

IDS' Mission, Resources & Policies

2015 New Misdemeanor Defender Program

Presented By:

Danielle Carman

IDS Assistant Director/General Counsel

Overview

- IDS' Mission
- Relationship Between IDS and AOC
- Some Things IDS Does to Enhance Quality & Efficiency
- What IDS Needs from PD Offices
- Upcoming Legislative Study of IDS
- What do PD Offices, PAC, and Contract Attorneys Need from IDS?

IDS' Mission

Effective July 2001, IDS was created to:

- Enhance oversight of delivery of counsel and related services
- Improve quality of representation and ensure independence of counsel
- Establish uniform policies and procedures for delivery of services
- Generate reliable statistical information to evaluate services provided and funds expended
- Deliver services in most efficient and cost-effective manner without sacrificing quality representation

In “Short”

- IDS’ statutory mission is to enhance quality, uniformity, efficiency, accountability, and cost-effectiveness of indigent defense services in North Carolina
- IDS’ policies are all aimed at fulfilling one or more aspect of that statutory mission

Relationship Between IDS and AOC

(See G.S. 7A-498.2)

IDS Independence

- In many ways, IDS is independent of AOC:
 - IDS' budget is separate from AOC's budget, and AOC has no authority to modify IDS' budget
 - IDS exercises its powers independently of AOC
 - AOC budget policies—such as limitations on hiring and travel, mileage reimbursement rate, etc.—do not apply to IDS unless IDS Director chooses to apply them

Continuing AOC Support

- But AOC has continuing statutory obligation to provide general administrative support to IDS, including purchasing, payroll, human resources, and similar services
- AOC Human Resources is there to serve PD offices along with the rest of the Judicial Branch
 - AOC's workplace harassment policies apply to your offices
 - If you have any concerns about workplace harassment, please notify AOC HR and IDS immediately

Some Things IDS Does to Enhance Quality & Efficiency

1. Legislative Advocacy and a Seat at the Table for Indigent Defense

- IDS regularly advocates for indigent defense at the General Assembly
- IDS makes one appointment to NC Judicial Council, in addition to the public defender appointment (G.S. 7A-409)
- IDS worked to get two defense attorneys appointed to AOC Criminal Forms Committee
- IDS works closely with NC Advocates for Justice and other groups on various initiatives impacting defense function

2. Systemic Reform Efforts

- IDS regularly engages in studies and initiatives that are designed to prompt reforms that would enhance quality and/or efficiency
- In prior years, General Assembly has directed IDS to, e.g.:
 - Consult with AOC, DA's Conference, Sentencing Commission, and others about proposals to reduce future costs, including reclassification of minor misdemeanors as infractions
 - Explore pilot tests of more efficient scheduling practices that would minimize defense attorney wait time

Class 3 Misdemeanors

- Of course, after IDS recommended reclassifying MDs as infractions, the 2013 General Assembly reclassified a number of MDs as Class 3 and then eliminated the right to counsel for Class 3 MD cases involving defendants who have no more than 3 prior convictions
- General Assembly also cut IDS' budget by \$2 million each year of biennium based on this change
- We understand that judges often do not know defendants' prior record levels at the time they are determining entitlement to counsel, and that this change has caused a lot of confusion and errors
- We have worked to educate legislators about the problems this has caused but, so far, they have not been receptive to reclassifying MDs as infractions

We're Interested in Your Thoughts

- Even if there is not a legislative directive for IDS to investigate and propose reforms in a specific area, we are always interested in systemic reforms that would enhance quality and efficiency
- If you have ideas based on your work on the front lines, please let us know!

3. Improved Defender Training

- IDS has a standing contract with the School of Government (“SOG”) to provide defender education programs for PDs and for private assigned counsel (“PAC”) and contract attorneys who do a significant amount of indigent work
- Thanks to the hard work of SOG faculty and staff, IDS has developed a number of new and innovative training programs

Some Examples of Programs

- 5-day trial advocacy school for public defenders and PAC
- Hands-on training program for appellate attorneys
- Specialized programs for attorneys who handle involuntary commitment cases, juvenile delinquency cases, and abuse/neglect/dependency and TPR cases
- Regional training for contractors
- Training for public defender staff investigators

On-Line Training

- In response to continuing budget limitations, SOG has also concentrated on new on-line training programs, such as:
 - “Webinars on demand”
 - “Virtual CLEs:” Self-paced on-line presentations that may be accessed from any computer with an Internet connection

NCAJ Membership

- IDS has a contract with the NC Advocates for Justice, which entitles APDs to some benefits of NCAJ membership, including
 - Subscription to NCAJ criminal defense listserv
 - 70 free CLEs, with IDS paying for additional CLEs at public service rate
 - Each APD receives CD-ROM of NCAJ's DWI Trial Notebook
- We hope this benefit is helpful to your practices

Non-IDS Programs

- IDS sometimes approves requests for APDs to attend specialized training programs that are sponsored by groups other than IDS and SOG, especially if they address topics that are not covered by the IDS-SOG calendar and the attendee is willing to serve as a future trainer on the topic
- IDS probably will not be in a position to approve special training requests this fiscal year because of budget restrictions

Special Training

- But to seek approval to attend such a program, you need to complete form AOC-A-182 (“Request for Special Travel and Training”) and submit it to the IDS Office **in advance**
 - *Note: You do NOT need to get advance approval to register for one of the prepaid NCAJ CLEs*
 - *If we exceed 70 CLEs, you will have to seek advance approval*

4. Additional Resources Available on IDS Website (www.ncids.org)

- In addition to the training schedule and materials from past programs, IDS website includes a wealth of materials that are helpful to public defenders, PAC, and contract attorneys
- Examples include:
 - Orientation Notebook for new APDs
 - North Carolina Indigent Defense Manual Series
 - Motions and brief banks
 - Forensic Resources page that includes a searchable expert database and State Crime Lab procedures and protocols

5. IDS Listservs

- IDS has created a number of listservs to facilitate communication with and between attorneys across the state who handle various types of cases
- Listservs have proven to be a great way to enhance communication and resource-sharing

IDS Listservs

- Chief public defenders and assistant public defenders
- Investigators in public defender offices and private investigators
- Public defender support staff
- Capital trial attorneys
- Capital post-conviction attorneys
- Appellate attorneys
- Attorneys who represent parent-respondents in A/N/D and TPR cases
- Attorneys who handle juvenile delinquency cases
- Attorneys who handle involuntary commitment cases
- Attorneys who handle child-support contempt cases
- IDS contract attorneys

6. Performance Guidelines

- IDS has developed performance guidelines for:
 - non-capital criminal cases at trial level
 - juveniles delinquency proceedings
 - abuse/neglect/dependency and termination of parental rights cases
- All guidelines are posted on IDS website

What Guidelines Are and Are Not

- Guidelines *are*:
 - Checklist of best practices and things counsel should consider at each stage of a proceeding
 - Training tool
 - Resource for new and experienced attorneys
 - Tool for legislative advocacy and systemic reform
- Guidelines are *not* absolute standards or mandates

Relationship Between Caseloads & Performance Guidelines

- We understand that performance guidelines are related to caseloads, and will continue to work with public defenders and legislators to address caseloads and resources
- We welcome constructive feedback from defenders about the obstacles you all face, and the resources you need to incorporate the guidelines into your practices

What IDS Needs From PD Offices

IDS Needs PD Offices to:

1. Provide Quality Legal Services for Clients
2. Report Data Accurately & Reliably
3. Submit Fee Applications to Judges in Cases that End in Conviction

1. Quality Legal Services for Clients

- Most importantly, IDS wants PD offices . . . and PAC . . . and contract attorneys to provide quality legal representation for indigent clients
- We hope the resources we provide help you do your jobs better
- If we can provide other resources that would assist you, please let us know

2. Accurate & Reliable PD Data Reporting


It all hinges on your fee applications ...

- After a PD office completes a case, a fee application is prepared
- Each fee application is then compiled into an on-line disposition reporting system that documents the number of cases disposed by highest charge and attorney
 - Rules for counting closed cases are posted on IDS website

We Collect this Data Because it is Required by Law

G.S. 7A-498.9:

The IDS Office must report to the General Assembly by March 1 of each year about the following matters:

- 
- (1) **The volume and cost of cases handled in each district by assigned counsel or public defenders;**
 - (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
 - (3) Plans for changes in rules, standards, or regulations in the upcoming year; and
 - (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services.

It's Also in Our Interests

- To justify our budget requests, IDS needs data that shows why we need more money
- Overall court data alone would suggest that IDS' budget should not be increased, because the total number of court dispositions over the past several years has remained relatively flat
- But percentage of cases funded out of IDS' budget has steadily increased over same time period

Creates More Resources for Your Offices

- Until this fiscal year, the Legislature has routinely approved new attorney and support positions for IDS to allocate across all defender offices
 - IDS does not have that authority this fiscal year for reasons that will be discussed later
- IDS has authorized new contracts in PD counties to relieve overburdened PD offices
- IDS has upgraded several administrative positions in PD offices

Your Chief PD Needs this Data:

- To assess APD caseloads
- To assess demands on support staff
- To demonstrate with hard data the needs of your office
- To support a request for a new attorney or support staff position when authorized by the Legislature

You Need this Data:

- To assess your own caseload
- To help you demonstrate your performance and value to your supervisor
 - House version of budget for this fiscal year includes 2% salary increase for state employees, but Senate version does not
 - Neither version prohibits merit increases, but IDS is still carrying significant debt from prior years (despite dramatic cuts to PAC rates)

Grass is Not Greener on the “Other Side”

- Private bar took a huge hit with the rate reductions in May 2011, especially for district court cases, and contract rates are designed to generate even more savings

	Old PAC Rate	Current PAC Rate
District CT	\$75	\$55
Superior Court	\$75	\$60
High-Level Felonies	\$75	\$70

APD Salaries vs. PAC Rate Cuts

- IDS Commission focused needed reductions on PAC rates and did not cut APD salaries for 3 primary reasons:
 - General Assembly appeared to direct that all reductions be focused on PAC
 - Commission did not want to inject a lack of pay parity between full-time prosecutors and full-time defense attorneys
 - APDs cannot supplement their income with retained cases the way PAC can

3. Recoupment: Fee Applications in Cases that End in Conviction

- G.S. 7A-455 provides that, in all cases that end in a conviction, the court shall direct entry of a civil judgment against the indigent person for the money value of services rendered by a public defender
- Thus, in all such cases, public defenders are required by statute to complete a fee application and submit it to the Court

Recoupment Strengthens the Indigent Defense System

- All funds collected through recoupment go back to the indigent defense fund to pay for services to future clients, and IDS' projected receipts from recoupment are added into our budget each year
- In FY14, IDS collected a total of \$12.9 million in recoupment revenues
- In FY15, IDS' recoupment revenues declined by almost \$3 million due to changes to the state tax code and withholding tables
 - May lead to renewed legislative focus on indigency screening/verification
- Recoupment is even more important in these fiscal times
- If we fall short on our collections, we fall short on our ability to serve our clients

Upcoming Legislative Study

Study Directive

- Both House and Senate versions of 2015 Appropriations Act direct a study of IDS to “determine whether changes should be made to the ways in which appropriated funds are used to provide legal assistance and representation to indigent persons”
- Senate version also directs a study of “creation and implementation of fee schedules” to compensate PAC
 - Legislators appear to continue to be opposed to hourly PAC rosters
- Findings and recommendations are to be reported when General Assembly reconvenes for 2016 short session in May 2016

Regional Meeting Series

- In preparation for that study, IDS Commission is holding a series of meetings with defense attorneys across the State during September, October, and November
- One meeting in each Judicial Division
- Dates, times, and locations are on IDS website
- We encourage you to attend one or more meetings!

Maintaining Status Quo

- Legislators want to maintain status quo during study
- So, unlike past budget bills, the current one:
 - Does not give IDS authority to create new positions in defender offices
 - Does not direct IDS to issue RFPs and expand contract system

Maintaining Status Quo

- We expect study to look at effectiveness of all service delivery systems—including PAC, PDs, and contracts—and to result in some legislative directive about how best to use various systems
- In the meantime, IDS plans to continue all existing systems where they are now, including honoring existing contracts
- So the contract system will continue to exist in many counties, at least for some time

Requests for Proposals & Contracts

- Contract attorneys handle “caseload units”
- Each “unit” represents a group of cases that will take roughly 20% of one attorney’s billable time (or approximately 360 billable hours per year)
 - Based on 3 fiscal years of data on PAC time claims
- Actual amount of time will depend on actual case assignments and efficiency of contractors and courts
- RFPs specify number of units available for each contract category, such as high- and low-level felonies, in each county

Number of Cases and Monthly Compensation

- Each unit represents range of annual disposed cases
 - E.g., for low-level felonies, 56-68 cases per year
- For most case types, IDS seeks qualifying offers only and pays a set monthly fee per unit
 - Monthly pay covers attorney time and routine expenses
 - Amount of monthly pay per unit is in RFPs
 - Per unit pay is uniform throughout state

Unit Compensation

- Contracts allow for adjustments to amount of monthly pay if actual number of disposed cases is significantly higher/lower than projected
- Contract attorneys are permitted to seek extraordinary pay for extraordinary cases and extraordinary expenses
- IDS continues to fund interpreters and pre-approved expert services outside of the contracts

Staggered by Geography

- First three RFPs sought offers for adult non-capital criminal cases and treatment courts in:
 - District 3A: Pitt
 - District 8: Greene, Lenoir, Wayne
 - District 9: Franklin, Granville, Vance, Warren
 - District 9A: Caswell, Person
 - District 10: Wake
 - District 11: Harnett, Johnston, Lee
 - District 14: Durham
 - District 15A: Alamance
 - District 15B: Chatham, Orange

Different than PAC Roster System

- Unlike case-by-case system of appointing from rotational roster, contract attorneys:
 - Cannot go on and off indigent lists
 - Are expected to handle their percentage of covered cases during contract period
 - Are being paid up front for an expected number of dispositions and must complete all assigned cases at conclusion of contract
 - *Should not file motions to withdraw at end of contract!!*

Case Assignments

- Judges, Clerks, and PD Offices still assign individual cases, but assignments are from lists of contract attorneys
- IDS staff work with local system actors to ensure that each contractor receives contracted-for percentage of local caseload
- IDS monitors attorney caseloads via on-line reporting system and contacts local actors if numbers get too far out of alignment

New Resources

- Shift to contract system has required new infrastructure and IDS staff, which also provides new resources for contractors, courts, and clients
- Two new Regional Defenders:
 - Provide support, training, and oversight to contract attorneys in their areas
 - Help local officials address problems that may arise
 - Resource for client complaints

What do PD Offices, PAC,
and Contract Attorneys Need
from IDS?

How Can IDS Help You?

- We want to know how IDS can help you, and welcome all feedback and suggestions
- Contact information for some IDS staff members is listed on the next screen
- Do you have any questions or comments to share at this time?

Contact Information for Some IDS Staff

- Tom Maher, Executive Director
Thomas.K.Maher@nccourts.org
- Danielle Carman, Assistant Director/General Counsel
Danielle.M.Carman@nccourts.org
- Elisa Wolper, Chief Financial Officer
Elisa.Wolper@nccourts.org
- Susan Brooks, Public Defender Administrator
Susan.E.Brooks@nccourts.org
- Beverly McJunkin, Office Manager
Beverly.M.McJunkin@nccourts.org