

REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES

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CONTENTS

COMMISSION ON INDIGENT DEFENSE SERVICES MEMBERS AND OFFICE OF INDIGENT DEFENSE SERVICES STAFF

ORGANIZATIONAL CHART

EXECUTIVE SUMMARY	1
REPORT	3
IDS ORGANIZATIONAL STRUCTURE AND FUNCTIONS	3
IDS Commission and Committees	3
IDS Administrative Offices	4
Relationship Between IDS and AOC	8
PROGRAM OVERSIGHT AND ADMINISTRATION	9
County and District Public Defender Offices	9
Private Assigned Counsel	12
Requests for Proposals and Contracts	13
Office of the Capital Defender	16
Offices of the Appellate Defender and Parent Representation Coordinator	16
Office of Special Counsel	17
Office of the Juvenile Defender	18
Inmate Access to the Courts	18
Innocence Inquiry Commission Proceedings	19
TRAINING, RESOURCES, AND SUPPORT	20
IDS Website	20
IDS Listservs and EBlasts	21
Grant Funding for Special Projects	21
Improved Training	22
Performance Guidelines and Reference Manuals	23
Additional Improved Resources	23
BUDGETARY OVERSIGHT AND FACTS	25
Controlling the Cost of Indigent Representation	25
Factors Driving Growth in Demand	25
Improved Revenue Collection	26
Historical Underfunding and Current Projections for Fiscal Year 2012-13	27
RESEARCH AND REPORTS	28
PAC Average Hours Studies	29
Waiting-in-Court Study and Alternative Scheduling Survey	30
Capital Case Costs and Dispositions Study	31
Misdemeanor Reclassification Study	31
Systems Evaluation Project	32

CASE VOLUME AND COST STATISTICS BY DISTRICT	33
CONTRACTS WITH LOCAL GOVERNMENTS FOR ASSISTANT PUBLIC DEFENDERS	33
LEGISLATIVE RECOMMENDATIONS	34
Increase Funding for the Private Assigned Counsel/Contractor Fund	34
Funding for Public Defender Case Management System and Equipment Replacement	35
Revise the Special Provision Directing IDS to Issue Requests for Proposals for Contracts	35
Restore North Carolina Prisoner Legal Services' Funding	36
Repeal Class 3 Misdemeanor Changes from 2013 Session and Reclassify Minor Misdemeanors as Infractions	37
Clarify IDS' Authority to Pay a Guardian ad Litem Appointed to Represent a Parent in an Abuse/Neglect/Dependency Proceeding	37
Transfer Chief Public Defender Appointment Authority Back to IDS Commission.....	38
Repeal or Amend Prohibition on Paying Public Defenders for Travel Within County of Residence	39
Allow for Part-Time State Employed Defenders and Allow Full-Time State Employed Defenders to Engage in the Private Practice of Law for Charitable Purposes	40
Allow Retired State Employees to Accept Indigent Appointments and/or Resolve Pending Cases on an Appointed or Pro Bono Basis.....	41
Additional Legislative Recommendations	41
CONCLUSION	41
 APPENDICES	
Annual Percent Change in Total Indigent Defense Expenditures (Demand).....	Appendix A
Fiscal Year 2012-13 County-by-County Recoupment Data	Appendix B
Fiscal Year 2012-13 District Case Volume and Cost Statistics	Appendix C

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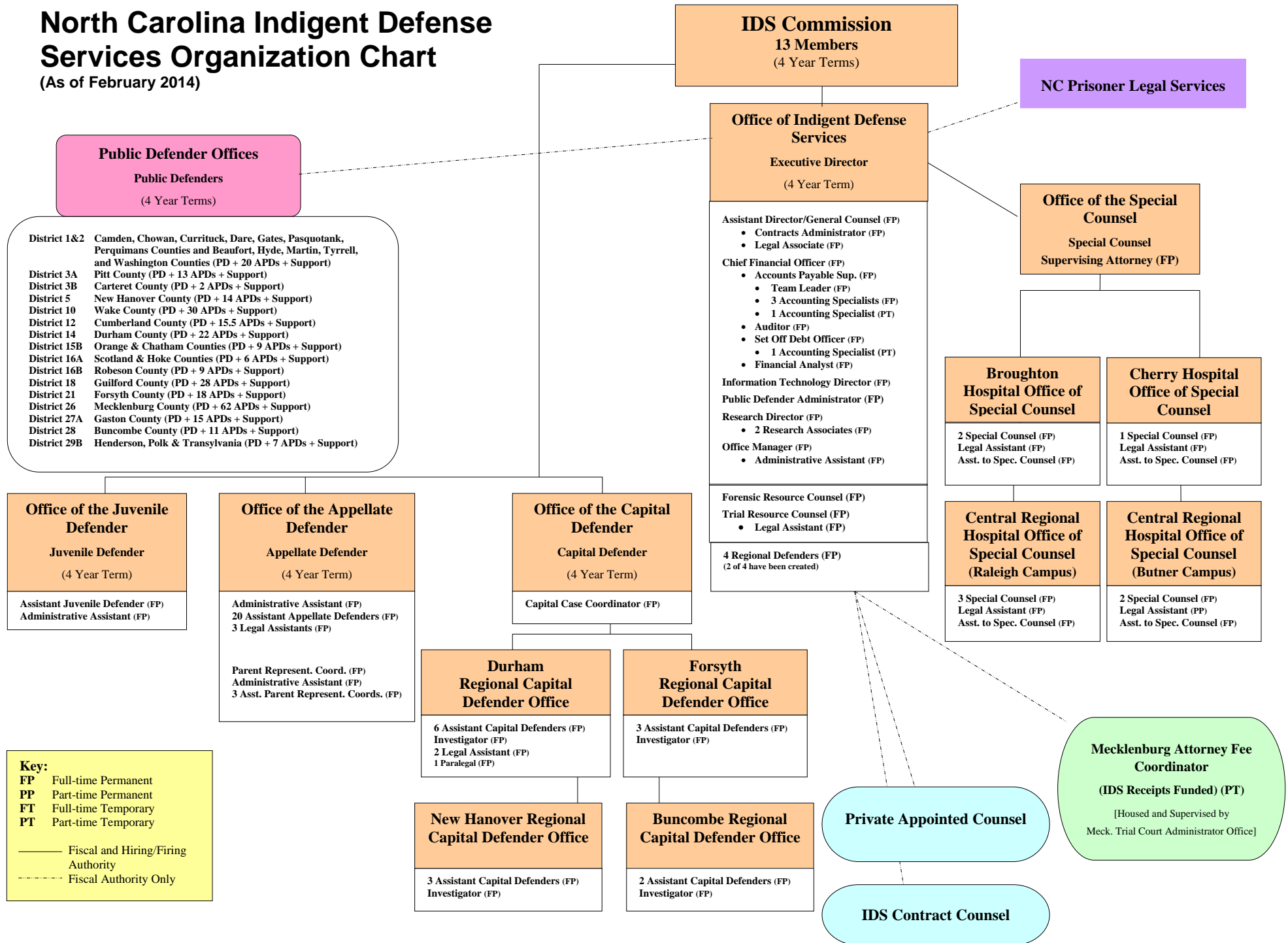
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North Carolina Indigent Defense Services Organization Chart

(As of February 2014)



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 § 18A.1 of Session Law 2013-360, this report summarizes the work of the IDS Commission and IDS Office to date, with a particular emphasis on fiscal year 2012-13. The report also contains a number of legislative recommendations for the 2014 short session or future long sessions, 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 one-page fact sheets on various topics, is available at 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 significant 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 4.9%, 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 and increased by 0.4% in fiscal year 2012-13. *See Appendix A.*

Indigent defense per disposition expenditures (for both public defender offices and PAC combined) declined over the first four years that IDS was in existence, increased modestly over the next four fiscal years, decreased in fiscal year 2009-10, increased modestly in fiscal year 2010-11, and decreased again in fiscal years 2011-12 and 2012-13. Overall, indigent defense expenditures per disposition during fiscal year 2012-13 were \$14.72 *less* than per disposition expenditures the year before IDS was established (fiscal year 2000-01) and \$13.93 *less* than per disposition expenditures during fiscal year 2011-12. 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 decreases in per disposition expenditures during fiscal years 2011-12 and 2012-13, indigent defense remains underfunded. The IDS Office is currently projecting that IDS will end this fiscal year with approximately \$5 million of debt, which represents a significant improvement in IDS' debt at the end of the past three fiscal years but will still result in another payment delay for assigned counsel. As a result, the Commission and Office respectfully request that the General Assembly appropriate an additional \$5 million in non-recurring funds for fiscal year 2014-15 to enable IDS to pay off the anticipated carry-forward debt. In addition, the current depressed PAC rates are unsustainable and will need to be increased again over time to ensure that the attorneys handling indigent cases have adequate resources to provide constitutionally effective representation.

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 § 18A.1 of Session Law 2013-360, the IDS Office must report to the General Assembly by March 1, 2014 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
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

Committee	Duties
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 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 and performing other accounts payable functions. Both offices combined accounted for approximately 2% of IDS' overall budget in fiscal year 2012-13.

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), 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, and § 18A.4 of Session Law 2013-360, 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. Office staff also conduct periodic intensive audits of attorneys who handle potentially capital cases, which involve compiling and comparing all billing by an attorney during a specified time period to ensure there are no errors or duplication across cases.

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.

However, given the continuing budgetary constraints, the IDS Commission and Office plan to investigate potential improvements to the current system, especially now that technological advances in access to financial data may streamline the process. The Office plans to analyze a small retrospective sample of cases where IDS paid for representation in one county during fiscal year 2011-12 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 collected.

IDS will then 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 will 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.

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 2012-13, the IDS Office set uniform fee awards for 2,570 attorney fee applications in capital cases and appeals, including interim and final fees. During fiscal year 2013-14 to date (through February 24, 2014), the Office set an additional 1,661 attorney fee awards.
 - ✓ During fiscal year 2012-13, the IDS Office set fee awards for 2,392 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 2013-14 to date (through February 24, 2014), the Office set an additional 1,646 expert fee awards.

- ✓ The Office is currently processing more than 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.
- *Appointment of Qualified Counsel in Capital Post-Conviction Cases*: During fiscal year 2012-13, the IDS Office made 25 attorney appointments in 19 different capital post-conviction cases. During fiscal year 2013-14 to date (through February 24, 2014), the Office made 10 additional attorney appointments in eight different capital post-conviction cases.
- *Expert and Miscellaneous Expense Funding Authorizations in Appeals and Capital Post-Conviction Cases*: During fiscal year 2012-13, the IDS Office reviewed and acted on 156 requests for expert funding and miscellaneous expenses in appeals and capital post-conviction cases. During fiscal year 2013-14 to date (through February 24, 2014), the Office acted on an additional 89 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.

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 IDS and AOC staff consult frequently 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.

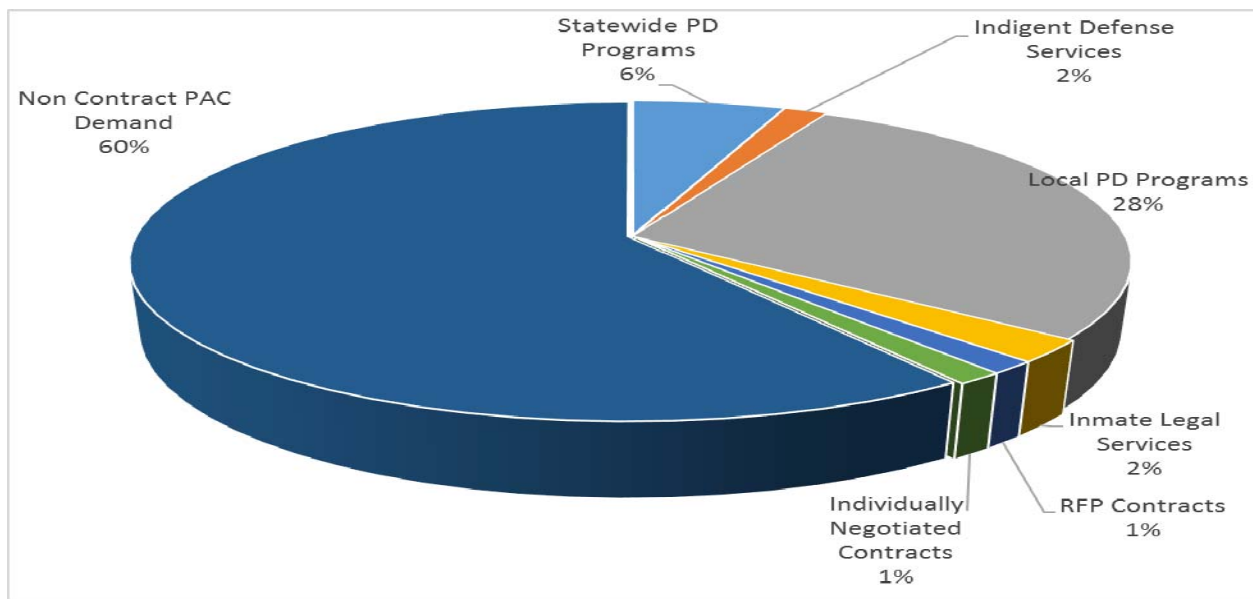
- *Accounts Payable*: In fiscal year 2005-06, AOC transferred to IDS several positions and functions that were previously performed by AOC fiscal personnel, including a number of accounting specialist positions to process fee petitions for appointed counsel after they have been approved by judges or 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 2012-13, IDS spent \$163,647.82 on out-of-court

interpretation and translation. 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 2012-13, IDS spent \$18,866.24 on defense lay witness fees and expenses.

PROGRAM OVERSIGHT AND ADMINISTRATION

FY13 ACTUAL BY TYPE OF PROGRAM



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 2012-13,

all of the county and district public defender offices combined reported 100,870 dispositions and withdrawals.

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 on-line 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 private assigned counsel (“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 annual report pursuant to this provision on October 1, 2013. Since that time, IDS Office staff have revised the public defender offices' on-line 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' October 2013 report, with the possible exception of very serious felony cases, the IDS Commission and Office believe it will be 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 2012-13, the IDS Director created 10 new attorney and five new support staff positions pursuant to this authority:

Office	Type of Position	# Positions
District 2 Public Defender Office	Assistant Public Defender	5
District 3A Public Defender Office	Assistant Public Defender	1
District 5 (New Hanover County) Public Defender Office	Assistant Public Defender	1
District 12 Public Defender Office	Assistant Public Defender	1
District 14 Public Defender Office	Assistant Public Defender	1
Office of Indigent Defense Services	Second and Fourth Division Regional Defender	1
District 2 Public Defender Office	Legal Assistant	1
District 2 Public Defender Office	Investigator	1
District 3B (Carteret County) Public Defender Office	Administrative Assistant I	1
District 5 (New Hanover County) Public Defender Office	Legal Assistant	2

- *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. 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. 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. Follow-up clarifications are currently being sought from those vendors and, once all necessary information has been obtained and references familiar with the vendors' products have been consulted, IDS and AOC will identify the most suitable option and enter into contract negotiations. After a contract is in place, the selected vendor will work with IDS and AOC to customize the product to the extent necessary to meet the requirements of the public defender offices, IDS, and AOC, and will then begin the implementation phase, which will include activating and testing the customized product and training users.

PRIVATE ASSIGNED COUNSEL

During fiscal year 2012-13, almost 2,800 PAC around the State handled approximately 60% of the indigent caseload in North Carolina, 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. During fiscal year 2012-13, IDS issued 205,071 payments to PAC.

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 savings between \$17.5 million and \$19 million once the reductions are fully implemented. The following chart sets forth the hourly rate changes for cases at the trial level since IDS was created in 2001:

Case Type	Original IDS Rates	Aug. 2006 Rates	Feb. 2008 Rates	Jan. 2011 Rates	May 2011 Rates
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 \$280 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 service offered by private practitioners to the State at such a steep discount.

In addition to the rate reductions, IDS’ historical underfunding has often led to payment delays for PAC. In fiscal year 2012-13, 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 depleted its annual funding for PAC after paying fee applications received in early May 2013, resulting in seven weeks of payment delays. Such delays create a significant hardship for the PAC who handle indigent cases, 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, 2013, the IDS Office had individually negotiated contracts with

40 different attorneys in Alexander, Avery, Brunswick, Buncombe, Catawba, Davie, Forsyth, Guilford, Harnett, Iredell, Johnston, Madison, Martin, 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 2012-13, IDS had contracts with 46 attorneys, some of whose contracts terminated mid-fiscal year, and the listed organizations to cover the above jurisdictions, as well as Durham County. 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, Durham, Forsyth, and Robeson Counties for youth and drug treatment courts, which were reported under a different system, all of the individually negotiated IDS contracts combined saved 11% (over \$150,000) during fiscal year 2012-13 compared to what it would have cost to pay private attorneys to handle the same cases pursuant to individual appointments.

- *Requests for Proposals ("RFPs") and Contracts:* Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, and § 18A.4 of Session Law 2013-360 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 special provision directs IDS to use PAC funds to enter into contracts. In selecting contractors, the 2013 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.

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 on-line virtual education program for interested attorneys about the RFP process and the contract system.
- ✓ Analyzed three fiscal years of 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. That 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 allows for more in-depth research and program evaluation.

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 covers 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. In limited case types, including treatment courts, IDS seeks per session cost/price offers in addition to qualifying offers.

In May 2012, IDS issued its first RFP for all adult non-capital criminal cases and treatment courts that were previously handled by PAC in Districts 9 (Franklin, Granville, Vance, and Warren Counties), 10 (Wake County), and 14 (Durham County). Contracts went into effect in those districts on December 1, 2012. In November 2012, IDS released a second RFP for the same case types in Districts 9A (Caswell and Person Counties), 15A (Alamance County), and 15B (Chatham and Orange Counties). Contracts went into effect in those districts on June 1, 2013. In November 2013, IDS released a third RFP for the same case types in Districts 3A (Pitt County), 8A (Greene and Lenoir Counties), 8B (Wayne County), 11A (Harnett and Lee Counties), and 11B (Johnston County). Contracts will go into effect in those districts on June 1, 2014. Future RFPs will expand into additional case types, including delinquency, parent representation, child support contempt, and special proceedings.

While IDS has 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, and IDS' ability to enforce that contractual requirement is limited.

For more details about the RFPs and contracts, see IDS' Report to the Joint Legislative Commission on Governmental Operations: Requests for Proposals and Contracts for Legal Services (Oct. 1, 2013), available at www.ncids.org.

OFFICE OF THE CAPITAL DEFENDER

In addition to the Capital Defender, the Office of the Capital Defender currently employs 14 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 2012-13, all of the regional offices combined handled 120 potentially capital cases at the trial level, including pending cases and withdrawals.

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 2012-13, the office made 593 attorney appointments in 516 potentially capital cases at the trial level. During fiscal year 2013-14 to date (through February 24, 2014), the office made an additional 397 attorney appointments in potentially capital cases.
- During fiscal year 2012-13, the office reviewed and acted on 1,865 requests for expert funding and miscellaneous expenses at the trial level. During fiscal year 2013-14 to date (through February 24, 2013), the office reviewed and acted on an additional 1,252 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 child support contempt appeals, has three staff attorneys who represent indigent persons on direct appeal. During fiscal year 2012-13, both offices combined disposed of 238 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 2012-13, the offices made 970 attorney appointments in capital, non-capital criminal, and non-criminal appeals. During fiscal year 2013-14 to date (through February 24, 2014), the offices made an additional 675 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 on-line 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 2012-13, 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 11,476 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 the more than 37,000 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 will proceed with frivolous *pro se* lawsuits. 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. Many appointed trial attorneys will now submit supplemental fee applications to IDS for correcting jail credit issues, which is a less efficient system and will merely shift 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 2012-13, IDS spent a total of \$3,105.00 on one Warren County case that was pending before the Commission and a total of \$10,652.19 on one Buncombe County case that was pending before the Commission. Neither of those cases was referred to a special three-judge panel. During fiscal year 2012-13, IDS also spent a total of \$12,858.05 on another Buncombe County case and a total of \$12,831.00 on a Catawba County case that were referred by the Commission to special three-judge panels. The three-judge panels unanimously found that both defendants were innocent.

TRAINING, RESOURCES, AND SUPPORT

IDS WEBSITE

The IDS Office has developed an independent website (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 the members of the IDS Commission, IDS staff, 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 one-page 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 mandated during the 2011 and 2013 legislative sessions.
- Reports and data generated by Office staff.

Since its creation in May 2002, there have been more than 502,000 visits to the IDS website.

IDS LISTSERVS AND EBLASTS

With assistance from other groups, the IDS Office has established 20 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 February 2014, 1,354 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 Fund ("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. \$125,000 of the grant funds is being used to support the Systems Evaluation Project and data warehouse that is described later in this report. The remaining \$100,000 is funding work to support NLADA's national efforts, such as the development of a variety of research toolkits. The grant currently runs through May 2014.

- In September 2013, BJA notified IDS and the Conference of District Attorneys that another 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 will again be split equally between the prosecution and defense. The defense funds will be used to conduct four bring-your-own-case programs around the State.
- 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 2012-13, 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 2012, which is an intensive program in which participants develop trial skills by working on their own cases.
- The annual conference for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings in August 2012.
- The annual juvenile defender conference in August 2012.
- The annual new misdemeanor defender training in September 2012.
- A hands-on appellate advocacy training program in October 2012.
- A case and legislative update webinar in December 2012.
- Administrative assistant training in December 2012.
- The annual new felony defender training in February 2013.
- An evening program that focused on DNA evidence in February 2013.
- A civil commitment conference that focused on working with child clients in February 2013.
- Advanced training for attorneys who represent parent respondents in abuse, neglect, dependency, and termination of parental rights proceedings in March 2013.
- Management training for managing attorneys in defender offices and IDS staff with managerial responsibilities in April 2013.
- The annual May 2013 conference for public defenders and investigators.
- A case and legislative update webinar in June 2013.

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 representing defendants in child support contempt actions. 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 on-line 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.

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 on-line manual for attorneys in Innocence Inquiry Commission Proceedings, and IDS and SOG have developed on-line orientation manuals for assistant public defenders and parent attorneys. All of the manuals are posted on 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 on-line 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 on-line database of all of the collateral consequences of criminal convictions in North Carolina that is described above.

IDS has also created two Resource Counsel positions that 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 and PAC who are facing complex trials, particularly capital trials, prepare for trial and evaluate plea options. Among other things, the Trial Resource Counsel is 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 trial resource and consulting function was previously filled by the Center for Death Penalty Litigation’s Trial Assistance Unit. By transferring the function to the central IDS Office at a lower staffing level, IDS believes this position is helping to maintain quality representation in complex trials at a reduced cost.

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 IDS demand (spending and current-year obligations) since IDS was created has averaged 4.9%, 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. Looking at actual spending, fiscal year 2012-13 PAC demand was 3.2% less than fiscal year 2011-12 demand and 16.6% less than fiscal year 2010-11 demand. However, since the rate reductions saved almost \$17 million during 2013, real rate-adjusted demand changed very little. Adjusting for changes in the hourly rates, the average growth rate in PAC demand by disposition year fell from 5.8% in fiscal year 2010-11 to -2.4% in fiscal year 2011-12 to 0.8% in fiscal year 2012-13. In both fiscal years 2011-12 and 2012-13, there were also decreases in the volume of fee applications received—a 3.3% drop in fiscal year 2011-12 and a 0.6% drop in fiscal year 2012-13. 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;
- 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 2014 study revealed that there has been a 10.3% *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 40.7% *increase* in the number of criminal non-traffic public defender and PAC file numbers that are funded through IDS.

	FY02	FY04	FY06	FY08	FY10	FY12	FY13
Criminal Non-Traffic Court Files	850,541	842,488	876,555	872,486	823,737	810,894	762,702
IDS Criminal Non-Traffic Files	291,954	318,460	366,294	392,011	412,970	414,594	410,761
IDS Disps. as % of Criminal Non-Traffic Court Files	34.3%	37.8%	41.8%	44.9%	50.1%	51.1%	53.9%

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, and decreased again in fiscal years 2011-12 and 2012-13. Overall, indigent defense expenditures per disposition during fiscal year 2012-13 were \$14.72 *less* than per disposition expenditures the year before IDS was established (fiscal year 2000-01) and \$13.93 *less* than per disposition expenditures during fiscal year 2011-12.

	FY01	FY05	FY09	FY10	FY11	FY12	FY13
Per Disp Expenditures	\$370.94	\$320.70	\$383.01	\$377.74	\$387.93	\$370.15	\$356.22

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 2012-13, including the attorney appointment fee required by G.S. 7A-455.1, amounted to \$13 million, which represented a slight decrease of 1.6% compared to the prior fiscal year. The drop in total recoupment was the result of a 3.6% decrease in the collection of attorney fees, which was somewhat mitigated by a 9% increase in the collection of attorney appointment fees. While the drop in attorney fees was a result of the decrease in 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, collection of fees through clerks’ offices fell more sharply, with a decrease of 5.23% compared to fiscal year 2011-12. The share of recoupment from the interception of state income tax refunds and lottery proceeds grew by almost 5% compared to fiscal year 2011-12. 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 2012-13, there continued to be wide variability in recoupment rates among counties. Excluding one small county with an unusually high recoupment rate, recoupment as a percentage of non-capital spending on PAC and public defender offices ranged from a low of 3.7% to a high of 44.3%, with an overall statewide rate of 13.2%. While this is a lower recoupment rate than in fiscal year 2011-12, it is an increase over the 2009-2011 fiscal biennium. The average recoupment rate by county has increased from 11.4% in fiscal year 2008-09 to 13.2% last fiscal year. While most counties had similar recoupment rates in fiscal years 2011-12 and 2012-13, 44 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. For fiscal year 2012-13, IDS staff found that roughly 30% of attorney fees in criminal cases were 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 18.9%, a slight drop from the prior fiscal year. The data on the recoupment eligible share of dispositions by county is not yet complete enough to make that calculation at the county level. 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.

HISTORICAL UNDERFUNDING AND CURRENT PROJECTIONS FOR FISCAL YEAR 2013-14

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 continuing 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. So far this fiscal year, PAC demand is 3.4% below fiscal year 2012-13. The drop in current year demand is due to a combination of further savings from the 2011 rate reductions, which are mostly realized at this point, reduced costs from the new contract system, and slowed growth in the overall court system. However, IDS has received 3% more fee applications during the first eight months of this fiscal year than it received during the same time period last fiscal year, so there will probably be more spending growth during the remainder of the year, particularly because the court system experienced considerable weather disruption during the winter of 2014. Assuming fiscal year 2013-14 demand is virtually flat compared to fiscal year 2012-13 demand, collection of full budgeted receipts, and the expected amount of lapsed salary from defender offices and the IDS Office, current projections suggest that IDS will end this fiscal year with a shortfall of approximately \$5 million. Thus, the shortfall of almost \$10 million that IDS carried forward from fiscal year 2010-11 and then reduced to almost \$8 million in fiscal year 2012-13 should be reduced even further, but not eradicated, this fiscal year. In other words, at the current level of demand and the depressed hourly PAC rates, IDS is operating within its budget but remains plagued by underfunding in prior years. If IDS ends this fiscal year with \$5 million of debt, IDS will again have to stop paying PAC and defense experts at the end of May, continuing the problem of payment delays on top of the rate reductions that PAC have suffered for several years.

The IDS Commission and Office recognize that reductions in spending were needed to meet the recent 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, for fiscal year 2014-15, the Commission and Office respectfully request an additional \$5 million in non-recurring funds to eliminate the carry-forward debt that dates back to fiscal year 2010-11.

RESEARCH AND REPORTS

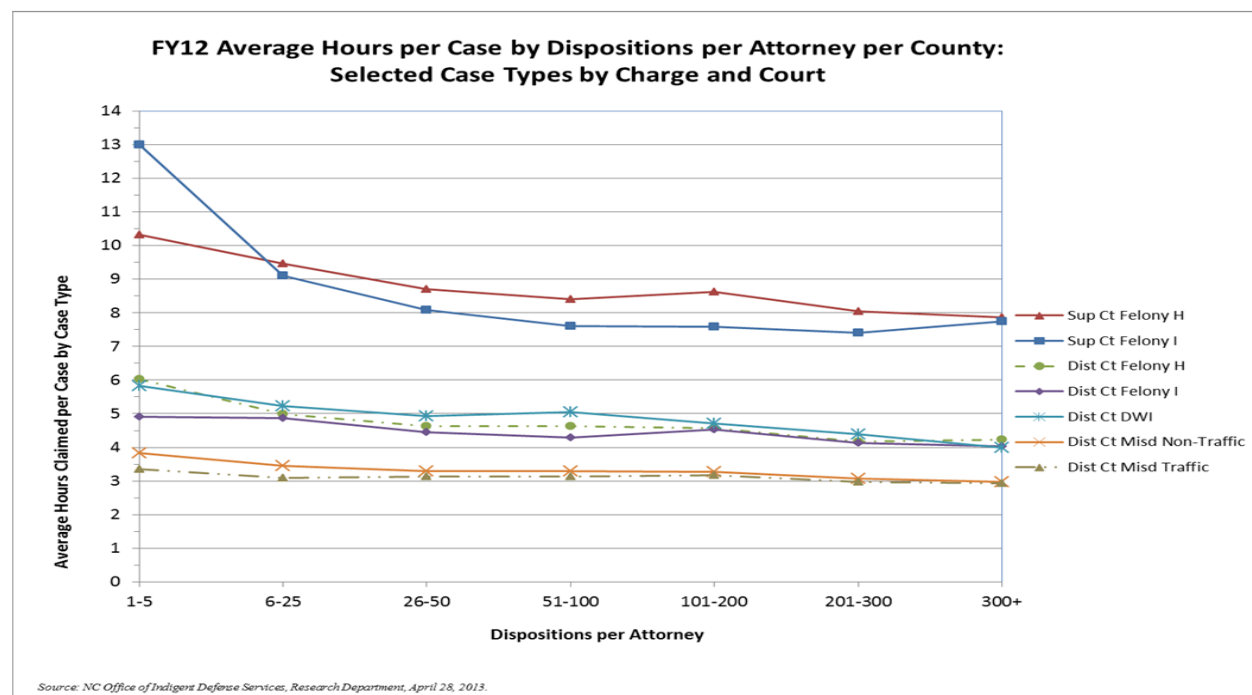
IDS Office staff continually work with AOC and IDS Financial Services to develop better and more comprehensive data collection and reporting systems for the indigent defense program, and now receive periodic data exports from the AOC's Automated Criminal Infraction System ("ACIS") upon request. With the OSF grant funding for the JSERI initiative that is discussed earlier in this report, IDS has hired an Information Technology consultant to build a data warehouse that will automate the integration of data from various court information systems into a data depository and facilitate data mining, reporting, and analysis. The data warehouse is 80% completed and is expected to be operational by April 2014.

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 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 year 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 year 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 on-line 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 would 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 on-line 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 are 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 adopted during the 2013 legislative session, 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. 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 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 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. While reclassification of DWLRs would generate an additional \$2.83 million in annual 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 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 planned 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.

In May 2012, the Open Society Fund ("OSF") awarded IDS \$125,000 in grant funds to support SEP. With that funding, SEP is working with three other pilot sites around the country to begin developing system performance measures. The multi-state project is in the final stages of completing a case outcome study and identifying key case outcome performance measures. 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. Additional materials about SEP are available at www.ncids.org under the "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 2012-13 is attached to this report as Appendix C. While the reported data continues to be limited in scope, the IDS Office is continually working to improve data collection procedures and data reporting capabilities. The IDS Office 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 2012-13, 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 2012-13 were \$937,477.81. 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 2012-13, \$24,937.01 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 one-time deficit in its appropriation for this fiscal year (2013-14) of approximately \$5 million. That shortfall will mean that funding for payments to PAC and defense experts will be depleted in late May 2013 and that IDS will not be able to resume payments until after the new fiscal year begins in July.

As discussed earlier in this report, the IDS Commission and Office recognize that reductions in spending were needed to meet the recent 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 next fiscal year, if IDS does not receive a non-recurring appropriation for next fiscal year to cover the anticipated \$5 million carry-forward debt from this fiscal year, IDS will again be facing a potential deficit of more than \$7 million at the end of fiscal year 2014-15, which would mean that IDS' funding for PAC payments would again be depleted in May 2015. 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.

The IDS Commission and Office respectfully request that the General Assembly appropriate an additional \$5 million in non-recurring funds for fiscal year 2014-15 to enable IDS to pay off the anticipated shortfall from this fiscal year. This funding request assumes that the Office will be permitted to use all recoupment receipts and available lapsed salary from the public defender fund.

FUNDING FOR PUBLIC DEFENDER CASE MANAGEMENT SYSTEM AND EQUIPMENT REPLACEMENT

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. 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 or purchasing a new system with available funds will put a significant strain on IDS' budget next fiscal year, and maintaining the system with available funds will put a significant strain on IDS' budget in future fiscal years. Based on current estimates and an assumption that some available funds may be needed to augment a dedicated appropriation, the IDS Commission and Office respectfully request \$350,000 in non-recurring funds for fiscal year 2014-15 and \$115,000 in recurring funds to maintain the system. In addition, IDS' current equipment repair and replacement budget is insufficient to cover reasonable replacement schedules for computers, printers, copiers, scanners, switches, servers, and software in the various public defender and state defender offices, which impacts the efficiency and quality of work done in those offices. Thus, IDS respectfully requests an additional \$25,000 in recurring funds for this purpose.

REVISE THE 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 do 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:

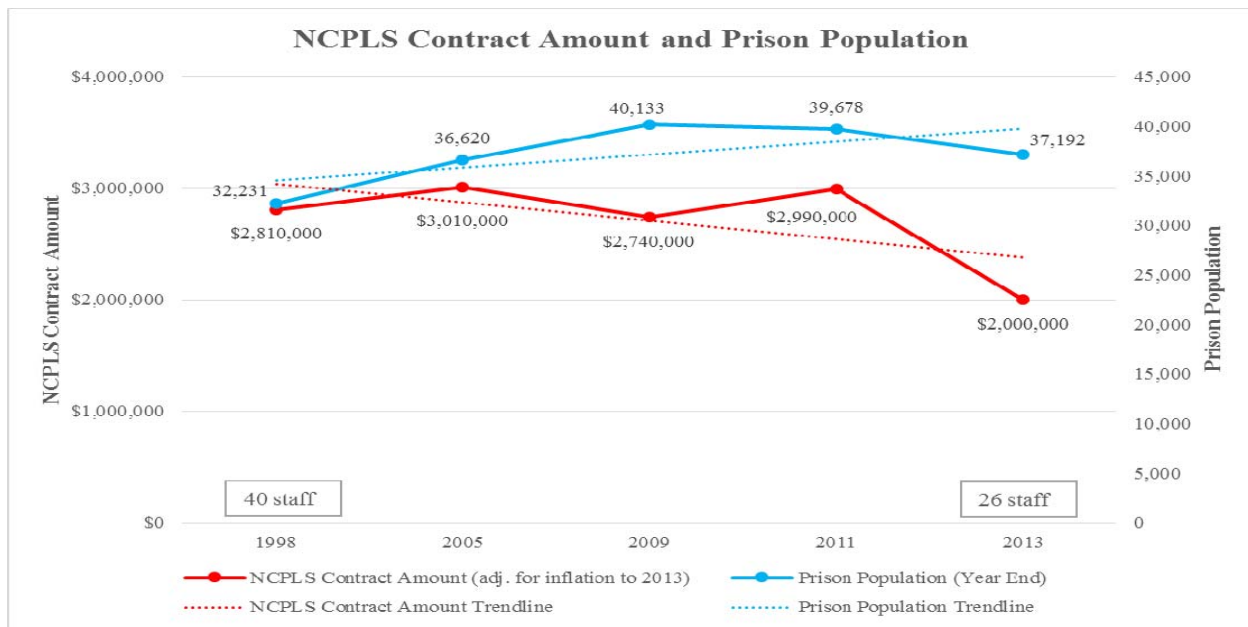
The Office of Indigent Defense Services shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of all classes of legal cases for indigent clients in all judicial districts, with the exception of potentially capital cases at the 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 Joint Legislative Commission on Governmental Operations by October 1, 2013. 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 2013 purchasing power)
1998	32,231	40	\$1.97 million	\$2.81 million
2005	36,620	40	\$2.52 million	\$3.01 million
2009	40,133	40	\$2.52 million	\$2.74 million
2011	39,678	40	\$2.89 million	\$2.99 million
2013	37,192	26	\$2.00 million	\$2.00 million
% Change (1998-2013)	+15.4%	-35.0%	+1.5%	-28.8%

In light of the significant funding reduction, NCPLS had to eliminate 16 attorney and support staff positions, and is now working to serve more than 37,000 inmates with only 26 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 long 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.

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 each year of the current biennium.

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.

CLARIFY IDS' AUTHORITY TO PAY A GUARDIAN AD LITEM APPOINTED TO REPRESENT A PARENT IN AN ABUSE/NEGLECT/DEPENDENCY PROCEEDING

G.S. 7B-602 provides that an indigent respondent parent in an abuse/neglect/dependency proceeding has the right to appointed counsel and, under certain limited circumstances, to an appointed guardian ad litem ("GAL"). G.S. 7B-1101.1 creates similar rights for an indigent

respondent parent in a termination of parental rights proceeding. G.S. 7B-603(b) provides that “an attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which [IDS] is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by [IDS].” However, despite the entitlement to appointed GALs in some circumstances and the long-standing practice of IDS paying the fees of GALs appointed pursuant to G.S. 7B-602, IDS Office staff recently realized that the statutory language does not clearly authorize such payments. The IDS Commission and Office believe this is an unintended gap in the statute and respectfully request that the General Assembly clarify IDS’ authority to pay GALs appointed to represent parent respondents in these cases in addition to the appointed attorneys. While the Commission and Office understand this issue would not be eligible for a stand-alone bill during the 2014 short session, it could be addressed in a Technical Corrections Bill.

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.

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 during the next legislative long session.

ALLOW FOR PART-TIME STATE EMPLOYED DEFENDERS AND ALLOW FULL-TIME STATE EMPLOYED DEFENDERS TO ENGAGE IN THE 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. IDS understands that this matter may be more appropriately addressed during a future long session.

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 an 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. As above, IDS understands that this matter may be more appropriately addressed during a future long session.

ADDITIONAL LEGISLATIVE RECOMMENDATIONS

During the 2014 short 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.

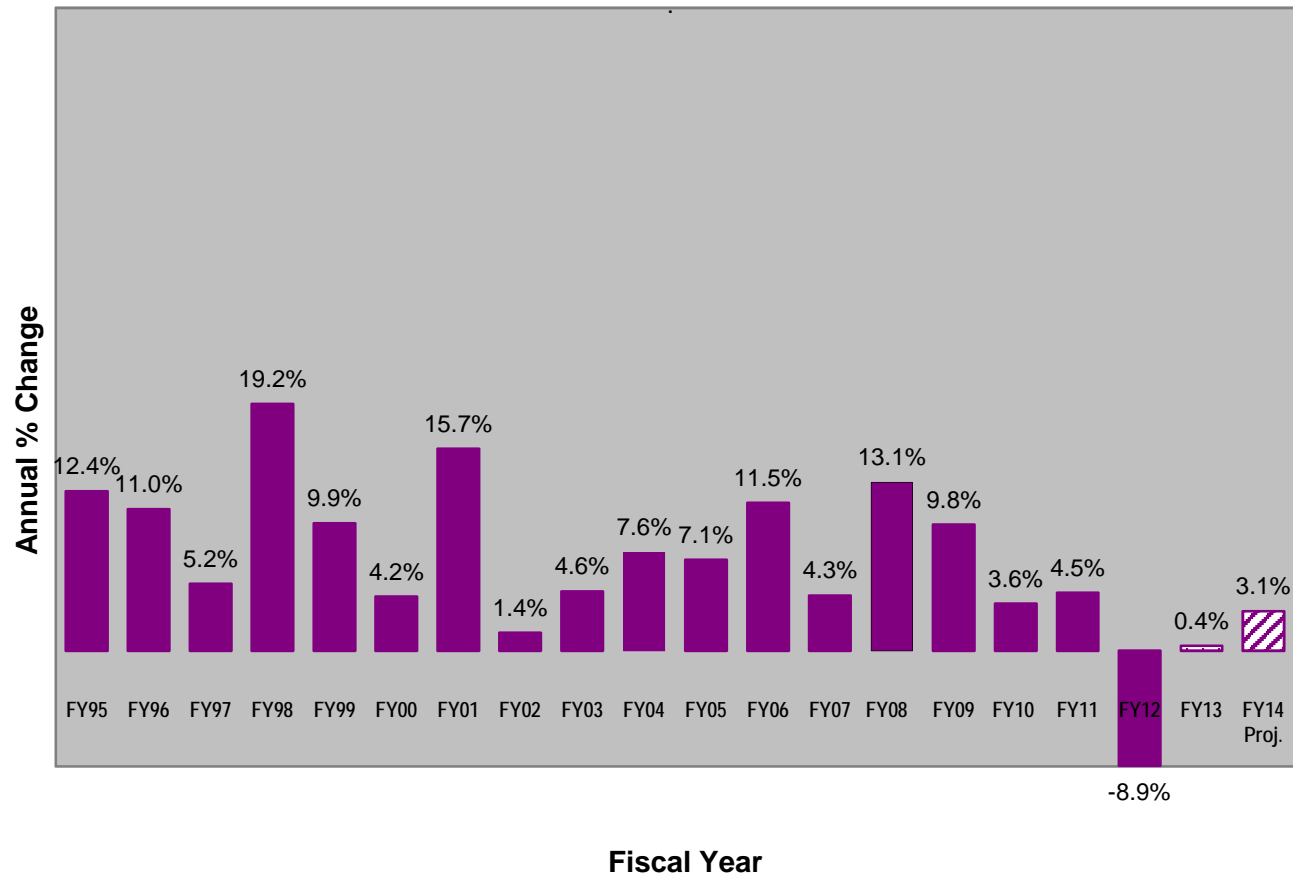
CONCLUSION

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 FY2013

<u>County</u>	<u>Appointment Fee</u>	<u>Attorney Fees</u>	<u>Total</u>	<u>Non Capital Spending</u>	<u>Recoup %</u>
Alamance	\$41,999	\$299,407	\$341,406	\$1,180,172	28.9%
Alexander	\$12,935	\$66,691	\$79,626	\$323,748	24.6%
Alleghany	\$4,900	\$19,982	\$24,882	\$83,722	29.7%
Anson	\$10,143	\$75,885	\$86,027	\$338,434	25.4%
Ashe	\$8,039	\$42,053	\$50,092	\$214,374	23.4%
Avery	\$5,998	\$41,495	\$47,494	\$147,950	32.1%
Beaufort	\$13,702	\$100,504	\$114,206	\$495,354	23.1%
Bertie	\$2,548	\$28,431	\$30,979	\$154,282	20.1%
Bladen	\$8,515	\$50,113	\$58,628	\$507,806	11.5%
Brunswick	\$25,880	\$178,307	\$204,187	\$1,181,847	17.3%
Buncombe	\$44,124	\$131,698	\$175,822	\$3,014,168	5.8%
Burke	\$14,474	\$140,792	\$155,266	\$633,240	24.5%
Cabarrus	\$60,018	\$332,420	\$392,437	\$1,040,880	37.7%
Caldwell	\$22,246	\$155,004	\$177,251	\$752,633	23.6%
Camden	\$972	\$5,327	\$6,299	\$44,527	14.1%
Carteret	\$10,841	\$51,804	\$62,645	\$722,471	8.7%
Caswell	\$5,549	\$45,267	\$50,816	\$192,976	26.3%
Catawba	\$17,768	\$193,972	\$211,741	\$1,212,102	17.5%
Chatham	\$5,337	\$22,382	\$27,719	\$720,452	3.8%
Cherokee	\$7,485	\$49,753	\$57,237	\$379,577	15.1%
Chowan	\$2,153	\$18,738	\$20,891	\$125,412	16.7%
Clay	\$1,751	\$11,914	\$13,666	\$159,243	8.6%
Cleveland	\$46,863	\$166,761	\$213,624	\$805,821	26.5%
Columbus	\$11,726	\$97,925	\$109,651	\$711,322	15.4%
Craven	\$21,790	\$144,639	\$166,429	\$514,359	32.4%
Cumberland	\$43,404	\$117,561	\$160,965	\$3,636,929	4.4%
Currituck	\$5,422	\$35,569	\$40,991	\$379,068	10.8%
Dare	\$7,974	\$48,307	\$56,281	\$690,290	8.2%
Davidson	\$63,508	\$335,239	\$398,747	\$1,339,705	29.8%
Davie	\$11,407	\$65,859	\$77,266	\$286,086	27.0%
Duplin	\$16,941	\$111,733	\$128,674	\$391,289	32.9%
Durham	\$42,470	\$194,787	\$237,257	\$4,605,207	5.2%
Edgecombe	\$12,477	\$99,906	\$112,383	\$513,393	21.9%
Forsyth	\$84,761	\$322,143	\$406,903	\$3,635,404	11.2%
Franklin	\$11,540	\$78,648	\$90,188	\$471,325	19.1%
Gaston	\$40,488	\$75,492	\$115,980	\$2,560,059	4.5%
Gates	\$374	\$2,357	\$2,731	\$15,416	17.7%
Graham	\$2,565	\$16,395	\$18,960	\$111,194	17.1%
Granville	\$9,823	\$76,907	\$86,730	\$417,351	20.8%
Greene	\$4,151	\$31,116	\$35,267	\$226,780	15.6%
Guilford	\$86,529	\$298,979	\$385,508	\$5,440,135	7.1%
Halifax	\$14,482	\$135,569	\$150,051	\$943,952	15.9%
Harnett	\$16,905	\$96,195	\$113,100	\$664,888	17.0%
Haywood	\$15,847	\$121,390	\$137,237	\$771,357	17.8%
Henderson	\$23,852	\$104,037	\$127,889	\$1,046,782	12.2%
Hertford	\$5,028	\$45,039	\$50,067	\$185,163	27.0%
Hoke	\$5,356	\$37,083	\$42,439	\$961,612	4.4%
Hyde	\$1,528	\$11,983	\$13,511	\$32,438	41.7%
Iredell	\$46,966	\$261,349	\$308,316	\$1,274,180	24.2%
Jackson	\$9,670	\$66,802	\$76,472	\$374,396	20.4%
Johnston	\$34,939	\$190,323	\$225,262	\$958,798	23.5%
Jones	\$4,178	\$21,339	\$25,517	\$101,488	25.1%
Lee	\$19,557	\$97,043	\$116,600	\$560,811	20.8%
Lenoir	\$23,410	\$198,112	\$221,523	\$562,551	39.4%
Lincoln	\$22,609	\$108,976	\$131,585	\$606,173	21.7%
Macon	\$7,428	\$48,469	\$55,897	\$311,325	18.0%
Madison	\$5,365	\$44,008	\$49,373	\$173,196	28.5%
Martin	\$7,701	\$46,413	\$54,114	\$203,237	26.6%
McDowell	\$16,206	\$100,525	\$116,731	\$579,357	20.1%
Mecklenburg	\$29,514	\$485,668	\$515,182	\$11,584,477	4.4%
Mitchell	\$5,943	\$47,775	\$53,718	\$121,133	44.3%
Montgomery	\$7,151	\$28,863	\$36,014	\$256,630	14.0%
Moore	\$20,352	\$152,792	\$173,145	\$898,283	19.3%
Nash	\$19,510	\$164,850	\$184,361	\$733,175	25.1%
New Hanover	\$37,257	\$309,066	\$346,322	\$2,782,091	12.4%
Northampton	\$2,570	\$21,819	\$24,389	\$179,920	13.6%

RECOUPMENT DATA FY2013

<u>County</u>	<u>Appointment Fee</u>	<u>Attorney Fees</u>	<u>Total</u>	<u>Non Capital Spending</u>	<u>Recoup %</u>
Onslow	\$41,538	\$258,726	\$300,264	\$959,424	31.3%
Orange	\$14,377	\$34,447	\$48,824	\$1,322,622	3.7%
Pamlico	\$3,301	\$24,933	\$28,234	\$74,550	37.9%
Pasquotank	\$7,015	\$53,033	\$60,048	\$426,864	14.1%
Pender	\$12,198	\$79,349	\$91,547	\$358,333	25.5%
Perquimans	\$2,119	\$14,368	\$16,487	\$80,369	20.5%
Person	\$10,216	\$83,406	\$93,621	\$578,623	16.2%
Pitt	\$16,843	\$139,551	\$156,394	\$2,399,138	6.5%
Polk	\$6,030	\$19,526	\$25,556	\$269,668	9.5%
Randolph	\$31,402	\$177,732	\$209,134	\$1,119,051	18.7%
Richmond	\$20,580	\$148,647	\$169,227	\$941,689	18.0%
Robeson	\$20,818	\$169,277	\$190,095	\$3,169,097	6.0%
Rockingham	\$27,414	\$211,437	\$238,851	\$1,129,360	21.1%
Rowan	\$52,136	\$270,747	\$322,883	\$1,443,666	22.4%
Rutherford	\$43,006	\$158,211	\$201,217	\$747,703	26.9%
Sampson	\$13,441	\$78,375	\$91,816	\$368,658	24.9%
Scotland	\$5,529	\$44,750	\$50,279	\$717,936	7.0%
Stanly	\$11,811	\$86,764	\$98,575	\$516,824	19.1%
Stokes	\$9,446	\$60,466	\$69,912	\$360,806	19.4%
Surry	\$24,024	\$166,451	\$190,475	\$666,707	28.6%
Swain	\$3,612	\$17,970	\$21,582	\$274,671	7.9%
Transylvania	\$8,657	\$36,630	\$45,288	\$447,580	10.1%
Tyrrell	\$1,642	\$8,902	\$10,543	\$10,258	102.8%
Union	\$41,358	\$236,667	\$278,025	\$1,379,551	20.2%
Vance	\$9,580	\$90,721	\$100,302	\$660,897	15.2%
Wake	\$139,621	\$362,574	\$502,195	\$7,537,840	6.7%
Warren	\$3,933	\$25,288	\$29,222	\$118,643	24.6%
Washington	\$4,135	\$22,102	\$26,237	\$84,012	31.2%
Watauga	\$13,501	\$86,368	\$99,869	\$365,525	27.3%
Wayne	\$25,907	\$184,265	\$210,172	\$869,281	24.2%
Wilkes	\$32,136	\$120,754	\$152,890	\$401,614	38.1%
Wilson	\$8,892	\$101,483	\$110,375	\$607,083	18.2%
Yadkin	\$11,066	\$89,191	\$100,258	\$275,677	36.4%
Yancey	\$3,801	\$36,423	\$40,224	\$203,388	19.8%
Totals	\$1,936,000	\$11,027,284	\$12,963,283	\$98,131,025	13.2%

APPENDIX C

COST AND CASE DATA ON REPRESENTATION OF INDIGENTS

July 1, 2012-June 30, 2013

	Number of Cases*	Total Cost**
Assigned Private Counsel		
Capital cases	1,474	\$10,003,597
Adult non-capital cases	193,549	\$55,814,884
Juvenile cases	7,383	\$1,682,293
Guardian ad Litem assigned by IDS	2,665	\$857,474
Total	205,071	\$68,358,248
Individually Negotiated Contracts	9,768	\$1,662,432
RFP Contracts	4,696	\$1,689,395
Legal Services to Inmates		\$2,914,071
Public Defender Offices		
District 1 & 2***	2,274	\$1,534,455
District 3A	3,591	\$1,572,883
District 3B (Carteret County)	1,339	\$447,501
District 5 (New Hanover)	5,099	\$1,768,187
District 10	9,371	\$3,400,517
District 12	6,370	\$1,863,631
District 14	10,073	\$2,701,499
District 15B	2,309	\$1,374,646
District 16A	2,400	\$1,073,373
District 16B	3,608	\$1,540,906
District 18	10,688	\$3,426,280
District 21	7,291	\$2,435,033
District 26	19,432	\$7,047,146
District 27A	5,861	\$2,113,789
District 28	8,717	\$1,783,836
District 29B	2,447	\$883,852
Total	100,870	\$34,967,534
Office of the Appellate Defender	238	\$2,584,961
Office of the Capital Defender	120	\$2,969,145
Office of Special Counsel	11,476	\$1,280,991
TOTAL DISPOSITION PAC+PD	327,543	\$7,116,854
Support Services (PAC only)****		
Transcripts, records, and briefs		\$686,535
Expert witness fees		\$2,540,552
Investigator fees		\$3,095,338
Interpreters & Translators		\$129,497
Lay Witness Expenses		\$3,292
Total		\$6,455,214
Set-Off Debt Collection		\$120,195
Indigent Defense Services		\$2,052,190
Office of the Juvenile Defender		\$281,757
TOTAL INDIGENT DEFENSE SERVICES		\$125,336,133

* The number of "cases" shown for private assigned counsel (PAC) is the number of payments (fee applications) made by IDS for appointed attorneys. For public defender offices, the number of "cases" is the number of indigent persons whose cases were disposed of by public defenders during FY13. For contractors, numbers are dispositions reported per contract requirements. For the Office of the Capital Defender, numbers include pending 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 \$9.9 million in unpaid fee applications at the end of FY12 and about \$7.9 million left unpaid at the end of FY13, the figures here differ from NCAS by about \$2 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. 904 of the reported FY13 dispositions were in District 2.

**** Support service costs for public defender offices and statewide defender offices are included in total office costs.

Assigned and Contracted Private Counsel and Experts

	<u>Number of Payments</u>	<u>Demand</u>
<u>District 1</u>		
Camden	26	\$12,987.00
Chowan	96	\$154,853.00
Currituck	186	\$120,437.00
Dare	339	\$256,856.00
Gates	12	\$4,555.00
Pasquotank	256	\$264,004.00
Perquimans	55	\$85,186.00
District Total	970	\$898,878.00
<u>District 2</u>		
Beaufort	1,651	\$409,958.00
Hyde	109	\$26,765.00
Martin	653	\$234,675.00
Tyrrell	38	\$8,260.00
Washington	231	\$66,212.00
District Total	2,682	\$745,870.00
<u>District 3A</u>		
Pitt	3,077	\$1,306,644.00
District Total	3,077	\$1,306,644.00
<u>District 3B</u>		
Carteret	594	\$362,889.00
Craven	1,932	\$661,517.00
Pamlico	233	\$74,550.00
District Total	2,759	\$1,098,956.00
<u>District 4A</u>		
Duplin	1,598	\$506,874.00
Jones	292	\$110,905.00
Sampson	1,619	\$404,560.00
District Total	3,509	\$1,022,339.00
<u>District 4B</u>		
Onslow	4,407	\$1,138,911.00
District Total	4,407	\$1,138,911.00
<u>District 5</u>		
New Hanover	3,564	\$1,082,103.00
Pender	1,340	\$415,173.00
District Total	4,904	\$1,497,276.00

Assigned and Contracted Private Counsel and Experts		
	<u>Number of Payments</u>	<u>Demand</u>
<u>District 6A</u>		
Halifax	2,931	\$1,318,837.00
District Total	2,931	\$1,318,837.00
<u>District 6B</u>		
Bertie	589	\$165,450.00
Hertford	744	\$210,018.00
Northampton	575	\$244,078.00
District Total	1,908	\$619,546.00
<u>District 7A</u>		
Nash	2,172	\$906,110.00
District Total	2,172	\$906,110.00
<u>District 7B/C</u>		
Edgecombe	1,754	\$600,110.00
Wilson	1,884	\$775,766.00
District Total	3,638	\$1,375,876
<u>District 8A</u>		
Greene	656	\$268,263.00
Lenoir	1,937	\$737,789.00
District Total	2,593	\$1,006,052.00
<u>District 8B</u>		
Wayne	3,092	\$1,210,257.00
District Total	3,092	\$1,210,257.00
<u>District 9</u>		
Franklin	1,218	\$472,225.00
Granville	1,078	\$445,277.00
Vance	1,318	\$673,897.00
Warren	343	\$126,177.00
District Total	3,957	\$1,717,576.00
<u>District 9A</u>		
Caswell	530	\$268,788.00
Person	1,557	\$617,131.00
District Total	2,087	\$885,919.00

Assigned and Contracted Private Counsel and Experts		
	<u>Number of Payments</u>	<u>Demand</u>
<u>District 10</u>		
Wake	11,366	\$4,908,551.00
District Total	11,366	\$4,908,551.00
<u>District 11A</u>		
Harnett	2,699	\$937,117.00
Lee	2,323	\$668,274.00
District Total	5,022	\$1,605,391.00
<u>District 11B</u>		
Johnston	3,763	\$1,309,432.00
District Total	3,763	\$1,309,432.00
<u>District 12</u>		
Cumberland	5,161	\$3,101,127.00
District Total	5,161	\$3,101,127.00
<u>District 13A</u>		
Bladen	1,658	\$620,471.00
Columbus	2,128	\$896,331.00
District Total	3,786	\$1,516,802.00
<u>District 13B</u>		
Brunswick	4,190	\$1,356,994.00
District Total	4,190	\$1,356,994.00
<u>District 14</u>		
Durham	4,831	\$2,356,736.00
District Total	4,831	\$2,356,736.00
<u>District 15A</u>		
Alamance	4,401	\$1,367,533.00
District Total	4,401	\$1,367,533.00
<u>District 15B</u>		
Chatham	483	\$275,626.00
Orange	980	\$507,021.00
District Total	1,463	\$782,647.00

Assigned and Contracted Private Counsel and Experts

	<u>Number of Payments</u>	<u>Demand</u>
<u>District 16A</u>		
Hoke	473	\$428,186.00
Scotland	615	\$362,085.00
District Total	1,088	\$790,271.00
<u>District 16B</u>		
Robeson	5,844	\$2,245,026.00
District Total	5,844	\$2,245,026.00
<u>District 17A</u>		
Rockingham	3,635	\$1,294,043.00
District Total	3,635	\$1,294,043.00
<u>District 17B</u>		
Stokes	1,418	\$439,951.00
Surry	2,799	\$739,781.00
District Total	4,217	\$1,179,732.00
<u>District 18</u>		
Guilford	6,911	\$2,375,410.00
District Total	6,911	\$2,375,410.00
<u>District 19A</u>		
Cabarrus	4,081	\$1,117,879.00
District Total	4,081	\$1,117,879.00
<u>District 19B</u>		
Montgomery	1,213	\$315,938.00
Randolph	5,119	\$1,414,812.00
District Total	6,332	\$1,730,750.00
<u>District 19C</u>		
Rowan	5,552	\$1,615,883.00
District Total	5,552	\$1,615,883.00
<u>District 19D</u>		
Moore	3,219	\$1,176,300.00
District Total	3,219	\$1,176,300.00

Assigned and Contracted Private Counsel and Experts

	<u>Number of Payments</u>	<u>Demand</u>
<u>District 20A</u>		
Anson	1,526	\$396,733.00
Richmond	3,788	\$1,188,440.00
Stanly	2,001	\$642,816.00
District Total	7,315	\$2,227,989.00
<u>District 20B</u>		
Union	4,907	\$1,722,632.00
District Total	4,907	\$1,722,632.00
<u>District 21</u>		
Forsyth	7,570	\$1,516,965.00
District Total	7,570	\$1,516,965.00
<u>District 22A</u>		
Alexander	1,226	\$336,792.00
Iredell	4,584	\$1,355,943.00
District Total	5,810	\$1,692,735.00
<u>District 22B</u>		
Davidson	6,071	\$1,511,093.00
Davie	1,066	\$299,416.00
District Total	7,137	\$1,810,509
<u>District 23</u>		
Alleghany	302	\$216,304.00
Ashe	797	\$228,914.00
Wilkes	2,047	\$546,712.00
Yadkin	918	\$277,434.00
District Total	4,064	\$1,269,364.00
<u>District 24</u>		
Avery	545	\$153,042.00
Madison	666	\$175,292.00
Mitchell	429	\$121,655.00
Watauga	1,121	\$443,910.00
Yancey	648	\$204,240.00
District Total	3,409	\$1,098,139.00

Assigned and Contracted Private Counsel and Experts

	<u>Number of Payments</u>	<u>Demand</u>
<u>District 25A</u>		
Burke	2,254	\$730,482.00
Caldwell	3,687	\$874,239.00
District Total	5,941	\$1,604,721.00
<u>District 25B</u>		
Catawba	4,984	\$1,354,078.00
District Total	4,984	\$1,354,078.00
<u>District 26</u>		
Mecklenburg	13,956	\$6,111,630.00
District Total	13,956	\$6,111,630.00
<u>District 27A</u>		
Gaston	1,389	\$940,753.00
District Total	1,389	\$940,753.00
<u>District 27B</u>		
Cleveland	4,184	\$929,604.00
Lincoln	2,400	\$644,131.00
District Total	6,584	\$1,573,735.00
<u>District 28</u>		
Buncombe	4,196	\$1,497,407.00
District Total	4,196	\$1,497,407.00
<u>District 29A</u>		
McDowell	1,876	\$583,696.00
Rutherford	3,161	\$841,338.00
District Total	5,037	\$1,425,034.00
<u>District 29B</u>		
Henderson	1,500	\$569,092.00
Polk	319	\$152,772.00
Transylvania	550	\$255,288.00
District Total	2,369	\$977,152.00

Assigned and Contracted Private Counsel and Experts

	<u>Number of Payments</u>	<u>Demand</u>
<u>District 30A</u>		
Cherokee	979	\$449,516.00
Clay	359	\$159,753.00
Graham	213	\$118,565.00
Macon	946	\$347,639.00
Swain	681	\$337,000.00
District Total	3,178	\$1,412,473.00
<u>District 30B</u>		
Haywood	2,339	\$859,503.00
Jackson	1,074	\$422,319.00
District Total	3,413	\$1,281,822.00

Notes: Reports through FY07 included only payments to attorneys; FY08 through FY13 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 cases closed as reported by contractors. Interpreters not included. This data excludes fee applications/contract payments received during FY12 but not paid until FY13, but includes those held for payment at end of FY13.