

Minutes – Indigent Defense Subcommittee Meeting, Jan. 28, 2016

Prepared by Jessica Smith, Criminal Committee Reporter

Attending: Brooks (Subcommittee Member); Coleman (Commissioner); Jordan (Commissioner); Kemp (Commissioner); Maher (Subcommittee Member); McLaurin (Commissioner); Melton (Subcommittee Member); Portner (Commission Staff); Robinson (Commission Executive Director); Rubin (Subcommittee Member); Smith (Committee Reporter); Wagoner (Commissioner); Waters (Subcommittee Member); Webb (Commissioner and Committee Chair); Williams (Commission Chief Reporter).

After brainstorming potential issues for exploration, the Subcommittee identified specific areas on which to focus its work. The final ideas that emerged from that brainstorming process are presented in the chart below, with clarification and detail provided in the footnotes.¹ Recognizing the limitations of time and capacity, the Subcommittee prioritized several issues, highlighted in yellow below. The Subcommittee recognized, however, that items not selected for priority action are important and should be addressed.

Leadership	People and Delivery Systems ²	Funding
Independence & accountability of IDS ³	Identifying the characteristics of an effective indigent defense program ⁴	Strategies to increase efficiency to free up funds for pressing indigent defense services needs and to create and ensure capacity for longer term improvements ⁵
Effective management where decisions are data driven.	An evaluation of how potential delivery systems fare in light of the identified characteristics ⁶	IDS funding issues <ul style="list-style-type: none"> • Ability to pay obligations on an annual basis • Source of funds • IDS administrative expenses
Core commission structure	Identifying which delivery systems may and may not work for NC, in light of the examination noted above and NC-specific factors. ⁷	Compensation of providers <ul style="list-style-type: none"> • Public defender salaries⁸ • Payments to private counsel⁹
	The need for a long-term plan for effective delivery of indigent services in NC light of, among other things, expected demographic changes and availability of lawyers in various parts of the state	

¹ Most of the Subcommittee's discussion focused on the three main areas indicated in the chart above: Leadership; People & Delivery Systems; and Funding. Creating a fourth category (Ultimate Goal of Indigent Defense), was discussed but ultimately not endorsed as a separate line of inquiry, perhaps because of overlap with the priority given to identifying the characteristics of an effective indigent defense program.

² This topic was originally discussed with different subtopics. After discussion, the original subtopics were collapsed as indicated in the chart above. The original subtopics included: (1) supervision and support of

private assigned counsel (separating out public defender and non-public defender districts and also addressing training); (2) public defender offices (including a preference for such offices where caseloads warrant and a long-term plan for creation of such offices); (3) “non-CR” cases; (4) capital cases; (5) mandated statewide contracts; (6) workload formulas (separate formulas for public defenders and private assigned counsel).

³ As discussed, this topic includes several facets: (1) ensuring independence while maintaining accountability to the legislature; (2) budgetary authority in light of the recent transfer of the IDS budget under the AOC; (3) independence regarding decisions pertaining to the best methods to deliver services; (4) independence regarding decisions pertaining to where to place the newly authorized personnel; (5) independence with respect to setting contract and private assigned counsel payment rates; and (6) independence with respect to selection of chief public defenders.

⁴ These characteristics might include, for example: (1) robust supervision of all lawyers providing indigent defense services, including public defenders and private lawyers; (2) adequate training for all lawyers providing indigent defense services; (3) lawyers who have the necessary resources to provide an effective defense (investigators, etc.); and (4) providing indigent defense services that focus on all of the defendant’s needs, including for example, mental health and substance abuse needs.

⁵ Although the Subcommittee did not prioritize the various ideas that were raised, those ideas include: (1) client eligibility guidelines and verification of indigency; (2) requiring a cost study before new crimes are created or punishments are increased by the legislature; (3) providing defense counsel with access to CJLeads; (4) use of alternative dispute resolution; (5) early exchange of discovery material; (6) encourage plea negotiations before trial; (7) online system for communication between the prosecutor and defense counsel regarding continuances, etc.; (8) more efficient criminal case processing; (9) alternatives to case-by-case appointment of defense counsel; (10) alternatives to the traditional full-day calendar; (11) specialized courts and dockets; (12) uniformly allowing pleas to H and I felonies in district court; and (13) reclassifying low-level misdemeanors as infractions.

⁶ For example: (1) an examination of whether public defender offices deliver superior services to private assigned counsel or vice versa; (2) an examination of services provided by private assigned counsel in public defender versus non-public defender districts; (3) an examination of services delivered by nonprofit organizations; and (4) an examination of quality of services provided under different payment methods including hourly rates, flat fees, and contracts.

The Subcommittee agreed to look at delivery methods currently in place in North Carolina as well as delivery methods not used in North Carolina but employed elsewhere, such as part-time defenders.

⁷ One Commissioner emphasized the importance of identifying delivery methods that should be avoided.

⁸ The need for parity with prosecution salaries was discussed, among other things.

⁹ This issue encompasses both the method of payment (hourly rate; flat fee; contract) as well as the amount paid.