



Indigent Defense in North Carolina

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This Presentation Will Cover

- ▶ What a Healthy Indigent Defense System Looks Like in Practice
- ▶ North Carolina's Progress Toward Achieving *Gideon's* Promise of a Fair Trial
- ▶ Overview of North Carolina's Delivery of Indigent Representation
- ▶ Overview of IDS' Finances
- ▶ Time Needed to Provide Effective Representation
- ▶ Dangers of Underfunding Indigent Defense




What a Healthy Indigent Defense System Looks Like in Practice

Role of Defense Counsel

- [In] our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided for him. This seems to be an obvious truth.

- *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)

- To ensure a fair trial, counsel needs:
 - Knowledge
 - Experience
 - Access to resources
 - Time
 - Support from other professionals
 - Independence



What a Healthy System Looks Like for Counsel and Clients

➤ Counsel

- Come to court knowing the law and the facts, including all relevant facts about their client and possible defenses, and ready to proceed
- Have met with their client and reviewed the facts, law, and the client's options
- Represent the best interest of the client, even when that means opposing the prosecution and pressing issues in court
- Have the skill and experience to advocate effectively for their client in all court proceedings

➤ Clients

- Trust their lawyers
- Understand the charges, both factually and legally
- Understand their options and the consequences of their choices
- Have had their questions answered
- Are prepared for the proceeding that is to take place in court



And for the System

- ▶ **The System:**

- ▶ Includes the defense in policy decisions
- ▶ Provides management of the available resources
- ▶ Provides oversight for defenders
- ▶ Attracts and trains new counsel
- ▶ Attracts and keeps competent counsel involved in representation



*Partners in
Policymaking*



ABA Ten Principles of a Public Defense Delivery System

- ▶ 1) The public defense function, including the selection, funding, and payment of defense counsel, is independent
- ▶ 4) Defense counsel is provided sufficient time and a confidential space within which to meet with the client
- ▶ 5) Defense counsel's workload is controlled to permit the rendering of quality representation
- ▶ 6) Defense counsel's ability, training, and experience match the complexity of the case
- ▶ 8) There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system
- ▶ 10) Defense counsel is supervised and systemically reviewed for quality and efficiency according to nationally and locally adopted standards



North Carolina's Progress
Toward Achieving *Gideon's*
Promise of a Fair Trial



Planting the Seeds for an Independent Defense Agency

- ▶ **1998:** General Assembly established Indigent Defense Study Commission to “study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants without compromising the quality of legal representation mandated by State and federal law”
- ▶ **May 1, 2000:** Study Commission issued Report and Recommendations



Study Commission's Key Findings

- ▶ “[I]ndigent defense in this state suffers, as to both cost-effectiveness and quality of representation, from lack of any centralized authority to provide coordinated planning, oversight, or management”
- ▶ Lack of management contributed to increase in spending
 - ▶ Between FY89 and FY99, costs increased by 168% while caseloads grew by 90%
 - ▶ Capital defense costs rose 338% during same time period
- ▶ No statewide uniform standards for appointment, qualifications, compensation or performance of counsel, public defender operations, contractual arrangements, or other matters




More Key Findings & Recommendation

- ▶ System hampered because “the statistics and information needed for management of indigent defense programs are incomplete and suffer from numerous comparability problems”
- ▶ System compromises the necessary defense independence from other judicial branch functions
- ▶ Recommends that General Assembly “create an Office of Indigent Defense Services vested with the comprehensive authority and provided with the resources necessary to provide for quality legal representation statewide in the most cost-effective manner possible”



Indigent Defense Service Act of 2000

- ▶ Statutory purpose:
 - ▶ Enhance oversight of the delivery of counsel and related services provided at State expense;
 - ▶ Improve the quality of representation and ensure the independence of counsel;
 - ▶ Establish uniform policies and procedures for the delivery of services;
 - ▶ Generate reliable statistical information in order to evaluate the services provided and funds expended; and
 - ▶ Deliver services in the most efficient and cost-effective manner without sacrificing quality representation



Original IDS Act Protected Defense Independence

- ▶ Created the IDS Office as an independent entity within the Judicial Department
- ▶ Provided oversight through a 13-member Commission appointed by a range of stakeholders
 - ▶ Chief Justice, Governor, Senate, House, State Bar, voluntary bar associations, and Commission itself
- ▶ Provided that IDS shall “exercise its prescribed powers independently of the head of the Administrative Office of the Courts,” and that the AOC Director “shall not reduce or modify [IDS’] budget” without the approval of the IDS Commission



IDS Successes

- ▶ Provides fiscal oversight through billing policies, standardized hourly and expense rates, auditing to prevent duplicate payments, deadlines for fee applications, and data analysis
- ▶ Works with local actors to develop alternative service delivery and compensation systems where appropriate, such as attorney for the day or representation for a court session
- ▶ Develops and provides training, manuals, performance guidelines, checklists, and other resources for indigent defense counsel, both private attorneys and full-time public defenders
- ▶ Created and maintains statewide rosters for counsel for potentially capital cases, appeals, and capital post-conviction
- ▶ Enhanced communication with the defense bar through website, listservs, and EBlasts

Delivering Services in the Most Efficient and Cost-Effective Manner...

- Very modest costs per disposition

FY	Average Cost per Disposition
01	\$370.94
14	\$372.18

- Overall spending growing at slower rate than growth in dispositions

Time Span	% Increase in Overall Costs	% Increase in Overall Dispositions	% Increase in Capital Attorney Costs (incl. PAC + OCD; trial, appeal, and post-conviction)
12 Years Pre-IDS	232%	114%	389.6%
12 Years Post-IDS	68%	90%	7.4%

- Cost controls in potentially capital cases, including exceptional case policy and requirement of pre-trial budgets in high cost cases



...Without Sacrificing Quality Representation


- ▶ Enhanced training through SOG, including
 - ▶ Trial School
 - ▶ New Misdemeanor Defender and New Felony Defender programs
 - ▶ specialized programs for appellate, juvenile, and parent representation
 - ▶ Management and Leadership Training for public defenders
- ▶ Work with SOG and others to create and distribute manuals, brief banks, and motions banks
- ▶ Worked with public defenders to create networks of APDs who specialize in forensic or immigration issues to help their offices provide constitutionally effective representation



...Without Sacrificing Quality Representation

➤ New Resources:

- Juvenile Defender: Resource for counsel in juvenile delinquency cases
- Forensic Resource Counsel: Works with counsel to identify experts, understand the underlying science and discovery provided, and ensure effective representation in cases in which forensic science plays a role
- Regional Defenders in contract counties: Provide local trainings, consult on cases, observe contract attorneys in court, address client complaints, assist courts with issues that arise
- PD Administrator: Works with PD offices, conducts in-depth site visits, monitors workloads, handles complaints from clients, and assists with personnel issues and training



...Without Sacrificing Quality Representation

- ▶ Research Department conducts in-depth data collection and analysis, producing reports on numerous aspects of indigent defense, such as:
 - ▶ Attorney average hours, capital case costs and outcomes, and potential reclassification of minor offenses
 - ▶ Research to develop and evaluate new policy initiatives
 - ▶ Grant-funded work on Systems Evaluation Project that measures whether the system is reaching its goals and objectives through concrete indicators

Steps Back

- ▶ 2011: General Assembly reduced IDS' budget and required reduction in rates paid to PAC
 - ▶ Non-capital rates reduced from \$75 per hour to as low as \$55 per hour
 - ▶ Capital rates reduced from \$95 to \$85, with a further reduction to \$75 when case is declared non-capital
 - ▶ Even after dramatic rate reductions, ended FY11 with approximately \$10 million of unpaid fee applications
- ▶ Budget reductions place an additional strain on PDs as well
 - ▶ PDs only have access to approximately 90% of their salary allotments
 - ▶ Compounded by years of little or no legislative salary increases
 - ▶ Restricted equipment, training, and travel funds

Steps Back: Survey of PAC

- Reduced pay, reduced access to support staff and other resources, and loss of experienced attorneys
- 80% saw decline in quality of representation
- About 40% reported they would either definitely stop handling indigent cases or there was a strong possibility they would stop handling indigent cases if the rates remain at current levels

“In my district several lawyers have stopped taking indigent cases. At least four lawyers have left the practice of law altogether during the past two years. This increases the burden on the rest of us to provide indigent representation. A substantial part of my practice is indigent representation. After overhead I get about \$15 per hour before taxes for indigent representation. My mechanic charges \$68 per hour to work on my car – and he is on the low end of the scale. I, and every other attorney I know doing indigent work, have to consider whether it is financially feasible to continue to do so.”



**Private Assigned Counsel Survey Results:
Impact of May 2011 Rate Reductions**

March 2015

North Carolina Office of Indigent Defense Services
123 West Main Street, Suite 400
Charlotte, NC 27205
www.ncidls.org

Steps Back: Survey of APDs

- Majority of APDs under financial stress:
 - A quarter of respondents reported working second jobs
 - Over a third reported they were likely to leave the office
 - Many reported carrying overly large caseloads and finding themselves unable to provide quality representation to all of their clients

"I recently represented a Spanish speaking juvenile who was forced into a hearing without actually speaking to me first!!!... More than once I have been forced to meet a client and try the case on the same day. I don't always have time [to] call each client, or research legal issues in each client's case, before the case is scheduled for court."



State Defender Survey Results: Impact of Budget Constraints

November 2015

North Carolina Office of Indigent Defense Services
123 West Main Street, Suite 400
Durham, NC 27703
www.ncidil.org



Steps Back: Diminished Independence

- ▶ 2015: General Assembly amends IDS Act and diminishes independence of defense function:
 - ▶ Act now provides that IDS is created within AOC
 - ▶ AOC Director may now modify IDS' budget or use IDS' funds without consent of the IDS Commission or Office
- ▶ AOC tasked with performing annual audit of IDS' budget
- ▶ Changes not supported by Chief Justice or AOC



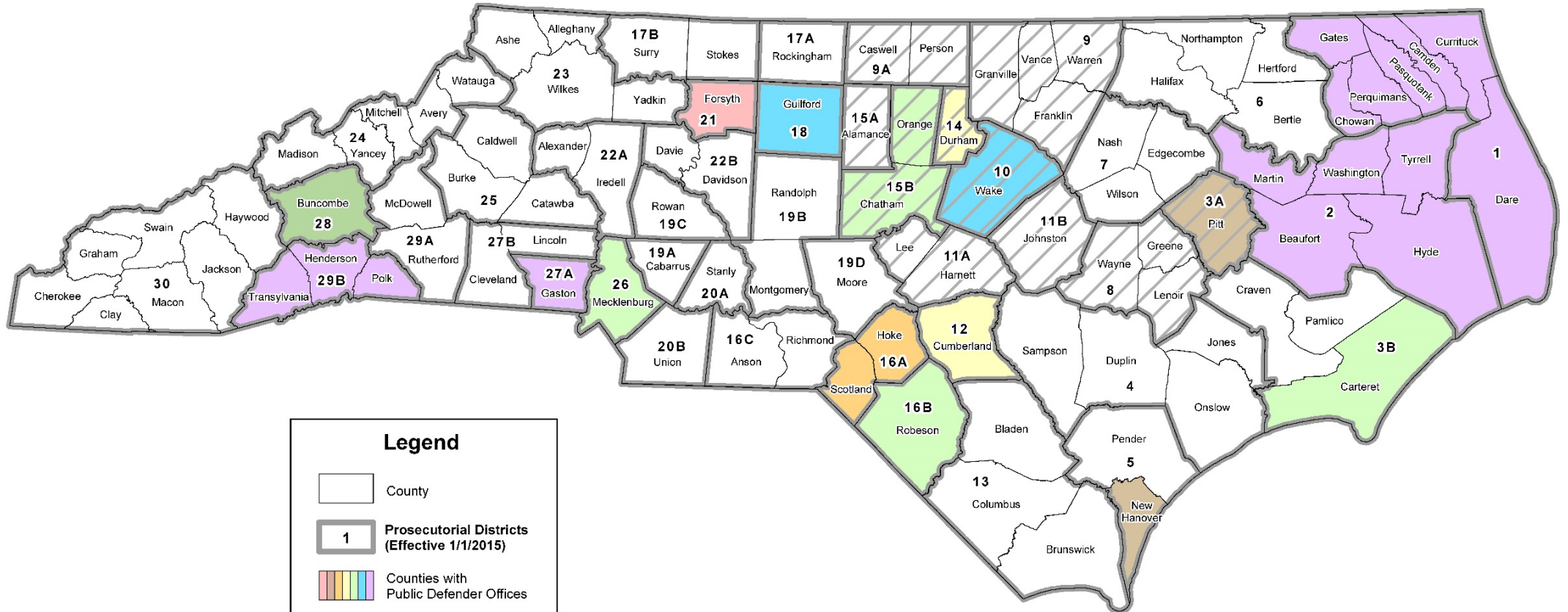
Overview of North Carolina's Delivery of Indigent Representation



IDS Provides Representation in:

- ▶ Adult criminal prosecutions, including potentially capital cases
- ▶ Juvenile delinquency proceedings
- ▶ Abuse, neglect, or dependency and termination of parental rights cases
- ▶ Commitment and guardianship cases
- ▶ Appeals
- ▶ Post-conviction, including capital post-conviction
- ▶ Meaningful access to the courts for inmates (NCPLS)
- ▶ Others (e.g., GALs for parents, extradition, satellite monitoring hearings)

Prosecutorial Districts with Public Defender Offices and Contract Defenders (Effective 1/1/2015)



Legend

- County
- Prosecutorial Districts (Effective 1/1/2015)
- Counties with Public Defender Offices
- Counties with Contract Defenders



Prosecutorial Districts 1 and 2 are covered by the same Public Defender's office.

Printed by the NC General Assembly, February 2, 2015.





Local Public Defenders

- ▶ 16 offices covering 31 counties
 - ▶ 276 Assistant Public Defenders
 - ▶ 43 investigators
 - ▶ 111 other support staff
 - ▶ Includes some grant-funded positions in Charlotte
- ▶ FY15:
 - ▶ All offices combined disposed of 102,939 cases (includes pending murder cases)
 - ▶ At a cost of \$37.43 million

Local PD Dispositions by Case Type (FY15)

Case Type	FY15 # of PD Dispositions/Withdrawals
Potentially Capital Trial	255 (incl. pending cases)
High-Level Felony	2,409
Low-Level Felony	26,188
Misdemeanor & Traffic	56,093
DWI	5,390
Other Criminal	1,504
Child Support Contempt	115
AND/TPR	793 (adj/disps plus review hearings)
Juvenile Delinquency	2,191
Other Civil (e.g., Commitment, Competency)	7,993
Non-Capital Appeals	8
Total	102,939



Statewide Defenders

▶ Office of the Capital Defender

- ▶ Offices in Durham, Winston-Salem, Asheville, and Wilmington
- ▶ 17 assistant capital defenders and 11 support staff (one part time)
- ▶ FY15: In addition to administrative responsibilities and support of more than 270 PAC, PDs, and APDs with active cases, 128 murder cases disposed, pending, and withdrawn at cost of \$3.45 million
- ▶ Four offices combined opened cases in 34 counties

▶ Office of the Appellate Defender (incl. Parent Representation unit)

- ▶ Office in Durham
- ▶ 23 assistant appellate defenders and 5 support staff
- ▶ FY15: In addition to administrative responsibilities and support of more than 80 PAC and APDs, disposed of 229 capital, non-capital, and non-criminal appeals at cost of \$2.78 million

▶ Special Counsel

- ▶ Offices in Raleigh, Morganton, Goldsboro, and Butner
- ▶ 8 attorneys and 8 support staff
- ▶ FY15: Disposed of 13,138 cases at cost of \$1.37 million



Local and Statewide PAC Rosters

- ▶ FY15: Paid more than 2,500 PAC to handle approximately 167,400 cases at a total cost of \$60.45 million
- ▶ Hourly rates:
 - ▶ \$55 for misdemeanors and low-level felonies resolved in District Court
 - ▶ \$60 for misdemeanors and low-level felonies resolved in Superior Court
 - ▶ \$70 for high-level felonies
 - ▶ \$85 for first-degree murder cases unless declared non-capital, then \$75
- ▶ Per session fees for some cases handled by the session, such as child support contempt
- ▶ Flat fees for cases resolved in District Court in Rowan and Cabarrus Counties

PAC Dispositions by Case Type (FY15)

Case Type	FY15 # of PAC Dispositions/Withdrawals/Fee Apps
Potentially Capital Trial & Capital Appeal/PC	1,397 (fee apps)
High-Level Felony (incl. non-capital PC)	5,180
Low-Level Felony	34,085
Misdemeanor & Traffic	60,501
DWI	6,405
Other Criminal	1,643
Child Support Contempt	17,524 (fee apps)
AND/TPR (incl. GAL for respondent)	23,167 (fee apps)
Juvenile Delinquency	6,142
Other Civil (e.g., Commitment, Competency)	10,380
Non-Capital Appeals	1,058 (fee apps)
Total	167,482

Based on FY15 demand year



Private Counsel Under Contract


- ▶ Contracts issued through Request for Proposals process:
 - ▶ Adult criminal cases
 - ▶ \$17,500 annually for 102 to 124 misdemeanors
 - ▶ \$19,500 annually for 56 to 68 low-level felonies
 - ▶ \$23,500 annually for 21 to 25 high-level felonies (plus hourly pay over 50 hours)
 - ▶ Extraordinary pay available for difficult cases
 - ▶ Two Regional Defenders who provide resources and oversight
 - ▶ Currently contracts with more than 200 attorneys in 18 counties
- ▶ Other contracts:
 - ▶ Non-profits, such as NC Prisoner Legal Services and Council for Children's Rights
 - ▶ Individually negotiated contracts, primarily for juvenile delinquency and non-criminal cases

RFP Contract Attorney Dispositions by Case Type (FY15)

Contract Category	No. of Dispositions
High-Level Felony (Class A-D)	935
Low-Level Felony (Class E-I)	8,652
Misdemeanor	17,153 (incl. 1,123 DWIs)
Total	26,740

Note: Data is preliminary and has not yet been cleaned for data entry errors.

- FY15 cost of \$7.66 million
- Contract attorneys are paid in monthly increments for contractually agreed upon caseload before cases are disposed



Non-RFP Contract Attorney Dispositions and Cost (FY15)

- ▶ Excluding NCPLS, total spent in FY15 was \$1.5 million
- ▶ Most of the spending was on contract attorneys handling A/N/D, TPR, and delinquency cases
- ▶ 8,352 reported closed cases

Healthy Systems Have a Mix of Service Delivery

- ▶ The ABA recommends that indigent defense programs utilize a mix of service delivery systems
 - ▶ ABA Standards for Criminal Justice Providing Defense Services, Standard 5-1.2: *"The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization. . . Every system should include the active and substantial participation of the private bar."*
- ▶ A mix of service delivery provides coverage for conflicts and ensures against overload in PD Offices
- ▶ NC has 100 counties with widely varying populations and caseloads, and the best system for handling the non-capital trial-level caseload in one county may not be the best system for those cases in another county
- ▶ Each delivery group has strengths that complement and fill in gaps of other groups
 - PD offices and PAC/contractors rely on each other as resources

Strengths and Challenges of PD Offices

Strengths:

- Institutional actor to work on system issues
- Efficiency in handling cases
 - Larger caseloads and increased specialization may result in less time spent per case
 - Cost savings for courts and for counties, which are better able to control their jail populations
- Supervision, training, and development of attorneys
- Laboratories for experimentation in ways to improve outcomes—e.g., job banks for clients; covering first appearance court
- Largely predictable costs
- Trained investigators and other legal assistance in-house

Challenges:

- Initial cost outlay for IDS and counties
- Retention of qualified, experienced attorneys and staff absent salary increases
- Decreased cost-effectiveness in areas with low volumes of work
- Overhead costs of Chief PD's salary, support staff, and resources
- Without IDS appointment authority, decreased independence from judiciary and accountability to IDS

Strengths and Challenges of PAC System

Strengths:

- Broad knowledge from a variety of other practice areas
- Flexibility
 - Crucial in areas with low volumes of work
 - Greater ability to accommodate changes in law or procedure—e.g., Class 3 misdemeanors
 - Good attorneys who do not want to work full time or to enter into contracts can contribute to the system
- While rates are too low, hourly pay matches actual demand for types and complexity of cases
- Allows young attorneys to gain hands-on experience

Challenges:

- Less ability to provide supervision and development of attorneys
- Less ability to provide resources and training
- Potential for inefficiency, particularly if local lists are too large or too small for caseloads
- Less predictability of costs
- Potential incentive for attorneys to overwork or prolong cases to increase hours
- Retention of qualified, experienced attorneys given current low PAC rates and delays in payment caused by budget shortfalls
- Administrative burden on clerks and judges

Strengths and Challenges of Contract System

Strengths:

- Ability for IDS to set cost-effective contract amounts
- Largely predictable costs and some flexibility in dealing with changes in caseloads
- Quality control in selecting, monitoring, and training contractors
- More efficiencies from larger caseloads
- Increased ability to address system issues
- Steady volume of cases and uniform monthly pay attract attorneys who may not be willing to handle a significant volume of cases as PAC
- Enhanced data collection and use of technology to facilitate payments

Challenges:

- Initial cost outlay
- Attracting and identifying best attorneys for contract types
- Retention of qualified, experienced attorneys given current contract rates
- Young attorneys may face difficulty in getting their feet in the door
- Risk in determining coverage needs where volume of work varies over time
- Large areas for regional defenders to oversee and additional administration for IDS
- Incentive for attorneys to short-cut cases when not paid by the hour