

Public Defense in North Carolina



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Constitutional Rights to Counsel



- **Sixth Amendment**

- NC Constitution, Art. I, sec. 23

- **Fifth Amendment (Due Process)**

- NC Constitution, Art. I, sec. 19

Indigence Determination



- N.C.G.S. § 7A-450:
- (b) Whenever a person, under the standards and procedures set out in this Subchapter, is determined to be an indigent person entitled to counsel, it is the responsibility of the State to provide him with counsel and the other necessary expenses of representation.
- The professional relationship of counsel so provided to the indigent person he represents is the same as if counsel had been privately retained by the indigent person.

Right to Counsel



- N.C.G.S. § 7A-498.1:

Whenever a person is determined to be indigent and entitled to counsel, it is the responsibility of the State under the federal and state constitutions to provide that person with counsel and the other necessary expenses of representation.

Statutory Rights to Counsel



- N.C.G.S. § 7A-451 – an indigent person is entitled to the services of counsel:
- Any case in which imprisonment or a fine >\$500 is likely to be adjudged
- Hearings on habeas petition
- MAR (if authorized under Chapter 15A)
- Probation revocation hearings
- Extradition hearings

Statutory Rights to Counsel



- Involuntary commitment hearings
- Juvenile delinquency
- Parole violation hearings
- Adult protective services hearings
- Abuse, neglect, dependency
- Termination of parental rights

Statutory Rights to Counsel



- Proceedings to quarantine a person
- Satellite-based monitoring hearings
- Post-conviction DNA testing
- Entitlement continues through: Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1), 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes.

Office of Indigent Defense Services



- Indigent Defense Services Act of 2000:
 - Commission on Indigent Defense Services
 - ✦ 13 member board (meets quarterly)
 - Office of Indigent Defense Services (IDS)
 - ✦ Full-time director – Tom Maher
- Created within the Administrative Office of the Courts (AOC)
- July 2001, IDS began operation

Office of Indigent Defense Services



- The purpose of this Article is to:
 - (1) Enhance oversight of the delivery of counsel and related services provided at State expense;
 - (2) Improve the quality of representation and ensure the independence of counsel;
 - (3) Establish uniform policies and procedures for the delivery of services;

Office of Indigent Defense Services



- (4) Generate reliable statistical information in order to evaluate the services provided and funds expended; and
- (5) Deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

Office of Indigent Defense Services



- The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:
- (1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;

Office of Indigent Defense Services



- (2) Cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1;
- (2a) Cases in which the State is legally obligated to provide legal assistance and access to the courts to inmates in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety; and
- (3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

What Does IDS Do?



- (1) oversees the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law;
- (2) develops training, qualification, and performance standards to govern the provision of legal services to indigent persons;
- (3) determines the most appropriate methods of delivering legal services to indigent persons in each judicial district; and
- (4) provides services in the most cost-effective manner possible.

Indigence Determination



- N.C.G.S. § 7A-450:
- (a) An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter.

Indigence Determination



- N.C.G.S. § 7A-450:
- (c) The question of indigency may be determined or redetermined by the court at any stage of the action or proceeding at which an indigent is entitled to representation.

Indigence Determination



- Rules of the Commission on Indigent Defense Services prescribe process for appointment of counsel.
- Part 1: Non-capital and non-criminal trial court cases
- Part 2: Capital (trial, appellate, PC)
- Part 3: Non-capital and non-criminal appeals

Indigence Determination



- IDS Rules, Part 1.4(b):
- (1) Before appointing counsel in cases in which indigency is a condition of appointment, the court shall require the defendant or respondent to complete and sign under oath an affidavit of indigency on a form approved by the IDS Director.
- (2) The court shall make reasonable inquiry of the defendant or respondent under oath to determine the truth of the statements made in the affidavit of indigency.

Indigence Determination



- (3) The affidavit of indigency shall be filed in the records of the case.
- (4) Based on the affidavit of indigency, the affiant's statements to the court on this subject, and such other information as may be brought to the attention of the court during the proceedings, the court shall determine whether the defendant or respondent is indigent.

Indigence Determination

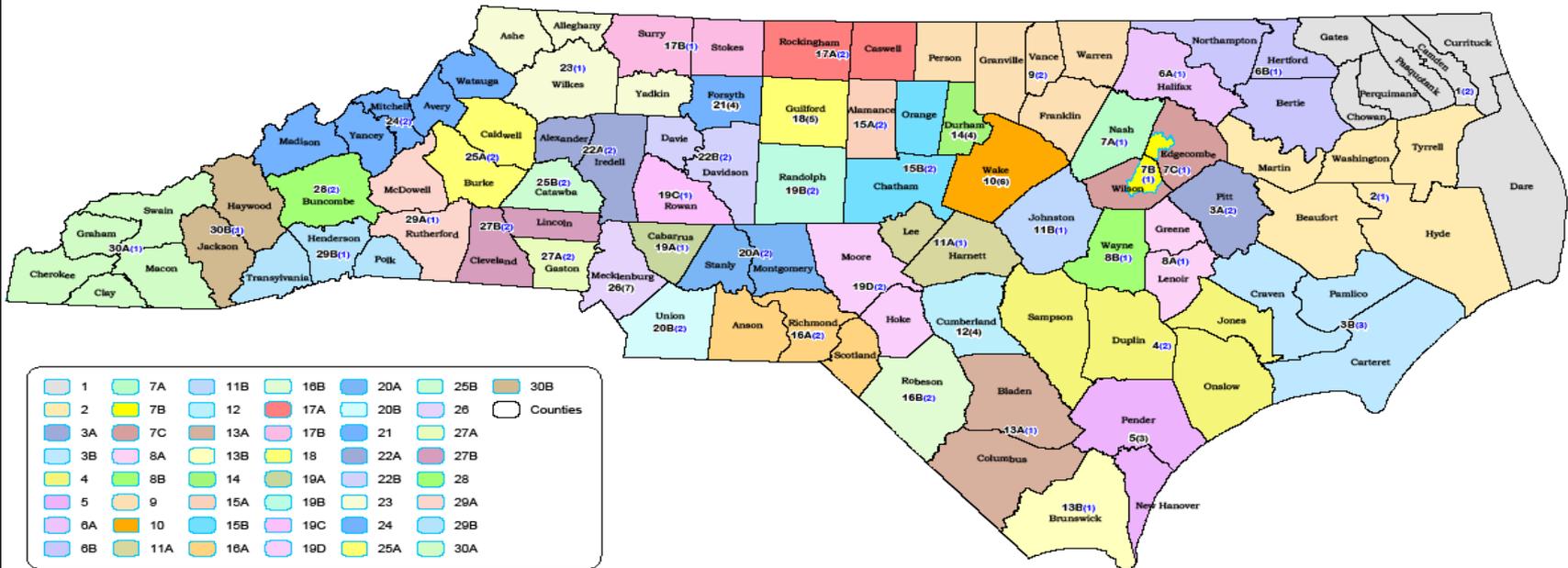


- Usually done at first appearance in District Court.
- Sometimes done in Superior Court:
 - Misdemeanor appeals
 - Probation revocations
- Upon entry of notice of appeal, IDS Rules Part 3.2 requires indigence determination and appointment of Office of the Appellate Defender.

Judicial Districts

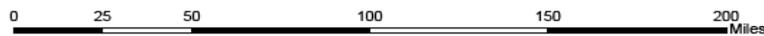


North Carolina Superior Court Districts



1	7A	11B	16B	20A	25B	30B
2	7B	12	17A	20B	26	Counties
3A	7C	13A	17B	21	27A	
3B	8A	13B	18	22A	27B	
4	8B	14	19A	22B	28	
5	9	15A	19B	23	29A	
6A	10	15B	19C	24	29B	
6B	11A	16A	19D	25A	30A	

Number of Judges is shown in parentheses



J-ST-9 H717 conference Superior

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Office of Indigent Defense Services



- 100 counties in North Carolina
- 49 Superior Court judicial districts
- 43 Prosecutorial districts

Delivery of Defense Services



- 17 Public Defender districts that cover 35 counties
- 5 Statewide defender offices
- “Court Appointed List”
 - Private assigned counsel (PAC) – hourly rates
 - Contract counsel – set monthly payments
- Prisoner Legal Services (PLS) receives some funding from IDS

Public Defender Districts



- Appointed by the Senior Resident Superior Court Judge for the District – 4 year terms
- 1 & 2 (one PD office for both districts) (14)
- 3A – Pitt (13)
- 3B – Carteret, Craven, Pamlico (7)
- 5 – New Hanover (not Pender) (14)
- 10 – Wake (31)
- 12 – Cumberland (16)

Public Defender Districts



- 14 – Durham (23)
- 15B – Orange, Chatham (9)
- 16A – Scotland, Hoke (6)
- 16B – Robeson (9)
- 18 – Guilford (Greensboro/High Point) (28)
- 21 – Forsyth (18)
- 26 – Mecklenburg (64)

Public Defender Districts



- 27A – Gaston (13)
- 28 – Buncombe (12)
- 29A – McDowell, Rutherford (8)
- 29B – Henderson, Polk, Transylvania (7)
- 27B?? – Cleveland, Lincoln (12)

Statewide Defender Offices



- IDS Commission appoints - 4 year terms:
- Office of the Capital Defender (trial court)
 - Durham, Buncombe, Forsyth, Nash, Robeson, & New Hanover
- Office of the Juvenile Defender (advocacy)
- Office of the Parent Defender (appeals)
- Office of the Special Counsel (trial court)
- Office of the Appellate Defender

Office of the Appellate Defender



- N.C.G.S. § 7A-498.8 establishes OAD
 - 20 assistant appellate defenders
 - 4 paralegals
 - Roster of 70+ private assigned counsel (PAC)
- Represent clients on direct appeal
 - Adult criminal
 - Juvenile delinquency
 - Commitments, adult and juvenile

Office of the Appellate Defender



- Consult with trial counsel
- Train trial counsel
- Provide litigation guides and sample motions and briefs
- Monitor developments in the law
- Resource for attorneys around NC

Indigent Appeals Process



- Notice of Appeal
- Appellate Entries and appointment of OAD
- OAD processes and AD assigns counsel
- Transcript is delivered
- Proposed record served
- Settled record filed
- Briefs filed

Why Public Defense?



- Representing clients
- Serving others
- Giving voice to the voiceless
- Seeking justice
- Contributing to positive systemic change
- Equalizing the playing field
- Working with a team

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