

Indigent Defense Funding and Its Effect on Capital Punishment in North Carolina,  
1976-present

By Lindsey E. Stephens

A Thesis submitted to the faculty  
of the University of North Carolina  
in partial fulfillment of the  
requirements of a degree with  
Honors in Political Science.

2012

Approved by

Adviser

---

---

---

# 1

## Introduction

In this Senior Honors Thesis, I will examine indigent defense services in North Carolina since the creation of Indigent Defense Services (IDS) through the Indigent Defense Services Act of 2000. Based on the research and analysis to be discussed in the following chapters, I reached the following conclusions:

1. IDS was borne from the concerns of several key players about the quality of constitutionally-mandated defense services for indigents in North Carolina.
2. IDS has made the most significant impact on the quality of defense attorneys in capital proceedings.
3. Because of IDS, the frequency of death sentences has decreased, although it is impossible to determine the exact effect of IDS because of the numerous other factors which have also contributed to the impact. These other factors will be discussed later in this introduction.
4. IDS still has a long way to go to reach its full potential – especially in the non-capital arena.
5. When looking at the decline in expenditures per disposition since the creation of IDS, it is clear that the improvements made to indigent defense services have been cost-effective and efficient.
6. Finally, the looming budget crisis and the cuts to government services pose a challenge for IDS. With the cuts to attorneys' fees, it is possible that quality

attorneys in the system will continue to remove themselves from the list of those eligible for appointment, especially if fees continue to drop.

I came to these conclusions through two different methods of analysis – first, through an empirical analysis of documents relating to the creation and development of IDS. I will relay the information gleaned from these documents in chapters two and three of this thesis. Second, I interviewed several stakeholders in the work of IDS, including judges, prosecutors, defense attorneys, and legislators, about the creation of IDS and its impact since 2001 on the quality of defense attorneys, primarily in capital cases. I will discuss the information gained from these interviews in chapter four.

## **The Puzzle**

Over the years, North Carolina has been referred to as a “death penalty state” for various reasons. The state currently ranks ninth in number of executions since 1976, with 43; however, North Carolina has not executed any inmates since 2006 and every state ranked above it executed at least one in 2011, not to mention years prior.<sup>1</sup> North Carolina’s prominence in the capital punishment world is also long standing – North Carolina ranks fifth among the states in known executions between August 26, 1726 and October 27, 1961.<sup>2</sup> Further, North Carolina ranks sixth in the number of inmates on death row, as of April 1, 2011.<sup>3</sup>

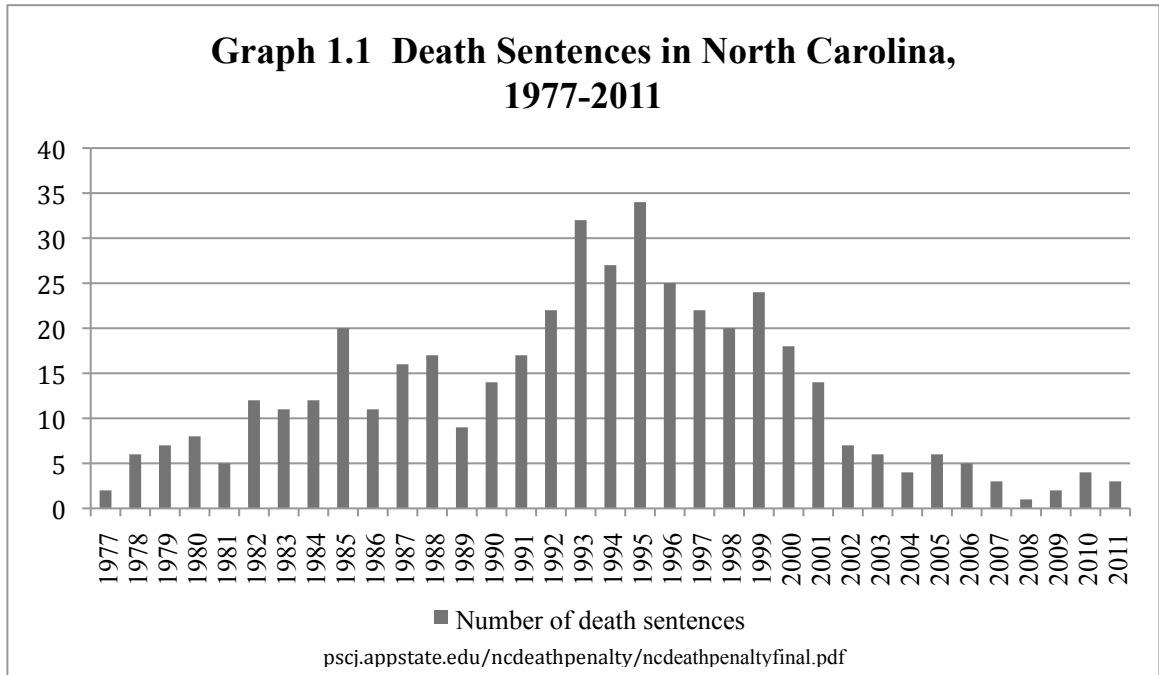
---

<sup>1</sup> “Facts about the Death Penalty” *Death Penalty Information Center*.  
<http://www.deathpenaltyinfo.org/home> (February 9, 2012).

<sup>2</sup> Radelet, M. & G. Pierce (2012). Race and death sentencing in North Carolina 1980-2007.

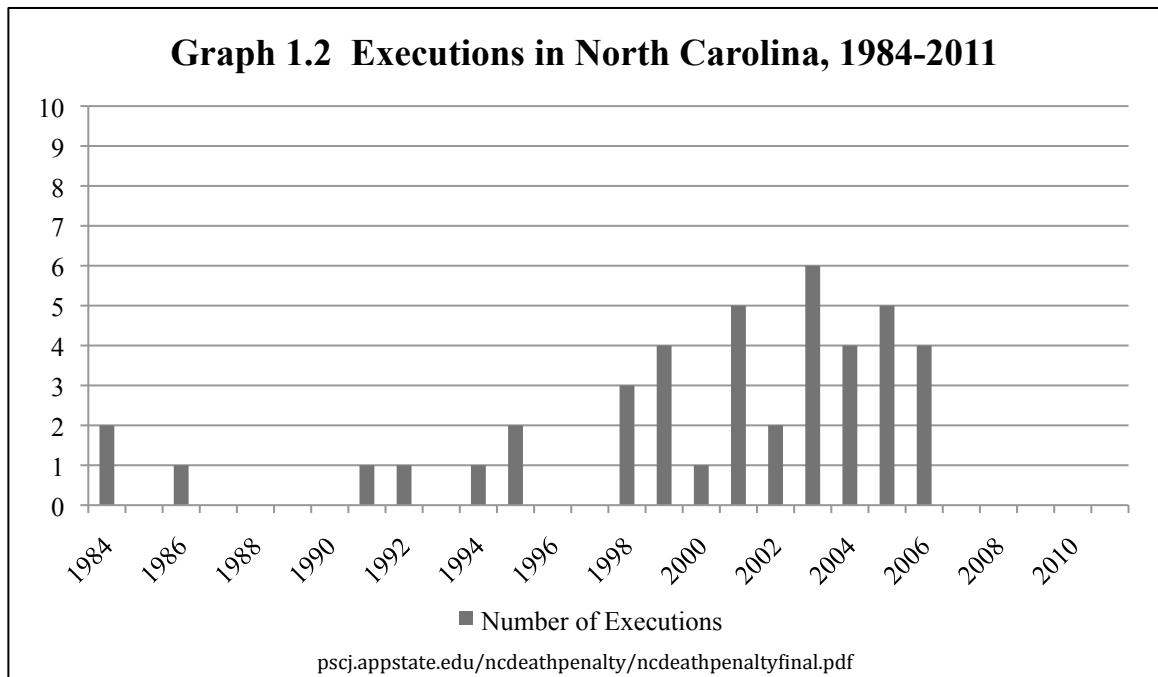
<sup>3</sup> “Facts about the Death Penalty” *Death Penalty Information Center*.  
<http://www.deathpenaltyinfo.org/home> (February 9, 2012).

More recently, however, North Carolina has seen a decline in capital punishment. The number of death sentences has steadily declined since its peak in 1995, with a more significant decline beginning in 2002.



This decline is not as pronounced in the number of executions, although North Carolina has not executed anyone since 2006. Since then, North Carolina has been in an “unofficial moratorium, caused by disputes over the proper role of medical personnel in

the lethal injection process.”<sup>4</sup>



Why is North Carolina seeing this decline? What factors have played a role in the disappearance of capital punishment in North Carolina? The following section will discuss a variety of factors that have likely influenced these numbers.

### **Potential Answers**

There are several potential answers to the puzzle of the decline of the death penalty in North Carolina. I will outline several of these answers in detail in order to fully understand the current state of capital punishment in North Carolina.

#### ***Life Without Parole Sentence***

Prior to 1976, North Carolina had a mandatory death sentence for those convicted of first-degree murder. This resulted in a number of death sentences that would not occur in

---

<sup>4</sup> Robinson, Matthew (2011). “The Death Penalty in North Carolina: A Summary of the Data and Scientific Studies.” [pscj.appstate.edu/ncdeathpenalty/ncdeathpenaltyfinal.pdf](http://pscj.appstate.edu/ncdeathpenalty/ncdeathpenaltyfinal.pdf) (February 29, 2012).

today's day and time.<sup>5</sup> In 1976, the United States Supreme Court ruled that this mandatory death sentence was unconstitutional in *Woodson v. North Carolina*. The Court found that juries must have the option of life imprisonment, which created the sentence of Life Imprisonment Without Parole.<sup>6</sup> Later, North Carolina General Statute §14-17, 2008, enacted the sentence of life without parole as the *only* alternative for a sentence of death in first-degree murder cases.<sup>7</sup> The Life Imprisonment Without Parole option is appealing because it ensures that those who receive this sentence will spend the rest of their lives in jail without the possibility of being paroled for good behavior, service, or a change in behavior.

With another option available to juries, a decline in the number of death sentences should result if the number of first-degree murders stays the same. As I will show later in this introduction, the murder rate per capita in North Carolina remained relatively constant until 2009 and 2010. This relationship is similar to that of death sentences, although the sharp decline in death sentences between 1999 and 2002 is unexplained by this particular influence.

### ***Prosecutorial Discretion***

In 2001, General Statute §15A-2004 gave North Carolina prosecutors the discretion to choose to try potentially capital cases non-capitally if they desired. Previously, the law required district attorneys to try first-degree murder cases capitally, if there were

---

<sup>5</sup> Maher, T. (2009). Worst of times, and best of times: The Eighth Amendment implications of increased procedural reliability on existing death sentences. *Elon Law Review*, 1, 95-112.

<sup>6</sup> *Woodson Et Al v. North Carolina*. 1976. 428 U.S. 280.

<sup>7</sup> Maher, T. (2009).

aggravating circumstances, in order to ensure that a criminal never walked the streets again.<sup>8</sup>

This General Statute has a few implications:

1. The State can choose whether to try a defendant capitally or non-capitally in first-degree murder cases, even if there is evidence that aggravating circumstances exist.
2. A death sentence cannot be ordered for a defendant convicted of a capital crime unless the state has given notice of its intent to seek the death penalty on the date of or before the pretrial conference.
3. If the State does not give notice of its intent to seek the death penalty, the case should be conducted non-capitally and the defendant should be given a sentence of life imprisonment if found guilty of first-degree murder.<sup>9</sup>

Following the implementation of this statute, it is probable that a decline in death sentences occurred in first-degree murder cases with aggravating circumstances because the law no longer required that district attorneys seek the death penalty in these cases.

### ***Eyewitness Identification Law***

The General Assembly passed the Eyewitness Identification Law in 2007 as a response to a study conducted by the North Carolina Actual Innocence Commission. The Commission determined that changes were necessary in North Carolina's standards governing eyewitness identification procedures, and this law was the result. The law changed standards governing lineups in order to eliminate the possibility of leading within the lineup. The guidelines require that independent administrators conduct lineups so that no prosecutors, defense attorneys, or investigators can lead the eyewitness towards a certain individual, intentionally or not. Because of this law, individuals in the lineup or photos of individuals in the lineup are to be viewed one at a time, eliminating the

---

<sup>8</sup> *Prosecutorial Discretion. 2001. NC General Statutes. Chapter 15A, Article 100-2004. [www.ncga.state.nc.us/Sessions/2001/Bills/Senate/pdf/S647v1.pdf](http://www.ncga.state.nc.us/Sessions/2001/Bills/Senate/pdf/S647v1.pdf) (February 29, 2012).*

<sup>9</sup> *Ibid*

possibility that the eyewitness could choose an individual based on process of elimination. To further this same purpose, the guidelines also require that the eyewitness be told that the person who has been arrested for the crime may or may not be in the lineup.<sup>10</sup>

In terms of the composition of the lineup, there must be at least five people who all resemble the eyewitness' description of the suspect, although only one police suspect can be in each lineup. Any additional lineups for the same eyewitness must contain different fillers to ensure that the eyewitness does not recognize any of the individuals from venues outside of the crime scene. If there are multiple eyewitnesses, the fillers can be the same, although the suspect must be placed in a different position within the lineup to avoid the possibility that communication between eyewitnesses could influence the lineup selection. Any identifying action, such as speech, gestures, or movements, should be performed by all participants in the lineup, and none of the participants' criminal records should be known to the eyewitness. Those lineup participants not being viewed at the time must be completely out of view so as not to provide distractions.<sup>11</sup>

During the lineup, nothing can be said to the eyewitness that might influence his or her choice in any way, nor can any comments be made about the eyewitness' choice following his or her selection. In addition, all eyewitnesses must be separated for a lineup, and each eyewitness should document a clear statement of their individual choice to the lineup administrator. No one who knows anything about the suspect is permitted to

---

<sup>10</sup> *Eyewitness Identification Reform Act. 2007. NC General Statutes. Chapter 15A, Article 14A.* [http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_15A/Article\\_14A.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_15A/Article_14A.pdf) (February 29, 2012).

<sup>11</sup> *Ibid*



be present during the lineup, to ensure that there are no outside influences on the eyewitness' choice. If possible, the guidelines also require a video record to be made of the lineup and the eyewitness' selection.<sup>12</sup>

These new standards governing the lineup procedures have the potential to impact the number of death sentences because it is now more difficult for a witness to make a lineup identification if he or she has any doubts about the physical appearance and/or traits of the suspect.

### ***Innocence***

The publicity surrounding exonerations in the United States and North Carolina is another potential reason the state has seen a decline in the use of capital punishment. Since 1976, there have been seven exonerations in North Carolina. These individuals have spent varying amounts of time on death row, from less than a year to fifteen years, and upon exoneration, the press is usually eager to cover their story.<sup>13</sup> This number ranks North Carolina seventh in the number of errors nationwide.<sup>14</sup>

Because of the increasing prevalence of the media in today's world, these exonerations are publicized heavily in various outlets, and thus juries are more likely to be aware of the issue of innocence when entering a capital trial. One study noted that, in response to:

[T]he coupling of continued increases in the number of exonerations of innocent death-row inmates and the subsequent media exposure emphasizing the increasing

---

<sup>12</sup> *Ibid*

<sup>13</sup> "Exonerations by state." Death Penalty Information Center. <http://deathpenaltyinfo.org/innocence-and-death-penalty#inn-st> (February 29, 2012).

<sup>14</sup> Robinson, Matthew (2011). "The Death Penalty in North Carolina: A Summary of the Data and Scientific Studies." [pscj.appstate.edu/ncdeathpenalty/ncdeathpenaltyfinal.pdf](http://pscj.appstate.edu/ncdeathpenalty/ncdeathpenaltyfinal.pdf) (February 29, 2012).

number of mistakes within the judicial system, the innocence frame has taken on a much more prominent—and vital role in media and public discussion<sup>15</sup>

This same study concluded that:

As more death-row inmates are exonerated, media coverage focusing on imperfections in the system naturally increases. As this occurs, juries may become less willing to sentence defendants to death (and prosecutors may become less likely to seek the penalty, knowing that they have a lesser chance of gaining it)<sup>16</sup>

This has the potential to cause a decrease in the pervasiveness of capital punishment in North Carolina and across the nation.

### ***Murder Rate***

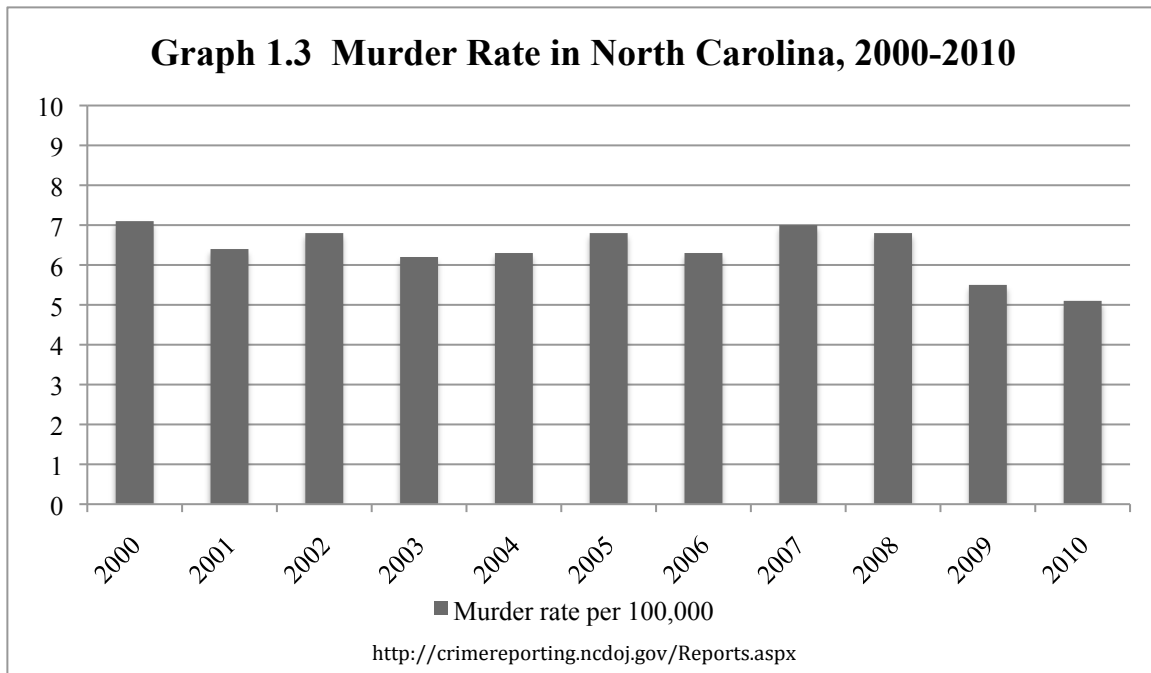
Another factor that has the potential to have a significant impact on the number of death sentences in North Carolina is the murder rate in any given year. Naturally, the higher the murder rate, the more likely death sentences are to occur. Since the creation of IDS in 2001, the murder rate has not fluctuated substantially. Between 2000 and 2008, the murder rate per 100,000 people remained somewhere between 6.0 and 7.1. In 2009 and 2010, these numbers drop into the 5.0 to 6.0 range, indicating that in these years and the years immediately following, the number of death sentences might decline from previous years, although this is not what occurred.<sup>17</sup>

---

<sup>15</sup> Dardis, Frank E., Baumgartner, Frank R., Boydston, Amber E., De Boef, Suzanna and Shen, Fuyuan (2008). "Media Framing of Capital Punishment and Its Impact on Individuals' Cognitive Responses", *Mass Communication and Society*. 11:2, 115-140

<sup>16</sup> *Ibid*

<sup>17</sup> "2010 Annual Summary Report." North Carolina Department of Justice. <http://crimereporting.ncdoj.gov/Reports.aspx> (February 29, 2012).



### ***Pre-trial Open File Discovery***

In 2004, the state provided pre-trial open file discovery for defense attorneys in criminal proceedings, not limited to capital cases.<sup>18</sup> This allows the defense to see the evidence that the state has against the defendant, increasing the likelihood that counsel can present an effective defense. With this possibility for an increase in quality, it is plausible that this decreased the likelihood that a capital case would result in with a death sentence.

### ***Indigent Defense Services Act of 2000***

The creation of IDS through the Indigent Defense Services Act of 2000 is the focus of this thesis, as it “did more than any other single action to revolutionize the practice of capital punishment in the state. It is no mere coincidence that the numbers of death

<sup>18</sup> Maher, T. (2009). Worst of times, and best of times: The Eighth Amendment implications of increased procedural reliability on existing death sentences. *Elon Law Review*, 1, 95-112.

sentences have declined so dramatically since the passage of this reform.”<sup>19</sup> IDS made several changes to the way capital cases are handled, including requiring defense counsel to seek consultation from the Center for Death Penalty Litigation in order to prepare a quality defense, assuming the responsibility of appointing and compensating defense counsel through the Office of the Capital Defender, providing increased training and support for attorneys, and assuming responsibility for allocating resources for experts, investigators, and other expenses incurred in defending a capital trial.<sup>20</sup>

In the following chapters, I will detail how IDS came to be, its purpose, and if it has met this purpose over the past eleven years. It is my intention in this thesis to show that the Indigent Defense Services Act of 2000 and the creation of the North Carolina Office of Indigent Defense Services have played a key role in the decline of capital punishment in North Carolina.

---

<sup>19</sup> Baumgartner, F., & I. Unah (2010). The decline of capital punishment in North Carolina. Paper presented to the annual meeting of the American Society of Criminology, November. San Francisco, CA. <http://www.unc.edu/~fbaum/papers/Baumgartner-Unah-ASC-2010.pdf> (February 17, 2012).

<sup>20</sup> Maher, T. (2009). Worst of times, and best of times: The Eighth Amendment implications of increased procedural reliability on existing death sentences. *Elon Law Review*, 1, 95-112.

## **Indigent Defense Services: The Beginning**

The current indigent defense system in North Carolina developed due to a series of actions taken by legislators and other activists with an interest in bettering the system. This chapter will detail the activities and findings of the Indigent Defense Study Commission, the proposed legislation, its journey through the North Carolina General Assembly, and the final legislation under which North Carolina operates today (with a few subsequent amendments) in order to explore the players' motivations and potential improvements sought in capital trial performance and procedures.

### **Indigent Defense Study Commission<sup>21</sup>**

The Indigent Defense Study Commission was created in 1998 by the General Assembly in order 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.”<sup>22</sup> This Commission was composed of eight members, listed below in table 2.1.

---

<sup>21</sup> The information included in this section comes from the following source, unless otherwise noted: N.C. General Assembly. Indigent Defense Study Commission. 2000. *Report and Recommendations*. <http://www.ncids.org/home/ids%20study%20commission%20report.pdf> (February 21, 2012).

<sup>22</sup> *Report and Recommendations*, 3

**Table 2.1** Members of the Indigent Defense Study Commission and their affiliations<sup>23</sup>

Name	Affiliation
Honorable Joe Hackney	North Carolina House of Representatives
Adam Stein	Attorney, Chapel Hill
Honorable Frank Balance	North Carolina Senate
Honorable W. Erwin Spainhour	Superior Court Judge
Joseph B. Cheshire, V	Attorney, Raleigh
Mary Ann Tally	Attorney, Fayetteville
Isabel Day	Public Defender, Charlotte
Honorable Edward H. McCormick	District Court Judge

Over the course of nine meetings, the Indigent Defense Study Commission conducted research and created guidelines for the betterment of North Carolina’s indigent defense program.

***Research Phase***

The Commission constructed its recommendations based on information collected about indigent defense both in North Carolina and around the country, with assistance from the Administrative Office of the Courts (AOC), the Legislative Fiscal Research Division, the Institute of Government, the directors of indigent defense programs in Minnesota, a state without capital punishment, and Kentucky, a state with capital punishment, and a nationally recognized consultant. Following their preliminary research and recommendation drafting, this group also held a public hearing to gain input from other affected parties, including judges, public defenders, prosecutors, private defense counsel, and the general public. This legislation was meant to be all-encompassing, representing

---

<sup>23</sup> *Report and Recommendations*, 1

the thoughts, beliefs, and preferences of all involved parties in order to create the best possible system of indigent defense.

At the time of the Commission's research, the State provided funding for indigent defense, and counties were charged with providing facilities for the offices. The legislature, however, determined where and when to open public defender offices. As such, there were 11 public defender offices spread across 13 counties during the Commission's review of the system. Because of the lack of public defender offices, private assigned counsel provided for a majority of representation in the 87 counties that did not have public defender offices. In these cases, the attorney's fee, as well as all monetary allowance for hired experts, were determined by the presiding judge in the case, creating a lack of independence and leading to bias and a lack of standardization. In addition to public defender offices and private assigned counsel, the Appellate Defender Office handled cases on appeal statewide. The Chief Justice appointed the Appellate Defender, due to his or her statewide jurisdiction, whereas the senior resident superior court judge in a given district appointed the public defender of the district in which he or she served, in order to ensure quality representation. Both the salaries and terms of removal for appointees were drawn from parallel policies governing district attorneys. In cases in which there was a conviction, the defendant was ordered to reimburse the state for the cost of representation. Compared to other states with this system, North Carolina had a relatively high recovery rate, collecting about \$5 million a year out of the \$60 million a year spent on indigent defense services.<sup>24</sup>

---

<sup>24</sup> *Report and Recommendations*, 5

## *Findings*

Based on the Commission's research, it determined that North Carolina's indigent defense system suffered, both in cost-effectiveness and in quality of representation. The primary reason cited for this was the lack of centralized authority to coordinate planning, oversight, and management. The authorities governing indigent defense in North Carolina were located all over the state – from the AOC, to the North Carolina State Bar, the 36 local bar committees, the 300 judges making rulings in the various cases, and the 11 independent public defender offices established by the legislature.<sup>25</sup> In addition to this lack of centralized governing authority, the rate of growth was substantial, with costs increasing by 168% and indigent caseload increasing by 90% between the fiscal years 1988-1989 and 1998-1999, leading to an ineffective and inefficient system of indigent defense.<sup>26</sup>

Another major problem with North Carolina's indigent defense system was the lack of standards for the various aspects of performance. There was no clear definition of what indigency was and who qualified for it, causing inconsistencies as to who was eligible for assigned counsel. There was also a lack of organization about how to appoint defenders to cases across the state. In terms of the public defenders themselves, there were no standards governing their performance, qualifications, or compensation, creating disparities in quality of representation across the state. This lack of competency of attorneys can be seen in the case of Glen Edward Chapman, a North Carolinian exonerated in 2008 after fifteen years on death row. Mr. Chapman, an indigent defendant, was assigned two attorneys in his trial for the murders of Betty Jean Ramseur

---

<sup>25</sup> *Report and Recommendations*, 7

<sup>26</sup> *Report and Recommendations*, 5



and Tenene Yvette Conley. In 2007, when Judge Robert C. Ervin reviewed the case under appeal, he granted Mr. Chapman a new trial due to the lack of strong and sure evidence. In his review of the case, Judge Ervin also found that Mr. Chapman's attorneys were incompetent. One had previously been disciplined by the North Carolina State Bar, and the other was removed from another capital case and enrolled in alcohol treatment. Although the prosecution later dropped all charges against Mr. Chapman, his case is a clear example of the issues that arose without set standards for defense attorneys. Unfortunately, Mr. Chapman's case was not the exception prior to the implementation of IDS.<sup>27</sup>

The offices themselves were also a point of issue, as there were no clear guidelines for consistency in their management. In addition to the administrative issues with the offices, the presiding judges in indigent criminal cases were saddled with the task of compensating the attorneys and making fee decisions about expert witnesses. None of these tasks were governed by standards, and the judges did not have access to information on how money was disbursed in other courtrooms. This led to unfair and inconsistent representation across the state. On top of all of these problems, the AOC lacked the resources to oversee or manage the various players in the system and did not have the power to allocate resources; thus, there was no opportunity for growth, improvement, or change with the current setup.

In addition to the problems resulting from the lack of central authority, North Carolina's system was in violation of one of the American Bar Association's (ABA) principles of public defense. This principle, which states that "the public defender

---

<sup>27</sup> Hartness, Erin (2008). "Death Row Inmate Freed After 15 Years." WRAL <http://www.wral.com/news/local/story/2669008/> (October 23, 2011).

function, including the selection, funding, and payment of defense counsel, is independent,” was meant to prohibit political influence in the judicial process.<sup>28</sup> In North Carolina, however, public defenders were selected by political players, and the funding and payment of defense counsel was determined by judges. With these policies, it was impossible to have an independent system, and thus, a reevaluation was much needed.

### ***Recommendations***

The Commission’s overall determination was that North Carolina needed to “establish a centralized, effective management authority clearly responsible for its decisions and thus more accountable to the legislature.”<sup>29</sup> The Commission noted that, looking at the recent growth rate and the continued potential for an increasing number of cases, growth in population, the extent and severity of crime, inflation, and other related factors, it could be expected that the costs would only continue to grow; however, if North Carolina chose to implement the recommended organizational changes, the Commission believed that much of the costs relating to organizational structure would be absorbed.

The recommendation of the Indigent Defense Study Commission was to create an Office of Indigent Defense Services as a central authority with the resources and power to provide both high quality and cost-effective representation to the indigent citizens of North Carolina. Their specific course of action involved the creation of a separate Commission on Indigent Defense under the judicial branch of government. This Commission was to be administratively supported by the AOC, with no additional expenses for payroll, purchasing, or other business needs.

---

<sup>28</sup> “ABA: Ten Principles of a Public Defense Delivery System.” *American Bar Association*: 1. <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.authcheckdam.pdf> (February 21, 2012).

<sup>29</sup> *Report and Recommendations*, 8

There were to be 13 members of the Commission on Indigent Defense, detailed below in Table 2.3.

**Table 2.3** 13 members of the Commission on Indigent Defense and their appointers<sup>30</sup>

Appointer	Number
Chief Justice	1
Governor	1
President Pro Tempore, Senate	1
Speaker of the House	1
State Bar	1
Bar Association	1
Public Defenders Association	1
Academy of Trial Lawyers	1
Association of Black Lawyers	1
Association of Women Lawyers	1
Already-appointed Commission members	3

There were a few blanket guidelines for the appointment of Commission members.

These members were to “have significant criminal defense experience or demonstrated commitment to quality representation.”<sup>31</sup> In order to protect the interests of the indigent, the members were not to be active law enforcement officials, prosecutors, or members of the judiciary. This was with the exception of the Chief Justice’s appointee and one of the Commission on Indigent Defense’s appointees, which were to be active or former members of the Judiciary. Additionally, there were to be at least two non-lawyers appointed to the Commission – one appointed by the Governor and the other by the Commission itself.

This Commission on Indigent Defense would have the responsibility and power to effectively and comprehensively manage indigent defense programs. In order to carry

<sup>30</sup> *Report and Recommendations*, 9

<sup>31</sup> *Report and Recommendations*, 9

out this responsibility, the Commission would be charged with preparing and administering the budget, in order to guarantee a truly “independent” system, as outlined by the ABA. This removed the responsibility from political players and the overseeing judge in order to eliminate bias and inconsistencies. Additionally, it would be given the responsibility of communicating comprehensive standards, policies, and procedures to those involved in the system after receiving input from the judiciary, bar, and other interested persons.

Following the determination and communication of the standards, the Commission was to determine the best approach for implementing and carry out the implementation of a system of representation in each area of the state – whether through a public defender office, a private assigned counsel system, and/or contracts. Lastly, the Commission would be in charge of appointing an Executive Director of the Office of Indigent Defense Services, who would then hire additional staff, to assist the Commission in its tasks and implement its decisions, manage the business of the system, plan, and handle the operational needs of the system. The Executive Director would handle the appointment and compensation of public defenders and the hired staff, although day-to-day decisions could be handled by the local public defender assigned to an individual district. The Commission would appoint the public defender for each district for a four-year term.

When looking at the financial aspects of the program and the potential for growth that the Commission cited in its preliminary research, they recommended that the General Assembly appropriate \$535,000 for first-year operations, facility, staff, and equipment

needs of the Office itself.<sup>32</sup> The staff was to consist of an Executive Director, and Associate Director, a Chief Financial Officer, an Informational Systems Manager, a Research Analyst, an Administrative Assistant, and a Secretary.<sup>33</sup>

The recommendations made by the Commission were a balanced and well-researched attempt at creating a more efficient, effective system of indigent defense. Based on these recommendations, it would appear that the quality of representation would improve and the money available for indigent defense would be disbursed more systematically. These changes should allow for a more effectual capital defense system, leading to a decline in the frequency of the death penalty in North Carolina. Based on the research and recommendations of the Study Commission, Senator Ballance and Representative Hackney moved forward with the legislative drafting process to create Senate Bill 1323/House Bill 1590, in order to implement the recommendations of the Commission.

### **Initial Legislation<sup>34</sup>**

The proposed legislation, formally known as the “Indigent Defense Services Act of 2000,” was introduced to the General Assembly by Senator Ballance and Representative Hackney on May 17, 2000. The stated purpose of the legislation incorporated several aspects of indigent defense services, including enhancing the oversight of the legal

---

<sup>32</sup> *Report and Recommendations*, 10

<sup>33</sup> *Report and Recommendations*, 10

<sup>34</sup> The information included in this section comes almost entirely from the following source, unless otherwise noted:  
N.C. General Assembly. Senate. 1999. *Indigent Defense Services/Funds*. 1999 first ed.

representation for those who qualify as indigents. They aimed to enhance the quality of the representation and to ensure that counsel was truly “independent,” as was required based on the guidelines of the ABA. Another important point of this legislation was to establish standards for uniform office administration, qualifications and performance of counsel, and qualifications for indigency. Lastly, the legislation noted the importance of keeping relevant and accurate statistics for evaluation, and the necessity of carrying out business in an “efficient and cost-effective” manner.<sup>35</sup> The legislation was composed of four parts: Part I amended Subdivision IX of Chapter 7A of the General Statutes by adding the new article entitled the “Indigent Services Act,” Parts II and III made changes to previous legislation in order to accurately reflect the provisions of the “Indigent Services Act,” and Part IV allotted \$535,644 from the General Fund to the Indigent Persons’ Attorney Fund for the 2000-2001 fiscal year.<sup>36</sup> The proposed legislation was almost an exact replica of that proposed by the study commission, with a few minor changes dealing with logistics and transition.

### ***Office of Indigent Defense Services***

In order to satisfy these objectives, the legislation proposed the establishment of an Office of Indigent Defense Services (IDS). The proposed Office would be an institution independent of the AOC, in order to ensure the independence of indigent representation from the judicial department. The legislature’s relations with the Office would consist of dealings with the Office’s budget only. The Commission, a separate but cooperative division of IDS, would be responsible for preparing and presenting this budget to the

---

<sup>35</sup> *Indigent Defense Services/Funds*. 1999 first ed., 2

<sup>36</sup> N.C. General Assembly. Senate. Judiciary II. 2000. *Bill Analysis: Senate Bill 1323: Indigent Defense Services/Funds*. First ed. 1999 General Assembly.

General Assembly for approval. These reforms were all intended to guarantee independence, which would ideally allow for more consistency and fairness in the funding of cases involving indigents, including capital cases.

The legislation allotted several responsibilities to the Office, the primary one being providing representation for those who are entitled due to their indigent status, whether directly or through a branch of IDS. The Office was also responsible for establishing standards to make this determination of indigency, which at the time, was inconsistent across districts. The court would be given the duty to determine whether or not a person was indigent and entitled to representation, based on these standards, although the Office would be given the power to assign itself to represent an indigent person initially, if the court delayed its ruling of indigency. In addition to standards for indigency, the Office was to establish policies concerning the appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts, which all aided in the promotion of consistency and quality across the state. Upon completion of the development of these policies, it was to allocate and disburse the funds based on their rules. Because the Office would now be responsible for establishing standards of determining indigency, ensuring quality representation, and disbursing funds, a more impartial system would result.

### ***Commission on Indigent Defense Services***

The legislation established a 13-member Commission within the Office to manage a majority of the responsibilities required of this new system mentioned above in discussing its responsibility of proposing the annual budget. This Commission was exactly as the Study Commission recommended, except that the three appointees of the

Commission itself were to be from different judicial districts, in order to further establish an unbiased system. Each appointee would serve a four-year term, not including the initial terms, which were defined differently depending upon the appointee in order to establish a system in which members were appointed each year to bring new perspectives to the Commission. The appointees would be required to either have experience in criminal defense or a commitment to the issues surrounding quality representation. The members of the Commission would not be paid for their services, but would be entitled to reimbursements.

The Commission would select a Chair from among the appointed, who would serve a two-year term. The legislation mandated that the first meeting of the Commission be no later than September 15, 2000, and that all appointments be made by September 1, 2000. Because no chair would yet be selected, the Chief Justice's appointee was to lead the first meeting. Thirty days following the first meeting of the Commission, a chair was to have been selected, as well as the three appointees of the Commission itself.

The Commission had several responsibilities, with the primary one being the "development and improvement of programs by which the Office of Indigent Defense Services provides legal representation to indigent persons."<sup>37</sup> The Commission would be asked to appoint the Director of the Office based on training, experience, and other relevant qualifications, in addition to consultation with the Chief Justice and Director of the AOC. Upon completion of the Director's selection, it would be possible to administer the necessary tasks to allow for the full implementation of the goals of the legislation.

One of these tasks was the development of standards. The Commission would have to establish standards for how to operate the public defender offices and appellate

---

<sup>37</sup> *Indigent Defense Services/Funds*. 1999 first ed. 5



defender offices, including the necessary qualifications, required training, and the size of staff allowable for each office. It would have to establish standards for the attorneys eligible to be appointed to indigent clients, including the minimum experience required, training, and other relevant qualifications. They would also have to establish standards for determining indigency and how to collect fees for their services in findings of guilt. Some of the more specific standards that needed to be established included: standards for caseloads for both the public and appellate defenders, standards for the performance of public and appellate defenders, standards for clients whose cases presented conflicts of interest, standards for providing and compensating expert witnesses and others who might be requested for legal services, and standards for qualifications and performance when involved in capital cases. The determination of standards was arguably one of the most tangible changes in terms of making a difference in the handling of capital cases. It guaranteed more quality representation, which was a significant issue among defense attorneys in capital cases prior to the legislation, seen in the case of Glen Edward Chapman.

Outside of determining standards, the Commission would be asked to determine the methods for delivering legal services to indigents who qualify in individual districts. This would include establishing a public defense system for each district or group of districts, whether it be through appointed counsel, contract counsel, part-time public defenders, public defender offices, appellate defender services, or other methods. During this process, it would be imperative that the Director of the Office and the Commission involve the local bar and judges in the process so as to ensure the most fitting system for each district.

Financially, the Commission was to establish policies for how to distribute funds on a district-to-district basis, including compensation for appointed counsel, schedules of allowable expenses, appointment and compensation of experts, and procedures for how to apply for and receive compensation. Based on the needs of the Office and system in its entirety, the Commission would be required to approve and recommend the budget to the General Assembly annually.

***Director of Indigent Defense Services***

The Director of the Office of Indigent Defense Services was to be appointed by the Commission for a term of four years, although he or she could be removed by a two-thirds vote of the members of the Commission. It would be required that the Director be a licensed and eligible attorney in the state of North Carolina, although his or her primary duties would be administrative. He or she would be required to prepare and submit the budget for the Office to the Commission, along with an annual report containing information about the operations, costs, and needs of the Office. He or she would also keep and maintain the financial records of the Office in order to calculate the operation fees. These duties would allow for the efficient distribution of the State's funds, which are reviewed on a yearly basis by the General Assembly.

Additionally, the Director would be in charge of hiring the office staff, coordinating the operations of the office, overseeing the compliance of the Commission's rules in other offices, and coordinating interactions between the Office and other sources that benefit indigent persons. Overseeing the rules of the Commission meant that the Director would organize the training programs required of attorneys to ensure that they were receiving the appropriate and necessary training to complete their job efficiently and

effectively, while also ensuring consistency in training from district-to-district. New training requirements allowed for more competent defense attorneys, and thus, higher quality representation. The Director would also be asked to apply for and accept funds from grants, gifts, or donations to benefit the services of indigents. Lastly, he or she would assist the Commission in the development of standards. The duties of the Director primarily dealt with ensuring IDS's role as the central authority for indigent defense services statewide.

### ***Public Defender Offices***

The Commission would be given the power to establish public defender offices in any location it deemed necessary in order to facilitate quality representation, and to appoint the regional and district public defenders to administer those offices. The Commission would select the public defender from a list of recommendations made by attorneys in the district of the new office, so as to ensure an attorney of good stature in the local community. These appointees would have to be licensed to practice law in the State of North Carolina, and willing to be full-time employees of the Office for a four-year term, unless he or she was removed by a 2/3 vote of the Commission. The salary of a Public Defender and an Assistant Public Defender was set by the Current Operations Appropriations Act for each five-year period.

The day-to-day operations of each individual office would be left to the public defender in that office, including the keeping of records and the submission of records to the Director about the general operation of the office, which would then be combined into the yearly report for the General Assembly. IDS, rather than the local office, would be responsible for furnishing each individual office, as well as providing equipment and

supplies. The Office would also provide secretarial and library support. Each public defender would be allowed to appoint a staff of assistants and investigators, and the average and minimum salary for these staff members would be provided in the biennial Current Operations Appropriations Act; although, the actual salaries of assistants would be determined by the public defender, with the approval of the Commission. The Commission would fix the salaries of investigators. These standards existed in order to ensure that the public defender offices did not vary greatly in quality from district to district due to inconsistent salaries and/or resources.

***Parts II, III, and IV***

As mentioned earlier, Parts II and III served the purpose of making amendments to previous legislation in order to accurately reflect the provisions of Part I of the legislation.

Part IV, on the other hand, made additions to the current legislation in order to facilitate a smooth transition. It first appropriated \$535,644 from the General Fund to the Indigent Persons' Attorney Fund for the 2000-2001 fiscal year that served the purpose of providing for the operations of the Commission on Indigent Defense Services, the Office of Indigent Defense Services, and its staff. The Supreme Court felt that this number could support a feasible, yet quality, system. It also mandated that the Director of the Administrative Office of the Courts was to assist the Commission in its selection of the first Director of the Office of Indigent Defense Services by submitting a minimum of three names to the Commission for consideration. Part IV also required that the Commission on Indigent Defense Services present a plan for the transfer of the budget from the Administrative Office of the Courts to the Commission on Indigent Defense

Services, along with the rules, standards, and regulations developed by the Commission for the carrying out of services, and any other necessary actions for the implementation of the legislation. This presentation had to take place prior to May 1, 2001. In order to ensure the speedy delivery of services, Part IV dealt with the transition of the public defenders and the Appellate Public Defender. Although the Commission was responsible for appointing public defenders and the Appellate Public Defender, those who were already serving as a public defender or Appellate Public Defender would be entitled to serve out the remainder of their terms. If they were to be removed, it would be by the statutes outlining policies for removal under the new legislation. Lastly, Part IV established the date for the implementation of all standards and policies determined by the Commission – July 1, 2001. Prior to this date, all authority over the distribution and expenditure of funds would remain with the Director of the Administrative Office of the Courts. This date gave the Commission time to develop and carry out the duties necessary for the functioning of the Office of Indigent Defense Services; however, it also allowed for the expedient delivery of such services

## **Journey to Final Legislation**

### *Senate*

The legislation was initially introduced by Senator Frank Ballance to the Senate committee Judiciary II on May 18, 2000. It was placed on the calendar and made its first appearance on June 20, 2000, at which time Senator Ballance introduced the legislation and allowed Judge Ross and Rick Kane from the AOC to speak on behalf of the bill.

Members of the public who were present to speak for the bill were Dick Taylor, from the

North Carolina Academy of Trial Lawyers, who was in support of the legislation, and Angus Thompson, from the North Carolina Association of Public Defenders, who spoke in support but had several recommended changes.<sup>38</sup> These perspectives allowed members of the Committee to understand the potential shortcomings of the bill, as well as what the bill would look like upon implementation.

Following the description of the bill by the special attendees, Senator Kerr moved to amend the legislation by deleting the section of the bill that mandated \$535,644 for the first year operations of the Office. The motion carried unanimously, and the committee's changes were engrossed into a committee substitute.<sup>39</sup> From here, the legislation was placed on the calendar for a reading on the Senate floor.

On June 21, 2000, during both the second and third readings of the legislation, every Democrat that was present voted in favor of the legislation. The Republicans, on the other hand, were split. A majority of the Republicans who were present voted against the legislation in both votes, showing the partisan nature of this legislation in the Senate. In addition to the results recorded by party, every African American Senator who was present voted in favor of the legislation. These votes were enough to pass the amended legislation in the Senate.<sup>40</sup>

---

<sup>38</sup> N.C. General Assembly. Senate. Judiciary II. 20 June 2000. *Minutes*. 1999 General Assembly. Second Session 2000.

<sup>39</sup> Senate. Judiciary II. 20 June 2000. *Minutes*,.

<sup>40</sup> N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/2<sup>nd</sup> edition, reading 2*. 1999 session, second session 2000., and N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/2<sup>nd</sup> edition, reading 3*. 1999 session, second session 2000.

### *House of Representatives*

The legislation appeared on the House Appropriations Committee calendar for June 20, 2000, where it was introduced by Representative Hackney. He outlined relevant background information and discussed the findings of the Indigent Defense Study Commission, while Judge Ross and Angus Thompson were present to answer questions. Following this introduction, Representative Nesbitt made a motion to appoint a subcommittee to discuss the legislation and make recommendations for a committee substitute. This motion passed, and the subcommittee was asked to report back on June 30, 2000. Representatives Hackney and Baddour were appointed to co-chair the committee, composed of Representatives Nesbitt, Michaux, Thomas, Justus, Kiser, Hensley, Sherrill, Insko, Hall, Horne, Jeffus, Sutton, and Alexander.<sup>41</sup>

During the meeting of the subcommittee, members discussed the legislation and made several small changes, most of which pertained to wording. These changes were made in order to promote consistency across the board – a major goal of the legislation as a whole. The only substantive change was the addition to Part II of the legislation to incorporate instruction for how to handle conflicts of interest. The court was given the power to assign counsel in cases in which conflicts existed, based on the guidelines put in place by the Office of Indigent Defense Services.<sup>42</sup> The amendment was passed by a voice vote when introduced to the committee as a whole, and a committee substitute was issued from the Appropriations Committee to the floor of the House of Representatives.

---

<sup>41</sup> N.C. General Assembly. House of Representatives. Appropriations Committee. 20 June 2000. *Minutes*. 1999 General Assembly. Second Session 2000.

<sup>42</sup> N.C. General Assembly. House of Representatives. 2000. *House Bill 1590: Amendment*. 1999 General Assembly. Second Session 2000.

When taken to the floor, all present Democrats voted in favor of the legislation after both the second and third readings, as they did in the Senate. A large majority of the Republicans, however, voted in favor of the legislation following both the second and third readings. Interestingly, the legislation was far more partisan in the Senate than in the House of Representatives. Beyond party lines, 15 of the 16 African American Representatives voted for the legislation, with one refraining from voting on the matter. These votes led to the passage of the amended legislation in the House of Representatives.<sup>43</sup>

### ***Conference Committee***

On July 12, 2000, it was determined that the House of Representatives and the Senate failed to concur on each other's committee substitute, and thus, each would appoint members to serve on a conference committee in order to resolve differences. These members are recorded below in Table 2.6.

**Table 2.6** Members of the House of Representatives and Senate appointed to serve on the conference committee<sup>44</sup>

Senate	House of Representatives
Ballance	Hackney
Jordan	Kiser
Kinnaird	Nesbitt
Horton	Thomas
Odom	Goodwin

<sup>43</sup> N.C. General Assembly. House of Representatives. 2000. *Roll Call on Indigent Defense Services, reading 2.*, and  
N.C. General Assembly. House of Representatives. 2000. *Roll Call on Indigent Defense Services, reading 3.*

<sup>44</sup> N.C. General Assembly. Senate. 12 July 2000. *Special Message from the Senate.* 1999 General Assembly. Second Session 2000., and  
N.C. General Assembly. House of Representatives. 12 July 2000. *Special Message from the House of Representatives.* 1999 General Assembly. Second Session 2000.



In the conference committee, the members decided to delete the House committee substitute that was voted favorable on July 6, 2000, and replaced it with the Senate Judiciary II substitute that was adopted on June 20, 2000.<sup>45</sup> They made the edits listed in the section below, entitled “Final Legislation.” When the conference committee’s substitute was introduced on the House and Senate floors, the legislation was still more partisan in the Senate than in the House, although in both houses, a majority of the Republicans and the Democrats voted in favor. Additionally, all African American members voted in favor of the legislation.<sup>46</sup>

### **Final Legislation<sup>47</sup>**

The ratified version of the Indigent Defense Services Act of 2000 looked much like the initial legislation proposed by Senator Ballance and Representative Hackney, with a few changes of substance. Although the Office served the same purpose and had the same governing principles, one of its responsibilities was slightly different. The Office was no longer able to preliminarily assign itself as counsel for someone entitled to representation under the standards of indigency, subject to the court’s approval. Instead, in non-capital cases, the court was the only party permitted to assign counsel, albeit pursuant to rules adopted by the Office of Indigent Defense Services. In capital cases, however, the Office

---

<sup>45</sup> N.C. General Assembly. Conference Committee. 12 July 2000. *Conference Report: Senate Bill 1323*. 1999 General Assembly. Second Session 2000.

<sup>46</sup> N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/3<sup>rd</sup> edition, reading 2*. 1999 session, second session 2000., and N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/3<sup>rd</sup> edition, reading 3*. 1999 session, second session 2000.

<sup>47</sup> The information included in this section comes almost entirely from the following source, unless otherwise noted:  
Indigent Defense Services Act. 2000. *Statutes at Large*. Article 39B, Subdivision IX, Chapter 7A.

maintained the power to appoint counsel, with the requirement that at least one of the two members of the defense team be a member of the bar in that division. This reform helped to ensure quality representation through mandating that a capital defense team could not be composed entirely of attorneys with little to no familiarity regarding and/or experience in the capital defense field.

The Commission, too, had one slightly altered responsibility. In its duty to determine the guidelines for how each individual district should provide services to the indigent, the final legislation required that the Commission seek written comments from the local district bar, senior resident superior court judge, and chief district court judge about how to best determine these policies. The solicited comments, along with the recommendations of the Commission for the individual district, were to be given to the members of the General Assembly from the affected district and any other interested groups. A legislative act was required to establish a public defender office in a particular district, and thus guaranteed that legislators were aware of the local opinion about establishing an office. This further ensured that the system put into place in each district would be the most fitting for that particular area. This legislation was not meant to be a blanket reform that implemented identical policies across the state, although it did aim to promote consistency.

Several changes were made to the legislation concerning the logistics of public defender offices. The Commission was no longer given the power to appoint a district's public defender. The senior resident superior court judge of the superior court district or set of districts in which the public defender office was to be established would appoint the public defender from a list of two to three nominees chosen by licensed attorneys

living in the district or set of districts. This, again, ensured the selection of an attorney well respected for his or her skills in defense by peers in the area, and allowed for more local input. The final change to the section governing public defenders and their offices mandated that the removal of a public defender or an assistant public defender be through the same procedures outlined for the removal of a district attorney, which also had no impact on the performance and outcome of capital cases.

The final and most extensive change to the legislation was the addition of a section outlining the policies concerning and responsibilities of the Appellate Defender, who had not previously been discussed. The Appellate Defender would be appointed by the Commission for a term of four years and could be removed or suspended by a 2/3 vote of the Commission. The Appellate Defender was responsible for hiring his or her own assistants and staff, based on the perceived need by the Office. All operational fees for the Appellate Defender office would be paid for by the Office of Indigent Defense Services.

The Appellate Defender had several outlined duties in the ratified bill. First and foremost, the Appellate Defender would represent indigent defendants in the post-conviction process. If the Appellate Defender and the Commission agreed, based on the burden of the office, this post-conviction representation could be assigned to a local public defender or private assigned counsel for the sake of ensuring quality representation. The Appellate Defender was to keep records concerning clients that would be made available to private counsel representing indigents in criminal proceedings. The Appellate Defender Office was also responsible for providing continuing legal education for the assistant appellate defenders and private assigned

counsel who represent indigents. For attorneys who would be representing defendants in capital post-conviction cases, the Appellate Defender was responsible for offering consultation services. Further, he or she was responsible for recruiting quality attorneys from the private bar who would be willing to represent clients in capital post-conviction proceedings. The Appellate Defender would be able to serve as counsel of record in capital cases in state court, and, to the extent that federal funds allowed, represent capital defendants in federal court.

The addition of this section of the legislation was intended to improve the post-conviction process of those convicted of crimes. In capital cases, this process is vital because many sentences are overturned or reduced following the initial conviction. In practice, this would aid in the reduction of executions and contribute to the end of the death penalty in North Carolina.

## **Conclusion**

Based on this examination of both the proposed and final legislation that created North Carolina's current indigent defense system, it is clear that the recommendations of the Indigent Defense Study Commission were not taken lightly. The specific recommendations were transferred almost entirely into the final legislation, with only a few minor changes, summarized above.

The reforms dictated by the Indigent Defense Services Act had three major goals:

1. To improve the quality of indigent representation in North Carolina
2. To ensure greater uniformity across the state in terms of the system of operation, standards, wages, and resources

3. To control the mounting costs presented by indigent defense that the Commission believed were being mismanaged

These goals, if achieved, had the potential to have a significant impact on capital punishment in North Carolina. The following chapter will look at the impact of these reforms on capital punishment by examining Indigent Defense Services' progress over the past ten years, as well as what IDS looks like today.

## **Indigent Defense Services Today<sup>48</sup>**

Since its implementation in July 2001, the representatives of IDS have worked tirelessly to effectuate the changes requested by the Study Commission and the General Assembly in their passage of the Indigent Defense Services Act of 2000. They have implemented many reforms, even in this time of budgetary crisis, and continue to make improvements today. This chapter will explore the accomplishments IDS has made over the past ten years, despite these financial issues, that have led to changes and improvements in the capital defense system. This discussion will be based on reports, studies, and other documents available on [ncids.org](http://ncids.org). Following these reforms, the budgetary situation will be detailed in order to show that the conditions under which these reforms were successful make them even more impressive.

In order to fully understand some of the following accomplishments, it is important to note that:

A state-funded Office of the Capital Defender began operations in 1999 as a pilot program within the Office of the Appellate Defender. The office was transferred to the Office of Indigent Defense Services in 2000, and the Commission on Indigent Defense Services appoints the capital defender to a four-year term. Since July 2001, regional branches of the office have been established. The capital defender's office represents indigent defendants who are charged with potentially

---

<sup>48</sup> The information in this chapter is taken from the following citation, unless otherwise noted: N.C. General Assembly. 2011. *Report of the Commission on Indigent Defense Services*. [http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/Legislative%20Report%203\\_2011.pdf](http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/Legislative%20Report%203_2011.pdf) (February 21, 2012).

capital offenses. The office also manages the roster of private attorneys who are eligible for appointment in potentially capital cases<sup>49</sup>

## **Rules Governing Capital Cases<sup>50</sup>**

In order to ensure compliance with proper procedure, the IDS Commission developed rules governing the delivery of services in cases under IDS's jurisdiction. This includes capital cases at the trial, appellate, and post-conviction stages. Initial rules were put in place on July 1, 2001, and changes and additions have been made, as necessary, over the past ten years. The rules established for the betterment of the capital defense system are subdivided into the following four sections: the appointment/compensation of trial counsel, appellate counsel, post-conviction counsel, and of experts and others providing services related to legal representation. The following sections will discuss each of these subdivisions in more detail, in order to show improvements that have been made to the capital defense system as a result.

### ***Appointment and Compensation of Trial Counsel***

The Director of IDS is responsible for the appointment of counsel at the trial level. The rules outline the process through which this occurs on a case-by-case basis in order to improve consistency from district to district. Initially, the Director has the option to appoint a provisional counsel in order to determine whether or not a person convicted of a capital crime is indigent; however, when a person is determined to be indigent, the

---

<sup>49</sup> "The Judicial System in North Carolina." *Administrative Office of the Courts*. <http://euro.ecom.cmu.edu/program/law/08-732/Courts/NorthCarolinaJudicialSystem.pdf> (February 21, 2012), 15

<sup>50</sup> The information in this section is taken from the following citation: "Part 2: Rules for Providing Legal Representation in Capital Cases." *Indigent Defense Services*. <http://www.ncids.org/Rules%20&%20Procedures/IDS%20Rules/IDS%20Rules%20Part%202.pdf> (October 31, 2011).

Director must appoint one attorney immediately. That person must be chosen from a list of eligible capital trial attorneys maintained by the Director. The attorney can be a public defender, an assistant public defender, a private attorney, or an attorney who has a contract to provide services with IDS, as long as he or she meets the Office's standards for eligibility, which will be discussed later in this chapter. The appointed attorney can request additional assistance from the Director, at which point the Director must appoint a second attorney, prior to the hearing declaring that the case will be prosecuted capitally. If the appointed attorney does not request assistance prior to this hearing, and at the hearing it is determined that the case will proceed capitally, the Director must appoint a second attorney immediately, as the rules require two appointed attorneys in an indigent capital trial. There should be no conflicts of interest involving the appointed attorneys and the client, and if there is a conflict, the client must give written consent to proceed or the attorney must make a motion to withdraw from the case.

If the defendant does not want appointed counsel, he or she has the right to waive counsel, as long as the court finds that the defendant is fully aware of his or her rights. In this case, a standby counsel can be appointed by the Director to aid the client in his or her defense, if deemed necessary. During the trial process, the Director is given the power to assign any duties or responsibilities that he or she chooses, such as additional training or meetings with the Director, for the appointed counsel. This power ensures that the Director can enforce additional standards if need be in order to maximize the quality of representation.

Although these rules may not seem especially impactful individually, they are all part of a system that enhances the efficiency and effectiveness of capital representation.



Their establishment ensures the consistent treatment of indigent clients who are charged with a potentially capital crime, improving on past occurrences that left clients unrepresented for long periods of time or assigned them attorneys with little to no experience and knowledge concerning capital trials.

### ***Appointment and Compensation of Appellate Counsel in Capital Cases***

The process of determining indigency is repeated if a defendant is found guilty of a capital crime in the trial stage. If the court does not appoint an attorney following the completion of the trial, the Appellate Defender can appoint the Office of the Appellate Defender as provisional counsel, similar to provisional counsel at the trial level, in order to determine indigency. If the court itself determines that a defendant who is found guilty and sentenced to death is indigent, the IDS Director immediately appoints the Office of the Appellate Defender to represent the defendant in the appeals process. The Appellate Defender is appointed to represent all capital cases on appeal; however, if, for the sake of effectiveness, the Appellate Defender does not believe that he or she can take on any additional cases, the option exists to appoint one or two other attorneys from a list maintained by the Appellate Defender Office of attorneys eligible to represent clients in the capital appeals process. These standards, too, will be discussed later in this chapter. The Appellate Defender can, and should, also appoint from this list if there is a conflict of interest between two clients that the Appellate Defender is assigned to represent.

This set of rules ensures that a client is guaranteed a fair appeals process from a different set of attorneys that are qualified to complete appeals work. It also further establishes IDS as a central authority with various branches that it oversees. Because of these rules, clients found guilty of a capital crime and sentenced to death are assigned

quality representation through an established and consistent process. This improvement in the quality of the appeals system increases the likelihood that more reversals and reduced sentences would occur, leading to a decline in capital punishment in North Carolina.

### ***Appointment of Post-Conviction Counsel in Capital Cases***

Post conviction counsel is appointed whenever a case is on direct appeal to the Supreme Court of North Carolina or has been affirmed by the Supreme Court. The IDS Director is again responsible for appointing counsel from a list of attorneys eligible to represent clients in the post conviction process, ensuring quality and experience. These standards will be discussed later in this chapter. These attorneys are given the power to prepare and submit a writ of certiorari for review of the Supreme Court's ruling on behalf of their client. The IDS Director is allowed to set additional requirements and standards in these cases, as he or she is at the trial level, in order to ensure efficiency and effectiveness.

This, again, may not seem like an involved or especially noteworthy system; however, the rules combine to produce a system that is enforceable and outlines expectations, improving the previous system of capital appeals. Prior to the legislation, there was no central authority over the appeals process, and the Appellate Defender was given the duty to oversee all cases on appeal statewide. The Appellate Defender was not only conducting the administrative tasks, but also representing clients, making it difficult to perform either job to the best of his or her ability.

### ***Appointment and Compensation of Experts in Capital Cases***

In any situation in which appointed counsel believes that it is necessary to bring in an expert or pay some other expense in order to ensure quality representation, the rules

require the attorney to apply for approval by the IDS Director. If, for whatever reason, the IDS Director denies the application for the expert or additional expenditure, the appointed counsel still has the option of applying to the court for approval of the expense. If the court approves the request, IDS must pay for it.

This system creates a check-and-balance operation in which expenses can be reviewed by multiple parties from different perspectives. If either one of these parties believes that the expense is necessary, it will be paid for, ensuring an unbiased and fair system. Previously, approval of expert witnesses and other expenditures was made by the presiding judge, adding to the lack of independence of the system. New regulations not only promote independence, but give the attorney two chances to argue their point, allowing for improvements in capital cases that were previously limited by the opinion of the presiding judge.

## **Electronic Communication and Resource Sharing**

One of the first accomplishments of IDS was to create a website that facilitates the communication of relevant information to parties involved or interested in indigent defense and its development in North Carolina.

This website, [www.ncids.org](http://www.ncids.org), provides several resources for capital defenders to use in their cases. This includes the contact information for all members of the IDS staff, the IDS Commission, and the state defender offices, as well as all IDS rules, policies, and procedures for reference throughout the process. The website contains all reports and data generated by the Office staff based on their research over the past ten years, all North Carolina Indigent Defense Manuals, and any legal resources and reference

materials IDS has for use by capital defenders in their research and preparation for proceedings. In order to enhance training, the website provides all of the materials used in IDS co-sponsored training programs, so that attorneys who were not present at these training programs can still take advantage of the resources. These improvements in the availability of resources should allow attorneys to present more convincing and well-prepared cases in any situation.

Several resources available on the website are aimed specifically at attorneys working on capital cases. This includes the North Carolina appellate brief bank, for those capital defense attorneys working on the appellate process, a capital trial motions index, for capital attorneys working on motions during the trial process, and a forensic science resource bank for capital attorneys in search of evidence for their case. The forensic science resources include an expert database of all past experts in any criminal case, as well as the State Bureau of Investigation's lab protocols and procedures for examining and dealing with evidence in the trial and post-conviction process. These specific resources deal more precisely with the capital trial procedures, although all of the resources discussed in this section enhance the capital defense process. The resources allow attorneys to present better prepared cases, likely leading to a decline in the occurrence of capital punishment in North Carolina.

One final electronic development, outside of the scope of the website, was the creation of listservs for attorneys dealing with similar types of cases or working in similar areas. A couple of the already-developed listservs focus on the capital process, including a listserv for attorneys of indigent capital defendants at the trial level, and a listserv for capital post-conviction attorneys. These listservs allow for improved communication and

information sharing, as well as provide more resources and support for attorneys dealing with situations specific to their case type.<sup>51</sup> Because capital attorneys have more outlets of communication with each other, they can better prepare for their cases.

### **Appointment of Attorneys in Capital Case Proceedings<sup>52</sup>**

Indigent Defense Services acquired the responsibility of appointing attorneys in all capital case proceedings upon its creation on July 1, 2001. Currently, trial level appointments are the responsibility of the Capital Defender, discussed in the beginning of this chapter, appellate appointments are the responsibility of the Appellate Defender, and post-conviction proceeding appointments are made by the IDS Director. All of these positions are overseen by IDS, and thus fall under its umbrella of power. The capital trial process, capital appeals process, and capital post-conviction processes all require attorneys with expertise in the area. Rosters are maintained of eligible attorneys for each of the three separate areas in order to guarantee quality and experience in the specific attorney.

This system of division has worked very well for the enhancement of the appointment process, which was previously overseen by judges. Because of the magnitude of indigent defendants charged with capital crimes, this division of responsibility has allowed for a speedier, more efficient capital defense system. Each step of the capital case procedure is processed and assigned independently, further enhancing the check and balance system to ensure quality and an all-encompassing

---

<sup>51</sup> *Report of the Commission on Indigent Defense Services*, 5-6

<sup>52</sup> The information discussed in this section refers to the period between July 1, 2001 and January 19, 2011

representation experience. As seen below in Table 3.1, IDS’s assumption of this responsibility has allowed for a comprehensive appointment system that did not exist in the previous system.

**Table 3.1** The number appointments made by various parties, compared with the number of proceedings, if available, since July 1, 2001<sup>53, 54</sup>

	Made by the Capital Defender in potentially capital cases <sup>55</sup>	Made by the Appellate Defender in capital, non-capital, and non-criminal appeals	Made by the IDS Director in Capital Post Conviction Proceedings
Number of appointments	6,923	9,598	373
Number of proceedings	5,693	n/a	233

Overall, each entity has worked to improve the efficiency of appointments in order to guarantee the preservation of each indigent defendant’s rights. The Commission and the Office both feel that the statewide roster system for the areas of capital proceedings has significantly increased the quality of representation in these areas of practice. The previous system required the presiding judge to appoint attorneys from a rotating list of eligible attorneys; however there were no standards for this process, and attorneys were often overburdened.<sup>56</sup> The new system removed a great deal of responsibility from the courts and allowed for more efficiency and effectiveness in the appointment system.

<sup>53</sup> *Report of the Commission on Indigent Defense Services*, 6-7

<sup>54</sup> The number of appointments is slightly higher than the number of proceedings due to the possibility of attorney withdrawal or reappointment.

<sup>55</sup> A “potentially capital case” refers to any murder case in which the death penalty has not been ruled out.

<sup>56</sup> N.C. General Assembly. Indigent Defense Study Commission. 2000. *Report and Recommendations*. <http://www.ncids.org/home/ids%20study%20commission%20report.pdf> (February 21, 2012).

## **Standards for Attorneys in Capital Proceedings<sup>57</sup>**

Since the creation of IDS, standards have been of significant importance, especially in capital proceedings. This section will detail the requirements for lead counsel and associate counsel in capital trials, appellate counsel in capital cases, and post-conviction counsel in capital cases. It is important to note that if the Director of IDS feels that an attorney who does not meet one or more of the requirements, but who he or she believes, “has the required legal knowledge and skill necessary for representation...and will apply that knowledge and skill with appropriate thoroughness and preparation,” the Director can waive or defer a requirement and place the attorney on the respective roster.<sup>58</sup> In addition, in order to remain on the respective list, attorneys must attend regular trainings in their specific field and consult regularly with the Director of IDS or the Appellate Defender, depending upon the roster. The Director can remove an attorney from any of the rosters at any time if he or she believes that an attorney is not meeting the requirements for eligibility on the roster.

### ***Standards for Lead and Associate Trial Counsel in Capital Cases***

In order to be eligible for appointment to either of these lists, an attorney must have the required knowledge and skills necessary to adequately complete his or her specific job, and be willing and able to prepare an adequate defense. In addition, a candidate for lead counsel must meet the following requirements:

---

<sup>57</sup> “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases.” *Indigent Defense Services*. <http://www.ncids.org/Rules%20&%20Procedures/IDS%20Rules/IDS%20Rules%20Part%202%20Appendix.pdf> (February 21, 2012).

<sup>58</sup> “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases,” 2

- (i) has at least six years of criminal or civil litigation experience; or has at least four years of concentrated criminal litigation experience as a public defender, prosecutor, or attorney in a capital defense organization;
- (ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and Supreme Court of North Carolina;
- (iii) has participated as trial counsel in at least ten jury trials to verdict or to hung jury;
- (iv) has tried a capital case to verdict or to hung jury as lead defense counsel; or has tried two capital cases to verdict or to hung jury as associate defense counsel; or has represented to disposition at the trial level defendants in four homicides cases; and
- (v) has substantial familiarity with and experience in the use of expert witnesses and scientific and medical evidence, including mental health, social history, and pathology evidence<sup>59</sup>

A candidate for associate counsel must meet the following requirements:

- (i) has at least three years of criminal or civil litigation experience;
- (ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and Supreme Court of North Carolina;
- (iii) has participated as trial counsel in at least four jury trials to verdict or to hung jury; or has spent two years in practice in a capital defense organization; and
- (iv) has substantial familiarity with scientific and medical evidence, including mental health, social history, and pathology evidence<sup>60</sup>

***Standards Appellate Counsel in Capital Cases***

In order to be placed on the roster of attorneys eligible for appointment on direct appeal in a capital case, an attorney must have the knowledge and skills necessary to do this job, as well as be willing and able to serve his or her client by utilizing this knowledge and skill. In addition, a candidate for appointment on a direct appeal in a capital case must meet the following requirements:

- (i) has at least five years of criminal, appellate, or post-conviction experience; or has at least three years of concentrated criminal litigation experience as a public

---

<sup>59</sup> “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases,” 1

<sup>60</sup> “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases,” 1-2



defender, prosecutor, or attorney in a capital defense organization; or is currently serving as the Appellate Defender or Assistant Appellate Defender;

(ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and Supreme Court of North Carolina;

(iii) is familiar with practice and procedure in the trial and appellate courts of North Carolina; and

(iv) has had primary responsibility for the appeal of at least five felony convictions in any state or federal court, at least three of which were on behalf of the defendant, and at least three of which were orally argued by the attorney<sup>61</sup>

### ***Standards for State Post-Conviction Counsel in Capital Cases***

In order to be eligible for appointment as a post-conviction attorney in capital cases, an attorney must have the skills and knowledge necessary to represent a client in post-conviction proceedings, and must be willing and able to apply the skills and knowledge in preparing to represent his or her client. In addition, a candidate for appointment as a state post-conviction counselor in a capital case must meet the following requirements:

(i) has at least five years criminal or civil trial experience; or has at least five years criminal or civil appellate experience; or has at least five years state or federal post-conviction experience; or has at least three years of concentrated criminal litigation experience as a public defender, prosecutor, or attorney in a public or private capital defense organization; or is currently in practice in a capital defense organization;

(ii) is familiar with ethics requirements, current criminal practice and procedure in North Carolina, and capital jurisprudence established by the Supreme Court of the United States and Supreme Court of North Carolina;

(iii) is familiar with the practice and procedure of the trial and appellate courts of North Carolina, including the practice and procedure for filing a Motion for Appropriate Relief, and with the practice and procedure of the federal courts with regard to federal habeas corpus petitions;

(iv) has had primary responsibility for representing a party in at least three criminal or civil appeals, or criminal post-conviction proceedings; and

(v) has substantial familiarity with and experience in the use of expert witnesses and scientific and medical evidence, including mental health, social history, and pathology evidence<sup>62</sup>

---

<sup>61</sup> “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases,” 4

<sup>62</sup> “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases,” 7

## **Compensation for Attorneys in Capital Cases**

One of IDS's initiatives following its development in 2001 was to reduce the rate of growth in expenditures in capital cases without sacrificing the quality of the representation provided. One aspect of its solution to this dilemma was the development of a fee application process in order to review and approve expenses, along with uniform rates of compensation for attorneys in capital cases. This took the burden of approving payment off of the presiding judges in the cases and placed it on IDS, adding to the independent nature of the new system. Between July 1, 2001 and January 19, 2011, the Office granted 24,324 fee applications in capital trials and appeals. It also set fee awards for 20,857 applications dealing with expert compensation. Currently, the Office sets approximately 115 fee applications per week and has them sent to Financial Services within one to two weeks of its initial receipt of the application. The fee application process has allowed for a more efficient system in regards to handling attorney payment, thus making defending these cases more appealing to attorneys. It has also created a more standardized process, handled by the central authority, in order to increase consistency and independence.

IDS also approved a new "exceptional case" policy, which defines what qualifies a case as "exceptional," and helps IDS monitor the most difficult and cost-demanding potentially capital cases at the trial level. This policy sets limits on the amount of compensation that an attorney can receive and the amount of funding available for experts and mitigation specialists in all potentially capital cases that are not deemed "exceptional." This policy also sets rules governing billing and other procedures in those cases that are deemed "exceptional." This provides for a more straightforward system in

order to promote consistency across the state, a major goal of the creation of IDS, while also allowing for the delivery of necessary services in those cases in which exceptional expenses are necessary. This policy, along with the uniform compensation policy and the fee applications, created a process through which capital attorneys can have expectations of their wages and fee allotments, something that has not been possible in the past due to statewide inconsistency.<sup>63</sup>

Because of this system, the Capital Defender was able to review and act upon 17,597 fee requests for expert funding and other miscellaneous expenses at the trial level. The IDS Office was able to review and act upon an additional 2,393 requests for expert funding, in the capital post-conviction process. Clear guidelines allow for a more uniform process and quick delivery of fees once applications are submitted.<sup>64</sup>

### **Uniform Rates of Compensation**

In June 1993, long before the creation of the Indigent Defense Study Commission, a subcommittee of the Bar Association's All-Bar Death Penalty Representation Conference recommended a \$95 per hour rate of compensation for attorneys working on capital cases to the General Assembly. In 1994, in response to this conference's recommendation, the General Assembly appropriated enough money to set the salary at \$85 per hour. When IDS was created in 2001, it kept this rate due to its limited funding and the other demands it faced. After dealing with several more pressing issues in the beginning of its establishment, IDS was able to raise this rate to \$95 per hour in fiscal year 2006-2007. Unfortunately, however, due to the budgetary constraints mentioned in the introduction to

---

<sup>63</sup> *Report of the Commission on Indigent Defense Services*, 8-9

<sup>64</sup> *Report of the Commission on Indigent Defense Services*, 9

this chapter, the rate was again lowered to \$85 per hour in all cases that were initially potentially capital but were later decided to be non-capital cases in 2011. This system of uniform compensation, similar to the fee application process, allows for more clear and uniform guidelines to help capital defenders in dealing with the previous ambiguity surrounding capital defense. Uniform rates of compensation allow for the creation of expectations, and leave no room for complaint or disappointment in terms of what they will receive for their services.<sup>65</sup> These rates also further add to the independence of the system, as the presiding judges in the cases no longer have a say in the amount of compensation for attorneys.

### **Mitigation Specialists**

Mitigation specialists, or experts who testify on behalf of the defense in order to convince the jury that the defendant deserves a lesser sentence, have also experienced more uniformity following the development of IDS. On May 6, 2005, the IDS Commission adopted standards of qualification for mitigation specialists in capital cases, based on their educational background, experience, skills, and training. In conjunction with these standards, standard hourly rates of compensation were also created, seen below in Table 3.2.<sup>66</sup>

---

<sup>65</sup> *Report of the Commission of Indigent Defense Services*, 9-10

<sup>66</sup> *Report of the Commission of Indigent Defense Services*, 12-13

**Table 3.2** Experience and hourly rate of pay associated with various levels of mitigation specialists<sup>67</sup>

	Level 1 Mitigation Specialist	Level 2 Mitigation Specialist	Level 3 Mitigation Specialist
Experience	< 1 year	1-5 years	> 5 years
Hourly rate of pay	\$35	\$45	\$60

Mitigation specialists are a vital part of every capital trial, and thus creating rosters and setting standard hourly rates of pay has further enhanced the uniformity and expectations in the capital trial procedure.<sup>68</sup>

### **Capital Case Costs and Dispositions Study**

IDS organized the Capital Case Costs and Dispositions Study to evaluate IDS’s spending on private assigned counsel and expert witnesses in potentially capital cases. There were four major findings in this study, which will be outlined in this section.

The first finding was that IDS’s per case spending on potentially capital cases has not increased since IDS’s creation. Many legislators find it alarming that the annual expenditures, detailed in the final section of this chapter, have increased since 2001. This study determined, however, that the total annual expenditures have grown because of the increasing caseload. At the time in which this study was completed, in 2009, the number of open cases in which IDS paid for an attorney or expert had grown by 49% since IDS’s development. IDS paid for an attorney or expert in 746 cases in the 2001-2002 fiscal

<sup>67</sup> *Report of the Commission on Indigent Defense Services*, 12-13, and “Standards for Mitigation Specialists in Capital Cases.” *Indigent Defense Services*. <http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/MitigationStandards.pdf> (February 21, 2012).

<sup>68</sup> “Standards for Mitigation Specialists in Capital Cases.”

year, and 1,112 cases in the 2007-2008 fiscal year.<sup>69</sup> This information will be explained in more detail at the end of this chapter.

The second finding was that high profile cases in which there are numerous expenditures are the exception in the North Carolina system. Fifty percent of the potentially capital cases each had total costs of less than \$4,400, and 90% cost less than \$64,500. In addition to these total cost statistics, 25% of these cases had no expert spending, and 60% of the potentially capital cases had total expert spending of less than \$5,000. Essentially, high profile, high cost cases are the exception, hence the development of the exceptional case clause.<sup>70</sup>

The third finding was that IDS's spending is driven by the decisions that the prosecution makes in terms of charging cases. This is an idea and explanation not typically thought of; however, the findings of the Study provoked thought and discussion about how capital cases are screened and processed, discussed in more detail later in this chapter. The prosecution has historically charged all intentional homicides as first-degree murder cases, proceeding capitally for a death sentence. The study found that 86-88% of all intentional homicide cases are charged as first-degree or undesignated-degree murder, as opposed to the charges of second-degree murder or voluntary manslaughter. The average cost of a first-degree murder case, between 2001 and 2006 was \$27,834, compared to \$1,931 for second-degree murder cases and \$1,385 for voluntary manslaughter. In addition, all potentially capital murder trials that end up proceeding

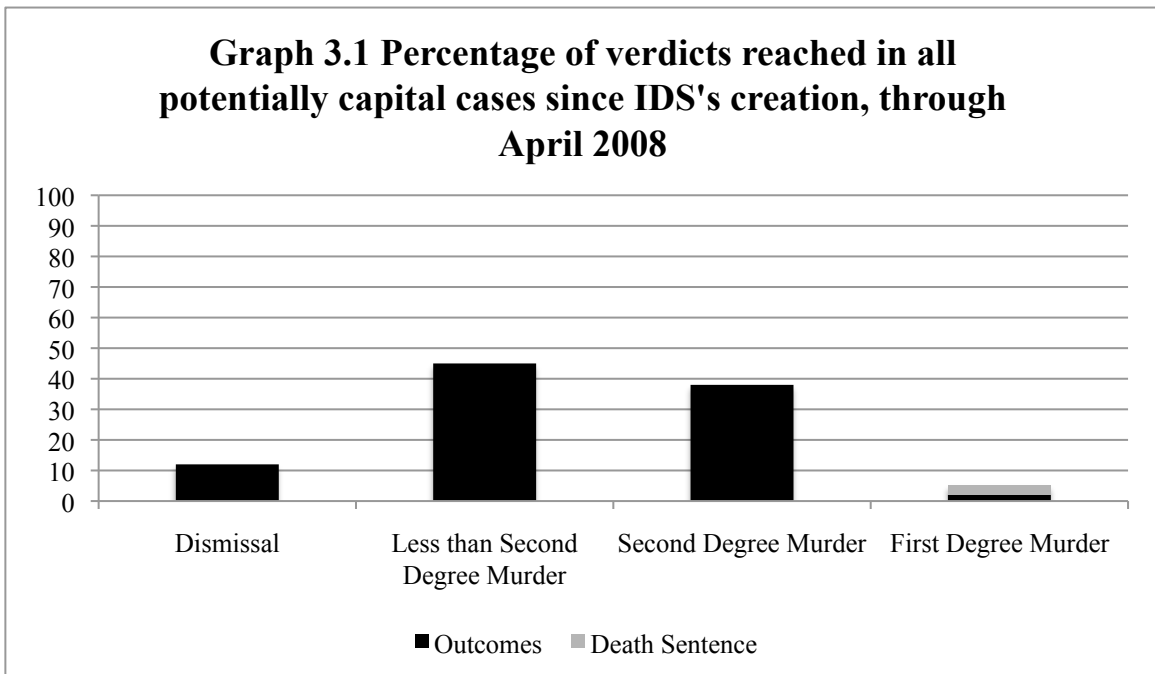
---

<sup>69</sup> *Report of the Commission on Indigent Defense Services*, 16

<sup>70</sup> *Report of the Commission on Indigent Defense Services*, 16

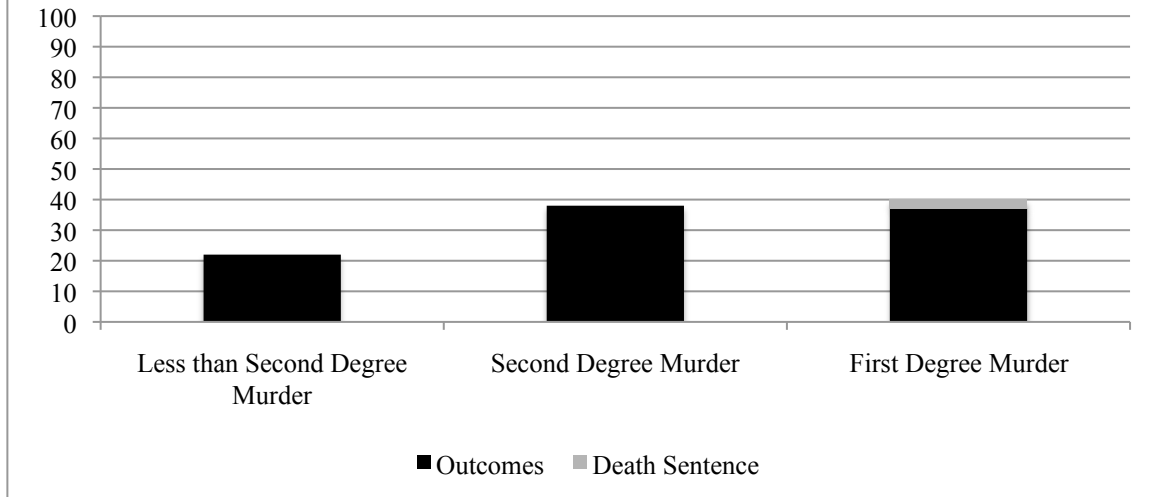
capitally cost IDS three times more than those that do not proceed capitally.<sup>71</sup> This finding indicates that there might be room for a decrease in total costs for IDS if the prosecution decided not to push for the strongest charge in most cases.

The fourth finding is directly linked to the third finding, in that it deals with the various charges a potentially capital case might receive. See graphs 3.1 and 3.2 for the percentage of verdicts reached in all of the potentially capital cases acquired since IDS's creation and disposed of before April 22, 2008.



<sup>71</sup> *Report of the Commission on Indigent Defense Services*, 16

**Graph 3.2 Percentage of verdicts reached in all potentially capital cases that have been tried capitally since IDS's creation, through April 2008**



If the magnitude of the costs in comparison, discussed in the third finding, was not enough to encourage a review of the charge system conducted by prosecutors, this fourth and final finding is. The system results in a major waste of funds by IDS in order to defend these cases that end with guilty verdicts for charges that could have minimized costs if charged initially. Rarely does a potentially capital case end in a death sentence; however, every time the prosecution chooses to proceed capitally, IDS pays three times the cost of those cases that do not proceed capitally.<sup>72</sup>

## **Training and Resources**

One of the major initiatives recommended by the Study Commission was improved training and resources made available to defenders. Public defenders serve various specialized purposes, and each of these purposes should be serviced with tailored

<sup>72</sup> *Report on the Commission of Indigent Defense Services*, 16



trainings. IDS continues to work to improve these trainings each year, and has recently formed a partnership with the UNC School of Government to provide regional trainings. All of the trainings and training materials are available on the IDS website, discussed in detail earlier in this chapter.<sup>73</sup>

Although potentially capital cases seem to have taken top priority in many of the various areas of improvement in IDS discussed in this chapter, training and resources is not one of them. Despite the numerous additional resources made available online for attorneys in capital proceedings, including briefs and motions in capital cases, trainings dealing specifically with capital cases are not common.

The trainings are organized into various areas, such as appeals and ethics, and many trainings that fall into the various categories can be useful to attorneys representing indigent clients in capital proceedings; however, rarely is there a training meant solely for capital attorneys.<sup>74</sup>

## **Racial Justice Act Coordination**

Upon the passage of the Racial Justice Act (RJA), IDS and the Center for Death Penalty Litigation (CDPL) entered into a contract to “coordinate the investigation and litigation by trial, appellate, and post-conviction counsel of issues arising under the RJA, and to provide training and educational materials to appointed counsel.”<sup>75</sup> This contract has allowed for savings in the budget that might have resulted from the passage of the RJA,

---

<sup>73</sup> *Report on the Commission of Indigent Defense Services*, 30

<sup>74</sup> “Training and Reference Materials Index.” *Indigent Defense Services*. <http://www.ncids.org/Defender%20Training/Training%20Index.htm> (February 21, 2012).

<sup>75</sup> *Report on the Commission of Indigent Defense Services*, 37

because IDS and the CDPL's combined efforts resulted in the combination, rather than duplication, of efforts to educate, train, and evaluate with regard to the RJA. IDS also designed and implemented a system to track the number of motions and associated costs that result from the RJA. These coordination efforts by IDS with regard to the RJA have allowed for a more standardized handling of the motions and have allowed indigent death row inmates to feel that their claims are being handled efficiently.<sup>76</sup>

### **Capital Case Screening and Processing**

In January 2009, representatives of the IDS Commission, the IDS Office, the North Carolina Association of Public Defenders, and the Executive Committee of the Conference of District Attorneys met to discuss making improvements to the way potentially capital cases are charged, screened, and processed. This was a direct result of the Capital Case Costs and Dispositions Study, aiming to reduce total costs incurred for IDS. Unfortunately, these representatives were unable to formulate any recommendations, although the Commission and Office remain open to discussing these issues with other's involved in the system. This should be an area of focus for IDS moving forward, although improvements will not be made without some concessions from the Office of the District Attorney, which will not be easy to achieve.<sup>77</sup>

---

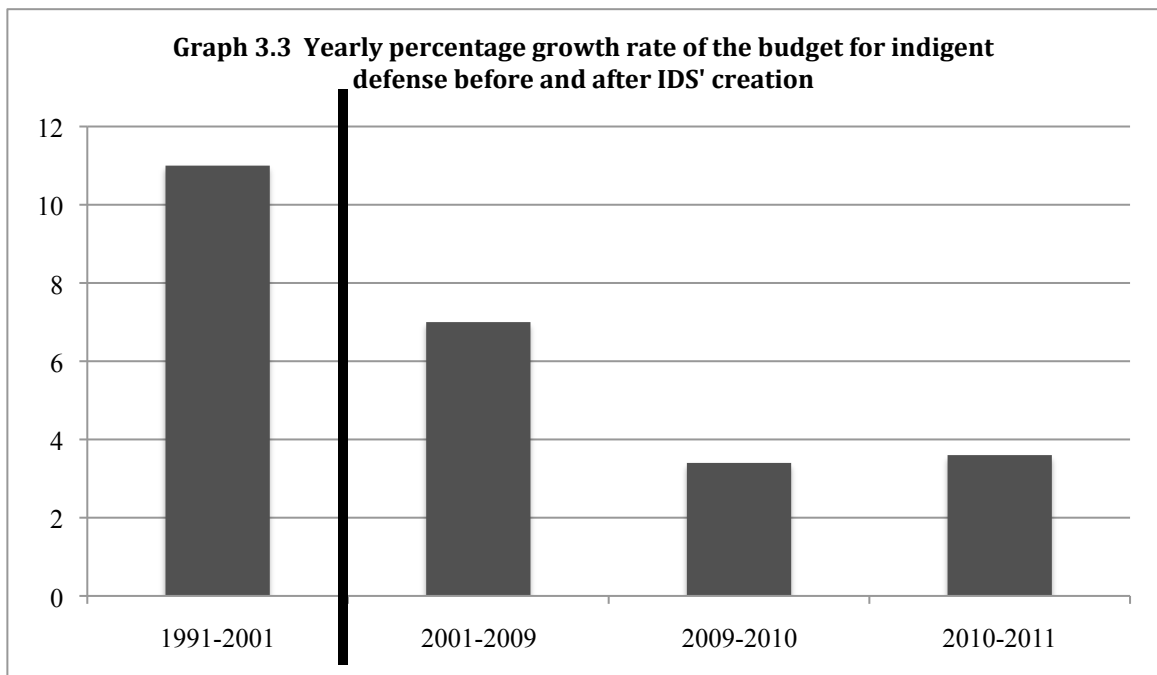
<sup>76</sup> *Report on the Commission of Indigent Defense Services*, 36-37

<sup>77</sup> *Report on the Commission of Indigent Defense Services*, 51

## Budget and Caseload

IDS has been very successful in establishing these reforms over the past ten years, especially in this time of financial crisis. From the beginning of IDS's development, funding for government programs has continually been tight. A government program serving those who are indigent receives greater demand for services during times of financial crisis, causing difficulties for the effective functioning of the program, and on top of that has minimal public support.

This scenario is exactly what has happened with IDS since its creation. The Office and Commission have placed a significant emphasis on cutting the rate of growth in the budget of indigent defense, a major initiative of the legislation. See graph 3.3 below for a look at IDS's accomplishments.



Seeing as one of the goals of the legislation, listed in Chapter Two, was to create a cost-effective system without sacrificing quality representation, these statistics are impressive.

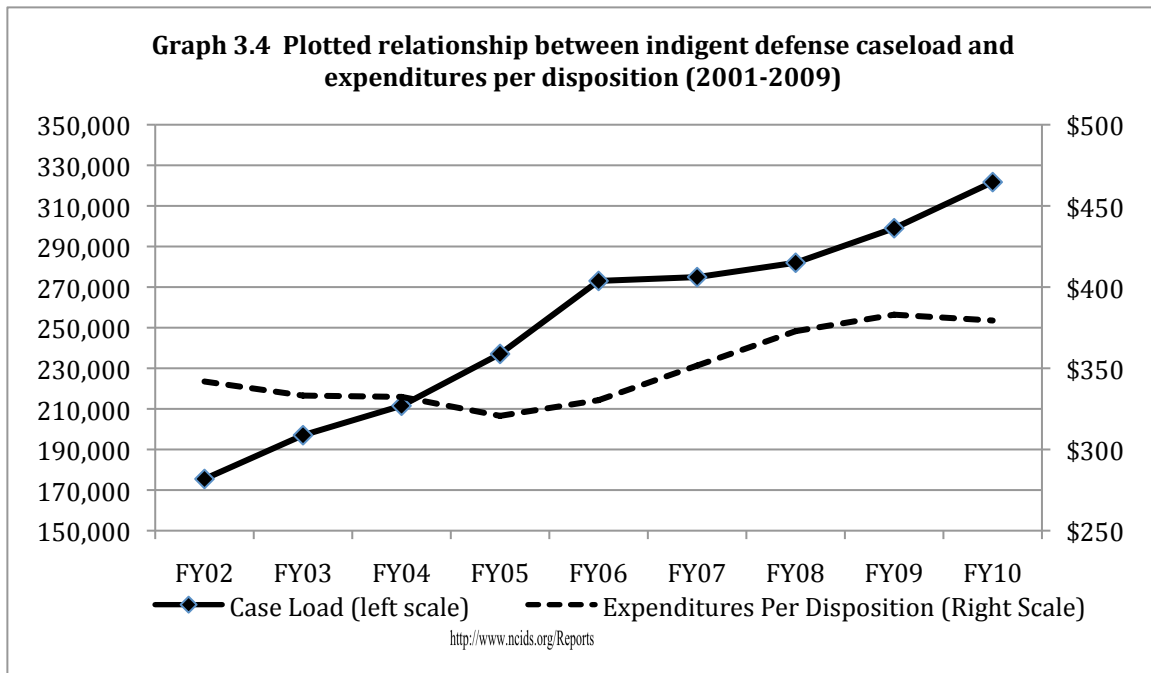
Clearly, the system is more efficiently using funds and shows improvement looking into the future.<sup>78</sup>

Indigent Defense has also seen improvement in the average rate of growth in expenditures per disposition, meaning all of the expenditures resolved before the same judge on the same day. In the nine fiscal years since IDS's creation, the average growth rate in expenditures per disposition was only .3%, compared to 3.4% in the five years before IDS's creation. In the 2009-2010 fiscal year, expenditures per disposition were only \$8.48 higher than 2000-2001, and only \$37.57 higher than IDS's first year in existence, 2001-2002.<sup>79</sup> One of the primary areas of cost growth for indigent services in the past was per-disposition expenditures. Without clear guidelines for spending, attorneys felt no pressure for efficient use of funds, and thus costs were ballooning. IDS's movement to create standards governing expenditures both in terms of resources and personal fees allowed for this minimal growth that will hopefully continue into the future. See graph 3.4 for the relationship between the growth in expenditures per disposition and the indigent caseload.

---

<sup>78</sup> *Report of the Commission on Indigent Defense Services*, 2

<sup>79</sup> "North Carolina Office of Indigent Defense Services Fact Sheet." 2011. *Indigent Defense Services*.



Despite these impressive improvements, IDS still projected \$9 million in debt in fiscal year 2010-2011 due to underfunding.<sup>80</sup> How can this be? The answer lies in the increasing caseload IDS has taken on over the past ten years. North Carolina has seen a 3% decrease in the rate of total criminal non-traffic court dispositions between fiscal years 2001-2002 and 2009-2010. While one might expect this to aid in decreasing the funding demands of IDS, the budgetary crisis in the United States has caused a significant rise in the number of indigent defendants. Between fiscal years 2001-2002 and 2009-2010, there was a 40.4% increase in the number of cases involving indigent clients, thus creating a greater demand for IDS and causing it to fall under more debt.<sup>81</sup>

<sup>80</sup> *Report on the Commission of Indigent Defense Services*, 2

<sup>81</sup> “North Carolina Office of Indigent Defense Services Fact Sheet.” 2011. *Indigent Defense Services*.

## **Conclusion**

Through this exploration of the developments IDS has implemented over the past ten years, as well as the conditions under which these developments have arisen and succeeded, it is clear that IDS has had an impact on capital punishment in North Carolina. The following achievements, in particular, are partially to credit for the decline in the death penalty:

1. The creation of the Office of the Capital Defender, which provides mentoring and guidance for attorneys who are appointed to defend clients in capital cases
2. Standards for attorneys on the appointment lists that are enforced by IDS
3. Enhanced training opportunities for the special skills needed to defend capital cases
4. Improved access to resources, including fees for expert witnesses and investigators, as well as communication with and aid from other attorneys working on similar cases

These vast improvements, in addition to the changes made to the indigent system as a whole, combine for an overall increase in the quality of capital defense across the state. These improvements, made possible by the IDS Act of 2000, and combined with the various other factors discussed in the introduction, have allowed for a decrease in the prevalence of capital punishment in North Carolina.

## **Indigent Defense Services Today: The Stakeholder's Perspective<sup>82</sup>**

The previous chapter was a summary of Indigent Defense Service's accomplishments, as outlined in several reports, studies, and documents made available on [www.ncids.org](http://www.ncids.org), through the General Assembly, and various other sources. This chapter takes this evaluation one step further in an effort to illustrate fully the impact IDS has had since its creation. In order to do this, several members of the legal community who are considered key players in what indigent defense and IDS are today—including judges, legislators, prosecutors, and criminal defense attorneys—were interviewed. Each interview consisted of questions regarding the individual's perception of how IDS came to be, what its purpose was, and whether or not it has achieved its purpose. In addition, each individual spoke about IDS's impact on capital punishment in North Carolina. The results of these interviews are summarized in this chapter.

### **The Wheels Begin to Turn**

Many of the interviewees in this study referenced the Chief Justice's Advisory Committee on Defense of Indigents, which issued its report in 1990, as the structure that

---

<sup>82</sup> This chapter consists primarily of information obtained through 15 interviews, of which the subjects are confidential. Interviewees either were or are currently involved in the actions of IDS in North Carolina.

put the wheels in motion to improve indigent defense services in North Carolina. Chief Judge James G. Exum formed this committee and noted its purpose, stated below:

The committee's task ultimately will be to recommend a method which will be fair to indigents, who have a right to effective legal representation; fair to attorneys, who deserve reasonable compensation for their work; and fair to the tax-payers, who must bear the costs<sup>83</sup>

After evaluating North Carolina's indigent defense system at the time, the Committee held the opinion that no major, systemic changes needed to be made in order to guarantee fairness to indigents, attorneys, and tax-payers, as Judge Exum requested. The opinion of the Committee reads, "With the major serious exception of regular shortages in the fund for payment of private assigned counsel, individually these programs have been operating in an adequately effective manner."<sup>84</sup> It goes on to state that, "The committee as a whole does not find that the indigent defense system is in need of sweeping change," although efforts to improve the operation and efficiency of the current system were recommended.<sup>85</sup>

The opinion of this Committee, however, did not stimulate the improvements that have been made to IDS today. Rather, a dissenting statement by Adam Stein, in which he "respectfully disagree[d]" with the committee's conclusion, was what North Carolina needed to begin the long and drawn out discussions that led the state to where it is today. Stein cited the ABA's standards for defense services programs that had recently been amended in the *American Bar Association's Standards for Criminal Justice*. In his dissent, Stein discussed issues with funding, quality of representation, independence of

---

<sup>83</sup> Chief Justice's Advisory Committee on Defense of Indigents: Final Report. 1990. Submitted to the Honorable Chief Justice James G. Exum, Jr. p. 1-69.

<sup>84</sup> *Ibid*

<sup>85</sup> *Ibid*



assigned counsel and public defenders, and the structure of the current indigent defense system. Following this discussion, he made four distinct recommendations:

- A. Enlisting the Vigilant Support of the Organized Bar for Adequate Funding of the System
- B. Conduct a Comprehensive Study of Our System
- C. Professional Independence of Attorneys Providing Defense Service from the Judiciary
- D. Budgetary and Administrative Authority Over Indigent Defense Services Should Be Placed in an Independent Board or Commission<sup>86</sup>

According to several interviewees, Stein’s recommendations in this dissent encouraged people to begin thinking and talking about the room for growth and improvement in North Carolina’s indigent defense system.

In addition to Stein’s dissent, key players recognized several obvious shortcomings in the criminal justice system in the 1990s. Interviewees cited the negative coverage surrounding the handling of many death cases as one reason the legislature felt pressure to make improvements. This included two publicized exonerations in 1989 and 1999.<sup>87</sup> In addition, representation in many other cases was “less than stellar,” and a need for improvement in quality was identified. One interviewee stated that many criminal defense attorneys felt that, “[the State] wasn’t maximizing the quality of representation – we could do better.” Outside of the issues with quality, there was a perceived need for uniformity and consistency in attorney’s fees, as many attorneys believed that they “weren’t being paid fairly.” Judges were often inconsistent from case to case and from district to district, which led to an inefficient use of funds. In the late 1990s, one legislator who was interviewed remembered being informed that costs for indigent

---

<sup>86</sup> *Ibid*

<sup>87</sup> “The Innocence List” *Death Penalty Information Center*. <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row> (January 23, 2012).

defense services had gone up 180% in the recent years, and projections showed this rate would continue to rise. Because of this, interviewees noted, many key players recognized the need for a central authority in order to manage funds more efficiently. The North Carolina Advocates for Justice (formerly the Academy of Trial Lawyers) pushed for a statewide system due to the observed success of already-established public defender offices around the state in terms of efficiency and effectiveness. They saw this system as an independent agency, and the idea had support from the defense bar, the AOC, and formal establishments.

Stein's dissent, combined with these more publicized issues with the current system in the 1990s, forced the legislature to take steps towards improving indigent defense services. Many interviewees credited the Honorable Mary Ann Tally, who was the public defender in Fayetteville at the time, as the force that won over the legislature. Her continued pressure on the legislature to improve the current state of indigent defense was eventually rewarded, when she got the attention of Representative Joe Hackney and Senator Frank Ballance. According to interviewees, Tally won the legislators over by arguing that judges should not appoint attorneys. This point was well taken by Hackney and Ballance, and they pushed from within the legislature to create the Study Commission discussed in Chapter Two of this thesis.

### **The Study Commission**

Interviewees noted that with Hackney and Ballance on board, action in the General Assembly was almost guaranteed. This was one of the primary issues with the Chief Justice's Advisory Committee on Defense of Indigents, discussed earlier, because there

was no one with any direct ties to state lawmakers. With this in mind, members of the Study Commission remained very “forward-thinking,” and worked tirelessly to create recommendations to the General Assembly to equalize the system in terms of efficiency, quality, and fairness. In order to do this, the bipartisan group studied other states and had consultants make suggestions to the members. After this research, it became obvious that overall, systemic change was needed. One interviewee remembers Minnesota as the primary state that the Study Commission looked at and used to formulate its recommendations to the General Assembly. Minnesota has both statewide and regional public defender offices, as North Carolina does today. Interviewees felt that the Study Commission’s recommendations were representative of the many issues with the current system and cited the bipartisan and educated makeup of the Commission as one reason for this.

## **The Legislation**

According to interviewees, the legislation looked fairly similar to the recommendations put forward by the Study Commission. It addressed issues of efficiency, quality, and fairness, as had been the goal of the Study Commission, and ended the dependent relationship of indigent services on “closely allied judges and prosecutors,” which created an, “unlevel playing field” in terms of resources and fees, among other things. In an effort to create legislation that could please the various actors with an interest in the outcome, the opinions of many were heard by the different houses, including close consultation with the Public Defender Association, according to one interviewee.

Those interviewed pointed out two new pieces of data not discussed thus far in this thesis: one, that the biggest hole in the legislation was the lack of IDS's power to appoint public defenders statewide (something the Study Commission felt strongly could benefit the system overall); and two, that due to concerns of the public, the legislators chose to add several phrases to the legislation that would ensure that locals had some influence in what IDS was able to do in their districts, which will be discussed in the next section. Both of these changes were made during the legislation's journey through the General Assembly in order for legislators to feel comfortable voting in favor of the act.

### **Response to the Legislation**

When asked about the response of key players in the indigent defense world to the passage of the legislation and the push for change in the system, interesting information unable to be gleaned from IDS's various documents, studies, and reports was revealed.

Every interviewee that I spoke with was in support of the legislation that was passed and noted that it was a "step in the right direction" and a "significant improvement." They believed it was something that "needed to be done," and that the final product was very "forward-thinking" and "almost revolutionary." These positive feelings about the legislation, however, were not held by all.

According to interviewees, legislators tended to have feelings similar to those interviewed. One legislator noted that the Indigent Defense Services Act of 2000 was introduced in an even-numbered year, meaning that it was a short session. Usually, new legislation not pertaining to the year's budget is introduced in odd-numbered years, or long sessions. The fact that the IDS Act was introduced in 2000 indicates that the

legislature was eager to address the issue because legislators, too, felt that it “needed to be done.” Those interviewed did not remember the legislation being extremely contentious in the General Assembly, especially after changes were made to allow more local input in IDS’s work. Many members of the Study Commission noted that, at the time, both houses were controlled by Democrats and it was “easy to make appeals to Republican members.” Every legislator that I spoke with in the interview process said that if they had to vote on the legislation again, they would be favorable, “without hesitation.”

The response of the State Bar and criminal defense attorneys was less pleasant. Interviewees stated that the changes were “very contentious,” and that the “general sense was negative” with many individual defense attorneys because they felt that “the people in Raleigh,” or the bureaucracy that was created through this legislation, were going to come into smaller towns and start making changes that were not desired by the people who lived there. As mentioned earlier in this chapter when discussing the legislation, changes were made to the Act in order to alleviate these concerns expressed by local populations. The General Assembly amended the legislation in its journey to final passage to require the Director, Office, and Commission to “consult with the district bar” and to ensure that “local bars have the opportunity to be significantly involved in determining the method or methods for delivering services in their districts.”<sup>88</sup> These changes also required the Commission to consult with a district’s bar, senior resident superior court judge, and chief district court judge prior to recommending to the General

---

<sup>88</sup> *Indigent Defense Services Act*. 2000. *Statutes at Large*. Article 39B, Subdivision IX, Chapter 7A.

Assembly that a district or regional public defender office be established.<sup>89</sup> These changes were aimed at making local bar organizations and criminal defense attorneys feel more comfortable with the creation of a central authority in IDS. Despite these efforts, however, several interviewees noted that for much of the time that IDS has existed, public defenders and criminal defense attorneys have been its biggest enemies because they saw this as an attempt by the State to end the “good ole boy” system to which many rural districts were accustomed. These attorneys did not want the State interfering with the relationship between judges and appointees because they saw the superior court judge in their district as their “boss.” In fact, one group of defense attorneys in Cumberland County filed suit against IDS saying that it was unconstitutional. This case will be discussed in the next section. Interviewees noted that, over, time, as older public defenders and criminal defense attorneys aged out of their positions, support from this community has grown. Newer public defenders and criminal defense attorneys recognize the benefits that IDS provides to the system, and thus are in support of the general purpose and actions of IDS.

Some interviewees noted that the community of district attorneys across the state voiced opposition to the reforms initially. Many prosecutors saw this as just one more thing that would require funding and possibly take money away from prosecutorial services. Some of the interviewees felt that these dissatisfied prosecutors were “easily neutralized because they could not make a reasonable argument about why they should be involved or have any input in the appointment process.” Despite this backlash observed by some of those interviewed, other interviewees, believed that the prosecutorial community appreciated the changes because this meant that quality

---

<sup>89</sup> *Ibid*

attorneys would be working for the defendants, and thus, fewer appeals would be justifiable.

The interviewees' perception of the response of the judiciary is similar to that of the district attorney community. Although many judges voiced opposition to the changes for many of the same reasons that local bar associations and criminal defense attorneys did (end of the "good ole boy" system, interference of bureaucracy), others observed support. The creation of IDS took various duties away from the judiciary, and while some judges saw this as "a restriction of power," others responded favorably because they detested those duties (reviewing fee applications, in particular) in the first place.

Outside of these particular communities, interviewees noted that more formal organizations, such as the North Carolina Association for Black Lawyers and the North Carolina Association for Women Lawyers, were favorable to the legislation.

### ***Ivarsson IV v. Office of Indigent Defense Services***

In June of 2001, before the Office of Indigent Defense Services opened for operation, several members of the Cumberland County Bar filed suit against IDS, "claiming that the Indigent Defense Services Act and the creation of the IDS were unconstitutional."<sup>90</sup>

These attorneys argued that IDS violated the North Carolina Constitution's principle of separation of powers because the appointment of attorneys in indigent cases was the "power and responsibility of the judicial branch."<sup>91</sup>

---

<sup>90</sup> *Ivarsson IV v. Office of Indigent Defense Services*. 2003. COA02-38. Court of Appeals of North Carolina.

<sup>91</sup> *Ibid*

The Court of Appeals respectfully disagreed with the plaintiffs’ argument, noting that the plaintiffs face a heavy burden of persuasion to show that an act of the General Assembly is unconstitutional. The Court wrote that nothing in the state constitution gives the power of appointment and compensation of attorneys assigned to defend indigents in criminal cases to any branch of government. In response to the plaintiffs’ argument that the power of appointment and compensation is an “inherent power” of the judicial branch because it is “essential to the existence of the court and the orderly and efficient exercise of the administration of justice,” the Court pointed out that the judiciary’s power lies in supervision, not selection, over attorney-client matters.<sup>92</sup> The Court extended this point, ruling that the only reason the judiciary even held the power of appointment at the time was because of its supervising role. If an indigent defendant appeared in court without an attorney, the judge needed to intervene because, “the complete absence of counsel is the ultimate form of attorney inadequacy,” a topic the judiciary oversees.<sup>93</sup>

In speaking with many of the key players in indigent defense services in North Carolina, this court case was a display of the resistance to IDS from many of the defense attorneys across the state. Although only Cumberland County attorneys were involved in the suit, many people felt that the opinions of these lawyers were widely held among defense attorneys because they did not want to see a change in the “good ole boy” system or more involvement in their towns from bureaucracy in Raleigh. In speaking with an attorney who signed on as one of the plaintiffs in this case, he noted that, despite the good things the attorneys saw that IDS was doing, they felt that it was an unconstitutional delegation of responsibilities to the executive and legislative branches. The appointment

---

<sup>92</sup> *Ibid*

<sup>93</sup> *Ibid*



and payment of attorneys was strictly a judicial function in their opinion. When asked whether or not these feelings are still apparent in Cumberland County defense attorneys, he stated, “there is always the perception that there is more input and control given to the people in Raleigh, Durham, and Chapel Hill.” Despite these feelings, however, he felt that most Cumberland County defense attorneys seem to be pleased with the impact that IDS has had since its creation in 2001.

### **Conditions Before IDS**

The responses I received when asking about conditions of indigent defense before IDS were by far the most uniform from interview to interview than any others. Interviewees agreed with many of the circumstances discussed earlier in this paper in Chapter Two – things were rough. The lack of state-sponsored training opportunities for attorneys was often evident in the courtroom, which led to a lack of quality of the defense’s argument. Because there were no requirements for training, attorneys were on their own to attend training sessions sponsored by outside organizations, such as the UNC School of Government. Several of those interviewed noted, however, that there were still some attorneys who truly loved their work and did a “fantastic job” representing their clients. These individuals were often making minimum wage for their assignments, due to the lack of statewide standards for fees, and were forced to pay out of pocket to prepare a quality defense in many cases. In addition to the lack of training requirements, standards were virtually non-existent outside of the American Bar Association’s, which were unenforceable.

Because of the lack of standards for fees, funds were used inefficiently from district to district, which was a major selling point to legislators in making a change in the way indigent services were provided. In addition, interviewees described the attempts of attorneys to get resources for expert witnesses and investigators as “haphazard” and “an adventure” because of the different judges from district to district. Standards for fees, as well as the availability of resources and lack of training, were cited as reasons that the system lacked the fairness, equality, and support that it needed to successfully defend indigents.

When asked whether or not these shortcomings affected capital punishment, all of the interviewees felt strongly that a capital trial was more likely to end in a death sentence prior to the creation of IDS due to the combination of factors discussed above. Specific trainings for attorneys in capital proceedings were organized, standards were set for appointment in capital cases, and access to resources and uniformity increased statewide. Many of those involved in the early years of IDS noted that, because of the serious consequences of capital trials, improving the conditions of indigent representation was the number one priority when IDS opened in 2001.

### **Biggest Improvements**

The biggest improvements cited by interviewees had one common thread from interview to interview—the improvement to the capital defense system since the creation of IDS. Thirteen of the fifteen interviewed mentioned this as one of the “most significant” developments in indigent defense services because of the IDS Act of 2000. Different interviewees described it as “dramatic” and a “real improvement.” They cited such

improvements as the oversight of the Capital Defender Office, specialized trainings for capital cases, and listservs for attorneys working on capital proceedings. One interviewee stated that, because of the dire need for improvement to the capital defense system when IDS was created, IDS took over the task of appointments in capital cases immediately. This allowed for instantaneous improvements to these cases because IDS had standards for attorneys who could be appointed to capital proceedings. Interviewees agreed that, as these improvements have been made over the years, the number of death sentences returned in capital cases has decreased, in large part because of these improvements.

Different interviewees mentioned the improvements to several of the shortcomings discussed in the sections above, which affected the quality of indigent criminal defense “across the board.” The independence from the judiciary was the most popular answer, outside of improvements to capital defense. Not counting on the judiciary for appointment, resources, and payment is a significant improvement that would not have been possible without the creation of a central authority. The development of statewide standards for fees applicable to everyone, depending on what type of case you are assigned to, was mentioned in every interview. The overall improvements to the hourly rate of compensation were seen as a significant enhancement that increased the chances that quality lawyers would stay in the field and on the appointment lists. Unfortunately, however, interviewees noted their disappointment that the legislature undid this improvement in 2011 due to the financial crisis the State is dealing with right now. Interviewees also felt that other improvements, such as the wide array of trainings available to attorneys and the resources that IDS publishes, were significant. When discussing these improvements in training and resources, many

interviewees emphasized the specialized nature of these enhanced trainings and resources, targeting different skills from capital defense, to work with juveniles, and termination of parental rights cases. The creation of IDS signified the end of the assumption that an attorney can be a “jack of all trades” and gave focus to areas that had been overlooked in the past (including juveniles and forensics).

Outside of many of these agreed-upon improvements to the system, different interviewees mentioned a few improvements that they personally felt were significant. One mentioned the effort of IDS to follow up on the more serious cases that come through the Office. Previously, attorneys were appointed to handle cases and were, for the most part, left to their own to handle them. Today, IDS provides mentoring and consultation to appointed attorneys in these very serious cases. A few other interviewees cited the improvements to the Office of the Appellate Defender as one of the more significant changes. The attorneys who are appointed to handle appeals need separate skills and a different kind of training and consultation. These improvements allow for the development and enhancement of these specialized skills. Another interviewee felt that the improvements made to Prisoners Legal Services and the focus on sentencing research have been a major development by IDS. And, finally, one interviewee mentioned the overall improvements to camaraderie of spirit of indigent attorneys. Today, these attorneys are more willing to reach out to each other for help, advice, and resources. In addition, attorneys act more positively about the activities of IDS and are more willing to use the resources of IDS, which improves indigent defense generally.

## **Continued Room for Improvement**

Despite the various improvements discussed in the previous section, there is still significant room to grow and develop within IDS. Interviewees noted that the vast majority of indigent cases are not even handled by IDS today (including superior court felonies and district court misdemeanors). In order to make full circle improvements to the system, it is necessary to open more statewide and regional public defender offices, as well as establish new contracts with private lawyers, to take on the full burden of indigent cases. Not only did interviewees feel that North Carolina needs more public defenders, but many also mentioned the need to focus on maintaining the ones who are already doing this work. Because of the cuts in fees and the lack of financial incentive surrounding indigent cases, many of those interviewed are worried that the number of quality attorneys who are willing to take appointments is going to decrease. In order to fix this problem, IDS needs an “adequate budget to provide the type of constitutionally-mandated duties that are needed in this state.”

In addition to these areas for overall improvement of the system, interviewees cited the need for continued improvement to the trainings offered. Despite the “significant” improvements to capital cases, the quality and experience of attorneys in many major felonies (such as those defending B1 sex offenders) are still “less than stellar” in many cases. It would be helpful to establish more regional trainings for private lawyers in order to increase the accessibility of the services IDS provides. Another problem that goes hand in hand with this is the lack of evaluation of effectiveness for individual attorneys, says one interviewee. In other areas of legal practice, you answer to someone – in private practice to your clientele, and as a prosecutor to the electorate. If

there were an evaluative process, it would be easier to “weed out the bad lawyers.” One interviewee also cited the need for more forensic experts for attorneys, something IDS is working to improve today.

In capital cases in particular, some interviewees still see room for improvement. One defense attorney stated that the research and data collection that IDS has conducted over the years has been extremely helpful. This data allows people to see how and why money is spent within IDS, and aids IDS in knowing what areas need attention. When the State is aware of areas that need more funding, it is easier to divide up the budget without feeling that money is being wasted. In addition, a few interviewees cited the definition of a “potentially capital case” as a problem for IDS and funding. Because the current definition is so broad, it is impossible to know which cases will proceed capitally in the end, and which cases will actually go to trial. This uncertainty results in a huge waste of resources, because each “potentially capital case” that comes through the system has to proceed as if it were a capital case that will go to trial – an extremely costly process. Unfortunately, IDS has no real control over this, and has presented government officials with this information in the Capital Case Costs and Dispositions Study. Hopefully this waste of resources can be dealt with through the legislature; however, this would mean taking away the element of prosecutorial discretion, which would likely be controversial among the prosecutor community.

Despite these various areas for continued improvement, every legislator that was interviewed agreed that he or she would vote in favor of the legislation if asked to again today.

## **The Future of Capital Punishment**

Although almost every interviewee was confident in his or her opinion that the creation of IDS has certainly played a part in the decline of the death penalty in North Carolina, many do not see the end of capital punishment in sight. Interviewees expressed comments such as that capital punishment is a “failure of society” and an “irrational practice”; however, as long as there are heinous murders occurring across the state and the press continues to publicize the gory details of these murders, capital punishment will continue to “stick around.” Many cited the decline in capital punishment in the 1960s and its recent frequency in the 1990s as an example of how support for the death penalty ebbs and flows. Because of this, some interviewees felt it was impossible to predict moving forward from this low point.

When the end does come around, how will it occur? Some interviewees firmly believe that the legislature will eventually vote to abolish capital punishment, not on moral grounds, but on the basis of cost-effectiveness. It is expensive for the State to pay for the extensive appeals process involved in capital trials, and at some point, the population will come to terms with the fact that this money is better used on something else. Other interviewees feel confident that the legislature will never outright vote to abolish it, but rather, that other laws that limit the death penalty, such as the Racial Justice Act (RJA), will decrease its frequency and lead to a de facto moratorium.

In the meantime, however, every interviewee believes that IDS will continue to aid in the decline in capital punishment.

## **Conclusion**

Following the completion of these interviews, it remains clear that IDS has played a significant role in the decline of capital punishment in North Carolina. Not only do the numbers demonstrate this, but the people who are directly involved with the day-to-day activities of IDS feel strongly that it is true. Most, if not all of those interviewed, believe that the *most significant* improvements that have arisen from the legislation are to the capital punishment cases, noting that these cases were the most vulnerable at the time IDS was created. Despite these improvements, however, most of those interviewed still believe that capital punishment will be around for a while – and when it ends, it likely will not be because of the direct actions of IDS.

Outside of those improvements, there is still significant room for improvement in the work of IDS, primarily in non-capital cases; however, with the current financial state of the economy, it will be difficult to improve upon the services that are in need. The current focus is simply maintaining the significant progress that IDS has made thus far.



## 5

### Conclusion

This paper looked at two varying perspectives on whether the Indigent Defense Services Act of 2000 has achieved its purpose of:

- (1) Enhanc[ing] oversight of the delivery of counsel and related services provided at State expense;
- (2) Improv[ing] the quality of representation and ensur[ing] the independence of counsel;
- (3) Establish[ing] uniform policies and procedures for the delivery of services;
- (4) Generat[ing] reliable statistical information in order to evaluate the services provided and funds expended; and
- (5) Deliver[ing] services in the most efficient and cost-effective manner without sacrificing quality representation<sup>94</sup>

In evaluating this purpose, capital punishment was the primary focus of the research, which looks at the perspective of the documents and reports issued about IDS, as well as the thoughts and opinions of many of the key players involved.

### Documentary Findings

When evaluating the documents through the prism of capital punishment, it is clear that this area has been a focus for IDS since its creation. IDS successfully established both the Office and the Commission, and these entities were then able to make the prescribed improvements for indigent defense services. Standards for the appointment and compensation of trial counsel, appellate counsel, post-conviction counsel, and expert witnesses at the capital level were established early on, when IDS took over appointment

---

<sup>94</sup> Indigent Defense Services Act. 2000. *Statutes at Large*. Article 39B, Subdivision IX, Chapter 7A.

power in these proceedings. With regard to compensation, uniform fees and hourly rates are now published for various services, and an “exceptional case policy” exists for cases that go above and beyond the reasonable expectations for a certain type of proceeding. Standards for qualification and hourly rates of pay also exist for mitigation specialists. The increased standardization for the process decreased the unpredictability that plagued indigent defense prior to the creation of IDS. Attorneys now have expectations about what they will be paid and how much time they should spend, and clients can typically rest assured that their appointed defense counsel will be well qualified and have the resources to prepare a satisfactory defense.

In addition to these uniform standards for appointment and compensation, more resources in the form of training and communication are now available. Trainings are organized through IDS, often times with the involvement of outside parties. These trainings are specific to specializations, such as capital defense. Although there have been significant improvements to trainings overall, capital punishment has not been the primary focus of these trainings, likely because of the increased opportunity for consultation through the Office of the Capital Defender. The creation of the website allows for online access to contact information for the staff of IDS, the rules of IDS, reports and data published about IDS, manuals, resources for capital proceedings, records and materials for trainings, the appellate brief bank, the capital trial motions index, and the forensic science resource bank (which includes an expert database, as well as lab protocols and procedures for examining and dealing with evidence). The Office also created listservs for attorneys on the appointment lists for different specializations. This allows for increased communication between attorneys in capital proceedings. The

improvements in communication and resource availability have an inherent impact on the quality of defense services, because these resources allow defense attorneys in capital proceedings to prepare well-researched cases through the utilization of proven tactics.

The Capital Case Costs and Dispositions Study, which looked at the accomplishments IDS has made in the realm of capital defense, found that the per case spending has not increased in capital cases, but that the overall budget has continued to grow due to the increasing caseload. The study also found that high profile, high expense cases are the exception, and that the spending in these cases, as well as others, is primarily driven by the decision of the prosecution to charge a defendant with first-degree murder and to proceed capitally. What was surprising about this finding was that, although the number of first-degree murder charges that arise out of potentially capital cases is high, the number of cases that actually end in a death sentence is very small, and many of them even end in guilty verdicts for charges of less than first-degree murder. This is an area for improvement in the future of indigent defense services, although it requires the cooperation of the prosecution. The documents also demonstrate that, although the overall budget for IDS has continued to grow, the rate of growth has significantly declined since the creation of IDS, while the rate of growth of overall caseload has continued to increase at a much faster rate.

The findings based on documents, reports, and data published by IDS and other sources about the accomplishments of IDS since its creation show evidence that IDS has worked tirelessly to make improvements to capital defense services, and that it has made these improvements in a cost-effective manner. This paper will now summarize these

accomplishments from the perspective of people who observe IDS's activities in their daily activities.

### **Stakeholders' Perspective**

The interviews generally corroborated the findings from the documentary research; however, the individuals tended to point out areas for future improvement that are impossible to glean from the perspective of the documents.

The interviewees suggested that the creation of IDS stemmed from concerns about the overall quality of defense services in North Carolina, primarily in the capital arena. Issues of innocence and poor defense attorneys, as well as the exponential growth of the budget for indigent services, were all points of concern that the Study Commission and General Assembly aimed to improve. Despite these noble goals, there was strong opposition to the legislation by many public defenders and criminal defense attorneys, as well as some judges and prosecutors. Many of these players did not like the idea of a bureaucracy in Raleigh governing the public defense system in rural areas without input from locals. In addition, many judges and defense attorneys did not want to see the end of the "good ole' boy" system of appointments that was used in many smaller districts across the state. As older defense attorneys and judges have aged out of the system, and new attorneys have moved into the field, support for IDS has increased.

The interviewees' recollection of what conditions of indigent defense looked like prior to the creation of IDS echoed the findings of the Study Commission. Trainings, standards, and statewide uniformity were virtually non-existent, and while this was not disastrous in some districts, others needed significant improvement in order to ensure the

quality of defense services in all indigent criminal proceedings. The conditions of indigent services have significantly improved since the creation of IDS – especially in the capital arena, according to interviewees. Although the documents show significant improvements to capital proceedings, the interviewees noted that the “most significant” improvements that IDS has made are to the capital system. Interviewees noted that other specialized areas, such as parental rights and juvenile proceedings, also see high levels of improvement due to the work of IDS.

Outside of these developments, however, the interviews provided a glimpse into continued areas for improvement, as well as the urgency surrounding some issues. First of all, there are several cases that are still not handled by IDS due to the lack of resources (including many superior court felonies and district court misdemeanors). In addition, the inability to truly evaluate the appointees poses a problem in that it is difficult to weed out the “bad” attorneys. And perhaps most importantly, the current fee cuts to state institutions, including IDS, create a significant problem, in that IDS is losing quality defense attorneys who simply cannot afford to stay on the appointment rosters.

While all interviewees felt strongly that IDS has had a “significant” impact on the decrease in capital punishment in North Carolina, especially when combined with other improvements to the system, they also did not see an end to capital punishment in North Carolina in the near future. In fact, the uncertainty surrounding the future of capital punishment was stunning, in that some felt that capital punishment could see another wave of activity, while others felt that capital punishment would continue to decline. And within the group of those who felt it would continue to decline, some felt that the

legislature would eventually vote to abolish it, while others believed that it would come to an end simply because juries refused to give capital verdicts.

## **Main Conclusions**

The culmination of this research led to five primary conclusions:

1. The creation of IDS resulted as a reaction to pressure from a range of different parties with varying concerns about indigent defense services, many of which had to do with the quality of defense attorneys in capital cases.
2. The most substantial improvements that IDS has made to the indigent defense system have been to capital proceedings.
3. IDS has had an impact on capital punishment in North Carolina, although it is impossible to determine the exact magnitude due to the various other improvements to the system that have also had an impact on capital punishment in the state.
4. There is still significant room for improvement within IDS; although, most of the needed improvements deal with non-capital work.
5. IDS has proven to be a cost-effective and efficient system. The growth rate in expenditures per disposition has continually decreased, and IDS has been able to take on more cases over the years.
6. IDS is facing the potential for deteriorating conditions in indigent defense due to the continued budget cuts and loss of quality attorneys who cannot afford to continue representing indigent clients.

It is clear that IDS has had great success in its endeavors, especially in the capital arena. The power of appointment, combined with the vast improvements to training, resources, standards, and uniformity, have created a system of capital proceedings that has led to systemic change. Not only have the number of death sentences gone down substantially since the creation of IDS in 2001, but North Carolina has not executed anyone since 2006.<sup>95</sup> This is due in part to the Racial Justice Act of 2009, which prohibits a death sentence on the basis of race.<sup>96</sup> What has been the price of this improvement to the capital system in North Carolina? Perhaps the high quality defense of North Carolinians who are facing non-capital crimes. Although this surely was not the agenda of the legislators, capital punishment seems to have been the natural priority upon the creation of IDS. In addition to the importance of quality defense in capital proceedings, the lack of power of appointment of counsel in non-capital cases really hurt the advance of defense in non-capital crimes. Although it is safe to say that the improvements to training, standards, uniformity, and resources have affected non-capital defense services, the quality of attorneys in these cases certainly has not advanced at the rate that capital cases have seen. The Capital Defender Office, specialized trainings, exceptional case policy, individualized standards for attorneys in capital cases, and power of appointment have made a substantial difference to the quality of defense in capital proceedings, and it will be interesting to see if North Carolinians can say the same about non-capital crimes moving into the future – especially with the current budget crisis looming.

---

<sup>95</sup> “Executions carried out under current death penalty statute.” *North Carolina Department of Public Safety*. <http://www.doc.state.nc.us/dop/deathpenalty/executed.htm> (February 28, 2012).

<sup>96</sup> North Carolina Racial Justice Act. 2009. *General Statutes*. Article 101, Chapter 15A.

## References

- “2010 Annual Summary Report.” North Carolina Department of Justice.  
<http://crimereporting.ncdoj.gov/Reports.aspx> (February 29, 2012).
- “ABA: Ten Principles of a Public Defense Delivery System.” *American Bar Association*:  
1.  
<http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.authcheckdam.pdf> (February 21, 2012).
- “Appendix to Part 2 – Appendix 2A: Standards for Lead and Associate Trial Counsel in Capital Cases.” *Indigent Defense Services*.  
<http://www.ncids.org/Rules%20&%20Procedures/IDS%20Rules/IDS%20Rules%20Part%202%20Appendix.pdf> (February 21, 2012).
- Baumgartner, F., & I. Unah (2010). The decline of capital punishment in North Carolina. Paper presented to the annual meeting of the American Society of Criminology, November. San Francisco, CA. <http://www.unc.edu/~fbaum/papers/Baumgartner-Unah-ASC-2010.pdf> (February 17, 2012).
- Chief Justice’s Advisory Committee on Defense of Indigents: Final Report. 1990.  
Submitted to the Honorable Chief Justice James G. Exum, Jr. p. 1-69
- Dardis, Frank E., Baumgartner, Frank R., Boydston, Amber E., De Boef, Suzanna and Shen, Fuyuan (2008). “Media Framing of Capital Punishment and Its Impact on Individuals' Cognitive Responses”, *Mass Communication and Society*.” 11:2, 115-140
- “Executions carried out under current death penalty statute.” *North Carolina Department of Public Safety*. <http://www.doc.state.nc.us/dop/deathpenalty/executed.htm> (February 28, 2012).
- “Exonerations by state.” Death Penalty Information Center.  
<http://deathpenaltyinfo.org/innocence-and-death-penalty#inn-st> (February 29, 2012).
- Eyewitness Identification Reform Act*. 2007. NC General Statutes. Chapter 15A, Article 14A.  
[http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_15A/Article\\_14A.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_15A/Article_14A.pdf) (February 29, 2012).
- “Facts about the Death Penalty” *Death Penalty Information Center*.  
<http://www.deathpenaltyinfo.org/home> (February 9, 2012).
- Hartness, Erin (2008). “Death Row Inmate Freed After 15 Years.” WRAL



- <http://www.wral.com/news/local/story/2669008/> (October 23, 2011).
- Indigent Defense Services Act*. 2000. *Statutes at Large*. Article 39B, Subdivision IX, Chapter 7A.
- “The Innocence List” *Death Penalty Information Center*.  
<http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row> (January 23, 2012).
- Ivarsson IV v. Office of Indigent Defense Services*. 2003. COA02-38. Court of Appeals of North Carolina.
- “The Judicial System in North Carolina.” *Administrative Office of the Courts*.  
<http://euro.ecom.cmu.edu/program/law/08-732/Courts/NorthCarolinaJudicialSystem.pdf> (February 21, 2012)., 15
- Maher, T. (2009). Worst of times, and best of times: The Eighth Amendment implications of increased procedural reliability on existing death sentences. *Elon Law Review*, 1, 95-112.
- N.C. General Assembly. 2011. *Report of the Commission on Indigent Defense Services*.  
[http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/Legislative%20Report%203\\_2011.pdf](http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/Legislative%20Report%203_2011.pdf) (February 21, 2012).
- N.C. General Assembly. Conference Committee. 12 July 2000. *Conference Report: Senate Bill 1323*. 1999 General Assembly. Second Session 2000.
- N.C. General Assembly. House of Representatives. 12 July 2000. *Special Message from the House of Representatives*. 1999 General Assembly. Second Session 2000.
- N.C. General Assembly. House of Representatives. 2000. *House Bill 1590: Amendment*. 1999 General Assembly. Second Session 2000.
- N.C. General Assembly. House of Representatives. 2000. *Roll Call on Indigent Defense Services, reading 2*.
- N.C. General Assembly. House of Representatives. 2000. *Roll Call on Indigent Defense Services, reading 3*.
- N.C. General Assembly. House of Representatives. Appropriations Committee. 20 June 2000. *Minutes*. 1999 General Assembly. Second Session 2000.
- N.C. General Assembly. Indigent Defense Study Commission. 2000. *Report and Recommendations*.  
<http://www.ncids.org/home/ids%20study%20commission%20report.pdf> (February 21, 2012).

- N.C. General Assembly. Senate. 12 July 2000. *Special Message from the Senate*. 1999 General Assembly. Second Session 2000.
- N.C. General Assembly. Senate. 1999. *Indigent Defense Services/Funds*. 1999 first ed.
- N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/2<sup>nd</sup> edition, reading 2*. 1999 session, second session 2000.
- N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/2<sup>nd</sup> edition, reading 3*. 1999 session, second session 2000.
- N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/3<sup>rd</sup> edition, reading 2*. 1999 session, second session 2000.
- N.C. General Assembly. Senate. 2000. *Recorded Vote on Indigent Defense Services/Funds, comm. sub/3<sup>rd</sup> edition, reading 3*. 1999 session, second session 2000.
- N.C. General Assembly. Senate. Judiciary II. 2000. *Bill Analysis: Senate Bill 1323: Indigent Defense Services/Funds*. First ed. 1999 General Assembly.
- N.C. General Assembly. Senate. Judiciary II. 20 June 2000. *Minutes*. 1999 General Assembly. Second Session 2000.
- “North Carolina Office of Indigent Defense Services Fact Sheet.” 2011. *Indigent Defense Services*.
- “Part 2: Rules for Providing Legal Representation in Capital Cases.” *Indigent Defense Services*.  
<http://www.ncids.org/Rules%20&%20Procedures/IDS%20Rules/IDS%20Rules%20Part%202.pdf> (October 31, 2011).
- Prosecutorial Discretion*. 2001. *NC General Statutes. Chapter 15A, Article 100-2004*.  
[www.ncga.state.nc.us/Sessions/2001/Bills/Senate/pdf/S647v1.pdf](http://www.ncga.state.nc.us/Sessions/2001/Bills/Senate/pdf/S647v1.pdf) (February 29, 2012).
- Radelet, M. & G. Pierce (2012). Race and death sentencing in North Carolina 1980-2007.
- Robinson, Matthew (2011). “The Death Penalty in North Carolina: A Summary of the Data and Scientific Studies.”  
[pccj.appstate.edu/ncdeathpenalty/ncdeathpenaltyfinal.pdf](http://pccj.appstate.edu/ncdeathpenalty/ncdeathpenaltyfinal.pdf) (February 29, 2012).

“Standards for Mitigation Specialists in Capital Cases.” *Indigent Defense Services*.  
<http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/MitigationStandards.pdf> (February 21, 2012).

“Training and Reference Materials Index.” *Indigent Defense Services*.  
<http://www.ncids.org/Defender%20Training/Training%20Index.htm> (February 21, 2012).

*Woodson Et Al v. North Carolina*. 1976. 428 U.S. 280.