The Challenge: Evaluating Indigent Defense


By Margaret A. Gressens
and Daryl V. Atkinson
ABOUT THE NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act of 2000, creating the Office of Indigent Defense Services (IDS) and charging it with the responsibility of overseeing the provision of legal representation to indigent defendants in North Carolina. The cornerstone of IDS’s mission is to ensure that poor people have the same legal protections as everyone else. Our goals are to ensure that every client is provided with an attorney that has the legal qualifications, training, and resources needed to be an effective advocate and to manage the state’s indigent defense fund in an efficient and equitable manner. North Carolina’s passage of the IDS Act makes it a national leader in the development of indigent defense programs.

North Carolina has 100 counties within 43 judicial districts, and the criminal justice system can vary within each county. North Carolina’s indigent defense services are organized around these county-based systems. Services are provided by either a public defender, court appointed attorney, or contractual agreements. As of 2012, 26 counties have public-defender-based systems, which together handle approximately 34% of the state’s indigent defense caseload. Every year, over 2,500 indigent defense attorneys represent more than 275,000 North Carolina citizens who face potential incarceration by the state.

ACKNOWLEDGEMENTS

NCSEP staff would like to thank Rhoda Billings, former Chief Justice of the Supreme Court of North Carolina, retired law professor from Wake Forest University, member of the National Committee on the Right to Counsel established by the Constitution Project, and former Vice Chair of the IDS Commission for her input and support of NCSEP, as well as the many hours she spent carefully reviewing the performance indicators contained in this guide.

NCSEP staff also would like to thank the Open Society Fund for their generous support of the JSERI project and NCSEP and for enabling NCSEP to move forward to the next phase: operationalizing a significant number of the performance indicators.
ABOUT THE SYSTEMS EVALUATION PROJECT

Across the country, indigent defense systems lack effective program evaluation, which can result in poor quality services, inefficient resource allocation, and wasted taxpayer dollars. The North Carolina Systems Evaluation Project (NCSEP) was created to measure client outcomes and assess system performance. With data driven evaluation tools IDS will be able to improve the quality of legal representation for the poor, increase system efficiency, and quantify the social and economic benefits that quality indigent defense services generate for our clients, the criminal justice system, and the community.

ABOUT THE AUTHORS

Margaret A. Gressens joined IDS as Research Director in 2001 when the IDS office was established. Ms. Gressens has over 20 years of social and economic research, policy analysis, and program evaluation experience and has spent the last decade focused on indigent defense research. Her professional career has been devoted to conducting research to promote social change. Ms. Gressens serves on the Measures for Justice Data Council and is an advisory board member of the NLADA’s Research & Data Analysis Advisory Committee. She received her B.A. in Women’s Studies/Development Studies from Brown University, Providence, Rhode Island and a M.P.A from the University of Alaska, Anchorage, Alaska. From 1996 to 2000, Ms. Gressens served as a Health Planner for the Municipality of Anchorage, Department of Health and Human Services (DHHS), where she directed a project that measured the health and quality of life of the municipality. Prior to DHHS, Ms. Gressens was Assistant Director of the Real Security Education Project for the Institute for Policy Studies, in Washington, DC, where she co-designed a research and education project on the impact of U.S. foreign policy on the U.S. and the international economy. Ms. Gressens also has worked for the Institute for Social and Economic Research, University of Alaska and for the Office of United States Senator Daniel Patrick Moynihan (NY), Washington DC.

Daryl V. Atkinson served as the Systems Evaluation Project Coordinator and co-managed the Collateral Consequences Assessment Tool (C-CAT) during his tenure at IDS. C-CAT is an online searchable database that allows the user to identify the civil disabilities triggered by North Carolina arrests, indictments, and convictions. Mr. Atkinson serves on the advisory committee for the American Bar Association’s collateral consequence project. In February 2012, Mr. Atkinson became a staff attorney at the Southern Coalition for Social Justice focusing on criminal justice reform issues. Mr. Atkinson received a B.A. in Political Science from Benedict College, Columbia, SC and a J.D. from the University of St. Thomas School of Law, Minneapolis, MN. Since moving to North Carolina in 2007, Mr. Atkinson has been active in both the prisoner reentry and legal service communities. He is a founding member of the North Carolina Second Chance Alliance, a burgeoning statewide coalition of advocacy organizations, service providers, faith-based organizations and community leaders that have come together to achieve the safe and successful reintegration of adults and juveniles returning home from incarceration. Moreover, Mr. Atkinson served on a subcommittee of Governor Beverly Perdue’s Task Force to Stop Repeat Offenders. Mr. Atkinson and the Durham Second Chance Alliance led the first successful Ban the Box campaign in North Carolina, which resulted in the City of Durham adopting an administrative policy that removed the question about criminal convictions from the city employment application.
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North Carolina Office of Indigent Defense Services

North Carolina’s Office of Indigent Defense Services (NCIDS) oversees the provision of defense attorneys to North Carolina citizens who are charged with a crime but cannot afford legal counsel on their own. The right to counsel of persons accused of a crime is essential to protect individuals from being falsely imprisoned and to ensure a fair process and just outcomes. Protecting individuals from being deprived of life, liberty, or property without due process of law is fundamental to American freedom and a protection guaranteed by the U.S. Constitution.

Evaluating Indigent Defense System Performance

The question facing indigent defense services across the nation is how to measure the quality and cost-effectiveness of our indigent defense systems. How well do we meet the needs of our clients, the criminal justice system, and the community? What are our indigent defense system outcomes?

Indigent defense needs what other large scale systems, such as health care, have: the ability to collect and analyze indicators that measure whether indigent defense is achieving its goals. For example, if one goal of a successful indigent defense system is to maximize the opportunity for a client to be released from jail prior to trial, then indicators can be used to measure how well this is achieved. Data for key indicators, such as the percentage of clients incarcerated throughout the proceedings, the number of days of pretrial incarceration, the amount and conditions of bond, the number of clients who receive representation at each of the early stages of the process, the number of bond reduction motions filed and granted, and the number of bond revocations entered, can be collected and analyzed. Analysis of these indicators may reveal that attorneys from a public defender’s office are challenging pretrial incarceration and obtaining pretrial release at a different rate than private appointed or retained attorneys or pro se defendants, and that the clients who are released do comply with their bond conditions. This information will allow policy makers and managers to make more informed decisions about bond policy and about the benefits of active litigation regarding pretrial release as well as identify how to improve these services. Every day we lack this type of evaluation leads to more missed opportunities for understanding, improving, and more effectively advocating for indigent defense needs and for system reform. With 1 in every 31 adults in the U.S., or 7.3 million persons, either in prison, in jail, or on probation or parole, it is vital that indigent defense undertake evidence-based program evaluation.


NCIDS created the North Carolina Systems Evaluation Project (NCSEP) to measure system performance. Yet, measuring the quality and cost-effectiveness of the legal representation states provide to their most vulnerable populations had not been done before in the U.S. nor had the indigent defense community developed metrics to assess system performance. In 2005, NCIDS established the NC Systems Evaluation Project (NCSEP) to develop the means to evaluate North Carolina’s indigent defense system on an ongoing basis. After conducting extensive research, hosting focus groups with court system and community stakeholders, including judges, prosecutors, law enforcement, probation, and members of the business community, and conducting surveys and discussion groups with former indigent defense clients, NCSEP developed

this set of metrics to evaluate indigent defense system performance. For more information on NCSEP and to download research projects, visit the NCIDS website (www.ncids.org) and select Research & Reports and then Systems Evaluation Project.

This guide represents a landmark event for indigent defense. It defines the goals, objectives, and indicators of providing quality indigent defense representation and provides a blue-print for indigent defense agencies across the country to measure system performance. The guide presents a set of metrics to quantify system and client outcomes for indigent defense employing the same methodology the nation uses to assess the country’s economic health, or public health agencies use to measure community health, and even sports teams use to evaluate and predict team performance—the use of statistical indicators to measure performance.

The ability to perform program evaluation has been lacking in the operation of indigent defense systems across the country. For decades, the key obstacle has been the simple fact that indigent defense agencies have not known what to measure to assess system performance. In the past, indigent defense has focused on measuring the resources available to attorneys to perform their work, such as access to investigators or attorney workloads. While these efforts have been quite valuable, they have fallen short because they do not measure indigent defense outcomes and it is difficult, if not impossible, to identify best practices or quantify the benefits of indigent defense to the court system or the community if you cannot identify and quantify your system outcomes. The indicators identified in this guide go beyond measuring inputs or processes. For the first time, indigent defense has a set of metrics that will enable indigent defense agencies to quantify client and system outcomes, such as the rate at which clients are released prior to trial, or receive a non-active sentence, or face civil penalties attached to their criminal offenses (collateral consequences). Employing these metrics will enable indigent defense agencies to conduct effective research-based evaluations that can identify effective practices, strengths and weaknesses within their system, and areas where system reform is needed.

NCSEP Next Steps: Operationalizing NCSEP Performance Indicators

Next year marks the 50th anniversary of the U.S. Supreme Court decision deeming the right to counsel fundamental and essential to fair trials (Gideon v. Wainwright). Yet indigent defense services in the United States are in a perpetual state of crisis. Without accurate, verifiable, objective data, decision-makers and the public are left to form attitudes and create policy based solely on anecdotal information, speculation, and bias, which makes it difficult for indigent defense agencies to advocate for adequate resources, system improvements, and criminal justice policies that make sense.

Meet Rebecca: A Hypothetical Case Study in How System Evaluation Can Make a Real Difference

Scenario 1
Rebecca L., a 20-year-old single mother of two children, is arrested and charged with shoplifting a winter coat (cost $75) and providing false information to the police. Two days after her arrest, Rebecca appears before a magistrate but is not represented by counsel. The magistrate sets bond at $1,000 without any background information on Rebecca’s ties to the community or financial resources. Rebecca works as a grocery store clerk and struggles to provide for her family. She is unable to scrape up ten percent of her bond amount in order to secure release through a bail bondsman. Rebecca’s next court appearance is two weeks away and she will lose her job if she misses work for that long. In addition, the rent for her apartment is due and her children have been in the custody of a local social services agency since her arrest.

Scenario 2
A year before Rebecca’s arrest, NCSEP measured a number of indicators associated with pretrial release in counties across the state. Over the course of the evaluation, data revealed that Blackacre, the county where Rebecca lived, had both the highest average misdemeanor bond amounts and the highest percentage of clients incarcerated throughout pretrial proceedings and no appreciable difference in their failure to appear rate for defendants. Meanwhile, Blackacre was expending $55 per day per incarcerated defendant for an average of 40 days for misdemeanor pretrial incarceration. In addition, defense attorneys in Blackacre were not appointed to a case until after the bond hearing, and NCSEP data revealed that the majority of district court judges rarely granted bond reduction motions.

NCSEP staff presented these findings to local political and criminal justice stakeholders, and detailed how the county’s current policies regarding bond amounts and the appointment of counsel resulted in jail overcrowding, wasted taxpayer resources, family disruption that was counter-productive for children, and disproportionate punishment for defendants. Subsequently, a number of Blackacre policies changed, including lowering of average misdemeanor bond amounts and defense attorney representation at bond hearings, which provided magistrates with more complete information on which to make more informed bond decisions. Months later, when Rebecca was arrested, the policy changes were in effect, which resulted in Rebecca getting a reasonable bond amount for the alleged misdemeanor offense. Rebecca’s family was able to post bond and get her released prior to trial; as a result, she maintained her job and her apartment, and her children avoided foster care. Moreover, the community benefited from reductions in jail and social service costs and increases in tax revenues.
To address this endemic problem, NCSEP and the National Legal Aid & Defenders Association (NLADA)\(^2\) have partnered together on a new initiative, the Justice Standards, Evaluation and Research Initiatives (JSERI).

The NLADA is spearheading the new JSERI initiative to help expand the research capacity of the indigent defense community. Through leading by example, developing tools, resources, training, shared technology, and assisting in research projects, JSERI will work to build the capacity of indigent defense agencies across the country to conduct research and data analysis in-house.

NCIDS is one of the few indigent defense agencies in the country with a research department. For the last decade, the NCIDS Executive Director and 13-member IDS Commission have had access to research and data analysis to help inform policy decisions, allocate resources, refute rumors and inaccuracies, and advocate for adequate funding and system reform based on facts, rather than anecdotes.

As one initiative under the JSERI project, NCSEP will work with two additional indigent defense agencies or pilot sites over the next 18 months to develop the performance indicators identified in this guide in three areas—case outcomes, access to attorney, and pretrial release—and will share our results with the indigent defense community. In addition, NCSEP and the partner pilot sites will create Toolkits to help future indigent defense agencies perform similar research. The Toolkits will be designed and written for the non-researcher, walk agencies through the research steps involved with each indicator area, and provide templates, example data, and how-to instructions. NCSEP and NLADA also hope to develop training to assist indigent defense agencies in engaging in evidenced-based research. NCSEP and NLADA hope to leverage North Carolina’s evaluation model and research experience to foster similar research efforts throughout the indigent defense community. If your agency would like to join NCSEP’s listserv and receive project updates and products send an email to john.w.king@nccourts.org.

The NLADA has established a national research advisory board to facilitate and inform the work of JSERI. The national Research & Data Analysis Advisory Committee (RDA) consists of defenders, researchers, policy experts, and others wishing to support the creation of a strong foundation for indigent defense research. For more information on JSERI, visit NLADA’s website at [www.NLADA.org](http://www.NLADA.org) and select Defender Resources or call the JSERI Director at 202-452-0620.

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\(^2\) The National Legal Aid & Defender Association (NLADA), founded in 1911, is America’s oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. For 100 years, NLADA has pioneered access to justice, groundbreaking legislation, and the creation of critical institutions from the Sentencing Project to the Legal Services Corporation. A leader in the development of national standards for indigent defense services, NLADA provides advocacy, training, and technical assistance to indigent defense programs across the country.

NC Office of Indigent Defense Services—July 2012

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**Meet Joseph: A Hypothetical Case Study of How System Evaluation Can Inform Policy**

**Scenario 1**

Joseph T. was your typical all American kid. After high school he married his high school sweetheart and enrolled in the local community college to pursue a certificate in electrical contracting. A police investigation into several automobile break-ins on campus leads them to Joseph’s apartment. There, the officers find a car stereo system similar to ones reported missing and three tablets of Ecstasy. Joseph is charged with misdemeanor possession of stolen goods and possession of a Schedule 1 controlled substance, a Class H felony. The indigent defender assigned to Joseph’s case works out a plea bargain. If Joseph pleads guilty to the misdemeanor possession of stolen goods charge, the felony possession of a controlled substance charge would be dismissed. Joseph, at the direction of his attorney, agrees to the deal and resumes his life. Two years later, Joseph graduates from community college and goes before the Board that oversees electrical contractors to get his occupational license. At the licensing hearing, Joseph is horrified to find out that he is barred from getting his license because of the misdemeanor guilty plea. At the conclusion of the hearing, Joseph asks the poignant question, “Why didn’t anyone tell me this information before I invested all of this time and money in a field where I cannot get a job?”

**Scenario 2**

After the U.S. Supreme Court decision in *Padilla v. Kentucky*, the Indigent Defense Program (IDP) developed a searchable database that detailed the collateral consequences of criminal convictions. Recently, Joseph’s defender attended a CLE, hosted by IDP, where attorneys were taught how to use the database in their cases. During Joseph’s initial interview, the defender discovered that Joseph was in school pursuing a certificate in electrical contracting; thus, he knew the collateral consequence associated with this occupational license should be factored into Joseph’s case strategy. Joseph’s defender used the database to discover that Joseph would be barred from receiving his electrical contractor’s license if he pled guilty to a crime of moral turpitude. Interestingly enough, the defender discovered that the misdemeanor possession of stolen goods was a crime of moral turpitude, while the felony possession of controlled substance charge was not. Hence, Joseph could receive the contractor’s license if he pled guilty to the felony charge rather than the misdemeanor. After considering all the ramifications of pleading to a more serious charge, Joseph chose to preserve his career in electrical contracting. Joseph’s defender used this information to negotiate a plea agreement where Joseph pled guilty to the higher criminal charge so he could avoid the collateral sanction associated with the electrical contractor’s license. Joseph finished his education and ultimately received his electrical contractor’s license.
How System Performance Measures Will Enable NCIDS to Evaluate Indigent Defense Services in North Carolina

North Carolina’s Systems Evaluation Model

How the evaluation model will work is illustrated by the figure below, which is a pictorial representation of North Carolina’s approach to developing the indicators to measure system performance. First, we identified indigent defense system goals. Goals are broad statements that describe what we want the indigent defense system to achieve. Then, each goal was broken down into concrete, measurable objectives or clearly defined tasks that can be measured and that, if accomplished, will mean that the goal was achieved. Performance measures or indicators were then identified for each objective. Indicators are measures or statistical values used to determine the performance or achievement of a defined objective. The focus is on measuring outcomes or the desired results. For example, if you want to evaluate how well a baseball team is playing, you would measure how many games the team won (desired outcome), not how long or how often the team practiced (input). One innovation of NCSEP is that we intend to measure the impact of indigent defense performance on the criminal justice system and community well-being. When indigent defense works well, there will be system efficiencies that will benefit not only indigent defense practitioners, but the court system and the community. For example, one objective of a high quality indigent defense system is to secure pretrial release for a defendant when the defendant is not a flight or public safety risk. Defendants on pretrial release maintain their jobs and housing and continue to provide for their families, which, in turn, mean cost savings to local and state governments from reduced jail populations and reductions in unemployment benefits and other social service costs, such as foster care, food stamps, or public housing subsidies. In addition, unincarcerated defendants maintain their jobs, which translate into increased tax revenues that go toward supporting the community. Moreover, criminal justice research has shown that defendants who are not incarcerated pretrial have better case outcomes (see page 35).
Indicators and Program Evaluation: The Basics

Program evaluation consists of defining program goals and objectives and then identifying the indicators that will measure the extent to which the program achieved those goals and objectives. Program goals describe what you would like to accomplish. For example, municipal health departments want to protect and improve the health of their citizenry, and the Environmental Protection Agency (EPA) seeks to rehabilitate and safeguard the environment. Goals are broad statements that describe what you want to achieve. In contrast, objectives are clearly defined tasks or steps that, if accomplished, mean the goals have been achieved.

<table>
<thead>
<tr>
<th>Goals</th>
<th>Objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goals are broad</td>
<td>Objectives are narrow</td>
</tr>
<tr>
<td>Goals are general intentions</td>
<td>Objectives are precise</td>
</tr>
<tr>
<td>Goals are abstract</td>
<td>Objectives are concrete</td>
</tr>
<tr>
<td>Goals cannot be validated as is</td>
<td>Objectives can be validated</td>
</tr>
</tbody>
</table>

Performance measures and indicators are statistical measures that tell you whether you have achieved your objectives. Ideally, performance measures or indicators measure program outcomes, rather than inputs or processes. Inputs are resources, such as people, raw materials, energy, information, and finances, that are put into a system (such as an economy, manufacturing plant, or computer system) to produce desired results. Outcomes are the desired results. Once again, if you want to evaluate how well a baseball team is playing, you would measure how many games the team won (desired outcome), not how long or how often the team practiced (input).

For each goal and objective, NCSEP staff will collect and analyze data statewide as well as by county, region, type of attorney, race, gender, ethnicity, and other important disaggregating factors.

<table>
<thead>
<tr>
<th>Goal: Best Possible Outcomes for Clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>(not actual data)</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Clients are Not Incarcerated before Conviction (Pretrial Release)</td>
</tr>
<tr>
<td>% of defendants incarcerated throughout the proceedings</td>
</tr>
<tr>
<td># of days incarcerated pretrial</td>
</tr>
<tr>
<td>Average bond amounts by type of case</td>
</tr>
<tr>
<td>% of filed bond reduction motions as a % of pretrial incarcerated clients</td>
</tr>
<tr>
<td>% of filed bond reduction motions granted</td>
</tr>
<tr>
<td>% of defendants out on bond who failed to appear</td>
</tr>
</tbody>
</table>
Using the disaggregated data, NCSEP will be able to measure client outcomes, as well as perform the following:

- Assess strengths and weaknesses in the system
- Identify statewide norms, standards, goals, and benchmarks
- Identify best practices, especially those that are cost-effective
- Measure the impact of policy decisions, both internal and external, on performance and cost-effectiveness
- Enhance accountability and quality
- Maximize available resources to meet the needs of clients

This document lays out a blue-print for how NCIDS can measure indigent defense system performance through the development of statistical indicators. It identifies the goals and objectives of a quality indigent defense program, as well as the performance measures or indicators that will measure each objective. NCSEP staff hope the document will serve as a model for indigent defense services across the nation. The purpose is to measure system performance and system outcomes. It should be emphasized that, if there are occurrences of system performance failure, it does not mean that the failure is the fault of the individual attorney. Individuals work within a system and there are many factors that influence system outcomes that are beyond the control of the individual. Even more pertinent, system problems often require system-level solutions. Finally, please note that statistical indicators of system performance measure how well the system is performing. They do not explain why the system performs as it does. Identifying the causes and how to fix the problems are subsequent tasks.

For more information on the methodology NCSEP uses and how it applies to indigent defense, NCSEP has created a short web presentation that will walk you through the systems evaluation methodology. To view this presentation, visit the IDS website and select Research & Reports, then Systems Evaluation Project, and then Updates and Products.

### A Hypothetical Case Study in How Systems Evaluation Can Inform Policy

**Scenario 1**
Recently, the legislature in Blackacre directed the Indigent Defense Program (IDP) to change the way it pays attorneys who represent indigent defense clients. Blackacre has a mixed indigent defense delivery system; some clients are represented by salaried public defenders but the vast majority of clients are represented by private attorneys who are paid at an hourly rate. The legislature in Blackacre became convinced that paying attorneys an hourly rate was inefficient and contributed to burgeoning indigent defense costs. As a result, the legislature directed IDP to explore alternative payment structures. IDP did not have any way to compare how a change in payment structure would affect their overall cost-effectiveness or how such a change would affect the case outcomes of their clients. Thus, IDP could not respond to the legislature with evidence-based research and the legislature made a policy decision based on anecdotal stories from various court system actors. IDP elected to change to a flat fee system. Later, IDP began to receive a lot of complaints about how clients were being rushed through the system. In fact, a local newspaper coined an infamous phrase that stuck, “Come to Blackacre to receive McJustice.”

**Scenario 2**
After the legislature in Blackacre directed IDP to change the payment system for indigent defense attorneys, the research department at IDP conducted a study on how the proposed change would affect the overall cost-effectiveness and case outcomes of their clients. IDP is unique among indigent defense agencies because it has an in-house research department that can provide real-time quantitative analysis, which results in the agency implementing policies and practices based on evidence not anecdotes. The results from the study showed that changing the payment delivery system for attorneys to a flat fee system could be made cost neutral but the case outcomes for clients represented by attorneys being paid flat fees were substantially worse than the case outcomes for clients represented by attorneys being paid an hourly rate, including lower pretrial release rates. Moreover, the resulting lower pretrial release rates would increase jail costs and social service costs, as well as reduce tax revenues. IDP used the results of the study to persuade the legislature to abandon the proposed change in the payment delivery system for their attorneys.
How the Indigent Defense Performance Metrics Were Developed

The goals, objectives, and indicators identified in this guide were the result of extensive research, interviews with court system and community stakeholders, and client surveys and focus groups.

- **National Conference**: In 2005, SEP hosted a one-day national conference with indigent defense experts from around the country to discuss strategies for evaluating indigent defense and to present SEP’s vision for creating indigent defense performance measures. The conference generated a list of over 200 legal practitioners, academics, and researchers, who continue to receive updates on the progress of the project.

- **SEP Focus Groups**: SEP held discussions with other criminal justice stakeholders, as well as members of the non-profit and business communities, to hear their thoughts on the successes and limitations of our current indigent defense system. Focus group participants included judges, prosecutors, indigent defense attorneys, investigators, law enforcement, probation officers, correction officers, and members of community organizations and businesses.

- **Client Feedback**: IDS held discussions with former clients and conducted surveys at two correctional facilities to hear their thoughts on the legal representation they received and the representation they would have liked to have received.

- **SEP Literature Review**: SEP completed an extensive literature review of new developments in criminal justice research, innovations in defense practice, evaluation strategies, and models of practice that were successfully putting theory into practice. Our findings were published in a report, *The Challenge: Evaluating Indigent Defense, Innovation in the Art and Practice of Indigent Defense*, which can be downloaded from NCSEP’s website.

Throughout the evolution of NCSEP, NCSEP staff has sought the input and feedback of leaders within the indigent defense community. This feedback has been critical to ensuring that the North Carolina Model could serve as a national model for the rest of the indigent defense community. IDS would like to offer a special thanks to the following individuals for serving as national reviewers of the NCSEP Systems Performance Measures Guide: Rhoda Billings, former Chief Justice of the Supreme Court of North Carolina, retired law professor from Wake Forest University, and member of the National Committee on the Right to Counsel established by the Constitution Project; Melanca Clark, Senior Counselor, Access to Justice, United States Department of Justice; Tony Fabelo, Director of Research, The Council of State Governments Justice Center; Thomas Giovanni, Director, Community-Oriented Defender Network, Brennan Center for Justice; Norman Lefstein, Professor of Law and Dean Emeritus, Indiana School of Law-Indianapolis; Janet Moore, Professor of Law, University of Cincinnati College of Law, Commissioner, Ohio Public Defender Commission; and Curtis Watkins, Director, National Homecomers Academy, Phelps Stokes Fund.
**Key Indigent Defense Indicators**

This guide provides a blueprint detailing a comprehensive set of indigent defense metrics. It identifies indicators for all aspects of indigent defense, which are too many to implement all at once. So SEP borrowed a familiar concept among metric systems and developed a set of key or core indicators, similar to the economy's top 10 economic indicators or the Institute of Medicine's 20 key indicators of health. NCSEP has identified what we believe are the most important indicators to develop first. For example, one core indicator, if not the most important core indicator, is case outcomes, including determination of guilt, sentence, sentence type, and financial fees, fines, and restitution. Case outcome data is the building block for evaluating all aspects of the indigent defense system. If you want to evaluate bond motion practices, caseload standards, delivery systems, compensation systems, access to attorneys, alternative service models, such as holistic representation, and other aspects of the indigent defense system, you will evaluate these aspects in light of the case outcomes they produce.

**Key Indigent Defense System Performance Indicators**

<table>
<thead>
<tr>
<th>Goal</th>
<th>Objectives</th>
<th>Performance Measures/Indicators</th>
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</table>
| **A Defendant's Constitutional Right to an Attorney Is Preserved** | Access to attorney is real | 1. % of defendants who waive counsel the first time they appear before a judge (in court or by remote appearance)  
2. % of defendants who waive counsel and plead guilty the first time they appear before a judge (in court or by remote appearance)  
3. % of waivers made on the record |
| | Access to attorney is timely enough to preserve constitutional rights | 1. # of days between arrest and appointment of counsel  
2. # of days between arrest and first client interview with attorney by type of contact (in-person, video conference, telephone) |
| **Best Possible Outcomes for Clients** | The direct consequences of a criminal case are as beneficial to the client as possible | 1. Case Outcomes: determination of guilt, sentence, sentence type (active, intermediate, community), sentence length, and financial costs (court fees, fines, and restitution) by type of case  
2. % of convictions resulting in alternatives to incarceration |
<table>
<thead>
<tr>
<th>Goal</th>
<th>Objectives</th>
<th>Performance Measures/Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Best Possible Outcomes for Clients</strong> (cont.)</td>
<td>Clients are not incarcerated before conviction (pretrial release) and bond amounts are justified</td>
<td>1. # of days defendant incarcerated pretrial 2. Average bond amounts by type of case 3. Breakdown of conditions of release, e.g., released on own recognizance, secured bond, unsecured bond, etc. 4. Failure to appear rates by type of case</td>
</tr>
<tr>
<td></td>
<td>Cases are resolved in a timeframe least harmful to the client</td>
<td>1. # of days between arrest and resolution of the case 2. # of continuances per case by case type 3. % of cases resolved within X days by type of case</td>
</tr>
<tr>
<td></td>
<td>Procedural injustices are mitigated</td>
<td>1. # of days of lost work by type of case 2. # and % of clients who lost job pretrial by offense 3. # and % of defendants without active sentences who lost job, housing, driving privileges, scholarships, professional licenses, or were deported, or were required to register as sex offenders, etc.</td>
</tr>
<tr>
<td></td>
<td>Clients are aware of the collateral consequences of a criminal case and steps are taken to mitigate those consequences whenever possible</td>
<td>1. % of cases with collateral consequences attached to charged offenses by type of collateral consequence and type of case 2. % of cases with collateral consequences attached to convicted offense by type of collateral consequence and type of case</td>
</tr>
<tr>
<td></td>
<td>Disentangle client from criminal justice system</td>
<td>1. Recidivism rates 2. Probation failure rates 3. # and % of clients referred for evaluation or treatment for underlying dysfunction</td>
</tr>
<tr>
<td></td>
<td>Clients are satisfied with attorney</td>
<td>1. Client satisfaction survey scores</td>
</tr>
<tr>
<td><strong>Indigent Defense System is Accountable to Taxpayers</strong></td>
<td>Use taxpayer money as efficiently as possible</td>
<td>1. Cost per case by type of case 2. % of cases ending in failure to appear</td>
</tr>
</tbody>
</table>
### Key Indigent Defense System Performance Indicators (Continued)

<table>
<thead>
<tr>
<th>Goal</th>
<th>Objectives</th>
<th>Performance Measures/Indicators</th>
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<tbody>
<tr>
<td>Defendant's Receive the Same Quality Representation Regardless of Race, Gender, Ethnicity, or Income</td>
<td>A system without racial, gender, ethnic, or economic disparities</td>
<td>1. Analyze all indicators by race, gender, ethnicity, and income</td>
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</table>

The key indicators presented above represent a starting point for indigent defense agencies interested in conducting systems evaluation. NCSEP staff expect the list of key indicators to change and be refined as indigent defense agencies implement systems analysis and the defense community has a chance to review and discuss research findings from around the country.

### Overview of the Document

There are two parts to this document. First, a pictorial overview summarizes in a multi-page flow chart the goals, objectives, and performance measures/indicators that together define a quality indigent defense program. Following the pictorial summary, each goal and objective is presented in detail, along with a rationale and legal justification by esteemed legal academicians and practitioners that explains why each goal and objective is integral to a successful indigent defense system.
Part I: Overview of the Goals, Objectives, and Performance Measures/Indicators of a Quality Indigent Defense Program
## NCSEP Systems Performance Measures

<table>
<thead>
<tr>
<th>Goals (What We Want to Achieve)</th>
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<th>Performance Measures/Indicators (Measure Whether Objectives Are Achieved)</th>
<th>Impact on Criminal Justice System, Community, and Indigent Defense</th>
</tr>
</thead>
</table>
| **Counsel Is Provided When A Defendant Is Indigent** | • % of defendants denied appointed counsel who receive public benefits  
• % of defendants denied appointed counsel who later 1) proceed pro se, 2) waive counsel, or 3) hire a private attorney  
• % of defendants denied appointed counsel who hire a private attorney at significant financial hardship  
• % of defendants who are found not indigent and then appeal the denial of counsel (requires appeal mechanism to be in place) | • To be determined | |
| **Access to Attorney Is Real** | • % of defendants advised of right to counsel at the magistrate appearance  
• % of defendants who waive counsel the first time they appear before a judge (in court or by remote appearance)  
• % of defendants who waive counsel and plead guilty the first time they appear before a judge (in court or by remote appearance)  
• % of defendants who waive counsel the first time they appear before a judge (in court or by remote appearance) and subsequently request appointed counsel  
• % of waivers of counsel made on the record | • To be determined | • Cost-savings from reductions in jail population |
| **Access to Attorney Is Timely Enough To Preserve Constitutional Rights** | • # of days between arrest and appointment of counsel  
• # of days between arrest and 1st in-person contact with attorney  
• % of defendants with attorney at magistrate appearance  
• % of defendants with attorney the first time they appear before a judge (in court or by remote appearance) | • To be determined | • Cost-savings to local and state governments due to reductions in unemployment benefits, social service costs, and business losses due to workforce reductions |
| **Attorneys Are Free From Ethical Conflicts** | • % of cases with a potential conflict because the attorney is representing more than one co-defendant (or other conflict)  
• % of cases in which client waives conflict  
• % of cases in which an attorney withdraws due to a conflict | • To be determined | • Additional tax revenues when defendants remain employed |
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<tbody>
<tr>
<td>Clients Are Not Incarcerated</td>
<td>Prompt and Meaningful Determination of Probable Cause</td>
<td>% of filed bond reduction motions as a % of pretrial incarcerated clients</td>
<td>Cost-savings to local government due to reductions in jail population</td>
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<tr>
<td>Before Conviction (Pretrial Release) and Bond Amounts Are Justified</td>
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<td>% of filed bond reduction motions granted</td>
<td>Cost-savings to local and state governments due to reductions in unemployment benefits, social service costs, and business losses due to workforce reductions</td>
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<td>% of defendants incarcerated throughout the proceedings</td>
<td>Additional tax revenues when defendants remain employed</td>
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<td>% of days incarcerated pretrial</td>
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<td>Breakdown of conditions of release, e.g., released on own recognizance, secured bond, unsecured bond, etc.</td>
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<td>Average bond amounts by type of case</td>
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<td>Failure to appear rates by type of case</td>
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<td>% of defendants represented by attorney at magistrate appearance</td>
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<td>% of defendants represented by attorney the first time they appear before a judge (in court or by remote appearance)</td>
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<td>% of defendants released due to bond reductions</td>
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<td># and % of defendants who have bond revoked</td>
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<td>Impact of pretrial release on case outcomes</td>
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<td>% of defendants on Immigration and Customs Enforcement (ICE) holds</td>
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<td>% of felony cases with a probable cause hearing</td>
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<td>% of felony cases where counsel waived a probable cause hearing</td>
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<td>% of probable cause hearing results by type of ruling (dismissed, bound over to superior court, charge reduced by court, etc.)</td>
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<td>% of cases where the defendant is incarcerated until a probable cause hearing</td>
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<td>% of cases with &quot;X&quot; pretrial motions by type of amendment (different X for different case/amendment types), including discovery motions</td>
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<td>% of filed pretrial motions that were granted</td>
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<td>% of cases where defendant refused to make statements to police</td>
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<td># of days between arrest and probable cause hearing</td>
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<td>% of probable arrest and probable cause hearing</td>
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<td># of days between arrest and indictment by pretrial release status (prevent clients languishing in jail, cannot file pretrial motion until indictment)</td>
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<td>% of cases where defendant waives right to counsel during police interrogation and subsequently requests appointed counsel</td>
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<td># of days between indictment and resolution of case</td>
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<td>% of cases resolved within X days by type of case</td>
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<td># of continuances per case and type of hearing by requesting party</td>
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<td>% of continuance requests granted and denied by requesting party</td>
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<td>% of cases with speedy trial motions as a ratio to the length of pretrial incarceration</td>
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<td>% of cases resolved within X days by type of case</td>
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<th>Objectives/Outcomes: Tasks to Complete Goal</th>
<th>Performance Measures/Indicators: Measure Whether Objectives Are Achieved</th>
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<tr>
<td>The Direct Consequences of a Criminal Case Are as Beneficial to the Client as Possible</td>
<td>Case outcomes, including determination of guilt, sentence, sentence type (active, intermediate, community), and financial costs (fines, restitution, etc.) by type of attorney</td>
<td>To be determined</td>
<td>Cost-savings from reduced jail and prison populations, Reduced recidivism rates, Cost savings from reduced recidivism rates</td>
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<tr>
<td>Alternatives to Incarceration Utilized</td>
<td>% of convictions with non-active sentences</td>
<td>Cost-savings from reduced jail and prison populations</td>
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<td>% of eligible cases disposed in specialized courts</td>
<td>Reduced recidivism rates</td>
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<td>% of eligible cases disposed through mediation</td>
<td>Cost savings from reduced recidivism rates</td>
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<td>% of eligible cases diverted from traditional criminal justice processes</td>
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<td>% of eligible cases with a restorative justice component</td>
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<td>% of eligible cases referred to Sentencing Services, Criminal Justice Partnership programs, and pretrial programs</td>
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<td>% of eligible cases where attorney used underlying dysfunctions to client's benefit in resolving the criminal case, e.g., in plea negotiations or at sentencing</td>
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<td>Best Possible Outcome for Clients (Continued)</td>
<td>% of cases with collateral consequences attached to charged offense, by type of collateral consequence and charge</td>
<td>To be determined</td>
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<td>% of cases with collateral consequences attached to convicted offense, by type of collateral consequence and offense</td>
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<td>% of clients facing collateral consequences who were informed of collateral consequences by attorney, by type of collateral consequence and charge</td>
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<td>% of clients without active sentence who lost public housing or other public benefits, were deported, lost scholarships, lost driving privileges, lost professional licenses, were required to register as sex offender, etc.</td>
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<td>% of attorneys who receive training on collateral consequences</td>
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<tr>
<td>Clients Are Aware of the Collateral Consequences of a Criminal Case and Steps Are Taken to Mitigate Those Consequences Whenever Possible</td>
<td>% of clients who lost job pretrial by offense</td>
<td>Cost-savings to local and state governments due to reductions in unemployment benefits, social service costs, and business losses due to workforce reductions</td>
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<td>% of clients who lost housing pretrial by offense</td>
<td>Additional tax revenues when defendants remain employed</td>
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<td>% of clients who lost custody of children pretrial by offense</td>
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<td>% of clients expelled from educational institution by offense</td>
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<td># of days of lost work pretrial by offense</td>
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NC Office of Indigent Defense Services—July 2012
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<tr>
<td>Disentangle the Client from the Criminal Justice System</td>
<td>% of clients referred for evaluation or treatment for underlying dysfunction</td>
<td>• Recidivism rates &lt;br&gt; • Collateral consequences indicators listed above</td>
<td>• Lower recidivism rates &lt;br&gt; • Cost-savings or improved quality from reduced caseloads</td>
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<td></td>
<td>% of clients referred for evaluation who were found to have treatable dysfunction</td>
<td>• # of Judgment and Commitment forms where work release was recommended for eligible cases</td>
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<tr>
<td>Client Reentry Is Facilitated</td>
<td>% of clients enrolled in treatment during case</td>
<td>• # and % of clients who are free from court debt within X months</td>
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<tr>
<td>Client Property Is Returned</td>
<td>Recidivism rates</td>
<td>• Client satisfaction survey results</td>
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### Best Possible Outcome for Clients (Continued)

- **Client Reentry Is Facilitated**
  - % of cases dismissed or ending with not guilty of all charges where property was returned
  - % of cases where the return of property was sought by the defense attorney while the criminal case was pending
  - The total amount of storage fees charged to clients for holding evidence

- **Client Property Is Returned**
  - % of cases dismissed or ending with not guilty of all charges where property was returned
  - % of cases where the return of property was sought by the defense attorney while the criminal case was pending
  - The total amount of storage fees charged to clients for holding evidence

- **Attorney Preserves Record For Appeal**
  - Sample study of trial-level criminal cases to assess how well the record was preserved for appeals
  - % of superior court trials where the defense counsel requests a complete record of all proceedings pursuant to G.S. 15A-1241
  - # and % of appeals that note when the trial court failed to order full recordation
  - # of appeals where the appellate courts declined to rule on an issue because the issue was not preserved
  - % of errors preserved, as delineated by a form filled out by the appellate attorney
  - # of appeals where appellate counsel was forced to adopt a more stringent standard of review due to trial default, i.e. plain error or ineffective assistance of counsel
  - # of appeals where appellate counsel referred case to post-conviction agency due to default of issues at trial

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NC Office of Indigent Defense Services—July 2012
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<th>Goals (What We Want to Achieve)</th>
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<th>Performance Measures/Indicators (Measure Whether Objectives Are Achieved)</th>
<th>Impact on Criminal Justice System, Community, and Indigent Defense</th>
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</table>
| Best Possible Outcome for Clients (Continued) | Client’s Court Records Are Correct, Including Prior Record, Current Sentence, and Jail Credit | • % of identified errors corrected and other North Carolina Prisoner Legal Services reports on sentences that are corrected  
  • % of convictions where attorney received the Judgment and Commitment form  
  • % of convictions where the attorney received the Judgment and Commitment form and verified that all information was correct, including credit for time served  
  • % of convictions where client was incarcerated pretrial and credit for time served was ordered | • Reduction in unnecessary costs to correctional institutions from erroneous delays in inmate releases due to judicial or administrative error |
| | Clients Receive Vertical Representation | • % of cases where the client has the same attorney from appointment until conclusion of the case at the trial level | • To be determined |
| | If Within the Scope of Appointed Counsel’s Representation, Eligible Clients Receive an Expungement | • % of eligible cases where expungement petition was filed  
  • % of filed expungement petitions that were granted  
  • % of re-arrests and convictions after expungements were granted  
  • % of cases where charges were dismissed and an expungement was granted | • To be determined |
| | Clients Are Satisfied with Attorneys | • Attorney ratings from client satisfaction survey  
  • # of client complaints about attorneys  
  • # of client requests for a new attorney  
  • # of IDS and Bar complaints made about a lawyer  
  • # of clients that attempt to withdraw their guilty plea  
  • # of claims of ineffective assistance of counsel | • To be determined |
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| Defendants Receive the Same Quality Representation Regardless of Race, Gender, Ethnicity or Income | A System Without Racial, Gender, Ethnic, or Economic Disparities                     | • Analyze all indicators by race, gender, income, and English as a second language for signs of disparities  
• % of clients where English is a second language who have access to an interpreter/translator for jail interviews and court appearances (in court or by remote appearance)  
• % of defendants on Immigration and Customs Enforcement (ICE) holds  | To be determined                                                                                           |
| Wrongful Convictions Are Prevented                                      | Clients Receive Fair Trials and Are Not Convicted of Crimes They Did Not Commit       | • # of post-conviction exonerations  
• # of convictions over-turned on appeal  
• % of defendants who waive counsel and plead guilty the first time they appear before a judge (in court or by remote appearance) (look at the disparity between the potential sentence of charged offense and the actual sentence of convicted offense)  
• % of convictions that were guilty pleas for time served  
• Any statistical disparity between conviction rates of persons represented by retained and appointed counsel by offense  | To be determined                                                                                           |
| Client Input and Feedback Are Built Into the System                    | Oversight Bodies Should Have Client Representation                                   | • % of oversight bodies at the state, district, and local levels with at least one client representative  
• # of judicial districts that have a client advisory board or some representative body to speak for clients  | To be determined                                                                                           |
|                                                                        | Client Feedback Is Regularly Collected                                               | • % of indigent defendants who are given the opportunity to complete a client satisfaction survey  
• % of indigent defendants who complete a client satisfaction survey  
• % of appointed attorneys who have access to client feedback  | To be determined                                                                                           |
## NCSEP Systems Performance Measures

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| The State Should Pay For an Attorney Only When the Defendant Is Indigent | % of defendants screened for indigency  
% of defendants who meet uniform indigency requirements (uniform requirements should vary based on seriousness of charge)  
% of defendants who get appointed counsel and subsequently retain counsel  
Conduct a self-assessment on whether indigency guidelines are clear and can be applied fairly and consistently | ▪ Regular audits by external agency  
▪ Regular internal audits if external audit not available  
▪ % of cases where attorney submitted a timesheet  
▪ % of cases with an expert where the expert submitted a timesheet  
▪ % of attorney fee applications annually audited for accuracy by oversight body  
▪ Rate of errors found in attorney fee applications | ▪ To be determined |
| Financial Transparency | | | ▪ To be determined |
| Use Taxpayer Money as Efficiently as Possible | Cost per case by charge, delivery mechanism or type of attorney providing services, etc. (will look at in many different ways)  
% of cases where appointed attorney withdraws for any reason, causing duplication of time and effort | ▪ Use indicators in section on best possible outcomes for clients | ▪ To Be Determined |
| Provide Quality Services as Tasked | | | ▪ To Be Determined |
| Recoupment | % of total attorney, expert, and support fees recouped in cases that end in a conviction  
% of total attorney, expert, and support fees recouped in cases where the judge ordered repayment  
% of total attorney, expert, and support fees recouped (regardless of conviction)  
% of defendants whose probation was revoked for failure to repay attorney fees  
Recoupment error rate (any type of error incorrectly ordering or not ordering a defendant to repay attorney fees) | | ▪ To Be Determined |
| System Uses Taxpayer Funds In a Way That Compensates Service Providers on a Timely Basis | # of days between submission of fee application to the court or contractor request for payment to NCIDS and payment sent | | ▪ To Be Determined |
## NCSEP Systems Performance Measures

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| Indigent Defense is a Respected Player within the Criminal Justice Community | Indigent Defense is Treated As an Equal Member of the Criminal Justice System | • % of defense positions with comparable compensation packages as prosecution  
• Conduct a self-assessment  
• # of seats on Governors Crime Commission (GCC) or other pass-through agency  
• % of GCC or other pass-through agency grants applied for by indigent defense  
• % of GCC or other pass-through agency grants awarded to indigent defense, prosecution, and law enforcement  
• % of GCC or other pass-through agency funds awarded to indigent defense, prosecution, and law enforcement  
• # of criminal defense attorneys involved in court improvement projects that benefit the criminal justice system  
• % of judges and state legislators with criminal defense experience, as compared to prosecutors | To be determined |
| Indigent Defense Advocates for Criminal Justice Reform | Indigent Defense Services Advocates for Reform of the Criminal Justice System Where Appropriate | • Conduct a self-assessment and develop a strategic plan  
• # of impact litigation claims filed  
• # of successful impact litigation claims at the trial and appellate levels  
• # of amicus briefs filed  
• # of indigent defense attorneys who are members of an indigent-defense-related advocacy organization  
• # of advocacy groups lobbying on defense-oriented criminal justice issues  
• # of criminal justice issues lobbied on by indigent-defense-related advocacy organizations | To be determined |
| Members of the Community are Educated about Their Legal Rights | Prevent People from Becoming Entangled In the Criminal Justice System and Make Sure They Know Their Legal Rights | • Conduct a self-assessment | To be determined |
Part II: Indigent Defense Goals, Objectives, and Performance Measures/Indicators in Detail
Rationale:

- The Constitution guarantees the 6th amendment right to counsel to all citizens accused of crimes, regardless of their socio-economic status.
- Providing lawyers to defendants who are unable to afford legal counsel is an essential part of a fair and just criminal justice system because people who lack legal training cannot adequately represent themselves in criminal proceedings.

Performance Measures/Indicators:

- % of defendants denied appointed counsel who receive public benefits
- % of defendants denied appointed counsel who later 1) proceed pro se, 2) waive counsel, or 3) hire a private attorney
- % of defendants denied appointed counsel who hire a private attorney at significant financial hardship
- % of defendants who are found not indigent and then appeal the denial of counsel (requires appeal mechanism to be in place)

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

—Griffin v. Illinois, 351 U.S. 12, 19 (1956)
**Goal: A Defendant’s Constitutional Right to an Attorney Is Preserved**

**Objective: Access to Attorney Is Real**

**Rationale:**
- The right to counsel is a constitutional right.
- Quality indigent defense systems will make sure clients have access to an attorney and that waivers of counsel are made voluntarily and intelligently and not as the result of undue pressure, influence, or lack of understanding.

**Performance Measures/Indicators:**
- % of defendants advised of right to counsel at the magistrate appearance
- % of defendants who waive counsel the first time they appear before a judge (in court or by remote appearance)
- % of defendants who waive counsel and plead guilty the first time they appear before a judge (in court or by remote appearance)
- % of defendants who waive counsel the first time they appear before a judge (in court or by remote appearance) and subsequently request appointed counsel
- % of waivers of counsel made on the record

“The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. . . . This noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.”

—The Constitution Project, Justice Denied
NC Office of Indigent Defense Services

NCSEP System Performance Measures Reference Guide

Goal: A Defendant’s Constitutional Right to an Attorney Is Preserved

Objective: Access to Attorney Is Timely Enough to Preserve Constitutional Rights

Rationale:

- If clients do not see a lawyer in a timely fashion, their constitutional rights may be in jeopardy and defenses may be materially damaged. For example, the longer clients sit in jail without access to an attorney the more likely they will make statements that incriminate.
- The longer defendants sit in jail the stronger the temptation to plead guilty to an offense they did not commit in order to secure release from jail and get back to their jobs and families and resume normal life.
- Research shows client outcomes are significantly better when defendants have access to an attorney at every critical stage of the process, including bail and first appearance.
- The long-term consequences of having a criminal record are severe. A criminal record jeopardizes future employment, affects the ability to obtain housing, and can carry a host of civil penalties. Given these consequences, it is imperative that defendants understand the full consequences they face before they plead guilty to offenses. Having access to an attorney is their best chance that this will happen.

Performance Measures/Indicators:

- # of days between arrest and appointment of counsel
- # of days between arrest and 1st in-person contact with attorney
- % of defendants with attorney at magistrate appearance
- % of defendants with attorney the first time they appear before a judge (in court or by remote appearance)

“Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.”

—ABA, Ten Principles of a Public Defense Delivery System, Principle #3
Rationale: The North Carolina Rules of Professional Conduct require that lawyers avoid ethical conflicts. Loyalty and independent judgment are essential elements in the lawyer’s relationship with a client. Ethical conflicts interfere with these elements and damage the lawyer/client relationship.

Performance Measures/Indicators:
- % of cases with a potential conflict because the attorney is representing more than one co-defendant (or other conflict)
- % of cases in which client waives conflict
- % of cases in which an attorney withdraws due to a conflict

“Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system, and to the lawyer’s own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

—Preamble: A Lawyer’s Responsibilities, North Carolina Rules of Professional Conduct
NC Office of Indigent Defense Services
—
July 2012

NCSEP System Performance Measures Reference Guide

Goals: Best Possible Outcomes for Clients
Objective: Clients are Not Incarcerated Before Conviction (Pretrial Release) and Bond Amounts Are Justified

Rationale:
- Criminal law has a presumption of pretrial release unless a client is a flight or public safety risk.
- Clients out on pretrial release can maintain jobs, housing, and family stability.
- Research has shown that clients out on pretrial release are more likely to have favorable case dispositions than clients who are incarcerated pretrial.
- Pretrial release allows the defendant to assist his or her attorney and increases the likelihood that case dispositions will be based on actual guilt or innocence rather than the socio-economic backgrounds of the defendants.

Performance Measures/Indicators:
- % of filed bond reduction motions as a % of pretrial incarcerated clients
- % of filed bond reduction motions granted
- % of defendants incarcerated throughout the proceedings
- # of days incarcerated pretrial
- Breakdown of conditions of release, e.g., released on own recognizance, secured bond, unsecured bond, etc.
- Average bond amounts by type of case
- Failure to appear rates by type of case
- % of defendants represented by attorney at magistrate appearance
- % of defendants represented by attorney the first time they appear before a judge (in court or by remote appearance)
- # of defendants released due to bond reductions
- # and % of defendants who have bond revoked
- Impact of pretrial release on case outcomes
- % of defendants on Immigration and Customs Enforcement (ICE) holds

“The right to pretrial release is a fundamental liberty interest rooted in the notion that one is presumed innocent until proven guilty beyond a reasonable doubt.”

“For those who cannot make bail the unpleasantness of pretrial detention may be a very effective deterrent to trial.”
-Michael M. O’Hear, Plea Bargaining and Procedural Justice
Goal: Best Possible Outcomes for Clients

Objective: Prompt and Meaningful Determination of Probable Cause

Rationale:
- The prosecution should have to prove its case at every stage of the proceedings.
- Meaningful probable cause determinations should act as a check on the practice of overcharging by prosecutors.
- Probable cause hearings can prevent clients from languishing in jail between the time of arrest and indictment.

Performance Measures/Indicators:
- % of felony cases with a probable cause hearing
- % of felony cases where counsel waived a probable cause hearing
- # of days between arrest and probable cause hearing in felony cases
- % of probable cause hearing results by type of ruling (dismissed, bound over to superior court, charge reduced by court, etc.)
- % of cases where the defendant is incarcerated until a probable cause hearing

“Proper determinations of probable cause require circumstances sufficiently strong in of themselves to warrant a man of ordinary prudence to believe that the party committed the act of which the complaint is made.”

NC Office of Indigent Defense Services

NCSEP System Performance Measures Reference Guide

Goal: Best Possible Outcomes for Clients

Objective: Client’s 4th, 5th, 6th, and 14th Amendment Rights Are Protected

Rationale:

- The protection of clients’ constitutional rights is sacrosanct in a fair and just criminal justice system.
- Vigorous motions practice is often necessary to protect the constitutional rights of the criminally accused. In addition, the presence of motions practice is indicative that a client is receiving quality representation.

Performance Measures/Indicators:

- % of cases with “X” pretrial motions by type of amendment (different X for different case/amendment types), including discovery motions
- % of filed pretrial motions that were granted
- % of cases where defendant refused to make statements to police
- # of days between arrest and indictment by pretrial release status (prevent clients languishing in jail, cannot file pretrial motion until indictment)
- % of cases where defendant waives right to counsel during police interrogation and subsequently requests appointed counsel
- # of days between indictment and resolution of case

“When society acts to deprive one of its members of his life, liberty, or property, it takes its most awesome steps. No general respect for, nor adherence to, the law as a whole can well be expected without judicial recognition of the paramount need for prompt, eminently fair and sober criminal law procedures. The methods we employ in the enforcement of our criminal law have aptly been called the measures by which the quality of our civilization may be judged.”

Goal: Best Possible Outcomes for Clients

Objective: Cases Are Resolved in a Time Frame Least Harmful to the Client

Rationale:

- Prolonged litigation and repeated court appearances can negatively impact the client, especially when they are incarcerated.
- The timely resolution of a case clears docket space for indigent defense, the prosecution, and the judiciary.
- The speedy resolution of cases prevents undue and oppressive pretrial incarceration, minimizes the anxiety and concern accompanying public accusation, and limits the possibility that long delays will impair the ability of the accused to defend themselves.

Performance Measures/Indicators:

- # of continuances per case and type of hearing by requesting party
- % of continuance requests granted and denied by requesting party
- % of cases with speedy trial motions as a ratio to the length of pretrial incarceration
- % of cases resolved within X days by type of case
- # of days between arrest and indictment
- # of days between indictment and resolution of case

“For every defendant who has lost his job because of a conviction, there are probably five more who have lost their jobs as a result of simply having missed work in order to appear in court.”

—Malcolm M. Feeley, The Process is the Punishment: Handling Cases In a Lower Criminal Court (1979)
Goal: Best Possible Outcomes for Clients

Objective: The Direct Consequences of the Criminal Case Are as Beneficial to the Client as Possible

Rationale: The primary goal of indigent defense is to obtain the best possible outcomes for clients.

Performance Measures/Indicators: Case outcomes, including determination of guilt, sentence, sentence type (active, intermediate, community), and financial costs (fines, restitution, etc.) by type of attorney

“The primary objective of any indigent defense agency is to obtain the best outcome for the client.”

Specialty courts are alternatives to incarceration that provide treatment opportunities for the underlying dysfunctions that brought clients into contact with the criminal justice system in the first place. Once clients’ underlying dysfunctions are treated, the client will have a better chance at not re-offending.

Quality defense attorneys will take every opportunity to utilize criminal justice resources to the benefit of their clients.

Alternatives to incarceration, like diversion and mediation, resolve cases quicker and more inexpensively.

"Community-based alternatives, which do not necessarily include probation or parole, are a cost effective means of redirecting people away from prison while protecting public safety and maintaining accountability. Community-based alternatives include, but are not limited to, electronic monitoring, work release, day-reporting centers, and half-way houses. Community-based alternatives cost thousands of dollars less than prison, and help improve public safety by ensuring that people remain in the community with their families and support systems, while also maintaining employment and receiving services."

--Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety, Justice Policy Institute

**Goal: Best Possible Outcomes for Clients**

**Objective: Alternatives to Incarceration Utilized**

**Rationale:**
- Specialty courts are alternatives to incarceration that provide treatment opportunities for the underlying dysfunctions that brought clients into contact with the criminal justice system in the first place. Once clients’ underlying dysfunctions are treated, the client will have a better chance at not re-offending.
- Quality defense attorneys will take every opportunity to utilize criminal justice resources to the benefit of their clients.
- Alternatives to incarceration, like diversion and mediation, resolve cases quicker and more inexpensively.

**Performance Measures/Indicators:**
- % of convictions with non-active sentences
- % of eligible cases disposed in specialized courts
- % of eligible cases disposed through mediation
- % of eligible cases diverted from traditional criminal justice processes
- % of eligible cases with a restorative justice component
- % of eligible cases referred to Sentencing Services, Criminal Justice Partnership programs, and pretrial programs
- % of eligible cases where attorney used underlying dysfunctions to client’s benefit in resolving the criminal case, e.g., in plea negotiations or at sentencing
Goal: Best Possible Outcomes for Clients

Objective: Clients Are Aware of the Collateral Consequences of a Criminal Case and Steps Are Taken to Mitigate Those Consequences Whenever Possible

Rationale:
- Factoring collateral consequences into defense strategy helps ensure that the true punishment is proportional to the offense.
- Mitigating collateral consequences during the guilt/innocence phase facilitates the client’s eventual reentry into society.
- Understanding collateral consequences and the intersection of criminal and civil law can lead to better outcomes in both the criminal and civil matters.
- On July 15, 2009, the Uniform Law Commission approved the Uniform Collateral Consequences of Conviction Act. The Act includes a provision to ensure that defendants are aware of the existence of collateral sanctions before conviction.

Performance Measures/Indicators:
- % of cases with collateral consequences attached to charged offense, by type of collateral consequence and charge
- % of cases with collateral consequences attached to convicted offense, by type of collateral consequence and offense
- % of clients facing collateral consequences who were informed of collateral consequences by attorney, by type of collateral consequence and charge
- % of clients without active sentence who lost public housing or other public benefits, were deported, lost scholarships, lost driving privileges, lost professional licenses, were required to register as a sex offender, etc.
- % of attorneys who receive training on collateral consequences

“From the moment of arrest, people are in danger of losing hard earned jobs, stable housing, basic public benefits, and even their right to live in this country. . . . The steady accumulation of collateral sanctions has combined with the exponential increase in the availability of criminal record data to create a perfect storm.”

—The Bronx Defenders, Defender Toolkit: Using the Knowledge of Collateral Consequences to Get Better Results in Criminal Cases
“For every defendant sentenced to a jail term of any length, there are likely to be several others who were released from jail only after and because they pleaded guilty. For each dollar paid out in fines, a defendant is likely to have spent four or five dollars for a bondsman and an attorney. For each dollar they lose in fines, working defendants likely lose several more from docked wages. For every defendant who has lost his job because of a conviction, there are probably five more who have lost their jobs as a result of simply having missed work in order to appear in court. . . . When we view criminal sanctioning from this broader, functional perspective, the locus of court imposed sanctioning shifts dramatically away from adjudication, plea bargaining, and sentencing to the earlier pretrial stages. In essence, the process itself is the punishment.

—Malcolm M. Feeley, The Process is the Punishment

Goal: Best Possible Outcomes for Clients
Objective: Procedural Injustices Are Mitigated

Rationale:
- Indigent defense should attempt to prevent clients from losing their jobs, homes, and custody of their children by facilitating pretrial release whenever possible.
- Research has demonstrated that when procedural injustices are mitigated, clients’ perceptions of their indigent defense attorneys are improved.
- Research has shown that defendants who were found guilty of crimes were less likely to recidivate when they believed the court processes treated them fairly.

Performance Measures/Indicators:
- % of clients who lost job pretrial by offense
- % of clients who lost housing pretrial by offense
- % of clients who lost custody of children pretrial by offense
- % of clients expelled from educational institution by offense
- # of days of lost work pretrial by offense
- % of clients without active sentences who lost public housing or other public benefits, were deported, lost scholarships, lost driving privileges, lost professional licenses, were required to register as sex offenders, etc.
NCSEPN System Performance Measures Reference Guide

Goal: Best Possible Outcomes for Clients

Objective: Disentangle the Client From the Criminal Justice System

Rationale:

- When crafting legal strategy, negotiating pleas, etc. indigent defense attorneys should take into account the underlying dysfunctions that initially brought the client in contact with the criminal justice system so the client will not reappear on an indigent defense docket.
- Indigent defense can benefit from reduced caseloads if we successfully disentangle some of our clients from the cycle of crime.
- The argument for more indigent defense funding will be stronger because indigent defense will be seen as a problem solver rather than as a cog in the criminal justice system.

Performance Measures/Indicators:

- % of clients referred for evaluation or treatment for underlying dysfunction
- % of clients referred for evaluation who were found to have treatable dysfunction
- % of clients enrolled in treatment during case
- Recidivism rates
- Probation failure rates
- Treatment plan success and failure rates

“The goal is to ensure people are better off when they leave the justice system than when they entered, for their sake and that of society.”

—Michael Judge, Los Angeles County Public Defender
"Civil legal aid attorneys and public defenders who undertake representation of the indigent have a responsibility to be aware of the many challenges their clients face as they make the transition back in to their communities. Without assistance from civil legal aid attorneys and public defenders equipped to handle the legal hurdles of reentry, many ex-offenders fall prey to recidivism, ending up on the docket of the same public defender who helped them on the very offense for which they were originally incarcerated."

—Cynthia Works, Reentry-The Tie That Binds Civil Legal Aid Attorneys and Public Defenders, or NCSEP Research Rpt., p.52
Rationale:

- Clients are statutorily entitled to the return of seized property when the evidence is no longer needed pursuant to NC General Statute §15-11.1.
- Clients have stated that they consider pursuing the return of their property to be part of what a good attorney would do.

Performance Measures/Indicators:

- % of cases dismissed or ending with not guilty of all charges where property was returned
- % of cases where the return of property was sought by the defense attorney while the criminal case was pending
- The total amount of storage fees charged to clients for holding evidence

“Upon application by the lawful owner or a person, firm or corporation entitled to possession or upon his own determination, the district attorney may release any property seized pursuant to his lawful authority if he determines that such property is no longer useful or necessary as evidence in a criminal trial and he is presented with satisfactory evidence of ownership. If the district attorney refuses to release such property, the lawful owner or a person, firm or corporation entitled to possession may make application to the court for return of the property. The court, after notice to all parties, including the defendant, and after hearing, may in its discretion order any or all of the property returned to the lawful owner or a person, firm or corporation entitled to possession. “


— Insert Reference
Goal: Best Possible Outcomes for Clients
Objective: Attorney Preserves Record for Appeal

Rationale:
- If the trial attorney does not preserve the record for appeal, crucial legal arguments cannot be raised on appeal.
- Preserving the record for appeal may impact the behavior of the trial judge and prosecutor.
- Preserving the record for appeal, particularly through in-court objections, engenders client trust because clients believe they are receiving a zealous defense, which improves clients’ perceptions of their attorneys.

Performance Measures/Indicators:
- Sample study of trial-level criminal cases to assess how well the record was preserved for appeals
- % of superior court trials where the defense counsel requests a complete record of all proceedings pursuant to G.S. 15A-1241
- # and % of appeals that note when the trial court failed to order full recordation
- # of appeals where the appellate courts declined to rule on an issue because the issue was not preserved
- % of errors preserved, as delineated by a form filled out by the appellate attorney
- # of appeals where appellate counsel was forced to adopt a more stringent standard of review due to trial default, i.e. plain error or ineffective assistance of counsel
- # of appeals where appellate counsel referred case to post-conviction agency due to default of issues at trial

“Although an appeal is first set in motion by the filing of a notice of appeal with the clerk of the trial court, the appellate process actually begins at the trial and pretrial level. Counsel and the parties are bound by the record made at the trial level. A litigant cannot present any new evidence or testimony in the appellate court, which may only review the record from the proceedings at the trial court. In addition, trial errors cannot be raised for the first time on appeal, and constitutional issues must be raised at the first opportunity.”

—Patricia Ham, Making the Appellate Record: A Trial Defense Attorney’s Guide to Preserving Objections-the why and How
“As a defense lawyer, you know that rap sheets can have serious consequences, both within and without the criminal justice system. Within the criminal justice system, the information in a rap sheet can affect bail, plea offers, sentencing, and even parole or work release. Outside the criminal justice system, rap sheet information can affect an ex-offender’s ability to find work, secure housing or obtain public benefits. It is therefore extremely important to ensure that information on a rap sheet is as complete and accurate as possible.”

—Legal Action Center, Setting the Record Straight, What Defense Attorneys Need to Know About the Civil Consequences of Client Criminal Records

Rationale:
- Errors in a client’s criminal record can increase criminal history points, which negatively impact bail, plea negotiations, sentencing, and parole and work release determinations.
- Errors in a client’s criminal record can negatively impact the client’s ability to find work, housing, or public benefits, thereby increasing the chances that the client will re-offend.
- Attorneys should make sure that the current sentence on the Judgment and Commitment form is correct. During the NCIDS roundtable discussions, clients frequently complained that this information was often inaccurate.

Performance Measures/Indicators:
- % of identified errors corrected and other North Carolina Prisoner Legal Services reports on sentences that are corrected
- % of convictions where the attorney received the Judgment and Commitment form
- % of convictions where the attorney received the Judgment and Commitment form and verified that all information was correct, including credit for time served
- % of convictions where client was incarcerated pretrial and credit for time served was ordered
**Goal: Best Possible Outcomes for Clients**

**Objective: Clients Receive Vertical Representation**

**Rationale:**

- Vertical representation helps ensure that clients have the assistance of counsel at all critical stages of their cases because there are no unnecessary gaps in the legal representation.

- Without vertical representation, the quality of representation suffers as the responsibility for case preparation and planning is scattered among multiple attorneys, which often results in the loss of valuable time for case investigation.

- Vertical representation improves the rapport and trust between the client and attorney, which may lead to better case outcomes.

- Clients prefer having one attorney throughout the case

**Performance Measures/Indicators:**

- % of cases where the client has the same attorney from appointment until conclusion of the case at the trial level

“The same attorney continuously represents the client until completion of the case. Often referred to as vertical representation, the same attorney should continuously represent the client from initial assignment through the trial and sentencing.”

— ABA Ten Principles Of a Public Defense Delivery System, #7
NC Office of Indigent Defense Services
—July 2012

NCSEP System Performance Measures Reference Guide

Goal: Best Possible Outcomes for Clients
Objective: If Within the Scope of Appointed Counsel’s Representation, Eligible Clients Receive an Expungement

Rationale:
• The expungement of criminal records helps former clients navigate the barriers to successful reentry. A single criminal arrest can negatively impact a person’s ability to gain private employment, government employment, government housing, admission to the military, and the acquisition of credit.
• Expunging criminal records is a buffer to the public’s unlimited access to criminal record information.
• Expunging criminal records allows people to pursue employment, housing or other major life activities without the stigma of an arrest or conviction record.

Performance Measures/Indicators:
• % of eligible cases where expungement petition was filed
• % of filed expungement petitions that were granted
• % of re-arrests and convictions after expungements were granted
• % of cases where charges were dismissed and an expungement was granted

“The need for an appropriate expungement mechanism is perhaps greater now than ever before. Most jurisdictions now utilize technology to make criminal records easier to access. At the same time in the last two decades conviction rates have increased. The convergence of these facts and the post-September 11th focus on security, which has increased employers’ emphasis on any criminal record, make access to an expungement program all the more vital. An effective criminal justice system should be concerned with punishing appropriately while avoiding permanent collateral effects that are unwarranted or counterproductive.”

—Leslie McAdoo, Creating an Expungement Statute for the District of Columbia
Goal: Best Possible Outcomes for Clients

Objective: Clients are Satisfied with Attorneys

Rationale:

- Clients are the ultimate consumers of indigent defense services, and indigent defense agencies should be concerned about the overall satisfaction of their customers. In private practice, law firms and private attorneys frequently use client satisfaction surveys to gauge the perceptions of their clients. Indigent defense agencies should be just as concerned about the perceptions of their client population.

- Client satisfaction is an important measure of attorney performance and the quality of legal representation.

- Using client satisfaction as a measure of attorney performance would make indigent defense attorneys more accountable to clients.

Performance Measures/Indicators:

- Attorney ratings from client satisfaction survey
- # of client complaints about attorneys
- # of client requests for a new attorney
- # of NCIDS and Bar complaints made about a lawyer
- # of clients that attempt to withdraw their guilty plea
- # of claims of ineffective assistance of counsel

“Client satisfaction should be a primary component of defender professionalism as well as an important measure of defender performance. Tools for the assessment of client satisfaction should be developed and methodically used by defender offices.”

—Jonathan E. Gradess, Clients and the Client Community Deserve a Say in Defense Services
NCSEP System Performance Measures Reference Guide

Goal: Defendants Receive the Same Quality Representation Regardless of Race, Gender, Ethnicity, or Income

Objective: A System Without Racial, Gender, Ethnic, or Economic Disparities

Rationale:
- Racial, gender, ethnic, and economic disparities foster public mistrust and sully the perception of the criminal justice and indigent defense systems.
- Racial, gender, ethnic, and economic disparities within the indigent defense system violate the spirit of the Equal Protection clause, which guarantees that no person or class of persons shall be denied the same protection of the law that is enjoyed by other persons or other classes of persons in like circumstances.
- Identifying racial, gender, ethnic, and economic disparities in the indigent defense system will provide NCIDS with information that can be used to establish policies and practices to eliminate these disparities.
- Data on racial, gender, ethnic, and economic disparities may provide indigent defenders statistical data to support disparate impact litigation claims.

Performance Measures/Indicators:
- Analyze all indicators by race, gender, income, and English as a second language for signs of disparities
- % of clients where English is a second language who have access to an interpreter/translator for jail interviews and court appearances (in court or by remote appearance)
- % of defendants on Immigration Customs Enforcement (ICE) holds

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

—U.S. Constitution Amend. XIV §1
Rationale:

- Theoretically, the criminal justice system is based on fairness, and wrongful convictions compromise the integrity of the entire system.
- Wrongful convictions are evidence of serious deficiencies in the defense system and practice.
- Wrongful convictions result in innocent clients being punished for crimes they did not commit and guilty people not being brought to justice.

Performance Measures/Indicators:

- # of post-conviction exonerations
- # of convictions over-turned on appeal
- % of defendants who waive counsel and plead guilty the first time they appear before a judge (in court or by remote appearance) (look at the disparity between the potential sentence of charged offense and the actual sentence of convicted offense)
- % of convictions that were guilty pleas for time served
- Any statistical disparity between conviction rates of persons represented by retained and appointed counsel by offense

“The resources of the justice system are often stacked against poor defendants. Matters only become worse when a person is represented by an ineffective, incompetent or overburdened defense lawyer. The failure of overworked lawyers to investigate, call witnesses or prepare for trial has led to the conviction of innocent people. When a defense lawyer doesn't do his or her job, the defendant suffers.”

—Innocence Project Website
NC Office of Indigent Defense Services

NCSEP System Performance Measures Reference Guide

Goal: Client Input and Feedback Are Built into the System
Objective: Oversight Bodies Should Have Client Representation

Rationale:
- Clients should have a voice in the development and design of indigent defense policies and practices.
- Clients can provide the oversight board a unique perspective on the impact of indigent defense policies and practice.

Performance Measures/Indicators:
- % of oversight bodies at the state, district, and local levels with at least one client representative
- # of judicial districts that have a client advisory board or some representative body to speak for clients

“Our clients are a richly diverse group. It is important for everyone who works for public defense clients to hear their points of view, which are no more monolithic than the opinions of those in the public defense community itself. The mechanism for delivering those views may be a genuine presence on a program’s board, a separate client advisory board, regularly scheduled meetings of a program director with designated clients or client representatives, or some other means. Whatever its form, it must give clients a voice that is heard and heeded, resulting in representation of clients, not of files.”

—Jonathan E. Gradess, Clients and the Client Community Deserve a Say in Defense Services
Goal: Client Input and Feedback Is Built into the System

Objective: Client Feedback Is Regularly Collected

Rationale:
- The regular collection of client feedback will demonstrate that indigent defense values the client’s role as a consumer of its services.
- The regular collection of client feedback will establish client satisfaction as a measure of attorney and system performance.
- The regular collection of client feedback will give clients some power to demand accountability, fair treatment, and quality legal representation.

Performance Measures/Indicators:
- % of indigent defendants who are given the opportunity to complete a client satisfaction survey
- % of indigent defendants who complete a client satisfaction survey
- % of appointed attorneys who have access to client feedback

“Accountability has become a buzzword for many of our most important public systems, paid for and supported by taxpayers, but not the public defense system. In this system, accountability would mean giving voice to genuine client/consumer demands and allowing those demands to shape the future of the design, scope and nature of a reformed public defense system. It would mean using the experience of clients to identify shortcomings of the system and to remedy those shortcomings.

Goal: Indigent Defense System Is Accountable to Taxpayers

Objective: The State Should Pay For an Attorney Only When the Defendant is Indigent

Rationale:

- In North Carolina, NCIDS is statutorily required to establish indigency guidelines.
- The state should not pay for the legal representation of people who can afford to pay for it.
- Quality indigency screening preserves scarce indigent defense funds for the clients who need them the most.

Performance Measures/Indicators:

- % of defendants screened for indigency
- % of defendants who meet uniform indigency requirements (uniform requirements should vary based on seriousness of charge)
- % of defendants who get appointed counsel and subsequently retain counsel
- Conduct a self-assessment on whether indigency guidelines are clear and can be applied fairly and consistently

“In these times of fiscal austerity, every dollar spent representing someone who can afford to pay for counsel robs resource-poor indigent defense systems of money that could be better spent representing people who are truly in need.”

—Brennan Center for Justice, Eligible for Justice
NCSEP System Performance Measures Reference Guide

Goal: Indigent Defense System Is Accountable to Taxpayers
Objective: Financial Transparency

Rationale:
- The taxpayer has the right to know how tax dollars are being spent.
- The indigent defense system will be viewed with more legitimacy if the public believes that indigent defense resources are being spent wisely and efficiently.

Performance Measures/Indicators:
- Regular audits by external agency
- Regular internal audits if external audit not available
- % of cases where attorney submitted a timesheet
- % of cases with an expert where the expert submitted a timesheet
- % of attorney fee applications annually audited for accuracy by oversight body
- Rate of errors found in attorney fee applications

“Transparency is a fundamental concept in government accountability and democracy and should be extended to how well agencies are performing and how well officials are representing their constituency. Financial transparency can be an effective way to allow citizens to see how public funds are being spent.”

—Center for Public Policy & Administration, The University of Utah
Goal: Indigent Defense System Is Accountable to Taxpayers

Objective: Use Taxpayer Money as Efficiently as Possible

**Rationale:**
- Public resources should be used efficiently.
- The legitimacy of the indigent defense system increases if the public believes these resources are being spent efficiently.

**Performance Measures/Indicators:**
- Cost per case by charge, delivery mechanism or type of attorney providing services, etc. (will look at in many different ways)
- % of cases where appointed attorney withdraws for any reason, causing duplication of time and effort

“Whenever a person is determined to be indigent and entitled to counsel, it is the responsibility of the State under the federal and state constitutions to provide that person with counsel and the other necessary expenses of representation. The purpose of this Article is to: (5) Deliver services in the most efficient and cost-effective manner without sacrificing quality representation.”

— Indigent Defense Services Act of 2000 (2000-144, s. 1.)
Goal: Indigent Defense System Is Accountable to Taxpayers

Objective: Provide Quality Services as Tasked

Rationale:

- NCIDS has a statutory mandate to provide quality services in a cost-effective manner.
- Quality indigent defense services improve the outcomes for our clients.
- The community is served by its criminal justice system only if the public has faith in the outcomes, and fair outcomes are possible only if quality representation is afforded both sides.

Performance Measures/Indicators:

- Use indicators in section on best possible outcomes for clients

“The primary goal of the Commission on Indigent Defense Services ("NCIDS Commission") is to ensure that indigent defendants in North Carolina are afforded high quality legal representation.”

**Goal:** Indigent Defense System Is Accountable to Taxpayers  
**Objective:** Recoupment

**Rationale:**
- In North Carolina clients are statutorily required to repay the state for attorney services if convicted.
- Clients should be required to contribute to the cost of their legal services and indigent defense services should play an active role in this process.

**Performance Measures/Indicators:**
- % of total attorney, expert, and support fees recouped in cases that end in a conviction
- % of total attorney, expert, and support fees recouped in cases where the judge ordered repayment
- % of total attorney, expert, and support fees recouped (regardless of conviction)
- % of defendants whose probation was revoked for failure to repay attorney fees
- Recoupment error rate (any type of error incorrectly ordering or not ordering a defendant to repay attorney fees)

“To the extent required by law, individuals who have been appointed counsel . . . shall continue to be responsible for repaying the fees paid to such counsel or, in the case of representation by a public defender office, the value of services rendered by counsel. . . . The court shall ensure that the person potentially responsible for paying the fees is notified of the potential liability, and that the person has a reasonable opportunity to be heard on the issue.”

—NCIDS Rules for the Continued Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level, Rule 1.11(a); G.S. 7A-450.1-450.4; 7A-455; 7A-498.5(c)(8)
NCSEP System Performance Measures Reference Guide

Goal: Indigent Defense System Is Accountable to Taxpayers

Objective: System Uses Taxpayer Funds in a way that Compensates Service Providers on a Timely Basis

Rationale:

- Employees and contractors deserve to be paid on time for the work they do.
- Timely payment of private appointed counsel positively affects the retention and recruitment of quality indigent defense lawyers.

Performance Measures/Indicators:

- # of days between submission of fee application to the court or contractor request for payment to NCIDS and payment sent

“We urge Clerk’s Offices to forward attorney fee awards to Financial Services as promptly as possible. Prompt forwarding of fee awards allows NCIDS to pay attorneys as quickly as possible for their services and to capture accurate data about the demand on the indigent defense fund.”

—NCIDS Memorandum on NCIDS Policies Governing Attorney Fee and Expense Applications in Non-Capital and Non-Criminal Cases at the Trial Level
Goal: Indigent Defense Is a Respected Player Within the Criminal Justice Community

Objective: Indigent Defense Is Treated As an Equal Member of the Criminal Justice System

Rationale:

- Indigent defense is frequently left out of grant solicitations and the policy decision-making process at both the state and national levels, which negatively impacts the defense function. Being treated as an equal stakeholder in the criminal justice system means that indigent defense has an equal seat at the policymaking table, where it can advocate for progressive criminal justice reform and fight for equal resource allocation.

- Salary and resource parity will mitigate high turnover among indigent defenders and improve recruitment and retention of experienced and skilled attorneys, which ultimately improves the quality of representation for our clients.

Performance Measures/Indicators:

- % of defense positions with comparable compensation packages as prosecution
- Conduct a self-assessment
- # of seats on Governors Crime Commission (GCC) or other pass-through agency
- % of GCC or other pass-through agency grants applied for by indigent defense
- % of GCC or other pass-through agency grants awarded to indigent defense, prosecution, and law enforcement
- % of GCC or other pass-through agency funds awarded to indigent defense, prosecution, and law enforcement
- # of criminal defense attorneys involved in court improvement projects that benefit the criminal justice system
- % of judges and state legislators with criminal defense experience, as compared to prosecutors

"Federal financial assistance through grants or other programs as provided in support of state and local prosecutors should also be provided in support of indigent defense, and the level of federal funding for prosecution and defense should be substantially equal.

—Constitution Project, Justice Denied, Recommendation #13

“There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.”

—ABA Ten Principles, # 8
**Goal: Indigent Defense Advocates for Criminal Justice Reform**

**Objective: Indigent Defense Services Advocates for Reform of the Criminal Justice System where Appropriate**

**Rationale:**
- Proactive participation in legal reform and the policymaking process is an antecedent to effective courtroom advocacy.
- Indigent defense clients are an unpopular and easily marginalized group; consequently, there are very few groups advocating for policy changes that will benefit our clients. If indigent defense agencies and other public interest groups do not advocate for the issues that affect our clients, who will?
- The Constitution Project recommends that defense attorneys support and advocate for reform of indigent defense services.

**Performance Measures/Indicators:**
- Conduct a self-assessment and develop a strategic plan
- # of impact litigation claims filed
- # of successful impact litigation claims at the trial and appellate levels
- # of amicus briefs filed
- # of indigent defense attorneys who are members of an indigent-defense-related advocacy organization
- # of advocacy groups lobbying on defense-oriented criminal justice issues
- # of criminal justice issues lobbied on by indigent-defense-related advocacy organizations

“Defense service providers increasingly see a role for themselves in criminal justice policy making, particularly in light of past legislative reforms that have raised incarceration rates and limited the judges’ sentencing discretion through mandatory minimums and three-strikes laws. This is not a traditional role for defenders of the indigent. However over the past two decades, PDs and assigned counsel have recognized that the defense perspective needs to be more visible in policy making and have begun testifying at legislative hearings at both state and national levels.”

—Cait Clarke, Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor
NCSEP System Performance Measures Reference Guide

Goal: Members of the Community Are Educated about Their Legal Rights

Objective: Prevent People From Becoming Entangled in the Criminal Justice System and Make Sure They Know Their Legal Rights

Rationale:

- Preventing people from becoming entangled in the criminal justice system will clear docket space for indigent defense and the courts.
- Ensuring that people know their legal rights should they become enmeshed in the justice system should mitigate the number of waivers of counsel and inculpatory statements made during custody.

Performance Measures/Indicators:

- Conduct a self-assessment

“The revolving door nature of the criminal justice system and the corresponding economic and social costs associated with recidivism have spurred indigent defense offices to develop initiatives that would prevent and reduce crime, while still ensuring justice for their clients. Expanding the defense function toward crime prevention not only helps facilitate public safety but also improves the criminal justice system and the public perception of indigent defense and its role in society.”

—Mark Moore, The Best Defense is No Offense: Preventing Crime through Effective Public Defense