conference of District Attorneys estimated need for 150 FTE of Victim Services Coordinators (VSCs)

Victim Services Coordinators

- A federal grant is currently funding 150 VSCs
 - 6 positions are vacant
- Grant expires September 30, 2021
 - Not expected to be renewable
- S.L. 2018-110 Fiscal Note estimated General Fund (GF) support for 150 VSCs to cost:
 - \$8.1 M recurring in FY 2021-22 (effective October 1)
 - \$11.2 M recurring in FY 2022-23 (annualized)
- DA position: continued funding of VSCs needed to fulfill constitutional requirements

Resource Prosecutors Funding

- Mortgage Settlements Special Fund: currently funding 6 financial resource prosecutors within the Conference
 - 1 position is vacant
- Fund balance as of February 28, 2021: \$1.17 M
- FY 2020-21 monthly expenditures: between \$48,677 and \$59,205
- Based on monthly expenditures, fund balance may be depleted by late 2022
- Conference is seeking appropriations or other funding source

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\$93.7M

Source: FY 2021-22 Base Budget

JPS - IDS

Indigent Defense Services (IDS)

Funds defense attorneys for indigent defendants

Mary Pollard, Director of IDS

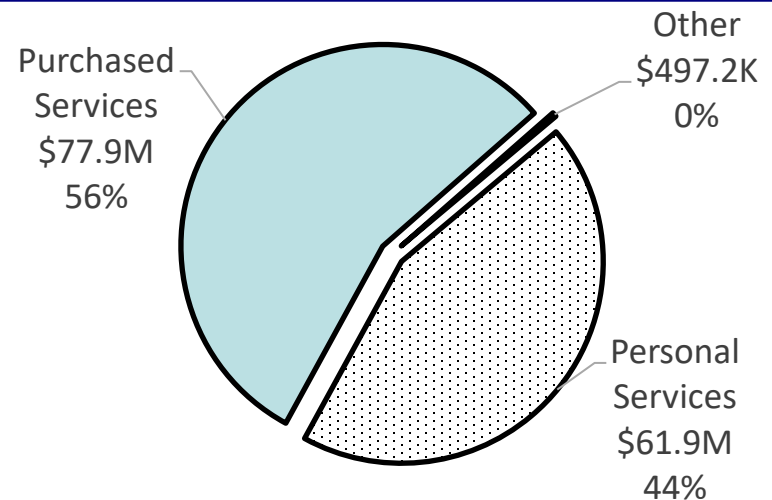
Includes:

- Public Defender offices
- Private Assigned Counsel Fund

Total General Fund Budget: **\$140.3 million**

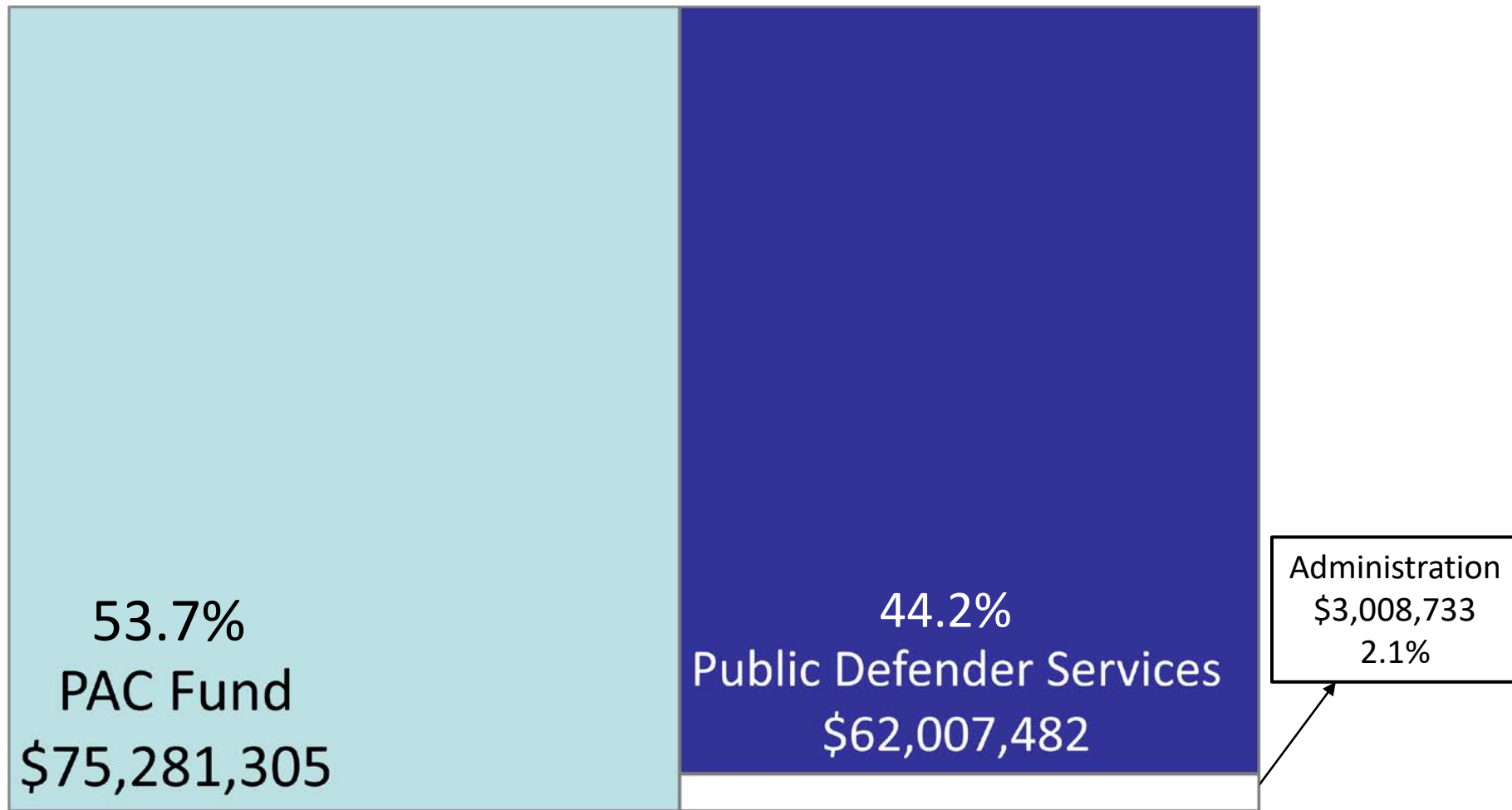
Total FTE: **554.0**

**IDS Total General Fund Base Budget
FY 2020-21**



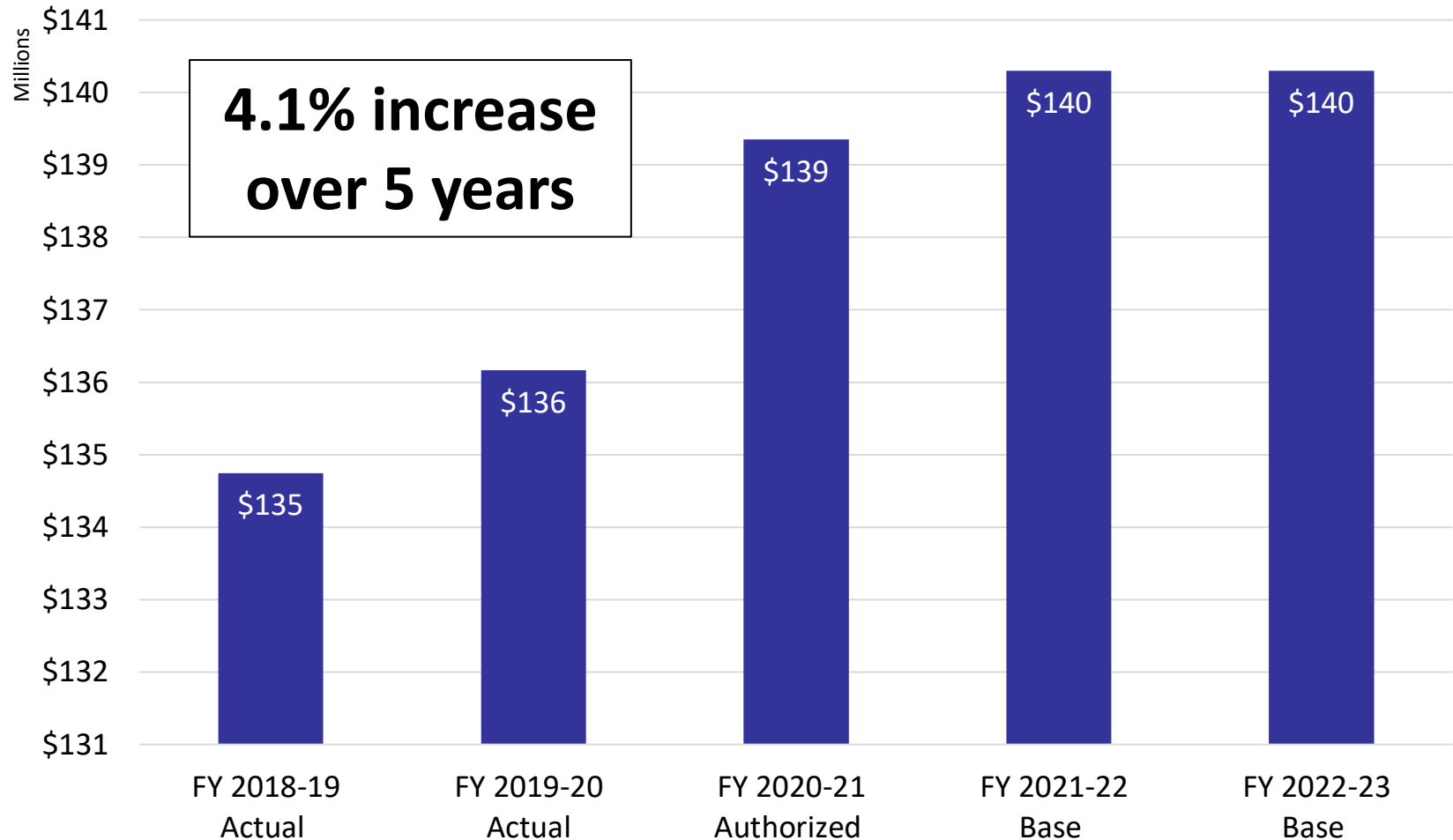
Source: FY 2021-22 Base Budget, OSBM

IDS by Function: FY 2020-21



Source: FY 2021-22 Base Budget

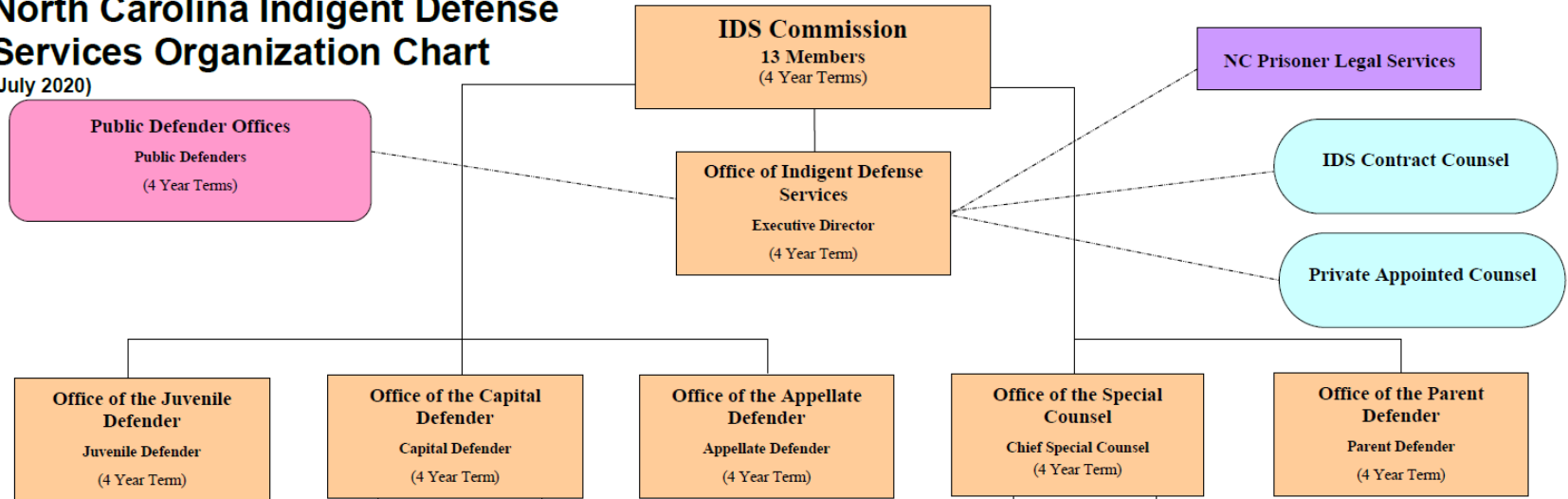
IDS Budget History



Source: OSBM

IDS Organization

North Carolina Indigent Defense Services Organization Chart (July 2020)



IDS Commission: provides oversight and guidance to IDS

Office of Indigent Defense Services: administers PAC fund, contracts, and provides support to public defender and statewide defender offices

Public Defender Offices: provide trial level defense to eligible individuals

Statewide Defender Offices: administer rosters of specialized attorneys, provide consultation, and assist with court improvement initiatives

NC Prisoner Legal Services: non-profit law firm providing legal advice to incarcerated people

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Private Assigned Counsel (PAC) Fund

Requirements:
\$75.3 M

Receipts:
\$11.6 M

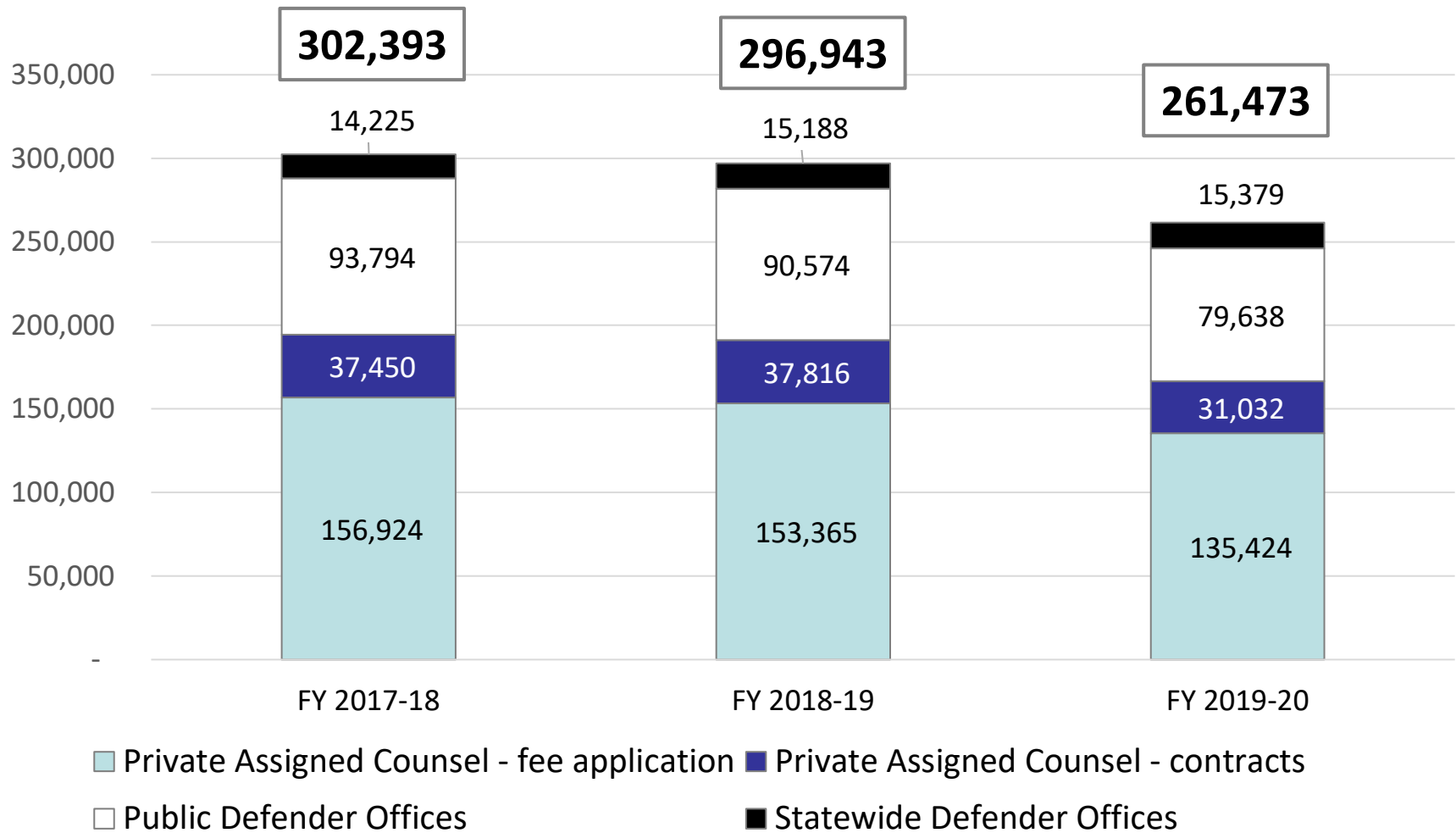
**Net General Fund
Appropriation:**
\$63.7 M

Total FTE:
0

**53.7% of IDS
Requirements**

- Private attorneys who accept appointment for an hourly rate or contractual arrangement
- Large scale contract system for criminal cases in 18 counties and individually negotiated contracts
- Supervised primarily at local level

IDS Dispositions



Source: IDS

PAC Hourly Rates

Case Type	Rate in 2011	Current Rate	Difference	IDS' Goal Rate
Capital Cases	\$95	\$90	(\$5)	\$105
High-Level Felonies (Class A-D)	\$75	\$80	\$5	\$85
Low-Level Felonies (E-I)	\$75	\$60	(\$15)	\$75
All Other Superior Court Cases	\$75	\$60	(\$15)	\$75
DWI and Class A1 Misdemeanors	\$75	\$60	(\$15)	\$75
All Other District Court Cases	\$75	\$55	(\$20)	\$70
Capital Appeals	\$95	\$90	(\$5)	\$105
Non-capital High-Level Felony Appeals (Class A-D)	\$75	\$80	\$5	\$85
All other Appeals	\$75	\$60	(\$15)	\$75

IDS estimates \$17 M Recurring required to achieve goal rates

PAC Available Counsel

Since FY 2017-18, the number of private assigned counsel on rosters has declined by approximately 15% from over 2,500 attorneys to 2,116 attorneys in FY 2019-20

IDS Recent Legislative Actions

S.L. 2020-83 – JCPC/Detention/CAA and Other Fees

- Increases Criminal Court Appointed Counsel Fee: \$60 to \$75
- Creates new \$2 court cost to support IDS
- Effective December 1, 2020

Impact on Receipts

- Despite higher amount, appointed counsel fee receipts 22% lower than prior years due to lower court disbursements
- New court cost generated \$79,620 as of February 26, 2021
- By FY 2022-23, new fees may generate \$1.6 M annually (\$1.2 M for new court cost; \$400 K for higher counsel fee)
- Supporting \$5 increases to select PAC rates, effective March 1st

Source: IDS PAC Rate Increase Report, March 1, 2021

PAC Rates Increases – March 1, 2021

Case Type	Prior Rate	New Rate eff. 3/1/2021
Class A-D Felonies	\$75	\$80
DWI disposed in District Court	\$55	\$60
Class A1 misdemeanors disposed in District Court	\$55	\$60
Potentially capital cases proceeding non-capitally at trial level	\$75	\$80
Provisional counsel in capital cases	\$75	\$80
Non-capital appeals and non-capital postconviction if most serious conviction was a Class A-D felony	\$75	\$80
Appeals of satellite-based monitoring hearing	\$75	\$80

Source: IDS PAC Rate Increase Report, March 1, 2021

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Public Defender Services

**Requirements:
\$62 M**

**Receipts:
\$493 K**

**Net General Fund
Appropriation:
\$61.5 M**

**Total FTE:
529**

**44.2% of IDS
Requirements**

- 17 Public Defender Offices covering 18 judicial districts and 35 counties
- Chief Public Defenders: appointed by senior resident superior court judge for 4-year terms
- Chiefs of Defender Offices: appointed by commission for 4-year terms

Public Defender Districts

Public defender districts specified in G.S. 7A-498.7

2018 Appropriations:

- Expanded District 3B to include Craven and Pamlico in addition to Carteret, aligning with judicial and prosecutorial districts
 - \$98 K NR provided
- Created District 29A (McDowell, Rutherford)

Hoke and Scotland remain together in District 16A although recent prosecutorial and judicial district revisions split the counties

Public Defender District Expansions

IDS has expressed support for the following expansions:

1. Office in District 2: Beaufort, Hyde, Martin, Tyrell, Washington
 - IDS has covered District 2 via District 1
 - Covering 12 counties poses management challenges
2. Expand District 5 to include Pender (in addition to New Hanover) to align with District Court district
3. Create new office in District 27B: Cleveland, Lincoln
 - Strong local interest

Statewide Defender Offices

- Office of Special Counsel
- Office of the Juvenile Defender
- Office of the Capital Defender
- Office of the Appellate Defender
- Office of the Parent Defender
- Provide advice and support on specialized areas of law to private counsel
- Chiefs partner with state agencies and stakeholders to develop policies and draft proposed legislation

Office of Special Counsel

- Chief Special Counsel, 8 Assistant Special Counsel, and 7.5 Support Staff
- Represents indigent individuals in civil commitment proceedings around the State through regional offices:
 - Cherry Hospital (Wayne)
 - Broughton Hospital (Burke)
 - Central Regional Hospital (Granville)
 - Former Dorothea Dix Hospital Campus (Wake)
- Disposed 14,904 cases in FY 2019-20

Source: IDS Annual Report FY 2019-20

Office of the Juvenile Defender

- Juvenile Defender, 2 Assistant Juvenile Defenders, Program Attorney, and 1 Support Staff
- Provides services and support to juvenile defense attorneys and evaluates the current system and makes recommendations

Source: IDS Annual Report FY 2019-20

Office of the Capital Defender

- Capital Defender, Deputy Capital Defender, Consultation Attorney, 16 Assistant Capital Defenders, and 10 Support Staff
- Represents indigent defendants charged with potentially capital cases at trial level
- Oversees PAC roster and assigns counsel
- Open cases grew 8% between October 2018 and February 2020 and 13% between February and September 2020

Source: IDS Annual Report FY 2019-20

Office of the Appellate Defender

- Appellate Defender, Deputy Appellate Defender, 19 Assistant Appellate Defenders, and 4 Support Staff
- Represents indigent defendants and provides consultation services at trial and appellate levels
- Oversees PAC roster and assign counsel

Source: IDS Annual Report FY 2019-20

Office of Parent Defender

- Parent Defender, 3 Assistant Parent Defenders, and 1 Legal Assistant
- Assists attorneys representing indigent parents in abuse, neglect, dependency, and termination of parental rights proceedings through training programs and consultation
- Assigns appeals of the above case types to PAC attorneys and defenders within the office

Source: IDS Annual Report FY 2019-20

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Administration

**Requirements:
\$3 M**

**Receipts:
\$254 K**

**Net General Fund
Appropriation:
\$2.8 M**

**Total FTE:
25**

**2.1% of IDS
Requirements**

- Executive Director
- Legal & Policy
- Regional Defenders
- Administration
- Information Technology
- Financial Services
 - Processed 145,540 fee applications and invoices in FY 2019-20

Source: IDS Annual Report FY 2019-20

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 - **COVID Response**

IDS' COVID Response

- PPE, overtime, and staggered work schedules
- Replaced all remaining desktop computers with laptops utilizing \$600,000 in COVID-19 relief funds
- Encouraged district court judges to expand use of interim fee applications for work completed if final disposition continued indefinitely

Source: IDS Annual Report FY 2019-20

JPS Contact Information

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Mark White – Mark.White@ncleg.gov
DOJ, DPS – Law Enforcement, Emergency Management, and National Guard

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